

D.U.P. NO. 92-19

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

In the Matter of

COUNTY OF MERCER and
PBA LOCAL 187,

Respondents,

-and-

Docket No. CI-92-9

THOMAS J. PRETTYMAN, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Thomas Prettyman against PBA Local 187 and Mercer County. Prettyman alleged that the PBA failed to represent him when it negotiated a clause in the successor contract that did not extend a retroactive pay raise to him. The Director finds that merely because Prettyman was not satisfied with the result of negotiations does not constitute a breach of the PBA's duty of fair representation. The Director also finds that Prettyman has no standing to bring a claim of failure to negotiate in good faith against the County.

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Appearances:

For the Respondent, Mercer County
Alfred B. Vuocolo, Jr., Asst. County Counsel

For the Respondent, PBA Local 187
Wills, O'Neill & Mellk, attorneys
(G. Robert Wills, of counsel)

For the Charging Party, Thomas Prettyman
W. Reed Gusciora, attorney

REFUSAL TO ISSUE COMPLAINT

On August 29, 1991, Thomas J. Prettyman, Jr. ("Prettyman")
filed an amended unfair practice charge against PBA, Local 187,
("PBA") and the County of Mercer ("County"). Prettyman alleges that
the PBA and the County violated certain subsections^{1/} of the New

^{1/} The PBA allegedly violated subsections 5.4(b)(1), (4) and (5)
of the Act. These subsections prohibit employee
organizations, their representatives or agents from: "(1)
Interfering with, restraining or coercing employees in the

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Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act") when it negotiated a retroactive salary increase provision to the current agreement covering certain employees who were retiring but not providing for employees on leaves of absence.

Prettyman specifically alleges that he was actively employed by the County until Septemeber 14, 1990, at which time he was granted a one year leave of absence to take a position with the Lawrence Township Police Department. During this time the PBA and the County were negotiating for a successor agreement.^{2/} Prettyman asserts that before he left he was assured by the PBA's president that "his interest in any pay increase would be protected."

1/ Footnote Continued From Previous Page

exercise of the rights guaranteed to them by this act. (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."

The County allegedly violated subsections 5.4(a)(1), (3), (5), (6) and (7) of the Act. 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. (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. (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. (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."

2/ The parties' previous agreement expired on December 31, 1989.

On January 23, 1991, the County and the PBA executed a contract covering from January 1, 1990 to December 31, 1991. The parties negotiated Section 31.1, a new provision to the contract, that states: "The retroactive effect of this contract applies only to those in County employment at the date (December 19, 1990) of the signing of the memorandum of agreement."^{3/}

On February 28, 1991, Prettyman wrote to the County Administrator requesting that he be paid the recently negotiated retroactive pay increase covering the nine months of active employment before he took his leave of absence in 1990. On March 11, 1991, County Counsel notified Prettyman that he was not eligible for back wages under Section 31.1 of the contract and therefore refused his request. Prettyman than filed this unfair practice charge.

The PBA and the County acknowledge that the effect of Section 31.1 is to extend back pay increases to certain officers scheduled to retire before the end of 1990. Both parties, however, deny violating the Act. The PBA contends that the agreement it negotiated in good faith with the County was in the best interests of all unit members. The PBA states that it had been negotiating for over a year with the County and that the agreement was finalized only after the parties were in interest arbitration. It argues that

^{3/} This section specifically modifies the expired contract's Section 28.3 which stated that the agreement applies only to those permanent employees in the unit actively employed as of the execution date of the agreement.

it could not hold up finalizing the agreement just for a specific provision covering Prettyman's situation. The County contends that it acted properly by negotiating an agreement with the designated majority representative of the bargaining unit. It argues that it was properly administering the terms of the agreement when it denied Prettyman retroactive back pay.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{4/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{5/} The Commission's rules provide that I may decline to issue a complaint.^{6/}

^{4/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice....Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

^{5/} N.J.A.C. 19:14-2.1.

^{6/} N.J.A.C. 19:14-2.3.

For the reasons stated below, I find that the Commission's complaint issuance standard has not been met.

Prettyman's allegations are largely concerned with the PBA's apparent failure to fairly represent him. A majority representative must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. However, it appears that the PBA did not act inconsistently with the standard for the duty of fair representation for contract negotiations. See Ford Motor Co. v. Huffman, 346 U.S. 330 (1953).^{7/} See also Humphrey v. Moore, 375 U.S. 335 (1984). Absent evidence of bad faith or fraud, unions may make compromises which adversely affect some members of a negotiations unit and result in greater benefits for other members. The fact that a negotiated agreement results in less than complete satisfaction for one member of the unit does not establish a breach of the duty of fair

^{7/} In Ford Motor Co., the Court stated:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Ford Motor Co., at page 338.

representation. Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); Essex Cty. Voc-Tech Bd. of Ed. and Admin. and Suprv. Assn., P.E.R.C. No. 84-76, 14 NJPER 508 (¶19214 1988); Lawrence Tp. PBA, Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15073 1983); Union City and F.M.B.A., P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982); Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978).

Here, the PBA indicated that it was in the best interests of the bargaining unit to reach closure on negotiations that had gone on for over a year. Prettyman has not alleged facts to show that the PBA acted fraudulently or arbitrarily or capriciously or in bad faith. The mere fact that the Prettyman was dissatisfied with the outcome of his majority representative's negotiations efforts does not establish a breach of the duty of fair representation.

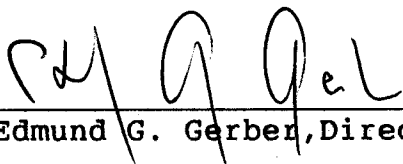
Further, Prettyman's charges against the County fail to indicate any other unfair practice within the meaning of the Act. The Commission has no jurisdiction to regulate the relationship between an individual employee and an employer except to prohibit employer conduct which discourages the exercise of certain rights guaranteed by the Act; that is, participation or the refusal to participate in protected (e.g., union) activity. See N.J.S.A. 34:13A-5.4(a)(3). Elizabeth Housing Auth., D.U.P. No. 90-3, 15 NJPER 385 (¶20162 1989).

Prettyman is contesting the County's refusal to pay him a retroactive salary. It is apparent that the County's rejection of

Prettyman's demand is consistent with the terms of the agreement. An individual has no standing to bring a claim that a contractual term and condition of employment has been repudiated by an employer. Only a majority representative can bring such an action before the Commission. City of Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); City of Atlantic City, D.U.P. No. 88-6, 13 NJPER 805 (¶18308 1987).^{8/}

Based upon the foregoing, I conclude that the Commission's complaint issuance standard has not been met. Accordingly, I decline to issue a complaint and dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: May 13, 1992
Trenton, New Jersey

^{8/} Prettyman has not alleged facts in support of either an (a)(7) or a (b)(5) allegation.