

D.R. No. 2013-11

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

CITY OF JERSEY CITY,

Public Employer,

-and-

Docket No. RO-2013-010

JERSEY CITY DETECTIVE BENEVOLENT  
ASSOCIATION/FOP N.J. LABOR COUNCIL,

Petitioner,

-and-

JERSEY CITY POLICE OFFICERS  
BENEVOLENT ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by the Jersey City Detective Benevolent Association, seeking to sever detectives from an existing unit that includes patrol officers. The Jersey City Detective Benevolent Association claimed that severance was warranted because the current majority representative failed to enforce a grievance arbitration award favorable to detectives, failed to negotiate comparable increases in leave time, refused to appoint the incumbent president of the detectives' association to the negotiations committee, and met with city officials for contract negotiations during the pendency of this petition. The Director found no evidence of irresponsible representation in the current majority representative's processing of detectives' grievances or negotiation of leave time. The Director also found that the exclusion of the incumbent president from the negotiations committee is beyond the agency's jurisdiction. Finally, the Director found that the current majority representative's meeting with city officials, standing alone, does not support an irresponsible representation claim. Under these circumstances, the Director found that severance was not warranted.

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Appearances:

For the Public Employer,  
William C. Matsikoudis, Corporation Counsel  
(Terri Keller, Assistant Corporation Counsel)

For the Petitioner,  
Thomas A. Cushane, attorney

For the Intervenor,  
Detzky & Hunter, LLC  
(Stephen B. Hunter, of counsel)

**DECISION**

On September 6, 2012, the Jersey City Detective Benevolent Association (DBA or Petitioner) filed a representation petition seeking to represent all detectives employed by the City of Jersey City (City). The petitioned-for employees are currently represented by the Jersey City Police Officers Benevolent

Association (POBA or Association) in a collective negotiations unit that also includes patrol officers.

The DBA asserts that severance of the detectives is appropriate because the POBA has failed to responsibly represent them by refusing to enforce a grievance arbitration award that is favorable to the POBA and particularly, the detectives. The DBA also claims that the POBA has failed to responsibly represent detectives because it breached its duty of fair representation of all unit employees when the incumbent POBA president refused to appoint the incumbent DBA president to the negotiations committee in retaliation for the filing of this severance petition. Finally, the DBA contends that the POBA has engaged in conduct that demonstrates contempt towards and irresponsible representation of the detectives. The DBA does not claim that the existing unit is unstable.

On September 14, 2012, the POBA filed a letter, together with a copy of its most recent collective negotiations agreement with the City, seeking to intervene in this matter. N.J.A.C. 19:11-2.7. The POBA objects to the proposed severance and requests that the petition be dismissed.

We have conducted an administrative investigation of this matter in accordance with N.J.A.C. 19:11-2.2 and 2.6. The DBA and POBA have submitted letters and supporting certifications. Our investigation reveals the following facts.

The POBA's role as the majority representative for Jersey City detectives and patrol officers dates back at least to June 23, 1982, when we certified the POBA as the majority representative of "[a]ll nonsupervisory police officers, including detectives, employed by the City of Jersey City excluding superior officers from the rank of sergeant and above" (Dkt. No. RO-82-150). No facts suggest that detectives and patrol officers have been represented separately in collective negotiations. Approximately 96 detectives and 557 patrol officers are currently employed by the City, totaling 653 non-supervisory police officers in the disputed collective negotiations unit. The POBA and the City are parties to a collective negotiations agreement extending from January 1, 2009 through December 31, 2012.

The DBA submitted its position statement on October 26, 2012. The POBA filed a response on November 14, 2012. The City filed a letter dated September 18, 2012 neither consenting nor objecting to the processing of the petition. After reviewing the arguments and certifications presented by the DBA and POBA, I find that the petitioned-for unit is inappropriate.

