

D.U.P. NO. 93-47

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

In the Matter of

C.W.A., LOCAL 1070,

Respondent,

-and-

Docket No. CI-93-34

WALTER E. KORCH, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that a union violated its duty of fair representation by misinforming an employee about his rights under civil service rules, failing to contact him and refusing to refund his dues after he was terminated. The Director finds that the facts alleged, even if proven true, do not support a finding of a breach of the union's duty. The Director further finds that the charges concerning dues refund are an internal union matter and not within the Commission's jurisdiction.

D.U.P. NO. 93-47

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

In the Matter of

C.W.A., LOCAL 1070,

Respondent,

-and-

Docket No. CI-93-34

WALTER E. KORCH, JR.,

Charging Party.

Appearances:

For the Respondent,  
Patricia J. Wallace, Staff Rep.

For the Charging Party,  
Walter E. Korch, Jr., pro se

REFUSAL TO ISSUE COMPLAINT

On October 16 and November 9, 1992, Walter E. Korch, Jr. filed an unfair practice charge and amended charge against the Communications Workers of America, Local 1070. The charge alleges that CWA violated subsections 5.4(b)(3) and (5) of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,<sup>1/</sup> in that it allegedly failed to properly represent him when he was terminated in July 1992.

---

<sup>1/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; and, (5) Violating any of the rules and regulations established by the commission."

On May 7, 1992, Korch was notified that he would be terminated from his position of Bridge Operator for the Ocean County Bridge Department in late May 1992 and was ultimately terminated on July 30, 1992. Korch was terminated because he had failed to pass a civil service examination for his position. Other applicants, including veterans who have preferential employment rights, had passed the exam. Korch had been a provisional employee for 14 months and was a member of CWA, Local 1070.

Korch alleges that he contacted Local 1070 on May 8, 1992 to inform them of his situation, and that he was told that he would have bumping rights. Korch alleges he made other attempts to reach union representatives until May 26 when he wrote to CWA's national office and copied the Local office. Attached to the charge is a copy of a reply letter from CWA representative Patricia J. Wallace, dated June 22, 1992. The letter states, in pertinent part:

"3. The certification list for Bridge Operators has been promulgated from the Department of Personnel. Your name does not appear on that list; . . .

6. The second provisional employee, who had less seniority than you, was terminated even though he appears on the list. It seems that the list has a great number of veterans on it and, therefore, the job must be offered to them before any non-vets."

The letter further invites Korch to contact Local 1070 President Virginia LaCapria and informs him that Wallace's investigation revealed that the County considers him a good employee and will try to place him in another job.

Korch appears to charge that the union violated the Act by not contacting him sooner than June 22, 1992, and by informing him in his initial telephone contact with a union representative that he has bumping rights as a provisional employee.

Korch further objects to the union's refusal to refund any of his dues. He complains that the County has permitted one employee to remain in the bridge operator position, although that employee has never taken a civil service test and that it found a position for another displaced bridge operator, but not for him.

The statements by a County representative and the County's conduct with respect to the treatment of other employees do not implicate CWA's conduct toward Korch. Allegations that the County may be misapplying civil service rules are not within this Commission's jurisdiction but fall under the Department of Personnel's jurisdiction. Nothing herein alleged shows bad faith or discriminatory or arbitrary conduct by CWA. Finally, in these circumstances, the refund of union dues appears to be an internal union matter within the discretion of the union.

I find that these allegations do not rise to the level of an unfair practice.

#### ANALYSIS

N.J.S.A. 34:13A-5.3 provides in part that:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has held: 'A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.' Vaca v. Sipes, 386 U.S. 171, 190 (1967) (Vaca).

A union should attempt to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. Mackaronis and Middlesex Cty. and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd. App. Div. Docket No. A-1455-80 (4/1/82), certif. den. \_\_ N.J. \_\_ (6/16/82), recon. den. (10/5/82); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). All the circumstances of a particular case, however, must be considered before a determination can be made concerning whether a majority representative has acted in bad faith, discriminatorily, or arbitrarily under Vaca standards. OPEIU Local 153 at 13. The National Labor Relations Board has held that where a majority representative exercises its discretion in good faith, proof of mere

negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local No. 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds, 110 LRRM 2928 (1982).

Here, the CWA did not breach its duty of fair representation with respect to Korch's dismissal. As a provisional employee, Korch did not have rights to hold his position of Bridge Operator in the face of a certification list. The County terminated Korch because of the list, pursuant to statute and regulation. Under these circumstances, other than investigating the circumstances of the termination, evidenced by CWA's letter of June 22, 1992, there was no other action CWA could have taken. The Department of Personnel Statute and Regulations pre-empt negotiations over this issue. Korch's allegations against CWA with respect to his discharge do not constitute conduct which is arbitrary, discriminatory or in bad faith. OPEIU, Local 153.

I decline to issue a complaint on the allegations of this charge.<sup>2/</sup> The charge is dismissed in its entirety.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: June 29, 1993  
Trenton, New Jersey