

D.U.P. NO. 2000-16

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

In the Matter of

CITY OF ASBURY PARK and  
IAFF LOCAL 384,

Respondents,

-and-

Docket No. CI-99-48

ROBERT R. FARRELL, SR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses, in part, an unfair practice charge filed by an individual against both the City of Asbury Park and the International Association of Firefighters Local 384 (IAFF). The Director found that the allegation that the IAFF breached its duty to fairly represent the charging party in his appeal of discipline was not supported by the alleged facts, which, even if true, would not have constituted a violation of the New Jersey Employer-Employee Relations Act N.J.S.A. 34:13A-5.4 b(1), the duty of fair representation. The alleged facts showed that the IAFF immediately met with management, obtained a slight reduction in the discipline and then submitted the entire issue to the grievance committee which considered the matter but decided not to pursue the grievance to arbitration.

The charge also alleges that the City disciplined the charging party in retaliation for his having filed earlier grievances. If true, this would constitute a violation of the New Jersey Employer-Employee Relations Act N.J.S.A. 34:13A-5.4 a(1) and (3), and accordingly, a complaint and notice of hearing will be issued on this allegation.

D.U.P. NO. 2000-16

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

In the Matter of

CITY OF ASBURY PARK and  
IAFF LOCAL 384,

Respondents,

-and-

Docket No. CI-99-48

ROBERT R. FARRELL, SR.,

Charging Party.

Appearances:

For the Respondent - City,  
Murray, Murray & Corrigan, attorneys  
(Karen Murray, of counsel)

For the Respondent - IAFF,  
Zazzali, Zazzali, Fagella & Nowak, attorneys  
(Paul L. Kleinbaum, of counsel)

For the Charging Party,  
Robert R. Farrell, pro se

DECISION

On January 15, 1999, Robert R. Farrell, Sr. (Farrell) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against his employer, the City of Asbury Park (City) and his majority representative, the International Association of Firefighters Local No. 384 (IAFF).

The charge alleges that the City violated 5.4a(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when it incorrectly recorded him as late on October 10, 1998; imposed minor discipline on him for an incident on October 15, 1998; and denied him due process by failing or refusing to advance his grievance through the grievance procedure.

Farrell also alleges that "management interfered with employee exercise of right to grieve by imposing retaliatory [sic] discipline without required due process." Attached to the two-paragraph statement of charge is a letter identifying the incidents underlying the charge, and 54 pages of exhibits. In the attached letter, Farrell complains about the investigation of the October 15th incident and states:

Incidentally, just prior to this investigation, this same supervisor (Cpt. DeSarno) was a party to an unresolved complaint by [Farrell]. There are currently 3 other Grievances that have been filed by Firefighter Farrell that are unresolved and have not gone beyond the first or second steps of the negotiated grievance procedure, just prior to and immediately following this disciplinary action.

---

<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; and (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."

It is my complaint that the Management of the City of Asbury Park...has denied me the procedural protections and opportunity for full and fair hearing and due process in violation of Title 34:13A-5.4a(1) Interfering with an employee in the exercise of rights by retaliatory discipline for making grievance. [emphasis added. January 15, 1999 letter appended to charge.]

Accordingly, despite that section 5.4a(3) is not specifically plead, I construe these statements to be an allegation that the City violated 5.4a(3) which prohibits public employers, their representatives or agents from: "(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."

The charge alleges that the IAFF violated section 5.4b(1)<sup>2/</sup> of the Act when in December 1998, it refused to continue to process his grievance over minor discipline.

On February 19, 1999 and March 29, 1999, Farrell applied to the Commission for interim relief against the City only. On May 12, 1999, the application was denied, and the case returned to investigation. City of Asbury Park (Farrell), I.R. No. 99-21, 25 NJPER 264 (¶30111 1999).

On August 18 and 19, 1999, the City and IAFF filed respective responsive position statements. Both deny having

---

<sup>2/</sup> 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.

violated the Act. The IAFF asserts that it attempted to resolve the issue of Farrell's discipline and also filed a formal grievance on Farrell's behalf. The City asserts that Farrell failed to file a timely petition for grievance, as required by the parties' grievance procedure. On August 30, 1999, Farrell submitted a reply to the Respondents' position statements.

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. I find the following facts.

