

D.U.P. NO. 96-4

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

In the Matter of
COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CI-95-78

LT. JOSEPH MARTINEZ,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging violation of N.J.S.A. 34:13A-5.4(a)(5) brought by a police lieutenant on the grounds that the lieutenant did not have standing to pursue a subsection 5.4(a)(5) violation in his individual capacity and that the charge asserted a mere breach of contract.

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Appearances:

For the Charging Party,
Joseph Martinez

REFUSAL TO ISSUE COMPLAINT

On May 23, 1995, Joseph Martinez filed an unfair practice charge alleging that the County of Essex ("County") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., specifically subsection 5.4(a)(5)^{1/} ("Act"), when the County reinstated him to the rank of lieutenant without giving him the compensation prescribed in the Agreement between the County and New Jersey State Policemen's Benevolent Association, Local No. 54, ("Contract"). Specifically, Martinez alleges violation of Article VIII, Section G of the Contract concerning a pay differential between the ranks.

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

On June 7, 1995, I wrote to Martinez stating that this matter should be resolved through PBA Local 54's contractual grievance procedure because the allegation concerns a contract violation.

On June 12, 1995, Martinez responded stating that he had submitted a grievance through the PBA Local 54, which was still pending, but he nevertheless wanted the Commission to continue to investigate the charge.

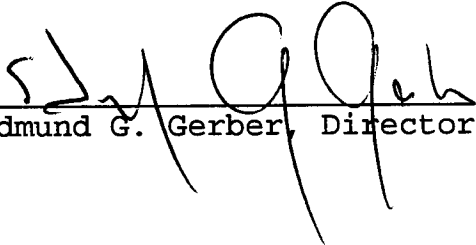
On June 23, 1995, I wrote to Martinez that I was not inclined to process the charge any further and that I intended to issue a decision declining to issue a complaint on the grounds that as an individual member of the PBA Local 54 he lacked standing to pursue a contract violation before the Commission and that he had asserted only a breach of contract. I afforded him the opportunity to present additional facts and a statement of position which would support the issuance of a complaint by July 3, 1995. There have been no further submissions by Martinez.

In N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt. No. A-1213-80T2, the Commission held that absent special circumstances not alleged here, an individual has no standing to contest the application or interpretation of a contract provision. Only the majority representative which negotiated and administers the contract has standing to allege a contract procedure was not followed. See also, City of Brigantine, D.U.P. No. 92-14, 18 NJPER 215 (¶23097 1992).

The Commission has also held that a mere breach of contract is not an unfair practice and that allegations of contractual breaches must be resolved through negotiated grievance procedures. City of Brigantine, P.E.R.C. No. 92-123, 18 NJPER 357 (¶23154 1992), State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Martinez in his individual capacity is attempting to assert a contract violation. Accordingly, I find the Commission's complaint issuance standards have not been met and dismiss this charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: July 31, 1995
Trenton, New Jersey