D.U.P. NO. 2004-2

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

In the Matter of

CWA LOCAL 1034,

Respondent,

-and- Docket No. CI-2003-1

RENALDO A. KING,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by former Burlington County employee Renaldo King against King's majority representative, CWA Local 1034. The Director finds that CWA had investigated and pursued a grievance for King which resulted in an extension of employment to September 29, 2000. Thereafter, CWA also investigated and considered King's second request to extend his employment but determined that the second grievance would not be successful and declined to pursue it to arbitration. Therefore, the Director finds that King did not allege facts, which even if proven true, would constitute an unfair practice.

D.U.P. NO. 2004-2

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

In the Matter of

CWA LOCAL 1034,

Respondent,

-and- Docket No. CI-2003-1

RENALDO A. KING,

Charging Party.

Appearances:

For the Respondent,
Steve Jarema, Sr. Staff Representative

For the Charging Party,
Renaldo A. King, pro se

REFUSAL TO ISSUE COMPLAINT

On July 1, 2002, Renaldo A. King, a former employee of Burlington County, filed an unfair practice charge against CWA Local 1034, alleging that Local 1034 violated provisions 5.4b(1), (2), (4) and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Specifically, King alleges that

---

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. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

between November 2000 and January 2, 2002, Local 1034 delayed processing his grievance, refused to take his grievance to arbitration, and refused to pursue his employment discrimination claim against Burlington County. King further alleges that Local 1034 unlawfully failed to exercise diligence on his behalf, which resulted in King being denied the opportunity to timely pursue any discrimination claims under state and federal law.

Local 1034 denies it violated the Act. It explains that it filed a grievance and an appeal with the New Jersey Department of Personnel (DOP) on King's behalf. Further, it notes that King could have pursued his employment discrimination claims on his own.

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 July 3, 2003, the Acting Director advised the parties that we were not inclined to issue a complaint in this matter and set forth the basis upon which we arrived at that conclusion. The parties were provided with an opportunity to respond. Neither party filed a response.

Based upon the following, I find that the complaint issuance standard has not been met.

Renaldo King was employed by Burlington County and a member of CWA Local 1034 for about 13 years. On July 10, 2000, King resigned from his position with the Burlington County Buildings and Grounds Department. King's written resignation letter indicated that he was moving out of state and that his last workday would be July 21, 2000.

By letter of July 11, 2000, Buildings and Grounds Superintendent Bruce E. Doty informed King that he accepted the resignation, and on July 12, 2000, the County Personnel Committee formally approved King's resignation. Thereafter, on July 14, 2000, King requested that his last day of work be extended to September 29, 2000. On July 18, 2000, the Personnel Committee approved the extension.

However, on September 26, 2000, three days before his employment was scheduled to end, King notified the County that he was withdrawing his resignation entirely, explaining that he wanted to continue working for the County. On September 27, 2000, Doty informed King that he could not accept King's letter rescinding his resignation. He explained that under County policy, resignations cannot be rescinded, and that a replacement for King had already been hired and, in fact, had begun employment with the County.

King sought Local 1034's assistance, and on October 2, 2000, within five days after the County had refused to retain King, Local 1034 filed a grievance on King's behalf. The grievance asserted that the County violated the parties' agreement by refusing to rescind King's resignation, because it had previously rescinded other resignations, and asked that King be rehired effective September 29, 2000, without loss of seniority or benefits. Further, on October 18, 2000, Local 1034 filed an appeal for King with the DOP, claiming that King was forced to resign.

On October 20, 2000, the County responded to the grievance by requesting that it be moved directly to arbitration. Thereafter, on October 25, 2000, Local 1034 Representative Steve Jarema informed King of the County's request and explained that he would notify King when CWA's international union approved his case for legal assistance. Further, on October 30, 2000, Local 1034 filed a request for submission of a panel of arbitrators with the Commission.

A year later, on October 31, 2001, Local 1034 wrote to DOP on King's behalf, asking for the status of King's appeal. On November 13, 2001, CWA International Representative Calvin W. Money informed Jarema that the international union had concluded that King's case lacked merit and that arbitration was not appropriate. Money explained that the New Jersey Office of

Administrative Law (OAL) would hear King's appeal; however, he stressed that neither the International Union nor Local 1034 would represent King at any OAL proceeding. On or about January 2, 2002, CWA's representatives notified King of this decision.

On June 20, 2002, DOP formally denied King's appeal, finding that King voluntarily resigned from his position, without any unlawful duress or coercion by the County. It noted that the County was willing to accommodate him by extending the effective date of his resignation to September 29, 2000; however, DOP found that once the resignation was accepted, the County was not obligated to rescind it. It held that King failed to show that the County's refusal to rescind his resignation constituted an abuse of discretion and concluded that King resigned in good standing effective September 29, 2000.

