

P.E.R.C. NO. 91-109

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY &  
COMMUNICATIONS WORKERS OF  
AMERICA, LOCAL 1040,

Respondents,

-and-

Docket No. CI-90-5

ESTRELITA DAVIS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practice's refusal to issue a Complaint based on an unfair practice charge filed by Estrelita Davis against the State of New Jersey and the Communications Workers of America. The charge alleged that the State and CWA violated the New Jersey Employer-Employee Relations Act when they refused to allow the charging party's grievance to be heard by the Joint Union/Management Panel ("JUMP"). The Commission finds that the employer took the reasonable position that the parties' contract required Davis to choose between a Department of Personnel ("DOP") and a contract appeal. It further finds that the union informed her that an appeal to DOP precluded JUMP review.

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Appearances:

For the Respondent, Robert J. Del Tufo, Attorney General  
(Stephen Schwartz, Deputy Attorney General)

For the Charging Party, Estrelita Davis, pro se

DECISION AND ORDER

On July 18 and August 14, 1989, Estrelita Davis filed an unfair practice charge and an amended charge against her employer, the State of New Jersey, and her majority representative, Communications Workers of America, Local 1040. The charge, as amended, alleges that the respondents violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when they refused to allow Davis' grievance to be heard by the Joint Union/Management Panel ("JUMP") as provided for in their collective negotiations agreement.<sup>1/</sup>

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<sup>1/</sup> The charge alleges that the employer violated subsection 5.4(a)(1). This subsection prohibits public employers, their representatives or agents from: "Interfering with, restraining or coercing employees in the exercise of the

On March 22, 1991, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 91-23, 17 NJPER 206 (¶22086 1991). He found that the State had a contractual right to refuse to permit the grievance to go before JUMP because Davis had pursued a discretionary appeal of her minor discipline to the Department of Personnel ("DOP"). Further, he found that there was nothing in Davis' charge which would show, if proved, that the CWA had arbitrarily, discriminatorily or in bad faith handled her grievance.

On April 2, 1991, Davis appealed the Director's refusal to issue a Complaint. She alleges that CWA neglected to inform her of the correct appeal route, did not request JUMP review within the contractual time limit, and did not inform her of the progress of the grievance. She further claims that CWA acted in bad faith because it notified her in July, rather than April, that the Office of Employee Relations had again declined JUMP review. In addition, Davis claims that CWA, DOP and the Office of Employee Relations colluded to defeat her appeal.

Based on our review of the record, we sustain the Director's refusal to issue a Complaint. Davis' factual allegations, if true, would not establish a violation of the Act.

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(Footnote Continued From Previous Page)

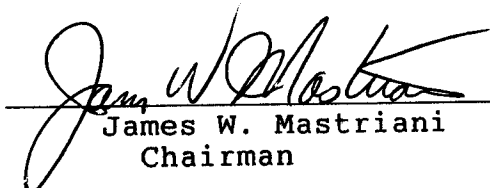
rights guaranteed to them by this act." The amended charge alleges that the majority representative violated its duty of fair representation. Subsection 5.4(b)(1) prohibits employee organizations, their representatives or agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

N.J.A.C. 4A:2-3.7(a) permits an employee to choose to appeal minor discipline to DOP and to waive any contractual appeal rights. The DOP appeal form specifies that employees are to choose between a DOP appeal and a contract appeal. The employer took the reasonable position that the collective negotiations agreement required Davis to choose between appealing her suspension to DOP or pursuing her grievance before JUMP. A CWA staff representative informed Davis that DOP was the incorrect forum for appealing minor disciplinary actions and tried to have her DOP appeal withdrawn. She objected. The president of CWA Local 1040 then wrote to Davis that her appeal to DOP precluded JUMP review. She still did not withdraw her DOP appeal. Six weeks later that appeal was denied. The employer then predictably refused to permit JUMP review. While Davis alleges delay and confusion in CWA's communicating that refusal to her, that miscommunication, if proven, would not establish unfair representation. We therefore find no basis for issuing a Complaint.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 20, 1991  
Trenton, New Jersey  
ISSUED: June 21, 1991