

D.U.P. NO. 96-7

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

In the Matter of

UWUA, AFL-CIO, LOCAL 534,

Respondent,

-and-

Docket No. CI-95-66

STEPHEN M. POLLACK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declined to issue a complaint where the charging party failed to articulate specific facts to support an unfair practice against the respondent, union.

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Appearances:

For the Respondent,
Fox and Fox, attorneys
(Dennis J. Alessi, of counsel)

For the Charging Party,
Stephen M. Pollack, pro se

REFUSAL TO ISSUE COMPLAINT

On April 10, 1995, Stephen M. Pollack filed an unfair practice charge against the Utility Workers Union of America, AFL-CIO, Local 534 (UWUA). On April 26, 1995, I wrote to Pollack detailing several defects in his charge and gave him an opportunity to amend the charge to conform with Commission Rules.

On May 12, 1995, Pollack filed an amendment to the charge which merely listed a series of grievances, apparently filed against the public employer. The amendment failed to state allegations which, if true, would constitute an unfair practice under the Act. On June 8, 1995, I again wrote to Pollack explaining the deficiencies and gave him another opportunity to amend his charge.

On July 3, 1995, the Commission received another amendment from Pollack which alleged that the UWUA violated its duty of fair representation although again Pollack failed to state specific facts. Attached to the amendment was a Memorandum from Vinnie Lyzell to Pollack stating that the Executive Board of the UWUA decided not to take grievance #SWTS-3 to arbitration.

On August 18, 1995, the Commission received a third amendment alleging that Pollack had not received a response from his employer regarding a grievance which was apparently filed by UWUA on Pollack's behalf on or around July 29, 1995. No other facts are asserted to support bad faith, discriminatory conduct on the part of the UWUA.

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

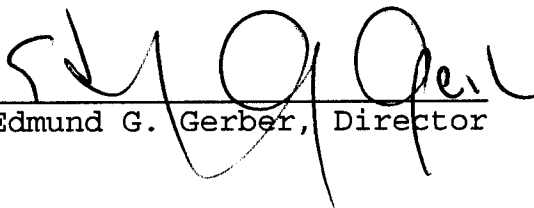
The Commission's complaint issuance standards have not been met. Despite numerous opportunities, the Charging Party has failed to articulate what the UWUA has done, or failed to do, in violation of the Act. If Pollack is asserting that the UWUA has breached its duty of fair representation in processing grievances, he failed to allege conduct that was "arbitrary, discriminatory or in bad

faith." New Jersey Transit Bus Operations, D.U.P. No. 95-23, 21 NJPER 54 (¶26038 1995).

One attachment, the UWUA memorandum to Pollack, simply informs him that the union's Executive Board decided not to take that grievance to arbitration. A considered decision not to take a grievance to arbitration alone does not constitute a breach of duty of fair representation. New Jersey Transit Bus Operations, supra. The second attachment, a July 29, 1995 grievance, evidences, if anything, that the UWUA has filed a grievance on Pollack's behalf.

Accordingly, I find that the Commission's complaint issuance standards have not been met and I refuse to issue a complaint. N.J.A.C. 19:14-1.5 and 2.1. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 6, 1995
Trenton, New Jersey