The Commission has long held that severance of a group or groups of employees from a broad-based unit may occur under very limited circumstances. In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248, 249 (¶61 1971), the Commission held:

The underlying question is a policy one: Assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

In applying the Jefferson standard to matters where an alleged breach of the duty of fair representation arises in the context of a representation question, we review the course of the parties' entire relationship, not only isolated occurrences. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63, 65 (¶18026 1986). Unlike unfair practice charge cases, where we examine discrete incidents to determine whether the majority representative has breached the duty of fair representation by acting arbitrarily, discriminatorily, or in bad faith, in severance matters we look to the entirety of the parties' relationship. Vaca v. Sipes, 386 U.S. 171, 190, 87 S.Ct. 903, 916, 17 L.Ed. 2d 842, 857 (1967); Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486, 491 (App. Div. 1976), certif. den. 72 N.J. 458 (1976). Thus, in the representation

context, severance does not necessarily follow from a one-time breach of the duty of fair representation. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., 13 NJPER at 65. With respect to a severance petition, ". . . the measure of fair representation is ultimately found at the negotiations table, in the administration of the negotiated agreement and in the processing of grievances." West Milford Tp. Bd. of Ed., P.E.R.C No. 56, NJPER Supp. 218, 219 (¶56 1971). Accordingly, the issue before me is whether the POBA has responsibly represented detectives in those areas, viewed in the context of the parties' entire relationship.

Petitioner sets forth several instances purportedly demonstrating that the POBA has not provided responsible representation. First, it contends that the POBA did not responsibly administer the collective negotiations agreement, including the processing of grievances, because it failed to enforce a favorable 1990 grievance arbitration award without explanation. That award entitled patrol officers to perform detective duties when temporarily assigned ". . . in either the Investigation Division or the Special Investigations Unit and who are not assigned to the Mayor's office or to housing warrants or the welfare squad." The arbitrator delineated the more highly compensated detective work:

What distinguishes officers from the Investigation Division from those from BCI or the Patrol Division is that the former have on-going responsibility for the investigation

they not only work at the scene but they follow up, if and as necessary.  
[Award, p. 15]

The current President of the DBA, Edward Dolan, certifies that several patrol officers currently assigned to perform detective duties are not being compensated as detectives, despite the 1990 arbitration ruling. The DBA complains that the POBA's failure to enforce the grievance arbitration award undercuts the value of the work of the regular detectives and its bargaining power to retain or increase its current salary stipends for such work.

POBA denies that it has failed to provide responsible representation in the enforcement of the 1990 grievance arbitration award. POBA President Carmine Disbrow certifies that five named patrol officers assigned to the Special Investigations Unit from 2006 through 2012 never requested additional detective compensation because they did not perform compensable detective duties, as set forth in the arbitration award. Disbrow certifies that the DBA's allegation arises out of the POBA's refusal to process to arbitration a grievance filed by Detective Mark Razzoli, which claimed non-compliance with the 1990 grievance arbitration award. Disbrow further certifies that two POBA attorneys independently concluded that the grievance was without merit because Razzoli lacked standing and insufficient facts supported the claim that patrol officers were actually performing

job duties identified in the 1990 grievance arbitration award as belonging to detectives.

The duty of fair representation prohibits a majority representative from acting arbitrarily, discriminatorily or in bad faith in its processing of employee grievances. Vaca v. Sipes; Belen v. Woodbridge Tp. Bd. of Ed.; however, the duty of fair representation does not require majority representatives to take all employee grievances to arbitration. Relying on Vaca, the Commission in OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12, 13 (¶15007 1983), provided this explanation of the duty of fair representation as it relates to the administration of grievances:

We have also stated that a union should attempt 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. [citations omitted]. All the circumstances of a particular case, however, must be considered before a determination can be made concerning whether a majority representative has acted in bad faith, discriminatorily, or arbitrarily under Vaca standards.

Where a majority representative exercises its discretion in good faith, proof of "mere negligence, poor judgment, or ineptitude in grievance handling," alone do not suffice to prove a breach of the duty of fair representation. Printing & Graphic



Communications, Local No. 4, 249 NLRB 88, 89, 104 LRRM 1050, 1052 (1980), rev'd on other grounds Tenorio v. NLRB, 680 F.2d 598 (9th Cir. 1982).

Applying these standards to the submitted facts and certifications, I find that the POBA appears to have exercised reasonable care in investigating and assessing the merits of possible "detective pay" grievances, including the Razzoli grievance, as they may or may not have been compensable under the 1990 grievance arbitration award. No facts suggest that the POBA's handling of those possible cases demonstrated conscious disregard of their merits.

The DBA has not asserted any other instance of the POBA's failure to process detectives' grievances over the many years in which detectives and patrol officers have been included in one unit. It does not claim that the POBA has denied it equal access to the grievance procedure by processing to arbitration patrol officers' grievance that are of similar merit to the Razzoli grievance.

The Petitioner next contends that the POBA has not provided responsible representation in collective negotiations because junior patrol officers have received substantial increases in vacation and leave time over the last few collective agreements, without any corresponding increase in the detectives' overall compensation package.

