

D.U.P. NO. 98-31

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

In the Matter of

PBA LOCAL 277
(SUPERIOR OFFICERS),

Respondent,

-and-

Docket No. CI-97-62

WAYNE OTTO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Wayne Otto against PBA Local 277. The Director finds that Otto was not an employee under the Act at the time the contract was signed; thus he is not entitled to the Act's protection for actions occurring after his termination. In any event, the Director finds that Local 277 did not breach its duty of fair representation owed to a unit member in the contract negotiations context.

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Appearances:

For the Respondent,
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(Sidney H. Lehmann, of counsel)

For the Charging Party,
Horn, Goldberg, Gorny, Plackter, Weiss & Perskie,
attorneys
(Frederick F. Fitchett, II, Esq.)

REFUSAL TO ISSUE COMPLAINT

On April 4, 1997, Wayne Otto, a former employee of the Camden County Sheriff's Department, filed an unfair practice charge against PBA Local 277 (Superior Officers). Otto alleges that the Respondent violated 5.4b(1) and (3)^{1/} of the New Jersey

^{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. (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."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by failing to represent him when the parties entered into a collective negotiations agreement which specifically excluded his former position from its coverage.

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. Our understanding of the facts appears below.

On December 12, 1997, Otto amended his charge, alleging that the Respondent violated 5.4a of the Act by treating him arbitrarily because of his political affiliations and right to litigate his employment rights with a public employer.

Otto was a member of Local 277 (Superior Officers) during his employment. On January 26, 1995, Otto was demoted from the position of Sheriff's Officer Chief to Sheriff's Officer. As a result of litigation Otto filed against the Sheriff, Otto was reinstated to the position of Sheriff's Officer Chief until the title expired on December 31, 1995. His employment with the Sheriff ended then.

On February 19, 1997, the Respondent and the County entered into an agreement which was retroactive to 1995 and specifically excluded Otto's former position, Sheriff's Officer

Chief, from the contract's coverage and thus excluded Otto from collecting retroactive wages for the period he was employed. Otto claims he was the only person excluded from the new agreement.

According to the Respondent, it has not violated the Act. It notes that the fact that a negotiated agreement results in less than complete satisfaction for some individuals in the unit, does not establish a breach of the duty of fair representation.

Further, the Respondent claims that it did not owe Otto a duty to negotiate on his behalf, because his position had been abolished by the Sheriff. At the time the contract was executed, Otto's employment with the Sheriff had already ended and so had the title of Sheriff's Officer Chief.

It points out that the Sheriff had the managerial prerogative to abolish the title; the Respondent lacked the authority to keep the position in the unit.

Further, the Respondent notes that Otto does not have standing to assert a 5.4b(3) violation and that the relief which Otto seeks through his charge was also litigated in his Superior Court case. Thus, principles of collateral estoppel and the single controversy rule prohibit him from also seeking that remedy here.

Finally, the Respondent asserts that Otto did not properly serve it with his charge, as service was upon PBA Local 277 President Thomas Gladden, who is not a representative of the Respondent.

ANALYSIS

I believe that Otto did effectively serve the Respondent. He properly specified PBA Local 277, SOA, as the Respondent in his charge; he simply inaccurately named Gladden as its President. This constitutes substantial compliance with N.J.A.C. 19:14-1.3(a)2. See Passaic Cty. and AFSCME Council 52, P.E.R.C. No. 98-54, 23 NJPER 623 (¶28302 1997). However, I do not find that his charge sets forth any violations of the Act.

At the time the contract was signed, Otto was not an employee within the meaning of the Act. See N.J.S.A. 34:13A-3(d); Jersey City Police Superior Officers Assn., D.U.P. No. 92-8, 19 NJPER 480 (¶24226 1991). Accordingly, Otto is not entitled to the protection of the Act for actions occurring after his termination.

In any event, I do not believe Local 277 acted inconsistently with the standard for the duty of fair representation owed to a unit member in a contract negotiations context.

In Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Federation of Teachers, 142 N.J. Super. 486 (App. Div. 1976), the Court explained the standard to be applied in evaluating a majority representative's conduct in a negotiations context:

Designation of an exclusive bargaining agent under the New Jersey Employer-Employee Relations Act confers on a union broad power to represent the members of the bargaining unit and to negotiate the terms and conditions of their employment. Along with this power comes the obligation to represent all employees

"without discrimination." N.J.S.A. 34:13A-5.3. This duty of fair representation of a union toward its members has received extensive development in the experience and adjudications under the National Labor Relations Act, which we find to be an appropriate guide for the interpretation of our own enactment. See Lullo v. Intern. Ass'n of Fire Fighters, supra. In Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967), the United States Supreme Court stated (at 190, 87 S.Ct. at 916): "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."

* * *

...[T]he 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 duty by the union. The realities of labor-management relations which underlie this rule of law were expressed in Ford Motor Co. v. Huffman, 345 U.S. 330, 73 S. Ct. 681, 97 L.Ed. 1048 (1953), where the court wrote:

...The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representation in servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion....[at 337-338, 73 S. Ct. at 686]

[142 N.J. Super. at 490-491]

See also, Humphrey v. Moore, 375 U.S. 335 (1964); Hamilton Tp. Ed. Ass'n, P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978). Accordingly, absent clear evidence of bad faith, fraud or invidious discrimination, an employee organization may make compromises which adversely affect some members of a negotiations unit, while resulting in greater benefits for other members. See Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); AFT Local 481,

P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986) adopting H.E. No. 87-7, 12 NJPER 628 (¶17237 1986); Bridgewater Raritan Ed. Ass'n., D.U.P. No. 86-7, 12 NJPER 239 (¶17100 1986).

Here there is no evidence that Local 277 made a deliberate decision in bad faith to cause Otto economic harm. Rather, it appears Local 277 acted within its wide range of reasonableness.

It is neither uncommon nor unlawful for an employee representative to negotiate an agreement which restricts retroactive benefits to current unit employees and current existing titles. Sayreville Mun. Supvrs. Assn. D.U.P. No. 94-3, 19 NJPER 430 (¶24195 1993); See Mercer Cty., D.U.P. No. 92-19, 18 NJPER 297 (¶23126 1992).

Further, I note that Otto, an individual employee, has no standing to allege a violation of section b(3), as a majority representative's obligation to negotiate runs only to the public employer. Tp. of Berkeley, D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985); Trenton Bd. of Ed., D.U.P. No. 81-26, 7 NJPER 406 (¶12179 1981).

Finally, Otto improperly plead a 5.4a violation in an affidavit submitted in support of his charge. Further, he failed to state which provisions of 5.4a were violated and thus does not meet the requirements of N.J.A.C. 19:14-1.3(a)3. Otto has not named the Sheriff as a respondent.

Based on the above, I find the Commission's complaint issuance standard has not been met and thus decline to issue a

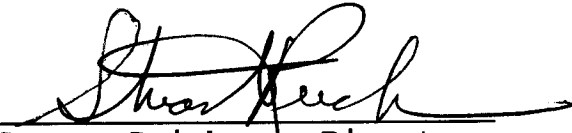
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complaint on the allegations of this charge. N.J.A.C. 19:14-2.3.

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: March 16, 1998
Trenton, New Jersey