

D.U.P. NO. 93-15

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

In the Matter of

C.W.A., LOCAL 1044,

Respondent,

-and-

Docket No. CI-92-13

SUSAN J. DONIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that a majority representative violated the duty of fair representation. The charge alleged that CWA refused to agree to a salary proposal for one unit employee and that it discriminated against her for signing a decertification petition.

The Director wrote that majority representatives must represent all employees without discrimination and found that CWA's opposition to an increase for one employee does not violate the duty. He also found that the mere signing of a decertification petition does not warrant the issuance of a complaint on a charge that CWA violated subsection 5.4(b)(1) of the Act.

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Appearances:

For the Respondent,
Willie Thompson, Staff Rep.

For the Charging Party,
Susan J. Donis, pro se

REFUSAL TO ISSUE COMPLAINT

On September 17, 1991, Susan Donis ("Charging Party") filed an unfair practice charge alleging that the Communications Workers of America, Local 1044 failed to properly represent her in July and August 1992, during negotiations when it refused to agree to the public employer's salary proposal for her title and when it asserted that it would "challenge" her eligibility for a position. She alleges that, although she is a member of the organization, CWA is retaliating against her because she supported a "decertification petition." CWA's acts allegedly violate subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

On October 18, 1991, Donis filed a letter asserting that she was provisionally appointed to the position of "technical assistant-construction office" and that her public employer, Township of Marlboro, had called for a "civil service examination" concerning the position. She alleges that CWA, in response, advised the Township that if she was "certified" to take the test, it would "challenge" her qualifications if another unit employee was denied the opportunity to take the test. The other unit employee is allegedly a "strong supporter" of CWA.

Also on October 18, 1991, CWA filed a statement denying that it engaged in any unfair practice and asserting that it rejected a salary proposal for Donis' title only inasmuch as the public employer was unwilling to "address the inequities" which the \$6000 increase posed regarding other unit titles. It also asserted that Donis was paid more than a starting salary in the provisional position, while other employees in provisional positions were offered only the starting salary. CWA denies that it has "predetermined" Donis' qualifications and that it seeks a flat dollar increase for all provisional employees. It denies discriminating against Donis.

On November 5, 1992, I issued a letter tentatively dismissing the charge. No response was filed.

In negotiating terms and conditions of employment, majority representatives must represent all employees without discrimination. Belen v. Woodbridge Tp. Bd. of Ed., et al., 142

N.J. Super. 486 (App. Div. 1976), certif. den. 72 N.J. 458 (1976).

In Belen, the Court stated:

...The mere fact that a negotiated agreement results, as it did here, in a detriment to one group of employees does not establish a breach of [the duty of fair representation] by the union. [142 N.J. Super. at 490]

The Commission has dismissed unfair practice charges alleging that a union violated its duty of fair representation by eliminating differential pay for certain employees in order to secure larger salary increases for all employees. PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983). Similarly, in CWA Local 1035, P.E.R.C. No. 86-123, 12 NJPER 378 (¶17148 1986), the Commission dismissed a charge alleging a violation of the duty of fair representation when the union did not "prefer" its members over non-union members during negotiations, because the union sought the upgrading of all job titles in negotiations.

The mere fact that CWA opposed a suggested \$6000 salary increase to one unit employee when other unit employees had not been offered similar increases in negotiations does not establish discrimination against that employee. Furthermore, Article XXIII of the Agreement, which binds the CWA and Township to "all Civil Service Rules and Regulations", suggests that the majority representative is concerned with such personnel matters as promotions.^{1/} Accordingly, it is not necessarily an unfair

^{1/} Although promotional criteria are not mandatory subjects for negotiations, promotional procedures are negotiable. State of N.J. v. State Employees Assn., 78 N.J. 54 (1978).

practice for CWA to identify more than one unit employee who may be eligible for promotion. Donis has not alleged sufficient facts warranting the issuance of a complaint on the mere assertion that CWA discriminated against her because she signed a decertification petition.

Based upon the foregoing, I conclude that this unfair practice charge does not meet the Commission's complaint issuance standard. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 4, 1992
Trenton, New Jersey