P.E.R.C. NO. 2017-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,

Respondent,

-and- Docket No. CI-2015-054

CRISSY B. NICHOLSON,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Director of Unfair Practices refusing to issue a Complaint based on the unfair practice charge, as amended, by Crissy B. Nicholson against the CWA. The charge alleges that the CWA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(1), by breaching its duty of fair representation when it did not arbitrate Nicholson's disciplinary charges because it negotiated a settlement agreement with her public employer involving rescission of disciplinary notices and charges seeking her removal. The Commission agrees with the Director's determination that Nicholson's displeasure with that settlement agreement does not equate to the CWA acting arbitrarily, discriminatorily, or in bad faith and therefore her charge does not satisfy the complaint issuance standard.

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, Weissman & Mintz LLC (Annmarie Pinarski, of counsel)

For the Charging Party, Crissy B. Nicholson, pro se

DECISION

On August 9, 2016, Crissy Nicholson appealed a decision of the Director of Unfair Practices that refused to issue a Complaint based on an unfair practice charge, as amended, that she filed against her former union, Communications Workers of America (CWA). D.U.P. No. 2017-1, 43 NJPER 61 (¶15 2016). Nicholson's charge alleges that CWA violated N.J.S.A. 34:13A-5.4b(1)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

1/ This provision prohibits 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."

Prior to the Director issuing D.U.P. 2017-1, on June 15, 2016, she sent a letter to the parties advising them that she was inclined not to issue a complaint and setting forth the reasons for that conclusion. The parties were provided with an opportunity to respond no later than the close of business on June 24. On June 22, Nicholson requested an additional seven to ten business days to respond. She was advised by the Director that she needed to obtain the consent of her adversary. At 6:51 p.m. on June 24, the Director received an email from Nicholson with an attached audio file. The Director responded, stating that the audio file could not be considered because it was inaudible, unauthenticated and filed on an untimely basis.

Nicholson's appeal contests the Director's decision not to consider the audio file, but also admits that she "did not bother" to get the CWA's consent for an extension of time to respond to the Director's June 15, 2016 correspondence because "[her] proof has been ready and waiting for years." With her appeal, she has submitted two CDs and a flash drive, which Nicholson asserts contain audio recordings of a conversation between her and a CWA staff representative from April 2013, a conversation that occurred while preparing for mediation between her and CWA staff representatives on August 29, 2013, and a recording of a departmental hearing. On appeal, we may not consider information that was not presented to the Director,

unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented. N.J.A.C. 19:14-2.3(b). The two CDs and flash drive submitted by Nicholson do not meet the standard for supplementing the record on appeal.

At the core of this case is Nicholson's claim that CWA breached its duty of fair representation. In Vaca v. Sipes, 398 U.S. 171 (1967), the Supreme Court articulated the standard for determining whether a majority representative violated its duty of fair representation. The 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, discriminatory or in bad faith. [Id. at 190].

The Director's decision discusses Nicholson's claim and why it does not satisfy the complaint issuance standard. The Director found that CWA was not obligated to arbitrate Nicholson's disciplinary charges, and that it had negotiated a settlement agreement involving rescission of two disciplinary notices seeking termination, and respective four and twenty day suspensions on two charges for removal. Nicholson's displeasure with that settlement agreement does not equate to the CWA acting arbitrarily, discriminatorily, or in bad faith. Ibid. Based on

the reasons set forth in the Director's decision we deny Nicholson's appeal.

ORDER

The refusal to issue a complaint is sustained.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. None opposed. Commissioners Jones, Voos and Wall were not present.

ISSUED: November 17, 2016

Trenton, New Jersey