

D.U.P. NO. 2001-6

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

In the Matter of

COMMUNICATIONS WORKERS
OF AMERICA, LOCAL 1033,

Respondent,

-and-

Docket No. CI-2000-33

PATRICIA A. FLORENCE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Patricia Florence against CWA. The Director finds that CWA did not violate the duty of fair representation when it responded in a timely fashion to communications from Florence and never refused to file a grievance on her behalf.

D.U.P. NO. 2001-6

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

In the Matter of

COMMUNICATIONS WORKERS
OF AMERICA, LOCAL 1033,

Respondent,

-and-

Docket No. CI-2000-33

PATRICIA A. FLORENCE,

Charging Party.

Appearances:

For the Respondent,
Gaye Palmer, Staff Representative

For the Charging Party
Patricia Florence, pro se

REFUSAL TO ISSUE COMPLAINT

On February 23, 2000, Patricia A. Florence, head microfilm machine operator, filed an unfair practice charge alleging that the Communications Workers of America, Local 1033 (CWA), violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically N.J.S.A. 34:13A-5.4b(1), (2), (3) and

(5).^{1/} The charge also alleged that the State of New Jersey, Department of State, violated N.J.S.A. 34:13A-5.4a(1), (2), (3), (5), (6) and (7).^{2/} On June 13, 2000, an exploratory conference was conducted by a Commission staff attorney. A resolution of Charging Party's allegations concerning the Department of State was reached at the conference and the Director of Unfair Practices approved the withdrawal of that portion of the case.

CWA denies engaging in any unfair practice.

-
- ^{1/} 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. (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. (5) Violating any of the rules and regulations established by the commission."
- ^{2/} These provisions prohibit public employers, 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) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

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 September 12, 2000, 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. Charging Party filed a response dated September 18, 2000.^{3/} Based upon the following, I find that the Complaint issuance standard has not been met.

Patricia Florence is a head microfilm machine operator employed by the Department of State. Prior to January 27, 2000, Florence was assigned to the Division of Archives and Record Management (DARM).

On April 28, 1999, Florence received a Performance Assessment Review (PAR) rating with which she disagreed and refused to sign. On October 27, 1999, Florence advised CWA of her

^{3/} Florence's response also raised several issues not apparently the subject of this charge, including her concerns about the settlement agreement which resolved the separate unfair practice charge which, as mentioned above, Florence filed against the Department of State.

disagreement with her PAR rating. Thereafter, CWA Staff Representative Gaye Palmer arranged and attended a meeting on November 23, 1999 with Supervisor of Microfilm Services Vincent Scardino, DARM Deputy Executive Director Keith Betten and Florence. The purpose of the meeting was to review Florence's PAR rating for the period of April 1, 1999 through September 30, 1999. The next day Palmer advised Florence that the meeting had resulted in a one point increase in Florence's overall PAR rating. On December 2, 1999, Palmer wrote to Florence: "after extensive discussion with members of (CWA) staff and the Department of Personnel, no violation in the rating procedures" could be identified. On December 6, 1999, Florence responded to Palmer indicating that Florence was still in disagreement with her PAR rating.

On December 21, 1999, Kathy Kisko, Administrative Director of the Department of State, advised Florence that an appointment had been scheduled for her to see a physician on December 27, 1999. On December 21, Florence notified CWA Local 1033 President Rae Roeder of Kisko's letter, describing the letter as a "violation" and requesting immediate attention. Palmer wrote to Kisko requesting a "detailed reply as to what events led up to this action being taken." On December 22, Kisko responded that Florence was referred to the physician to address concerns about Florence's interactions with co-workers that management felt should be addressed "via professional attention and counseling."

On January 27, 2000, Florence was advised by memorandum from Betten, that she would be temporarily reassigned to the Microfilm Section's "satellite unit" in Mercerville. On February 1, 2000, Florence requested that CWA take "immediate action" on a grievance concerning Florence's reassignment/downgrade, harassment, and the "civil rights violation" alleged in Florence's letter of December 21, 1999. In response to Florence's request, Palmer sent Florence a packet of information dated February 7, 2000, asking Florence to review the packet and then contact CWA to discuss her options. CWA asserts that according to the return receipt, Florence received the packet on February 17, 2000 and never responded. Instead, she filed this unfair practice charge on February 23, 2000. Florence appears to assert that the packet did not constitute an adequate response to Florence's February 1 letter.

The face of the charge describes various communications directed to CWA by Florence on respective dates. Florence appears to allege that CWA violated its duty of fair representation in connection with its response to the communications described in the charge. For the reasons set forth below, I decline to issue a complaint on the allegations of this charge.

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiations and administration of a collective agreement. With that authority comes the duty to represent all unit employees fairly in negotiations and contract administration. The standards in the private sector for measuring a

union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the negotiations unit is arbitrary, discriminatory, or in bad faith. Id. at 191. That standard has been adopted in the public sector. 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 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. OPEIU Local 153; Middlesex Cty. and NJCSA (Mackaronis), 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); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); and AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

None of the facts alleged herein, even if true, would support a finding that CWA breached its duty of fair representation. Here, there is no evidence of bad faith, fraud or invidious discrimination. Rather, CWA responded in a timely fashion


to communications from Florence concerning her objection to her PAR rating, the State's request that she see its physician, and her reassignment. The CWA sent Florence a packet of materials to review which she apparently received but to which she never responded. The CWA never refused to file a grievance on Florence's behalf.

Therefore, 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.^{4/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: October 4, 2000
Trenton, New Jersey