Respondent disputes the claim, identifying the favorable compensation and benefits it obtained for the detectives as their majority representative. For example, POBA President Disbrow certifies that in 2008, the salary differential between the maximum step for patrol officers and detectives amounted to \$3,535.00, which was approximately a 4.3% increase over the top step for patrol officers. This differential increased every year, capped by a \$3,940 differential in 2012, the final year of the most recent agreement. The POBA asserts that its differential is among the highest negotiated in the State. POBA President Disbrow also certifies that in 2007, only detectives received a one-time cash stipend of \$250.00.

Finally, the POBA explains its rationale for substantially increasing the vacation and leave time of certain officers. POBA President Disbrow certifies that there is a significant disparity in vacation time between all officers (both detectives and patrol officers) hired prior to February 17, 2003 and all officers hired after that date, which it has attempted to remedy through negotiations of the past few contracts.<sup>1/</sup> POBA President Disbrow

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<sup>1/</sup> POBA President Disbrow's certification and supporting exhibits show that after negotiating additional vacation days, the disparity remains. The most recent contract provides that officers hired after February 17, 2003, receive twenty-three (23) vacation days for fifteen (15) through twenty-nine (29) years of employment, while officers hired before that date receive thirty (30) vacation days after just five (5) years of employment.

certifies that at least six detectives received the benefit of this negotiation effort.

In the context of contract negotiations, ". . . [t]he 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 to complete good faith and honesty of purpose in the exercise of its discretion." Ford Motor Co. v. Huffman, 345 U.S. 330, 338, 23 S.Ct. 681, 686, 97 L.Ed. 1048, 1058 (1953). Thus, a breach of the duty of fair representation during contract negotiations requires a showing that the majority representative makes ". . . a deliberate decision in bad faith to cause a unit member economic harm." Union City, P.E.R.C. No. 82-65, 8 NJPER 98, 100 (¶13040 1982).

I do not find that the DBA's claim about the POBA's conduct in collective negotiations rises to the level of irresponsible representation of detectives. The POBA acted within its wide range of reasonable discretion in negotiating additional vacation time for hires after February 17, 2003. Its goal of remedying the substantial vacation disparity for recent hires demonstrates that the POBA did not deliberately intend to cause the detectives harm, especially since several detectives benefitted from this negotiation effort. Its good faith at the bargaining table is

further demonstrated by the sizable salary differential that the POBA negotiated on behalf of the detectives.

Petitioner also asserts that the POBA has not provided responsible representation because it is deliberately preventing detectives from being adequately represented on the negotiations committee. DBA President Dolan certifies that after the DBA membership announced at a June 13, 2012, emergency POBA general membership meeting that the DBA was preparing to file a severance petition, POBA President Carmine Disbrow informed DBA President Dolan and other attendees that anyone other than DBA President Dolan could be chosen to serve on the 2013 negotiations committee. DBA President Dolan certifies that the past two POBA presidents appointed him to the negotiations committee. The DBA claims that PBA President Disbrow's announcement left only one detective on the negotiations committee, an individual who happens to be the vice president of the POBA as well as the brother of POBA President Disbrow.

The POBA asserts that the DBA has been extensively involved in the POBA. POBA President Disbrow certifies that the last president of the POBA was Detective Jerry (Dewey) DeCicco. POBA President Disbrow also identified Detective Fred DiMase as having served as Executive Board Chairman from 2009 to 2010 and Detective Mark Razzoli as having served as Health & Safety Committee Chairman from 2009 to 2012. In addition to his brother

Detective Vinny Disbrow, POBA President Disbrow certifies that Detective David Murawinski also sits on the POBA's eight-member negotiations team.

In City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 566 (¶13260 1982), the Commission wrote that ". . . labor organizations are essentially private associations," noting that the Act's unfair practice jurisdiction does not extend to internal union matters. The manner in which individuals are chosen to serve on a negotiations committee is an internal union matter. Middletown Tp. Bd. of Ed., D.R. No. 88-11, 13 NJPER 765, 767 (¶18291 1987), mot. to consider den. P.E.R.C. 88-44, 13 NJPER 841 (¶18322 1987). The designation of individuals with authority to act on behalf of the majority representative are also internal union matters. Hoboken Teachers Assn., D.U.P. No. 90-14, 16 NJPER 375, 376 (¶21149 1990).

