

D.U.P. NO. 2000-14

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

In the Matter of

C.W.A. LOCAL 1034,

Respondent,

-and-

Docket No. CI-99-65

PATRICIA J. CAFFEE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that the CWA breached its duty of fair representation when it refused to represent a unit member at an OAL hearing. The Director finds that the allegations were beyond the Commission's six-month statute of limitations and, in any event, would not be violative of the Act.

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Appearances:

For the Respondent,  
Weissman & Mintz, attorneys  
(Steven P. Weissman, of counsel)

For the Charging Party,  
Patricia J. Caffee, pro se

**REFUSAL TO ISSUE COMPLAINT**

On April 5 and 23, 1999, and on June 3, 1999, Patricia Caffee filed an unfair practice charge and amended charges alleging that her majority representative, CWA Local 1034, violated 5.4b(1), (2) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Caffee alleges that CWA failed to

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<sup>1/</sup> These provisions prohibit 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (5) Violating any of the rules and regulations established by the commission."

represent her in a hearing before a State administrative law judge on February 11, 1999.

CWA denies engaging in any unfair practice. It asserts that the charge is filed beyond the Commission's six-month statute of limitations. It further contends that it acted in good faith on Caffee's behalf and did not breach its duty of fair representation.

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.

In correspondence dated March 16, 2000, I advised the parties that I was not inclined to issue a Complaint on any of the allegations Caffee asserted against the CWA and set forth the basis for that conclusion. I provided the parties with an opportunity to respond by March 27, 2000. Neither party filed a response. Based upon the following, I find that the Complaint issuance standard has not been met.

On December 14, 1995, Caffee's employer formally notified her that she was being terminated because of unsatisfactory work performance, including "excessive absenteeism", as memorialized in "progress reports" over the preceding three months. She was also advised of her right to appeal and seek a hearing from the State Merit System Board.

On December 26, 1995, CWA Local 1034 sent a letter to the Merit System Board appealing Caffee's "final disciplinary action." On December 27, CWA Representative Steven Jarema sent a memorandum to CWA National Representative Calvin Money, setting forth recommendations on Caffee's "request for legal assistance." The memorandum states that Caffee was terminated at the end of the 90-day working test period, noting that she was absent eight times and late for work four times. The memorandum concludes, "Caffee disputes 'some' of the time off which we (the union) are unable to substantiate. Shop Steward Renaldo King is pushing our efforts but on this one I agree with Doty - recommend we do not pursue."

On December 6, 1996, CWA sent a letter to Caffee, advising that her appeal was scheduled for a hearing before the State Office of Administrative Law (OAL) on February 21, 1997. The letter recounts Caffee's attendance record during the test period, noting that even after receiving a warning following a hearing, Caffee "called out sick" three more days and was late four additional times. The CWA wrote:

[We] will not provide you with legal representation on February 21, 1997, because your time and leave record during the working test period does not support our pursuing your case. However, it's your right to represent yourself at the hearing or you may seek private counsel to represent you at your own expense.

The letter asks Caffee to advise CWA if she was interested in CWA's assistance in seeking a "resignation in good standing" as an alternative to litigation.

On February 9, 1998, Jarema was served with a subpoena to appear on behalf of Caffee at the (rescheduled) OAL hearing on her termination. At the February 23, 1998 hearing, Caffee was represented by CWA Shop Steward Renaldo King in his capacity as a "friend." The Administrative Law Judge issued a recommended decision sustaining the termination. On April 7, 1998, the Merit System Board remanded the matter to the OAL for clarification; the OAL determined to conduct additional hearings.

In October 1998, CWA received a Notice of Hearing from OAL advising that additional hearings concerning Caffee's termination would commence on February 11, 1999. On December 8, 1998, CWA sent a letter to the Director of Merit System Practices advising that "CWA Local 1034 does not represent Patricia Caffee." Caffee contends that she did not learn that CWA did not intend to represent her until CWA's letter was read at the February 11, 1999 OAL hearing.

#### ANALYSIS

N.J.S.A. 34:13A-5.6 provides:

[N]o complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

Caffee was advised of CWA's appraisal of the merits of her case in the December 6, 1996 letter from Money. Noting her continued absences and tardiness after having received employer

warnings about similar infractions, Money concluded that Caffee's "time and leave record during the working test period [did] not support our pursuing [her] case."

No facts suggest that Caffee timely disputed CWA's December 1996 decision not to represent her at the OAL hearing. Nor did Caffee later file an unfair practice charge within the six-month period following her February 1998 OAL hearing. CWA's conduct from December 1996 never varied; it determined not to represent Caffee before the OAL and so advised her in writing. Caffee's 1999 unfair practice charge is untimely.

However, even if the charge were timely filed, the facts do not support a violation of the Act. Employee representatives must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs when a union's conduct toward a unit member is "arbitrary, discriminatory or in bad faith." Vaca v. Sipes, 386 U.S. 171 (1967); D'Arrigo v. N.J. State Bd. of Mediation, 119 N.J. 74 (1990); Saginario v. Attorney General, 87 N.J. 480 (1981).

Employee representatives must exercise reasonable care and diligence in investigating, processing, and presenting grievances; they should exercise good faith in determining the merits of grievances and grant employees equal access to the grievance procedure. Middlesex Cty. and NJCSA (Makaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982); Carteret Ed. Assn.

(Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); N.J. Hagedorn Hospital (Knapp), D.U.P. 99-17, 25 NJPER 311 (¶30132 1999). Although unions may not arbitrarily ignore meritorious grievances, individual employees do not have an absolute right to have their grievances taken to arbitration. See Vaca at 386 U.S. 191.

CWA investigated, assessed, and advised Caffee about the merits of her case well in advance of the OAL hearing. CWA filed the original appeal with the Merit System Board and later offered to try to secure Caffee a "resignation in good standing." No facts suggest that CWA's view of Caffee's conduct during her 90-day working test period was ever tainted by discriminatory or arbitrary motives. The facts show that from the outset - December 26, 1995 - CWA honestly believed there was no reason to appeal Caffee's release at the end of her working test period. Even if CWA's assessment was mistaken, a union is not liable for errors in judgment if they are made honestly and in good faith. Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971); OPEIU Local 153. CWA did not violate the duty of fair representation in declining to represent Caffee at the OAL hearing.

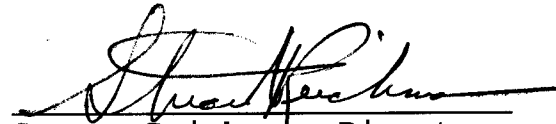
In addition, no facts suggest that CWA violated 5.4b(2) or (5) of the Act. Therefore, I also dismiss those portions of the charge.

Based upon the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.<sup>2/</sup>

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: April 17, 2000  
Trenton, New Jersey

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<sup>2/</sup> N.J.A.C. 19:14-2.3.