

D.U.P. NO. 97-38

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-97-57

LEWIS F. WILSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that CWA committed an unfair practice by failing to provide Lewis Wilson with a representative at a grievance hearing. The Director finds that a union does not violate its duty of fair representation by failing to represent a supervisor in a hearing regarding a grievance filed by a subordinate. In this case, Wilson did not allege that a grievance hearing was held and there is no evidence that CWA would not have provided him with a representative if a hearing had been convened.

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-97-57

LEWIS F. WILSON,

Charging Party.

Appearances:

For the Respondent,
Abby Demel-Brown, President

For the Charging Party,
Lewis F. Wilson, pro se

REFUSAL TO ISSUE COMPLAINT

On April 4, 1997, Lewis F. Wilson filed an unfair practice charge with the Public Employment Relations Commission against the Communications Workers of America, Local 1031. Wilson alleges that Local 1031 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} by failing to provide him a

^{1/} In the section of the charge form listing which subsections of the act were allegedly violated, Wilson filled in subsection 5.4(a)(3). That subsection prohibits public employers, their representatives or agents from: (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. However, it is clear from the narrative of the charge that Wilson's allegations are against his majority representative, not the public employer.

representative at a grievance hearing. The parties submitted position statements and supporting materials by May 5, 1997.

Wilson is an Assistant Supervisor 3 at Jersey City State College and is represented by Local 1031 in the State-wide Supervisory Unit. On December 17, 1996, Senior Clerk Typist Kathleen Fuquay filed a grievance against Wilson. Fuquay is represented by Local 1031 in the State-wide Administrative/Clerical Unit. Wilson requested that Local 1031 President Abby Demel-Brown provide him with a union representative for the grievance hearing. He alleges that Demel-Brown promised to send a union representative to the grievance hearing as an "observer" on his behalf, while providing Fuquay with a representative who would act as her advisor. Wilson states that as a dues paying member of Local 1031, he should have been entitled to the same representation that the Local offered Fuquay.

Local 1031 provided a detailed chronology and supporting documents regarding the events surrounding and subsequent to Fuquay's grievance, which are summarized as follows.

On January 2, 1997, Demel-Brown received a fax from Wilson requesting her assistance regarding Fuquay's grievance against him. Demel-Brown called Wilson and explained the practice and policy of Local 1031: when a member of the Administrative/Clerical Unit files a grievance against a member of the Supervisory Unit, CWA shop steward represents the Administrative/Clerical employee because the College traditionally represents the supervisor. Demel-Brown stated

that if Wilson was disciplined as a result of the grievance, a CWA shop steward would represent him in a disciplinary appeal.

Demel-Brown then agreed to provide Wilson with a shop steward to represent him after he informed her that the College would not provide him with representation. Demel-Brown confirmed her agreement to provide Wilson with a shop steward by fax on January 3, 1997 and stated that she was in the process of attempting to contact the branch president to assign Wilson a representative.

On January 3, 1997, CWA shop steward Dorothy Harris met with Wilson to discuss the grievance. Harris recommended that Wilson write a letter of apology to Fuquay, which would potentially end the matter and therefore eliminate the need to schedule a grievance hearing. Wilson wrote a letter of apology to Fuquay on January 6, 1997. It is Demel-Brown's understanding that the matter was resolved at this point and no grievance hearing was held.

On February 18, 1997, Wilson wrote to Demel-Brown and expressed his dissatisfaction with her initial response to his request for union representation. Demel-Brown responded on February 19, 1997, stating that she believed that the matter had been resolved.


Wilson's allegations do not constitute an unfair practice within the meaning of the Act. In CWA and McDevitt, D.U.P. No. 94-24, 20 NJPER 114 (¶25058 1994), I found that the union did not violate its duty of fair representation by failing to represent a supervisor in a hearing regarding a grievance filed by a

subordinate. In McDevitt, the supervisor was not disciplined in connection with the grievance. Here, Wilson does not allege that a grievance hearing was even held in this matter. His last correspondence with Demel-Brown expressed dissatisfaction with her initial response to his request for representation. Additionally, there is no evidence that Local 1031 would not have provided him with proper representation if a hearing had been held. See CWA Local 1033 and Cynthia Smith, D.U.P. No. 92-22, 22 NJPER 157 (¶27084 1996).

The Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{2/}

Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 11, 1997
Trenton, New Jersey