

D.U.P. NO. 99-3

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

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1081,

Respondent,

-and-

Docket No. CI-98-73

MARYANN TOSCANO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint where Maryann Toscano failed to allege facts suggesting that CWA's representation of Toscano in a disciplinary matter was arbitrary, capricious or discriminatory. The Director found that Toscano's dissatisfaction with the settlement agreement negotiated by CWA to avoid her termination did not constitute an unfair practice. Accordingly, the Director determined that the Commission's complaint issuance standard had not been met. Toscano stated no facts supporting various other citations of the Act and rules; therefore, those allegations were dismissed.

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Appearances:

For the Respondent,
Kathleen A. King, Representative

For the Charging Party,
Maryann Toscano, pro se

REFUSAL TO ISSUE COMPLAINT

On March 26, 1998, Maryann Toscano filed an unfair practice charge against her employee representative, Communications Workers of America, Local 1081 (CWA). Toscano alleges that the CWA violated the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-5.4b(1), (2), (3), (4) and (5), 1/ N.J.S.A. 34:13A-25^{2/}

1/ These provisions 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 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."

2/ This provision prohibits the transfer of school district employees for disciplinary reasons.

and N.J.A.C. 19:11-6.2(b) and 19:14-3.3^{3/} by its representation of Toscano concerning a disciplinary action in October 1997.

Toscano alleges in her charge that her disciplinary hearing was postponed from October 23, 1997 to October 24, 1997 and then cancelled altogether by the CWA Local 1081 president without explanation; that Toscano did not receive the discovery materials until three days before the initial hearing date, although the CWA local president had obtained and reviewed them long before; that Toscano did not have proper time for an attorney to review the materials on her behalf; that she was forced to sign a stipulation of settlement; that she was not permitted to amend anything in the stipulation of settlement; and that she was transferred from a field position to an in-house position for disciplinary reasons.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. Based upon the following, I find that the Complaint issuance standard has not been met.

3/ N.J.A.C. 19:11-6.2(b) provides for a Commission notice of hearing concerning a representation matter shall be served on all interested parties at least 10 days before the hearing. N.J.A.C. 19:14-3.3 concerns the amendment of a respondent's answer after the issuance of a Commission Complaint and Notice of Hearing. The Charging Party also alleges violations of: "34:13A-5.4a (2) and (6)". However, these provisions of the Act refer to employer conduct. The employer was not named as a respondent in this matter nor are there facts alleged concerning any employer conduct.

Toscano is employed by the Essex County Division of Citizen Services as a family service worker. On October 1, 1997, Toscano was issued a Preliminary Notice of Disciplinary Action for conduct unbecoming a public employee, falsification of physician certificates and theft by deception. The Notice sought the penalty of termination of employment and restitution. A hearing was initially scheduled for October 23, 1997. By letter dated October 10, 1997, Assistant County Counsel Pamela Gresham adjourned the hearing based upon the request of CWA representative David Weiner. By letter dated October 16, Ms. Gresham provided discovery materials to the CWA. On October 30, 1997, Ms. Toscano entered into a Stipulation of Settlement which was also signed by representatives of the County and CWA representative Weiner. The stipulation provided that Toscano admitted the charges, that she agreed to a 45-day suspension and a 45-day fine, and that she be immediately transferred to a non-field assignment.

ANALYSIS

For the reasons expressed below, I find that Toscano's charge does not set forth any violations of the Act. None of the facts alleged, even if true, would support a finding that CWA acted inconsistently with its duty of fair representation owed to a unit member.

N.J.S.A. 34:13A-5.3 provides in part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has 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, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190 (1967) (Vaca). The courts and this Commission have consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Board of Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [10 NJPER at 13].

The U.S. Supreme Court has also held that to establish a claim of a breach of the duty of fair representation, such claim "...carried with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of American v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

Here, there is no evidence of bad faith, fraud or invidious discrimination. Rather, it appears that representatives of the CWA, acting in their capacity as Toscano's representative, successfully reached an agreement with the employer concerning discipline for Toscano which avoided her termination. Employee organizations are

entitled to a wide range of reasonableness in determining how to best service their members. New Jersey Transit, D.U.P. No. 96-19, 22 NJPER 144 (¶27074 1996); Jersey City Bd. of Ed., D.U.P. No. 93-7, 18 NJPER 455 (¶23206 1992). CWA not only has a right to settle disputes with the employer, the Commission encourages such efforts. The settlement of labor disputes is the core of the Commission's statutory mission. N.J.S.A. 34:13A-2.; Westlake Education Assoc., D.U.P. No. 94-13, 19 NJPER 521 (¶24241 1993). Neither CWA's negotiation of the settlement agreement with the employer, nor any dissatisfaction Toscano may have with that agreement, constitutes an unfair practice. International Brotherhood of Teamsters, Local 97, D.U.P. 96-15, 22 NJPER 111 (¶27058 1996).

Toscano signed the agreement; the charge does not allege any facts supporting her claim that she was "forced" to do so. International Brotherhood of Teamsters, supra. Any other appeal Toscano might have concerning the propriety of the discipline is properly before the Department of Personnel, not this agency.

Toscano also alleges a violation of 5.4b(2), (3), (4) and (5) of the Act. No facts were alleged which support these allegations.

Moreover, a majority representative's obligation to engage in good faith collective negotiations runs solely to the public employer. Toscano, an individual employee, has no standing to allege a violation of 5.4b(3). Tp. of Berkeley, D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985), see also Trenton Bd. of Ed., D.U.P. No. 81-26, 7 NJPER 406 (¶12179 1981). Therefore, the 5.4b(1), (2) (3) and (4) allegations are dismissed.

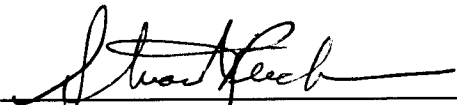
The charge alleges no facts to support violations of N.J.S.A. 34:13A-25, N.J.A.C. 19:11-6.2(b), or N.J.A.C. 19:14-3.3. The cited sections do not properly concern the allegations in this context and are dismissed.

Therefore, based on the above, I find the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations in this charge.

ORDER

The unfair practice charge is dismissed. N.J.A.C.
19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman
Director of Unfair Practices

DATED: October 22, 1998
Trenton, New Jersey