

P.E.R.C. NO. 2013-29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CWA LOCAL 1040, CWA DISTRICT ONE,
AND STATE OF NEW JERSEY
(JUVENILE JUSTICE),

Respondents,

-and-

Docket Nos. CI-2010-046
CI-2010-047
CI-2010-049

JUDY THORPE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Deputy Director of Unfair Practices refusing to issue a complaint in unfair cases filed by Judy Thorpe against CWA Local 1040, CWA District One and the State of New Jersey (Juvenile Justice).

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent - State of New Jersey, Jeffrey S. Chiesa, Attorney General (Brady Connaughton, Deputy Attorney General)

For the Respondent - CWA, Weissman & Mintz, LLC, attorneys (Anmarie Pinarski, of counsel)

For the Charging Party, Judy Thorpe, pro se

DECISION

On January 26, 2012, Judy Thorpe appealed a decision of the Deputy Director of Unfair Practices refusing to issue a complaint based on three unfair practice charges she filed with this agency. D.U.P. 2012-8, ___ NJPER ___ (¶ 2012). On July 3, 2010 and August 9, 2010, she filed a charge and amended charge against CWA Local 1040 and CWA District 1 NYC asserting violations of 5.4b(1), (2), (3), (4) and (5)^{1/} of the New Jersey

^{1/} These provisions prohibit employee organizations, their representatives or agents from: "(1) Interfering with,
(continued...)

Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act). The portions of the charges that are relevant for purposes of this appeal pertain to Thorpe's assertion that the CWA breached its duty of fair representation during an arbitration to contest her termination for not consenting to a fitness for duty evaluation.

On June 9, 2010 and August 6, 2010, Thorpe filed a charge and amended charge against the State of New Jersey/Juvenile Justice Commission, asserting violations of 5.4a(1), (2), (3), (4), (5), (6) and (7)^{2/} of the Act. The portions of the charges

1/ (...continued)
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/ These provisions prohibit public employers, 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) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (5) Refusing to negotiate in good faith with a majority
(continued...)

that are relevant to this appeal is Thorpe's assertion that the State's requiring her to undergo a fitness for duty examination was retaliatory and baseless.

This case has a tortured factual and procedural history which we will not repeat here. We incorporate the comprehensive factual and procedural history set out in the Deputy Director's decision.

Thorpe appeals the Deputy Director's decision asserting that the CWA should have advised her that the arbitration award was final and binding and that there were appeal procedures for arbitration decisions. Thorpe also asserts that CWA's failure to supply the arbitrator with reports from two doctors who found her fit for duty evidences its breach of duty of fair representation. As against the State, Thorpe asserts that its requirement that she undergo a fitness for duty evaluation was unwarranted. The CWA and the State refute Thorpe's claims.

With regard to Thorpe's assertions against the CWA, Vaca v. Snipes, 386 U.S. 171, 190 (1967), is the seminal case setting out the standard for a union's duty of fair representation. The

2/ (...continued)
representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

Court in Vaca found that a violation of a union's duty of fair representation occurs when its conduct towards one of its members is "arbitrary, discriminatory or in bad faith." With regard to Thorpe's assertions that the CWA failed to advise her that the award was final and binding and that an appeal may be raised in court, there are no facts which suggest that the CWA misled her into believing that she had no right to appeal the award, or that the CWA arbitrarily, in a discriminatory manner, or in bad faith decided not to advise her of her appeal rights. With regard to Thorpe's assertions that the CWA failed to supply the arbitrator with medical reports from two doctors who found her fit for duty, Thorpe does not assert that either of the reports were authored by doctors who were authorized by the State to perform the fitness for duty examination. Moreover, the pertinent issue as identified by the arbitrator was whether the State had just cause for terminating Thorpe for not consenting to a fitness for duty evaluation. Thus, Thorpe was terminated for her failure to submit to the requisite fitness-for-duty exam, not because the State actually made a determination that she was unfit for duty. Thorpe has not produced any evidence supporting her assertion that the State's request for her to undergo a fitness-for-duty evaluation was baseless. Furthermore, N.J.A.C. 4A:6-1.4, provides authority to an employer to require a fitness-for-duty

evaluation "as a condition of the employee's continuation of sick leave or return to work."

ORDER

The Deputy Director's refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: October 25, 2012

Trenton, New Jersey