The only issue which must be addressed in an irresponsible representation claim in this context is whether the majority representative acted arbitrarily, discriminatorily or in bad faith with respect to the category or titles of unit members seeking severance. Vaca v. Sipes; Belen v. Woodbridge Tp. Bd. of Ed. The DBA has not provided facts demonstrating irresponsible representation. DBA President Dolan served on the POBA's negotiations team twice from 2006 to 2010. The previous POBA president was a detective and served on the negotiations

committee. DBA President Dolan and POBA President Disbrow differ on whether one or two detectives are currently on the negotiations committee. Assuming DBA President Dolan is correct that only one detective serves on the negotiations committee, that detective representative comprises about 13% of the current negotiations team. Detectives comprise approximately 15% of the negotiations unit. Thus, even under facts set forth in DBA President Dolan's certification, the detectives' representation on the negotiations team is roughly proportional to unit membership. These facts demonstrate the detectives' participation in the negotiations process, undermining the claim that the POBA has acted arbitrarily, discriminatorily or in bad faith towards the detectives. Heeding the jurisdictional limitations set forth in Middletown Tp. Bd. of Ed. and Hoboken Teachers Assn., I find that DBA President Dolan's exclusion from the negotiations committee falls beyond our jurisdiction because it concerns only whether a named individual has been given authority to act and bind the POBA.

Finally, the DBA asserts that the POBA's decision to meet with City officials regarding a successor agreement after the DBA filed its severance petition shows the POBA's "disdain" for its detective members and irresponsible representation. DBA President Dolan certifies that the POBA and the City met on October 1, 2012, four weeks after the DBA filed its severance

petition, and did not notify the DBA about the meeting. The DBA has not asserted that the POBA met with the City on behalf of both the detectives and patrol officers.

The POBA claims that the City and the POBA are not in formal negotiations, and maintains that its meeting cannot be interpreted as showing disdain for detectives. It asserts that the Act permits the POBA to engage in formal negotiations with the City on behalf of the patrol officers who are not the subject of this severance petition and who comprise the majority of the bargaining unit.

Here, the issue is whether the POBA acted arbitrarily, discriminatorily, or in bad faith by meeting with City officials regarding contract negotiations. We have previously decided that absent actual examples of irresponsible representation, a majority representative's expressed disinterest in representing a group of its members is not proof of a failure to responsibly represent them. Middletown Tp. Bd. of Ed., D.R. No. 99-5, 25 NJPER 1,5 (¶30000 1998). In Middletown, we dismissed a representation petition seeking to sever school secretaries from a broad-based unit, including teachers and certificated staff, after the union president had openly expressed disinterest in negotiating on behalf of the secretaries.

I find that the POBA has not irresponsibly represented the detectives. Even assuming arguendo that the POBA's meeting with

City officials demonstrates a "contempt" for detectives, I find that the proffered instance, standing alone, does not support an irresponsible representation claim. See Middletown. If the meeting with City officials was for the purpose of negotiating a successor agreement on behalf of patrol officers, the POBA's conduct would not likely be unlawful.<sup>2/</sup> See Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 85-39, 10 NJPER 577 (¶15269 1984) (finding the school board committed an unfair practice when it refused to negotiate with the majority representative with respect to the academic teachers when they comprised a substantial portion of the unit and were not subject to the severance petition filed by the unit's shop teachers).

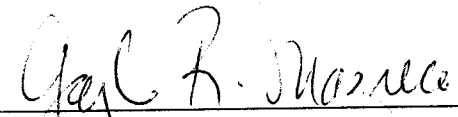
Based upon the totality of the circumstances, I find that Petitioner's allegations do not demonstrate that Respondent has

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<sup>2/</sup> Nothing in the certifications from the DBA and POBA indicates that the POBA was acting at the meeting on behalf of both the detectives and patrol officers. Therefore, no facts suggest that the POBA violated the Act, which prohibits employers from negotiating with the incumbent majority representative when there is a question concerning representation for the titles in a unit that are the subject of a pending representation petition. Middlesex Cty. (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266, 267 (¶12118 1981); Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451, 457 (¶14196 1983). Even if the POBA attended on behalf of both groups, as stated above, a breach of the duty of fair representation in the unfair practice context does not necessarily translate to a breach of the duty of fair representation in the context of a severance petition because we look to the entirety of the parties' relationship. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63, 65 (¶18026 1986).



irresponsibly represented detectives and that the facts do not warrant a determination that the proposed severance should be granted. The petition is dismissed.

  
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Gayl R. Mazuco  
Director of Representation

DATED: February 5, 2013  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by February 15, 2013.