

D.U.P. NO. 2024-8

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

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 1037,

Respondent,

-and-

Docket No. CI-2023-013

ISABELA PERDOMO,

**SYNOPSIS**

The Director of Unfair Practices and Representation (Director) grants CWA Local 1037's request for reconsideration of D.U.P No. 2024-005. The portion of the unfair charge filed by Isabela Perdomo (Perdomo), that was not dismissed in D.U.P. 2024-005, alleges that in November 2022, CWA Local 1037 failed to submit two grievances dated November 15 and 17, 2022 on her behalf. The Director finds that the subject of the November 15 and 17, 2022 grievances did not concern Perdomo being docked paid for telework days as found in D.U.P. No. 2024-005, but rather concerned issues of reassignment or potential loss of telework or work schedule changes. Based on the subjects of the grievances, the Director finds that CWA Local 1037 decision not to process Perdomo's grievances was not arbitrary, discriminatory or in bad faith as CWA Local 1037 determined that the grievances were rendered moot by Perdomo's resignation. Therefore, the Director declines to issue a complaint.

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ISABELA PERDOMO,

Charging Party.

Appearances:

For the Respondent,  
Weismann & Mintz, attorneys  
(Ira W. Mintz, of counsel)

For the Charging Party,  
(Isabela Perdomo, pro se)

**REFUSAL TO ISSUE COMPLAINT**

On August 21, 2023, CWA Local 1037 requested reconsideration of D.U.P. No. 2024-005. In that decision, I partially dismissed an amended unfair practice charge filed by Isabela Perdomo (Perdomo). The charge, as amended, alleges that CWA Local 1037 was not present for a meeting on October 28, 2022 between Perdomo and her employer regarding a "personal change in working conditions" despite Perdomo requesting union representation and in violation of her Weingarten<sup>1/</sup> rights. Perdomo further alleges that in November 2022, CWA Local 1037 failed to submit two

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<sup>1/</sup> NLRB v. Weingarten, 420 U.S. 251 (1975).

grievances dated November 15 and 17, 2022 on her behalf. Perdomo also alleges that CWA Local 1037 did not challenge her employer's refusal to rescind her resignation. Perdomo alleges that CWA Local 1037's actions violated section 5.4b(1)<sup>2/</sup> of the Act. I refused to issue a Complaint on Perdomo's alleged Weingarten violation and her duty of fair representation claim concerning her resignation. I did, however, find that Perdomo's duty of fair representation claim about the November 15th and 17th grievances warranted a complaint.

CWA Local 1037 seeks reconsideration of my finding that the November 15th and 17th grievances pertained to Perdomo being docked pay for telework days and that CWA Local 1037's refusal to process those grievances warrants a complaint. CWA Local 1037 contends that the grievances were rendered moot by Perdomo's resignation.

Perdomo was given an opportunity to respond to CWA Local 1037's position that the grievances did not pertain to docked pay for telework days and were not moot once she resigned. On August 21, 2023, Perdomo responded stating that "certification of my time was submitted without any authorization by the employer

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<sup>2/</sup> This provision prohibits 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."

regarding the telework days among other matters stated in grievances dated 11/15 & 11/17/2022."

On the same date, CWA Local 1037 provided copies of the grievance forms filled out by Perdomo. From the grievances provided, it is clear that they do not concern Perdomo being docked pay for telework days. For the following reason, I grant CWA Local 1037's request for reconsideration and find the following facts<sup>3/</sup>:

On November 15 and 17, 2022, Perdomo filled out two grievance forms. The November 15 grievance states:

I am a permanent staff member in BON (Board of Nursing). A unit transfer/decision was made on 10/28/2022 by Jessica Fiorilli. This transfer is deliberate due to ethical issues I had reported in good faith with the Board of Nursing. The work involved in the Review Union is out of scope to what job details are as an ASR 1.

The remedy sought was:

Reinstatement back to BON. Investigate issues which are a legitimate concern and/or reassignment out of the building to another posted vacancy in which I am interested and qualify for.

