

D.U.P. NO. 97-2

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

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1039,

Respondent,

-and-

Docket No. CI-96-72

DORINDA RELIFORD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations raised by an individual who lacks standing to file a charge. Reliford is employed by the Department of Personnel, Human Resources Development Institute. Employees in HRDI are confidential employees excluded from the protections of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. pursuant to the New Jersey Civil Service Act, N.J.S.A. 11A-1 et seq. and State of New Jersey, D.R. No. 97-1, 22 NJPER ____ (____ 1996).

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

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1039,

Respondent,

-and-

Docket No. CI-96-72

DORINDA RELIFORD,

Charging Party.

Appearances:

For the Respondent,
Alison Brown, Staff Representative

For the Charging Party,
Dorinda Reliford, pro se

REFUSAL TO ISSUE COMPLAINT

On May 17, 1996 and June 17, 1996, Dorinda Reliford filed an unfair practice charge and amendment against Alison Brown, HRDI Representative, CWA Local 1039 alleging violations of subsections 5.4(b) (1), (2), (3), (4), (5)^{1/} of the New Jersey

^{1/} 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. (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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Reliford alleges that she has received inadequate representation from CWA Local 1039. She alleges that Local 1039 representatives have refused to maintain any dialogue with her concerning union matters and have failed to respond to her letters and phone calls in February, April and May 1996. The problem became particularly noticeable and Reliford's attempts to contact Brown were especially urgent, in her mind, after employees in the Department of Personnel, Human Resources Development Institute received lay-off notifications in April 1996. Reliford asserts that the lack of communication with her is a blatant disregard by CWA for its membership.

On January 10, 1996, the State filed a clarification of unit petition with the Public Employment Relations Commission seeking to remove all employees in HRDI from four bargaining units represented by CWA. The State argued that the New Jersey Civil Service Act, N.J.S.A. 11A-1 et seq. provides in pertinent part that "all employees [of the Department of Personnel] shall be confidential employees for purposes of the New Jersey Employer-Employee Relations Act, L. 1941, c.100 (C 34:13A-1 et seq.)" N.J.S.A. 11A:2.11(b). Since N.J.S.A. 34:13A-3(d) excludes

1/ Footnote Continued From Previous Page

representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (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."

confidential employees from the definition of public employee, HRDI employees are, by statute, not public employees within the meaning of the Act and are, by statute, excluded from the Act's protection.

CWA opposed the State's petition.^{2/}

I issued a decision on July 1, 1996, finding that HRDI employees are confidential employees within the meaning of the Act and clarifying CWA's Administrative and Clerical Services, Professional, Primary Level Supervisors, and Higher Level Supervisors units to exclude all employees in the Department of Personnel Human Resources Development Institute. State of New Jersey, D.R. No. 97-1, 22 NJPER ____ (1996).

As an employee of HRDI, Reliford is a confidential employee within the meaning of the Act and does not enjoy the protections of the Act. Accordingly, her charge's allegation against Brown, HRDI Representative, CWA Local 1039, even if true, would not constitute an unfair practice.

Accordingly, I find that the Commission's complaint issuance standard has not been met and I will not issue a complaint

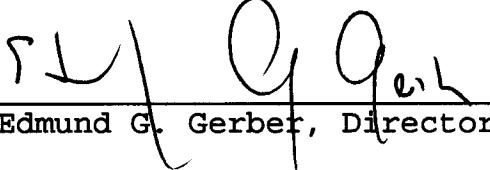
^{2/} It cited a 1991 Memorandum of Understanding between CWA and then Acting Personnel Commissioner William Schuer which provided that CWA would continue to represent HRDI employees after they were transferred into the Department of Personnel from other State departments. CWA argued that the State's consolidation and transfer of training functions to the Department of Personnel was procedurally illegal because it failed to adhere to the requirements of the Executive Reorganization Act, N.J.S.A. 52:14C et seq. Finally, CWA claimed that the removal of the HRDI employees from its units denied them equal protection of the law under the New Jersey and United States Constitution.

D.U.P. NO. 97-2

4.

on the allegations raised in this charge. N.J.A.C. 19:14-2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 9, 1996
Trenton, New Jersey