

D.U.P. NO. 91-23

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

In the Matter of

STATE OF NEW JERSEY &
C.W.A., LOCAL 1040,

Respondents,

-and-

Docket No. CI-90-5

ESTRELITA DAVIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that the State committed an unfair practice when it refused to refer a grievance to a Joint Union/Management Panel ("J.U.M.P."). The Director finds that the State had a contractual right to refuse to permit the grievance to go before J.U.M.P.

The Director also refuses to issue a complaint on allegations that CWA breached its duty of fair representation. The Director finds that CWA's handling of Davis' grievance was not arbitrary, discriminatory or in bad faith.

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Appearances:

For the Respondent State of New Jersey
Office of Employee Relations
(Nancy Mason, Employee Relations Coordinator)

Robert J. DelTufo, Attorney General
(Stephen Schwartz, Deputy Attorney General)

For the Respondent CWA, Local 1040
John Loos, Staff Representative

For the Charging Party
Estrelita Davis, pro se

REFUSAL TO ISSUE COMPLAINT

On July 18, 1989, Estrelita Davis ("Davis") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the State of New Jersey ("State") committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") when it refused to refer her grievance to the Joint Union/Management Panel as provided for in the labor relations

contract between the Communications Workers of America ("CWA") and the State.

On August 4, 1989, I wrote to Davis stating I did not believe Davis' charge constituted an unfair practice within the meaning of the Act. The Commission lacked jurisdiction to review the merits of Davis' grievance and only the majority representative, CWA, had standing to assert that the State, as Davis' employer, repudiated the contract during the handling of Davis' grievance.

Davis responded on August 14, 1989. She again argued the merits of her grievance. She also amended her charge to allege that the CWA violated its duty of fair representation in the handling of her grievance. The allegations of Davis' amendment were sufficient to warrant the processing of the charge and a conference was held with a Commission staff agent.

Our investigation of Davis' charge reveals that:

Davis was charged with insubordination for taking two days off without pay to take the New Jersey Bar Exam in July 1988. She appealed this suspension as a minor disciplinary action. The appeal was denied. Davis immediately requested a discretionary review by the Department of Personnel ("D.O.P.") and in addition, asked the CWA to grieve the discipline before the Joint Union/Management Panel (J.U.M.P.) as provided for in the collective negotiations agreement between the State and CWA (Article V, Section H).

In early December 1988, Davis received a copy of a letter from D.O.P. to the CWA stating Davis' request for a discretionary

review was being withdrawn. However, Davis immediately wrote to D.O.P. stating that she did not want her appeal withdrawn. She wanted to pursue both the discretionary appeal before D.O.P. and the contractual grievance before J.U.M.P. On February 2, 1989, the Department of Personnel denied Davis' appeal.

On March 1, 1989, the CWA informed Davis that her grievance would be heard by J.U.M.P. Then in July 1989, Davis was told that the Office of Employee Relations was refusing to allow her grievance to be heard by J.U.M.P. She claims that the union has, therefore, refused to process her grievance.

Although she never mentioned a letter from CWA to Davis dated December 21, 1988 in her statement of facts, Davis included this letter in her submissions to the Commission. It states:

I understand your desire to pursue your appeal via all possible avenues, however, this is an either/or situation. You chose to approach the appeal via the Department of Personnel, thus precluding your case from going before the Joint Union/Management Panel.

In the future, I strongly suggest that you consult with your union before proceeding into these matters.

The State/CWA contract provides in Article IV, Paragraph B.1 "... a grievant may request that the Civil Service Commission agree to review any matter which by the terms of this grievance procedure may not be processed beyond step two." It is apparent that the union was aware of this provision of the contract and it attempted to withdraw Davis' appeal before D.O.P. to ensure that

Davis' grievance would be heard by J.U.M.P. It was Davis herself who insisted the D.O.P. appeal go forward. She did so without first consulting with the CWA. The State was within its contractual right under Article IV.B to refuse to permit the grievances to go before J.U.M.P.

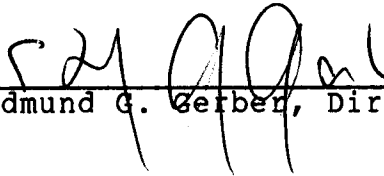
A majority representative is responsible for representing the interests of all unit members without discrimination. Subsection 5.4(b)(1) requires that an employee organization fulfill its duty of fair representation. New Jersey has adopted the standard set forth in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), for deciding duty of fair representation cases. D'Arrigo v. N.J. State Bd. of Mediation, ___ N.J. ___ (1990). In Vaca v. Sipes, the Supreme Court held:

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith.
[Id. at 190, 64 LRRM 2376]

There is nothing in Davis' charge which, if true, would indicate CWA's conduct was arbitrary, capricious or in bad faith. At worst, there was a miscommunication between Davis and the CWA as to the implication of her going forward with her appeal before D.O.P.

The Commission's complaint issuance standard has not been met and accordingly, I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 22, 1991
Trenton, New Jersey