On July 1, 2002, King filed the instant charge against Local 1034. King alleges that CWA treated him differently than other employees who resigned and then withdrew their resignations, but he did not provide any specific information in support of this claim. Local 1034 investigated but did not find any credible evidence in support of King's assertion that "others" had resigned their positions and were rehired. Specifically, Local 1034's investigation did not reveal any other County employee who had resigned and successfully rescinded his or her resignation twice.

ANALYSIS

King alleges that Local 1034 violated the Act by delaying the processing of and refusing to submit his grievance to arbitration. Local 1034 denies that it violated the Act and argues that it filed a grievance and DOP appeal shortly after King's last work day. It also argues that although the DOP appeal was unsuccessful, King's ability to pursue other discrimination claims has not been cut off. Under the circumstances presented here, I find that Local 1034 did not violate the Act.

Section 5.3 of the Act empowers an employee organization to represent employees in the negotiations and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly. 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)(Vaca). Under Vaca, a breach of the statutory duty of fair representation occurs only when a union's conduct towards 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. Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970). In Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976)(Belen), the Court held that 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. See Middlesex Cty. (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 (Kaczmarek), P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); and AFSCME Council No. 1 (Banks), P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

An employee organization is not required to take every grievance to arbitration. Rather, it must evaluate requests for arbitration on the merits and decide in good faith whether it believes the issue has merit. See also D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74 (1990); Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed (Salter), P.E.R.C. No.86-146, 12 NJPER 528 (¶17198 1986).

An organization's negligence in processing grievances, standing alone, is not sufficient to establish a breach of its duty of fair representation. See Glen Ridge Ed. Assn. (Tucker), P.E.R.C. No. 2002-72, 28 NJPER 251 (¶33095 2002); OPEIU

(Wasilewski), P.E.R.C. No. 98-131, 24 NJPER 256 (¶29122 1998); Printing and Graphic Communication, Local 4, 249 NLRB No. 23, 104 LRRM 1050 (1980); Service Employees Int'l Union, Local No. 579 AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977).

Applying these principals here, I find that the facts alleged by King do not support a conclusion that Local 1034 breached its duty of fair representation. King resigned not once, but twice. The County hired a replacement for him. Local 1034 acted with due diligence to file a grievance and DOP appeal as soon as it learned that the County refused to rescind King's resignation.

The County requested that the grievance proceed directly to arbitration; as a result, Local 1034 asked the International Union to review King's case and decide whether arbitration was warranted. About thirteen months later, the International Union determined that King would not likely prevail at arbitration. Thus, it concluded that arbitration was not appropriate; rather the matter belonged before DOP. While the delay in deciding whether arbitration was warranted might be considered negligent, however, mere negligence by a majority representative is not an unfair practice under the Act. In FOP Lodge 94 (Cassidy), P.E.R.C. No. 91-108, 17 NJPER 347 (¶22156 1991), a case with similar issues, the Commission found that the union's delay in processing a grievance while the employee pursued a worker's

compensation claim may have been negligent but did not violate the Act. Here, the union filed the grievance and appears to have preserved its right to go to arbitration. It eventually made a good faith determination (albeit delayed), not to pursue King's grievance to arbitration[2/], yet, nonetheless filed and pursued King's DOP appeal. I find that this conduct is not evidence of a breach of the duty of fair representation. As previously stated, a union is not obligated to bring every case to arbitration. Further, it appears that Local 1034 exercised reasonable care and diligence in investigating King's claim that the County had previously rescinded the resignations of other employees. In light of these circumstances, I find that King has failed to allege any facts showing conduct by Local 1034 that is arbitrary, discriminatory, or in bad faith. Moreover, no evidence or facts were alleged showing discrimination that is "intentional, severe and unrelated to legitimate union objectives." Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

King also alleged that Local 1034 violated sections 5.4b(2), (4) and (5) of the Act. There are no alleged facts which support

---

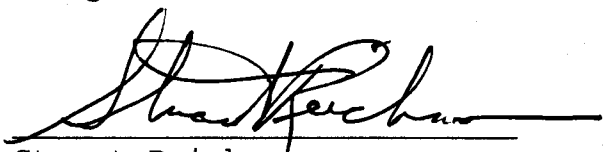
2/ The delay does not appear to have prejudiced the possibility of arbitration since the County was willing to proceed there initially, and CWA's representative filed a request with the Commission for a panel of arbitrators.

these allegations. Moreover, only the public employer has standing to allege violations of 5.4b(2) and (4); King, as an individual, lacks standing to raise these claims. Accordingly, I dismiss these allegations as well.

Based on the above, I do not believe that the Commission's complaint issuance standard has been met and I decline to issue a complaint on the allegations of this charge.[3/]

ORDER

The unfair practice charge is dismissed.



Stuart Reichman
Director of Unfair Practices

DATED: July 24, 2003
Trenton, NJ

3/ N.J.A.C. 19:14-2.3.