

D.U.P. NO. 98-7

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

In the Matter of

OCEAN COUNTY BOARD  
OF CHOSEN FREEHOLDERS  
& PBA LOCAL 258,

Respondent,

-and-

Docket No. CI-97-87

MARTIN J. BIENIASZ, et al.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by certain officers of the Ocean County Sheriff's Department alleging that the Ocean County Sheriff's Department committed an unfair practice when it denied a grievance relating to contractual step movement on the salary guide for 1997. The charge further alleged that PBA Local 258 violated the Act when it refused to file for binding arbitration of the step movement grievance. However, the denial of the grievance and the refusal to file for binding arbitration of the grievance did not constitute an unfair practice.

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Appearances:

For the Respondent, Ocean County Board  
of Chosen Freeholders  
Keith Goetting, Director of Employee Relations

For the Respondent, PBA Local 258  
George Graham, President

For the Charging Party,  
Martin J. Bieniasz, et al., pro se

REFUSAL TO ISSUE COMPLAINT

On June 11, 1997, certain officers of the Ocean County Sheriff's Department filed an unfair practice charge with the Public Employment Relations Commission. The charging parties allege that the Ocean County Board of Chosen Freeholders violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1

et seq., specifically subsections 5.4(a)(1) and (5) of the Act<sup>1/</sup> when it denied a grievance relating to contractual step movement on the salary guide for 1997. The charging parties also allege that PBA Local 258 violated the Act<sup>2/</sup> when it refused to file for binding arbitration of charging parties' grievance over step advancement on the 1997 salary guide.

We have conducted an administrative investigation into the allegations of the charge. These facts appear.

PBA Local 258 represents sheriff's and correction's officers in Ocean County below the rank of sergeant. The County, the County Sheriff and Local 258 entered into a collective negotiations agreement effective from April 1, 1994 through March 31, 1998.

The grievance procedure ends in binding arbitration of contractual disputes. Article XXI, entitled Grievance Procedure, provides for four levels in the processing of grievances. The

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<sup>1/</sup> These subsections 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. (5) Refusing to negotiate in good faith with a majority 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."

<sup>2/</sup> The charge does not recite subsection 5.4(b)(1) which 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." However, it is the import of paragraphs six and seven of the unfair practice charge.

first three levels provide for submission to the officer's immediate superior, to the county sheriff or warden and to the county administrator successively. At level four, the grievant may submit the grievance with a request for arbitration to the union. If the union determines that the grievance is meritorious, it may submit it to arbitration.

Article IV, sets forth salary guides for each year for 1993 through 1997, and sets out a series of subsections detailing the movement on the guide (lateral and vertical).

The details for movement in each year vary. For instance, effective April 1, 1994 the salary guide lists salaries for a probationary step through step 7. The subsections following the 1994 salary guide detail movement for those who had been at step 2 through step six in 1993<sup>3/</sup> and details their placement on the 1994 salary guide. No explanation for step movement is provided for those who had been on the probationary step or step one in 1993. Similarly, effective April 1, 1997 the salary guide sets forth salaries for probationary through step 7 as well as an off-guide step after step 7. The subsections following the salary guide for 1997 begin with details for movement of those members who were on step 4 as of 1996. No explanation of movement is given for those who were on probationary through step 3 as of the prior year's guide.

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<sup>3/</sup> There was no step seven on the 1993 salary guide.

Furthermore, in each contractual year there is no consistent pattern of movement -- i.e., movement in any particular year may be lateral and/or vertical and varies from step to step.

On March 19, 1997, the Board passed a resolution establishing sheriff's officers' salaries effective April 1, 1997. Those officers who were at steps 1 and 2 as of 1996 would remain at those steps in 1997 and receive increments reflected by the lateral movement on the salary guide for 1997.

The charging parties filed a grievance alleging that the resolution incorrectly set their salaries for 1997 and that the parties' collective negotiations agreement called for vertical movement on the salary guide -- i.e., those who had been on step 1 in 1996 should have been placed on step 2 for 1997. The grievance was denied through level three. At level four, the charging parties submitted the grievance for arbitration to the union.

According to the charging parties' submissions, the union's vice-president, Thomas Pandolf, responded in writing. He explained to them that the union consulted with its negotiating team, as well as the team's attorney, all of whom disagreed with charging parties' interpretation of the contract. They stated that the contract contemplated a lateral movement for step 1 and step 2 in 1997. Therefore, the union refused to submit the grievance to arbitration.