The November 17, 2022 grievance states:

My direct Supervisor had stopped communicating with me on 10/06/2022 in order to perform my job tasks which violated the ASR 1 job description details and created a hostile work environment. On 10/28/2022, members of management violated Weingarten rights by allowing to proceed with a meeting that changed my personal working condition. As a result, my pay changed as well as

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<sup>3/</sup> The facts contained in D.U.P. No. 2024-005 are incorporated into this decision, except as modified herein.

potential loss of approved Telework and work time schedule.

The remedy sought was:

Placement back to original position with no time or telework schedule change.

At the time Perdomo submitted the grievances to her union representative, the union representative was out of the office. Once the union representative returned to the office, Perdomo resigned and her resignation was accepted by her employer.

#### **ANALYSIS**

A majority representative has a duty to represent all unit employees fairly and without discrimination on the basis of union membership. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-5.7. A majority representative breaches its duty of fair representation "only when [its] conduct towards a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967). The Commission subsequently adopted and applied this standard to section 5.4b(1) claims. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. Of Teachers, 142 N.J. Super. 486 (App. Div. 1976); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12, 13 (¶15007 1983).

A majority representative is afforded a wide range of reasonableness in serving the unit it represents. PBA Local 187,

P.E.R.C. No. 2005-78, 31 NJPER 173, 175 (¶70 2005) (citing Belen, 142 N.J. Super. at 490-91). For example, the duty of fair representation does not require a union to process non-meritorious grievances. Id. at 174 (citing Carteret Ed. Ass'n, P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997)). However, in handling grievances, unions must exercise reasonable care and diligence in investigating, processing and presenting grievances; make a good faith determination of the merits of the grievance; and grant unit members equal access to the grievance procedure and arbitration for similar grievances of equal merit. Middlsex 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) Moreover, "mere negligence, poor judgment, or ineptitude in grievance handling," alone do not suffice to prove a breach of the duty of fair representation. Id. (citing Glen Ridge School Personnel Ass'n, P.E.R.C. No. 2002-72, 28 NJPER 251 (¶33095 2002) (additional citations omitted))

Here, Perdomo does not allege facts to support a finding that CWA Local 1037's refusal to process her November 15<sup>th</sup> and 17<sup>th</sup> grievances was arbitrary, discriminatory or in bad faith. CWA Local 1037 did not file or process Perdomo's grievances because the representative was out of the office when she submitted the grievance forms, and upon his return, Perdomo had already resigned from her employment. CWA Local 1037 argues that any

issues of reassignment or potential loss of telework or work schedule changes became moot when Perdomo resigned.

Here, CWA Local 1037 did not breach the duty of fair representation as the November 15<sup>th</sup> and 17<sup>th</sup> grievances, which sought reassignment and potential loss of telework days or work schedule, were rendered moot by her resignation, as she did not have a job to be reassigned to or that could be subject to telework or work schedule changes. As discussed in DUP 2024-005, when the employer accepted Perdomo's resignation, CWA Local 1037 determined that under N.J.A.C. 4A:2-6.1 (c) and (d) that there was nothing that could be done to rescind that resignation. Based on that determination, CWA local 1037 did not process her November 15 and 17, 2022 grievances as they considered them moot. Even if mistaken, CWA Local 1037's mootness rationale for not pursuing the November 15<sup>th</sup> and 17<sup>th</sup> grievances was not arbitrary, discriminatory or in bad faith. Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971); OPEIU Local 153. There are no facts indicating CWA Local 1037 acted arbitrarily or in bad faith when they determined Perdomo's grievances were moot. For all the reasons stated above, I find that Perdomo has failed to set forth sufficient facts to warrant the issuance of a complaint in the allegations that CWA Local

1037 violated section 5.4b(1) of the Act by failing to process her November 15 and 17, 2022 grievances.

**ORDER**

Accordingly, I find that CWA Local 1037 request for reconsideration is granted and decline to issue a complaint on the allegation that the duty of fair representation was breached when CWA Local 1037 did not process Perdomo's November 15 and 17, 2022 grievances.

/s/Ryan M. Ottavio  
Ryan M. Ottavio  
Director of Unfair Practices

DATED: September 15, 2023  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.**

**Any appeal is due by September 25, 2023.**