

D.U.P. NO. 2020-3

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

In the Matter of

BOROUGH OF PALMYRA,

Respondent,

-and-

Docket No. CI-2017-022

PALMYRA POLICE ASSOCIATION,

Respondent,

-and-

MICHAEL DEUTSCH, FLOYD JOHNSON,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by two individuals against their former majority representative and former public employer. The Director determined that the two individuals, former police officers and retirees, were not public employees within the meaning of the Act when the charge was filed. IAFF Local 208 (Sarapuchiello) P.E.R.C. No. 2009-47, 35 NJPER 66 (¶25 2009).

The Director also determined that if the individuals had legal standing to pursue claims against their former public employer, the matters, involving increases in co-payments mandated by their health benefits plan, would likely involve contractual violations appropriately presented through the contractual grievance procedure. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 439 (¶15194 1984).

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Appearances:

For the Respondent,
(Ted M. Rosenberg, Solicitor)

For the Respondent,
Quinlan and Nigro, LLC, attorneys
(Patricia M. Nigro, of counsel)

For the Charging Parties,
Bittiger Elias and Triolo, attorneys
(Hope M. Deutsch, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 27, 2017, and August 7, 2018, Michael Deutsch and Floyd Johnson filed an unfair practice charge, and an amended charge, respectively, against their former employer, Palmyra Borough (Borough), and their former majority representative, Palmyra Police Association (Association). Deutsch and Johnson, both retired Borough police officers, allege that the Borough

refused to reimburse them, as retirees, for their increased co-payments, pursuant to their post-retirement healthcare benefits, in violation of the collective negotiations agreement (CNA) between the Borough and the Association. They allege that the Association violated its duty of fair representation by failing to file a grievance on their behalf, during their retirement, contesting the Borough's omission. Deutsch and Johnson also allege that the Borough's refusal to provide the requested co-pay reimbursement violates their vested property rights in their post-retirement healthcare benefits. They further allege that the Association has twice previously filed grievances like the one they are seeking now, and that the Borough had provided compensatory reimbursement to retirees in response to those grievances; first, when the Association filed a grievance in 2004 that resulted in the Borough's enactment of Resolution 2004-165, and second, when the Association filed a grievance in 2012 that resulted in the Borough's enactment of Resolution 2012-95. Deutsch and Johnson allege that the Borough's actions violate section 5.4a(1), (3) and (7),^{1/} and the Association's actions

1/ These provisions 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;" and "(7) Violating any of
(continued...)

violate section 5.4b(1), (3) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

On May 3, 2017, the Borough filed a letter asserting that Johnson retired on December 11, 2010, during the term of a collective negotiations agreement that extended from January 1, 2006 through December 31, 2010, and that Deutsch retired on July 11, 2012, during the term of a collective negotiations agreement that extended from January 1, 2012 through December 31, 2014. The Borough denies violating any provision of the Act.

On May 17, 2017, the Association filed a letter denying that it is obligated to file grievances on behalf of retirees such as Deutsch and Johnson, who are no longer dues-paying members.

On June 5, 2017, Deutsch and Johnson filed a letter advising that, contrary to assertions in the Association's May 17, 2017 letter, it filed a grievance in 2004 on behalf of a member who had retired during the term of the January 1, 1997 to December

1/ (...continued)
the rules and regulations established by the commission."

2/ 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 the unit;" and "(5) Violating any of the rules and regulations established by the commission."

31, 1999 collective negotiations agreement, in response to increased retiree healthcare benefit co-pays. Deutsch and Johnson wrote that that grievance ultimately resulted in the Borough's adoption of Resolution 2012-95 granting four retirees "the exact reimbursement" they are now seeking.

On July 10, 2017, the Association filed a letter reiterating that it has no obligation to represent or file grievances on behalf of retired officers who are no longer members of the Association or public employees of the Borough.

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.

Deutsch and Johnson were employed by the Borough as police officers until their respective retirements after twenty-five years of service. Deutsch's and Johnson's retirement health benefits are governed by the collective negotiations agreements that were in effect at the time of their respective retirements. Johnson retired on December 11, 2010, during the term of a collective negotiations agreement that extended from January 1, 2006 through December 31, 2010, and Deutsch retired on July 11,

2012, during the term of a collective negotiations agreement that extended from January 1, 2012 through December 31, 2014.

The respective collective negotiations agreements include provisions mandating that the Borough provide retirees with benefits that are "substantially the same or better than the State Health Benefits Plan" (Article 22, for example) and requiring that they "continue to receive those benefits as provided for in the contract year of retirement" (Article 29). Since Deutsch and Johnson retired certain health benefits costs - co-payments and prescriptions - have increased.

