

D.U.P. NO. 98-38

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-98-345

CWA LOCAL 1033,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by CWA Local 1033 against the State of New Jersey. The Director finds that Local 1033 lacks standing to allege a violation of 5.4a(5) of the Act. Further, even if Local 1033 had standing to assert the charge, the charge simply alleges a mere breach of contract, which does not warrant the exercise of the Commission's jurisdiction under Human Services. Finally, the Director finds that no facts or allegations were presented to support a 5.4a(1) or (2) violation.

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Appearances:

For the Respondent, Peter Verniero, Attorney General  
(Michael L. Diller, Sr. Deputy Attorney General)

For the Charging Party, CWA Local 1033  
(Rae Roeder, President)

REFUSAL TO ISSUE COMPLAINT

On March 20, 1998, Communications Workers of America, Local 1033 ("Local 1033") filed an unfair practice charge against the State of New Jersey, Office of Employee Relations ("State"). The charge alleges that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically provisions 5.4a(1), (2) and (5)<sup>1/</sup> by unlawfully

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

denying two union members' requests for unpaid leave for union activity. Local 1033 claims the State acted in bad faith and violated the parties' collective negotiations agreement.

The State asks that the charge be dismissed. It points out that it is not obligated to negotiate with Local 1033 under 5.4a(5) of the Act, as Local 1033 is not the certified representative of the two employees. Thus, the State argues that Local 1033 lacks standing to bring the instant charge.

The State further asserts that even if Local 1033 has standing to bring this charge, it still could not maintain the action, since Local 1033 is alleging a mere breach of contract claim, which is more appropriate for arbitration under the CWA's collective agreement with the State. However, the State also notes that Local 1033 does not have authority to seek arbitration under the agreement, since it is not the certified representative.

Finally, the State asserts that there are no facts to support an independent violation of 5.4a(1) or (2) of the Act.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. Based upon the following, I find that the Complaint issuance standard has not been met.

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The right to initiate a charge alleging a violation of 5.4a(5) of the Act rests only with the exclusive representative. In matters involving the State, the CWA International, not a CWA local, is the designated exclusive representative pursuant to the Commission's certification and the parties' collective negotiations agreements. Accordingly, Local 1033 lacks standing to allege a refusal to negotiate in good faith violation of 5.4a(5) of the Act. Only the CWA International may bring such a charge. See, e.g., State of New Jersey (Dept. of Human Services), D.U.P. No. 97-11, 22 NJPER 332 (¶27172 1996); State of New Jersey (Department of Human Services), D.U.P. No. 95-21, 21 NJPER 52 (¶26036 1994).

However, even if Local 1033 had standing to bring this charge, it appears that the charge does not assert violations of our Act. Local 1033 alleges that the State's denial of the requested union leave violated Article XXIV of the CWA's contract. The State responded that the contract does not permit such short-term leaves as requested. It appears that the dispute between Local 1033 and the State is one of contract interpretation. In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that allegations setting forth, at most, a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. Therefore, the allegations in the charge


do not meet the Commission's Compliant issuance standards. Human Services.

Finally, no facts or allegations were presented in the charge which support an independent 5.4a(1) or a(2) violation.

ORDER

I decline to issue a Complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Stuart Reichman, Director

DATED: June 30, 1998  
Trenton, New Jersey