#### ANALYSIS

It is alleged that when the union refused to arbitrate the grievance filed by charging parties it violated its duty of

fair representation. However, the charge fails to allege an unfair practice.

The standards for determining whether a union violated its duty of fair representation were first established by the United States Supreme Court in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). The Court in Vaca held that:

...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. 386 U.S. at 190, 64 LRRM at 2376.

The Supreme Court, subsequently, also held that to establish a claim of a breach of the duty of fair representation:

...carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives. Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

The Commission and the New Jersey courts have consistently embraced the Vaca and Amalgamated standards in adjudicating fair representation cases. See Saginario v. Attorney General, 87 N.J. 480 (1981); Belen v. Woodbridge Tp. Bd. Ed., 142 N.J. Super. 486, 491 (App. Div. 1976); Middlesex Cty., MacKaronis and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. (6/16/82), recon. den. (10/5/82); FOP Lodge 94 and Cassidy, P.E.R.C. No. 91-108, 17 NJPER 347 (¶22156 1991); Fair Lawn Bd. Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, (¶13040 1982); New Jersey Tpk.

Ees. Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

The fact that a union's decision results in a detriment to one unit member does not establish a breach of the duty. Ford Motor Co. v. Hoffman, 345 U.S. 330 (1953); Essex-Union Joint Meeting and Automatic Sales, Servicemen & Allied Workers, Local 575 and Brian McNamara, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991). Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca; Essex-Union Joint Meeting. Rather, a union is allowed "wide range of reasonableness" in servicing its members. Ford Motor Co. v. Hoffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953); Essex-Union Joint Meeting.

Based on the foregoing, the union's refusal to take the charging parties' grievance to arbitration does not constitute an unfair practice. The union reviewed the grievance, consulted with its negotiating team and the attorney who represented the negotiating team and made a good faith determination not to arbitrate because it thought that it would not prevail.

The charging parties may not have been satisfied with the union's efforts to change their step movement on the salary guides and to process its grievance in this regard, but a labor organization is not required to represent unit members to their complete satisfaction. Given the complexity of salary guides of the contract, and the unions reliance on the understanding of its negotiations team and attorney, the union operated within its

"wide range of reasonableness". Ford Motor Co.; Essex-Union Joint Meeting. See Ford; New Jersey Tpk. Auth.

Finally, the §5.4(a)(5) allegation by charging parties that the Board violated this subsection of the Act must be dismissed. In New Jersey Turnpike Authority (Jeffrey Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), the Commission found the standing of individual claimants to allege violations of section 5.4(a)(5) is very limited. The Commission stated:

As a general matter, we do not believe that an individual employee, in the absence of any allegations of collusion or unfair representation by the majority representative, can use the unfair practice forum to litigate an alleged breach of a collective negotiations agreement unrelated to union activity. The violation of the duty to negotiate terms and conditions of employment implied by such an allegation is more appropriately asserted by the majority representative. It is not an unfair practice for a public employer to refuse to negotiate with an individual employee or even a group of employees if they do not constitute the exclusive majority representative. Therefore, while the breach of a contract may violate certain rights of an individual employee, they are not normally vindicated in the unfair practice forum provided by this Act. (6 NJPER at 561).

There is no breach of the duty of fair representation supported by the facts alleged in the charge, and there is no allegation of collusion by the employer in the decision of the union not to take the grievance to arbitration. Since the charging parties' dispute with the Board over their placement on the salary guide of the collective negotiations agreement is the real issue of contention, such dispute is purely a matter of contract interpretation. The Commission has held that an individual employee has no standing to challenge the interpretation of an agreement arrived at in good faith between the employer and majority

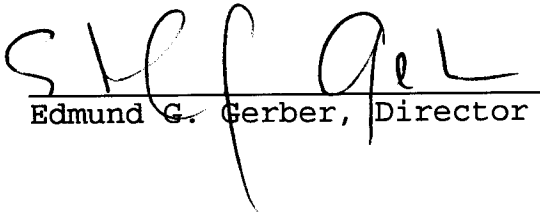


representative. Therefore, the charging parties have no standing to assert a violation of section 5.4(5) against the employer.

Accordingly, based on the foregoing, I find the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.<sup>4/</sup>

The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: August 21, 1997  
Trenton, New Jersey

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<sup>4/</sup> N.J.A.C. 19:14-2.3.