On unspecified date(s) before March 27, 2017, the charging parties submitted written requests to the Borough for reimbursement of increased co-payment costs. The requests were denied. On or after January 6, 2017, the Association elected not to reply to a letter from charging parties' Counsel seeking confirmation of its refusal to grieve the matter of retiree increased co-payment costs.

ANALYSIS

In IAFF Local 208 (Sarapuchiello), P.E.R.C. No. 2009-47, 35 NJPER 66 (¶25 2009), a retired municipal firefighter filed an unfair practice charge alleging that his former majority representative violated section 5.4b(1) and (5) of the Act when it failed to arbitrate his grievance alleging that the health benefits of his dependents were prematurely and improperly

terminated when he turned 65, in violation of terms of the collective negotiations agreement in effect when he retired.

The Commission affirmed the refusal to issue a complaint (D.U.P. No. 2009-4, 34 NJPER 453 (¶142 2009)). It held:

Unfair practice charges may be filed by public employers, public employees, public employee organizations or their representatives. N.J.A.C. 19:14-1.1. A retiree is not an employee within the meaning of the Act. N.J.S.A. 34:13A-3(d) defines an employee as a current employee or an individual who ceased work because of a labor dispute or unfair practice. The definition does not include retirees. [Id. 35 NJPER at 66]

On the date(s) that Johnson and Deutsch filed their unfair practice charge, Johnson was retired from the Borough's police department for more than six years and Deutsch was retired for more than four years. As retirees, they lack standing under our Act to pursue a charge against either or both respondent(s). See also Borough of Belmar, P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988) (retired police officers not public employees under the Act); PBA Local 245 (Maggio), D.U.P. No. 97-27, 23 NJPER 72 (¶28043 1996.^{3/})

^{3/} Individual employees like Deutsch and Johnson do not have standing to assert a 5.4b(3) violation. Only a public employer has standing to allege such violations. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978); Edison Tp. and Joseph Cies, D.U.P. No. 99-15, 25 NJPER 274 (¶30116 1999); PESU Local 1034 and Renaldo A. King, D.U.P. No. 2004-2, 29 NJPER 367 (¶113 2003); State of
(continued...)

The charge also alleges that the Borough has a contractual obligation to remedy a reduction(s) in retiree health benefits, pursuant to Articles 22, 23 and 29 of the respective collective negotiations agreements.

The recognition provisions of the agreements (Article 1) authorize the Association to act as "exclusive majority representative for collective negotiations for all regular patrolmen, sergeants and detectives." The grievance procedure (Article 3) in the 2006-2010 collective negotiations agreement authorizes individual employees and the Association to process grievances, culminating in final and binding arbitration. The grievance procedure in the 2012-2014 collective negotiations agreement authorizes only the Association to process grievances through all steps, including arbitration.

Charging party Deutsch, having retired in 2012, does not have standing to contest "negotiable terms and conditions of employment" of the Association's contract with the Borough. Only the Association has standing to allege that a contractual commitment was not followed. See 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); Middlesex Cty (Mackaronis), P.E.R.C.

3/ (...continued)
New Jersey (Hagedorn) and Knapp, D.U.P. No. 99-17, 25 NJPER 311 (¶30132 1999). I dismiss that allegation. No facts in the charge support a claim that the Association violated N.J.S.A. 34:13A-5.4b(5).

No. 81-62 6 NJPER 555 (¶11282 1980, aff'd NJPER Supp. 2d 113 (¶194 App. Div. 1982), certif. den. 91 N.J. 242 (1982)).^{4/}

Even if charging party Johnson has standing (individually) to claim that the Borough breached the 2006-2010 collective negotiations agreement, I would find that violation(s) of the agreement are not ordinarily litigated as an unfair practice. Rather, issues of contract violations are appropriately presented through the contractual grievance procedure. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15194 1984); City of Newark (Montgomery), P.E.R.C. No. 2000-57, 26 NJPER 91 (¶31036 2000) (denial of contractual benefits to an individual employee is generally a breach of contract that does not rise to the level of an unfair practice).

No facts suggest that the Borough violated section 5.4a(3) of the Act. See Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984).

"The inability of a retired employee to file an unfair practice charge does not mean that the negotiated benefit or contractual right may not be able to be enforced in another forum." Sarapuchiello, 35 NJPER at 66, citing Grasso v. FOP,

^{4/} I assume for purposes of this decision that the charging party alleged that the Borough violated section 5.4a(5) of the Act: "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."

Glassboro Lodge No. 108, App. Div. Dkt No. A-2517-07T3 (9/4/08)

(noting that retired police officer won a civil suit to enforce a contract article requiring reimbursement of Medicare premiums).

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: August 21, 2019
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by September 3, 2019.