Farrell is a firefighter with the City and a member of IAFF's rank and file negotiations unit. The City and IAFF are parties to a collective negotiations agreement, effective from January 1, 1995 to December 31, 1997. Article XX is the grievance procedure. Step 1 provides:

The union grievance committee, upon receiving a written and signed petition from an employee, shall determine if a grievance exists. If, in their opinion no grievance exists, no further action will be taken.

Under Step 2 a grievance must be filed within ten (10) days after the event giving rise to the grievance. Step Two provides:

In the event a grievance does exist, the Grievance Committee shall, with or without the physical presence of the aggrieved employee(s), present the grievance within ten (10) days of the

occurrence of same to the Deputy Chief of the Department for resolution. The Deputy Chief shall then conduct a meeting with the aggrieved(s) and the Union President, or his/her designee, within seventy-two (72) hours of receipt of the grievance....

Steps 3 and 4 provide for meetings between the grievant, his or her representative and the Public Safety Director and City Manager, respectively. The grievance procedure ends in binding arbitration.

On October 15, 1998, Farrell was involved in an incident involving the transport of a patient. On October 21 and 22, 1998, Chief Terrance Weldon directed Farrell to report to him to provide his version of the incident. Farrell was unable and/or unwilling to do so until October 23, 1998.

On about October 23, 1998, the City issued a Notice of Minor Disciplinary Action to Farrell for "failure to perform duties on October 15, 1998." The City imposed a penalty of a three-day fine of \$578.32.

Although Farrell had not yet submitted a grievance petition to the Union Grievance Committee contesting the discipline, on October 27, 1998, the IAFF submitted a written request to Chief Weldon.<sup>3/</sup> The IAFF wrote:

This Association, Local 384 request [sic] a departmental hearing regarding the minor disciplinary action taken against Firefighter Robert R. Farrell.

---

<sup>3/</sup> The IAFF's grievance was one of the attachments to Farrell's charge.

Although Firefighter Farrell didn't request this hearing and is willing to accept the disciplinary action, we (Local 384) feel it is in our best interest to pursue this matter for the betterment of our membership.

It would greatly be appreciated if this hearing could take place sometime after November 5th.

On December 10, 1998, Weldon and IAFF President Doug DeWyssocki had a step 2 meeting to resolve the issue. Weldon offered an alternate punishment which DeWyssocki communicated to Farrell on about December 11, 1998. Farrell rejected the revised punishment (Letter from Farrell to DeWyssocki dated December 11, 1998, attached to the charge.) On or about December 19, 1998, Farrell wrote to DeWyssocki, enclosing a formal grievance over the issuance of the discipline for the October 15, 1998 incident.

By letter of December 30, 1998 (attached to the charge), the IAFF's grievance committee notified Farrell that it had decided not to seek any further appeal or arbitration of Farrell's case. In its letter, the Committee recited a 12-point chronology of the events and meetings on the grievance, and identified the specific advice from legal counsel on which it relied in making its decision. All five members of the Committee signed the letter.

#### ANALYSIS

Farrell's charge against the IAFF raises the issue of whether a majority representative breaches the duty of fair representation owed to a unit member where it pursues a reduction of discipline with the employer, but refuses to take the grievance

through all of the steps in the grievance procedure, including arbitration. For the reasons set forth below, I find that under the circumstances presented by this case, even if the allegations are proven true, the IAFF has not breached its duty. Accordingly, I dismiss the allegations against the IAFF.

Section 5.3 of the Act empowers an employee representative to exclusively represent employees in the negotiations and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. The standards in the private sector for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory, or in bad faith. Id. at 191. That standard has been adopted in the public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); See also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

A majority representative does not have an obligation to file every grievance which a unit member asks it to submit. Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed (Salter), P.E.R.C. No.



86-146, 12 NJPER 528 (¶17198 1986). Rather, an employee representative is obligated to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. Middlesex Cty. (Mackaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982); Carteret Ed. Assn.; New Jersey Turnpike Employees Union Local 194 (Kaczmarek), P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

It appears that the IAFF did that here. Within a few days after Farrell was notified that he was being disciplined, the IAFF, as is its right, independently took up the cause and filed a written request for a hearing, even though Farrell had not asked the IAFF to appeal his discipline. DeWysocki met with Chief Weldon, which resulted in an offer to slightly reduce the disciplinary penalty. See, UTU Local 33 (Gresham), D.U.P. No. 93-27, 19 NJPER 135, (¶24067 1993) (no unfair practice where the union settled an employee's grievance rather than seeking to arbitrate it). Though critical of the IAFF's reliance on Civil Service rules, the City corroborated that the IAFF took the initiative in appealing Farrell's minor discipline.

