

D.U.P. NO. 95-7

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

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,

Respondent,

-and-

Docket No. CI-94-10

JAMES WILLIAMS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by James Williams against CWA Local 1081. The charge alleged that the Local had refused to supply detailed financial records, had made questionable expenditures, had threatened employees, and interfered with members' ratification. The Director found that these allegations concerned internal union affairs, not within the Commission's jurisdiction. Further, as to the allegations concerning threats to employees, interference with ratification procedures and questionable expenditures, the Director found that the charging party failed to allege specific facts upon which these charges were based.

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Appearances:

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

For the Charging Party,
James Williams, pro se

REFUSAL TO ISSUE COMPLAINT

On September 10, 1993, James Williams filed an unfair practice charge with the Public Employment Relations Commission against the Communications Workers of America, Local 1081.^{1/} The charge alleges that CWA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically, subsections 5.4(b)(1) and (5)^{2/} by refusing to provide the

^{1/} See P.E.R.C. 94-82 for this matter's procedural history.

^{2/} These subsections 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, and (5) Violating any of the rules and regulations established by the commission."

membership with an accurate three year listing of the Local's audited financial records, by coercing members and non-members through written threats made because they questioned the Local's expenditures and by interfering with unit members' ability to ratify a contract. Williams also charges that the union has not provided members with copies of the most recent agreement and alleges that union officials received compensation and reimbursement for questionable expenditures and refused to explain other expenditures.

CWA argues that none of Williams' allegations state a violation of the Act. First, it asserts that nothing in the Act gives members the right to receive audited financial records and that any alleged violation of a union bylaw is not within the Commission's jurisdiction. CWA claims that it has provided Williams with the opportunity in the past and presently to view the union's books at an annual "View the Books Night" during which members are invited to review the Local's financial records. Further, it alleges that Williams was specifically notified that the audit reports in question are available at membership meetings. CWA denies that it made written threats to members who requested the Local's financial records. It notes that Williams' charge fails to indicate when any of the claimed threats against members were made, by whom they were made or what those threats contained, and that no copies of the alleged written threats were provided. CWA asserts that copies of the most recent negotiations agreement are being printed and would be available for distribution as soon as they were

received by the CWA. Finally, CWA argues that Williams is not entitled to information concerning union officials' compensation and/or salaries under the Act; that no officials are salaried, and that Williams has failed to provide specifics about when or by whom any of the claimed denials and refusals were made.

We have conducted an administrative investigation into the allegations of the charge. The following facts appear.

James Williams is employed by Essex County as a food stamp worker. He is represented by and is a member of CWA, Local 1081. Williams claims that he has attempted to obtain detailed audited financial reports from the officers of the Local, but has been unsuccessful. He claims that Article XX, part b of the CWA's bylaws entitle him to this information.

The Act does not regulate internal union conduct. City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982). Likewise, in the private sector, the National Labor Relations Board ("NLRB") normally does not adjudicate disputes over the relationship between a union and its members.^{3/}

^{3/} Such matters are regulated by the Labor Management Reporting and Disclosure Act, 29 U.S.C. §401 et seq. ("LMRDA"). Enforcement of the LMRDA is through a civil action in federal district court, 29 U.S.C. §412, rather than through unfair labor practice proceedings before the NLRB. New Jersey has no public sector counterpart to the LMRDA, but the New Jersey Courts have asserted jurisdiction over union members' property and/or contractual rights. See, e.g., Moore v. Local Union No. 483, 66 N.J. 527 (1975).

Any duty to supply information to unit members under the New Jersey Employer-Employee Relations Act derives from an employee organization's duty to represent the interests of unit members fairly and without discrimination. N.J.S.A. 34:13A-5.3. A breach of the duty of fair representation occurs only when a union's conduct toward a unit member is arbitrary, discriminatory, or in bad faith. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967).

The charging party argues that he is entitled to the detailed financial information by virtue of an article of the CWA's bylaws. He makes no connection between the requested information and the union's duty to represent him fairly in collective negotiations or the administration of the agreement between CWA and the County. CWA has provided a summary auditor's report and afforded Williams the opportunity to review all of the Local's financial transactions at "View the Books Night." I do not believe that the Act requires CWA to provide more information.

As to the assertions that CWA has interfered with members ability to ratify a contract, threatened members for requesting financial information, and that its officers have received questionable compensation and refused to explain other expenditures, Williams has identified no specific incidents or conduct in support of this allegation. N.J.A.C. 19:14-1.3 provides that a charge shall contain:

...a clear and concise statement of the facts
constituting the alleged unfair practice,
including, where known, the time and place of
occurrence of the particular acts alleged and the
names of Respondent's agents or other
representatives by whom committed....
(Emphasis supplied)

Williams' charge does not meet the requirements of this rule. The charge does not state facts; it merely states conclusions.

Further, contract ratification procedures are generally beyond the scope of our regulatory authority. Camden Cty. Coll. Faculty Ass'n, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987) (ratification procedures constitute internal union matter where no evidence that employee suffered any harm or discrimination); See also Council of N.J. State Coll. Locals, D.U.P. NO. 81-8, 6 NJPER 531 (¶11271 1980). Because the Act imposes no ratification requirements, it imposes no corollary duty to supply information concerning internal ratification procedures. Cf. Erie Cty. Sheriff Dept. Local 2060, Council 82 and Duda, 17 NY PERB ¶4604 (Dir. Decision 1984) (mere failure to respond to request for information or advice which has no adverse affect upon unit members runs to the internal functions of an employee organization and is beyond PERB's jurisdiction). Given the information CWA did provide and absent factual allegations which would constitute bad faith, arbitrariness or discrimination concerning the information not provided, there is no basis here for finding a breach of the duty of fair representation.

The Commission's complaint issuance standard has not been met. I will not issue a complaint on the allegations of this charge and dismiss the unfair practice charge in its entirety.^{4/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 22, 1994
Trenton, New Jersey

^{4/} N.J.A.C. 19:14-2.3.