

D.U.P. NO. 2000-1

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

In the Matter of

CARTERET HOUSING AUTHORITY,

Charging Party,

-and-

Docket No. CE-98-9

CWA LOCAL 1032,

Respondent.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint on an employer's charge alleging the union filed a charge and a grievance without the aggrieved employee's permission. The Director finds that the union has the right to enforce its contract and protect the collective rights of its members.

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Appearances:

For the Charging Party
Carol Ward, attorney

For the Respondent
Weissman & Mintz, attorneys
(Judianne Chartier, of counsel)

REFUSAL TO ISSUE COMPLAINT

On February 3, 1998, the Carteret Housing Authority (Authority) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the Communications Workers of America, Local 1032, AFL-CIO (CWA). The Authority alleges that CWA coerced an employee into filing and participating in an unfair practice charge and grievance against the Authority, and failed to follow the parties' negotiated grievance

procedure, in violation of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-5.4b(1), (3) and (5).^{1/}

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 June 14, 1999, I advised the parties that I was not inclined to issue a Complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based on the following facts, I find that the Complaint issuance standard has not been meet.

CWA represents a negotiations unit of all full-time and part-time employees employed by the Authority. The most recent agreement between the Authority and CWA is effective from January 1, 1996 through December 31, 1997. The parties' agreement includes the following relevant provisions:

^{1/} These provisions prohibit public employee organizations, their representatives and agents from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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.

Article VI, Grievance Procedure

B. Nothing herein contained shall be construed as limiting the right of any employee having a grievance to discuss this matter informally with any appropriate member of the departmental supervisory staff and having the grievance adjusted. The Union shall be notified of any grievance submitted by an employee, and shall have the right to be represented at any and every step of the grievance procedure, including the informal step incorporated in this section.

C. 1. The term "grievance" as used herein means an appeal by an individual or the Union on behalf of an individual employee or group of employees from the interpretation, application or violation of policies, agreements and administrative decisions affecting them.
[Emphasis added.]

The grievance procedure provides for binding arbitration as a terminal step.

On January 8, 1998, CWA Staff Representative Karen Szczepanski filed an unfair practice charge (Docket No. CO-98-251) with the Commission against the Authority, alleging that the Authority failed to negotiate in good faith when it changed its disciplinary procedures by not giving unit employee Antoinette Lakatos advance notice of disciplinary charges or a disciplinary hearing, in violation of 5.4(a)(1) and (5) of the Act. The Authority alleges that Lakatos told the Authority that she did not wish to pursue either CWA's charge or a related grievance also filed by CWA. The Authority alleges that Lakatos was "forced" to participate in these matters.

ANALYSIS

The charge raises the issue of whether an employee representative may pursue an unfair practice charge or grievance

without the cooperation or agreement of individual unit members. For the reasons below, I find that employee representatives are entitled to pursue such actions without the express cooperation of individual members.

Initially, I note that the unfair practice charge (Docket No. CO-98-251) referenced by the Authority was not filed by Lakatos, but by a CWA staff representative. Thus, factually, it does not appear that Lakatos was forced to participate in or file this charge. CWA's right to notice and participation in all stages of all grievances, even those filed by individual employees, is expressly set forth in Section B of the parties' negotiated grievance procedure.

A majority representative's rights to independently file grievances or unfair practice charges are fundamental rights under the Act. Section 5.3 of the Act provides in relevant part:

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 interest of all such employees without discrimination and without regard to employee organization membership.

* * *

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization.

* * *

Grievance and disciplinary review procedures established by agreement between the public

employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

Applying the above statutory provisions here, I find no violation has occurred. In Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 151 N.J. Super. 435 (App. Div. 1977), aff'd 78 N.J. 122 (1978), the New Jersey Supreme Court upheld the right of a majority representative to file grievances on behalf of affected employees. The Court noted that:

...the question of consensual initiation of any organizational grievance would not be a legitimate matter of concern for the public employer. Its obligation to accept organizational grievances is not conditioned on its verification that the affected employee has consented to the filing of the grievance. [78 N.J. at 142.]

The Court went on to say that, "...the Legislature has chosen to assign responsibility for the prevention of such possibly unlawful conduct to PERC, not to the public employer. N.J.S.A. 34:13A-5.4(c)." Id. at 142. Thus, CWA does not interfere with an individual's rights by asserting its own independent statutory and contractual rights. To require an employee representative to first secure permission from the affected individual unit employee would impede an organization from enforcing its collective negotiations rights on behalf of the negotiations unit as a whole.


The Authority has alleged no facts which support its contention that the CWA has violated 5.4b(3) or (5) of the Act.

Based upon the above, I conclude that the Authority's alleged facts do not support a finding of a violation of either 5.4b(1), (3) or (5).

ORDER

The unfair practice charge is dismissed.^{2/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: July 8, 1999
Trenton, New Jersey

^{2/} N.J.A.C. 19:14-2.3.