Further, as demonstrated by its letter to Farrell, it appears that the grievance committee investigated the grievance and

relied upon advice from its legal counsel in making its decision not to pursue the grievance further. Employee organizations are entitled to a wide range of reasonableness in determining how to best service their members. Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338, 73 S.Ct. 681, 97 L.Ed. 1048 (1953); Atlantic Cty. Special Services (Postal), D.U.P. No. 9-14, 25 NJPER 272 (¶30115 1999). Employees do not have an absolute right to have grievances taken to arbitration; therefore, a union does not necessarily breach its duty of fair representation by refusing the employee's request. N.J. Turnpike Auth. (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981) (union's decision not to arbitrate was based on good faith belief that grievance lacked merit); Vaca.<sup>4/</sup> Finally, IAFF promptly advised Farrell that it would not appeal his discipline further, and provided him reasons for reaching that conclusion.

---

<sup>4/</sup> See also, PBA Local No. 183 et al. (Brian Moriarity), H.E. No. 92-10, 17 NJPER 518 (¶22258 1991), adopted P.E.R.C. No. 92-81, 18 NJPER 96 (¶23043 1992) (union's decision not to take the officer's grievance to arbitration was based upon a good faith determination that it could not be sustained); Fair Lawn Ed. Ass'n, P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984) (no violation where union in good faith refused to take grievance to arbitration since it lacked merit); N.J. Turnpike Employees Union, Local No. 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) (no breach of the duty of fair representation where the union competently represented the complaining grievant at an administrative hearing and thereafter, concluded that it could not win in arbitration); Monroe Tp., D.U.P. No. 93-26, 19 NJPER 134 (¶24066 1993) (union's refusal to arbitrate employee's grievance not unlawful where it based its decision on counsel's opinion that the grievance lacked merit).

Under the facts alleged in the charge, I find that the IAFF's decision not to pursue Farrell's grievance through all steps and to arbitration was not arbitrary, discriminatory or in bad faith. Here, there is no allegation that the union failed to give Farrell less access to the grievance procedure and arbitration than other unit members for similar grievances of equal merit. Based upon the factual allegations set forth in the unfair practice charge against the IAFF Local #384, this charge does not meet the Commission's complaint issuance standard. N.J.A.C. 19:14-2.1 and 2.3. Accordingly, I decline to issue a complaint on the allegations of the charge against the IAFF.

The allegation that the City violated the provisions of section 5.4a(5) of the Act is also dismissed. An individual employee normally does not have standing to assert a breach of contract claim through an a(5) violation, as the employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980). Further, the City cannot be held to have refused to process a grievance, since no grievance was pending after the December 10, 1998 step two meeting. Hence, the charge's claim of an (a)(5) violation must fall.

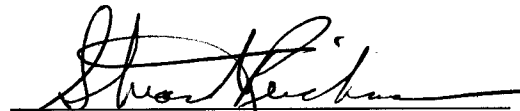
Based on the foregoing, I find that the Commission's complaint issuance standard has not been met on the 5.4b(1) or 5.4a(5) allegations of the charge. I dismiss these allegations.

Farrell's charge also alleges that the City imposed discipline after and in retaliation for earlier grievances. I find that these allegations, if true, could constitute violations of the Act and, therefore, those allegations appear to meet the complaint issuance standard with regard to the 5.4a(3) and, derivatively, a(1) allegations concerning the City's imposition of discipline on October 23, 1998.<sup>5/</sup> I will issue a Complaint and Notice of Hearing<sup>6/</sup> as to that allegation.

ORDER

The Charging Party's 5.4a(5) and 5.4b(1) claims are dismissed. I will issue a complaint on the Charging Party's 5.4a(3) and, derivatively, a(1) allegations.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: May 3, 2000  
Trenton, New Jersey

---

<sup>5/</sup> N.J.A.C. 19:14-2.3.

<sup>6/</sup> The Complaint and Notice of Hearing will be issued under separate cover.