P.E.R.C. NO. 2009-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA (LOCAL 1039),

Respondent,

-and- Docket No. CI-2009-009

GEORGE EKEMEZIE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices's refusal to issue a complaint based on an unfair practice charge filed by George Ekemezie against Communications Workers of America (Local 1039) ("CWA"). Ekemezie alleges that CWA breached its duty of fair representation when it allegedly entered into a secret agreement with his employer to pressure him into accepting a three-day suspension rather than the five-day suspension that was originally imposed. The Commission holds that Ekemezie has not alleged that the CWA acted outside the wide range of reasonableness afforded a majority representative acting in good faith.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Charging Party, George Ekemezie, pro se.

DECISION

George Ekemezie has appealed the decision of the Director of Unfair Practices that refused to issue a Complaint based on his unfair practice charge against his majority representative, the Communications Workers of America (Local 1039). D.U.P. No. 2009-6, 35 NJPER 33 (¶13 2009). Ekemezie claims that CWA did not properly represent him when it allegedly entered into a secret agreement with his employer, the State of New Jersey (Department of Children and Family Services), to pressure him into accepting a three-day suspension, rather than the five-day suspension that was originally imposed. He seeks to have CWA represent him at an arbitration hearing. After a careful review of all of Ekemezie's submissions, we sustain the decision not to issue a Complaint.

A union will breach its duty of fair representation and violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(1),[1/] when its conduct toward a negotiations unit member is arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967); Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). A wide range of reasonableness must be allowed a majority representative in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173 (¶70 2005) citing Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953). Thus, the duty of fair representation does not require a union to arbitrate every grievance. Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987).

A complaint will not issue unless the allegations in an unfair practice charge, if true, might constitute an unfair practice. N.J.A.C. 19:14-2.1. Absent some arbitrary,

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1/ This provision prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

discriminatory or bad faith conduct, it would not be an unfair practice for the CWA to have supported a proposed settlement of a disciplinary matter and refused to submit the disciplinary dispute to binding arbitration.

On January 12, 2009, the Director wrote to the parties and explained that he was not inclined to issue a complaint. He stated that it appeared that Ekemezie was not forced to accept the negotiated settlement of his discipline and that no facts indicated that CWA could have negotiated a better deal or that arbitration would have resulted in a reduction in the discipline imposed. The Director concluded that by negotiating a reduction of the discipline from five days to three; by informing Ekemezie of the reasons for not advancing the discipline to arbitration; and by advising him of the means to appeal within CWA and how to advance the case to arbitration without its assistance, CWA did not violate its duty of fair representation. The Director also stated that if the parties believed that his determinations were incorrect or that there were additional material facts that they wished to bring to his attention, they could submit documents, affidavits or other evidence and a letter brief in support of their positions.

On January 26, 2009, Ekemezie submitted nine documents and a five-page letter brief to the Director. Among other things, Ekemezie alleged that CWA failed to request documents from the

employer in preparation for his disciplinary hearing/meeting; the employer referred to those documents, but that he and CWA had no knowledge of their content; and the hearing officer used those documents to make a decision and CWA did not contest this violation of contractual procedures. Ekemezie alleged that although CWA never received the documents, he received a five-day suspension and CWA advised him to accept the decision. The departmental hearing officer found that Ekemezie had intentionally disobeyed or refused to accept a reasonable order. Ekemezie's supervisor had testified to the hearing officer that Ekemezie had been directed to stay at the office to sign an emergency placement check and then did not answer his cell phone when the supervisor made repeated attempts to reach him. Ekemezie testified that he did not return the supervisor's telephone calls because his tone was threatening so he contacted his CWA representative to intervene. In his submission to the Director, Ekemezie claimed that his decision to contact his union representative when he felt that his discussion with his supervisor might lead to discipline is protected under the Weingarten doctrine.[2/] Ekemezie also asked why CWA failed to present evidence that he had provided. Finally, Ekemezie alleged that CWA's decision not to represent him discriminated against him because of his national origin and that the employer and

2/ NLRB v. Weingarten, Inc., 420 U.S. 251 (1975)

union do not seem to believe that he deserves the same rights as other union members.

On February 17, 2009, the Director issued his final decision refusing to issue a Complaint. D.U.P. No. 2009-6. The Director's rationale was the same as that presented to the parties in his January 12 letter.

Ekemezie asserts that CWA breached its duty of fair representation, but he has not alleged any facts that suggest that it did so. He asserts discrimination based on his national origin, but he has not alleged any facts to suggest that CWA treated him any differently than anyone else. Contrast Steele v. Louisville & Nashville R.R., 323 U.S. 192, 195 (1944) (seminal case involving duty of fair representation; union could not negotiate contracts that "ultimately . . . exclude[d] all Negro firemen from the [railroad] service."). He asserts that CWA failed to conduct proper fact-finding responsibilities, but has not alleged any specific facts that suggest that CWA's alleged failure to obtain additional documents from the employer before the hearing officer issued her decision was arbitrary, discriminatory or in bad faith or would have led to a different result. The hearing officer attached the additional documents to her decision sustaining the five-day suspension. Nor has Ekemezie explained what evidence he had that CWA failed to present or how it would have changed the outcome. Finally,

Ekemezie alleges that his failure to return his supervisor's telephone call was protected by Weingarten. However, Weingarten requires that an employee request of the supervisor that the supervisor get a union representative before the employee answers questions in an interview that might lead to discipline. It does not permit an employee to refuse to respond to a supervisor's telephone call. In addition, it is not alleged that Ekemezie presented his Weingarten claim for CWA to argue and that the union refused to advance that claim.

Ekemezie's allegations describe conduct that comes within the wide range of reasonableness afforded a majority representative acting in good faith. Accordingly, we sustain the decision not to issue a complaint.

ORDER

The refusal to issue a complaint is sustained.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Colligan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Branigan was not present.

ISSUED: April 30, 2009

Trenton, New Jersey