

D.U.P. 87-20

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

In the Matter of
CITY OF SOUTH AMBOY

Respondent,

-and-

Docket No. CI-87-57

SOUTH AMBOY PBA AND JAMES HOLOVACO

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint on an (a)(5) allegation where the charge was filed by an individual and an association which was not the designated majority representative. The Director found that only a majority representative could file a refusal to bargain charge and that neither charging party could stand in the shoes of that majority representative.

The Director issued a Complaint, however, on the (a)(1) and (3) allegations in the charge.

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Appearances:

For the Respondent,
Thatcher and Lanza
(John R. Lanza, of counsel)

For the Charging Party,
Weinberg and Kaplow
(Irwin Weinberg, of counsel)

DECISION

On March 12, 1987, Captain James P. Holovaco ("Holovaco") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the City of South Amboy ("City") alleging violations of subsections (a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} On May 18, 1987, this Charge was amended to include

^{1/} 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

the South Amboy Patrolman's Benevolent Association ("PBA") as one of the charging parties. It is the position of the charging parties that the City unilaterally implemented a schedule change for Captains and abolished long-standing departmental divisions. Further, the charging parties allege that the City took actions designed to punish and discriminate against them in the exercise of their protected activities.

The City denies it committed an unfair practice. It maintains that it was not obligated to negotiate over the managerial decision to implement a shift change. In the alternative, it argues that negotiation did in fact take place, and that the Captains themselves proposed the schedule which was implemented. Lastly, the City denies taking any discriminatory action against bargaining unit members.

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

1/ Footnote Continued From Previous Page

condition of employment to encourage or discourage 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."

complaint stating the unfair practice charge.^{2/} 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.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

It appears that the Commission's complaint issuance standards have not been met as to the alleged (a)(5) violation. The South Amboy Patrolman's Benevolent Association and Captain Holovaco lack standing to bring a charge against the City for failure to negotiate in good faith. The City is only obligated to negotiate with the majority representative. In the instant matter, the South Amboy Superior Officers Association, not the PBA, is the majority bargaining representative for the Captains employed by the City.

^{2/} 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..."


^{3/} N.J.A.C. 19:14-2.1.

^{4/} N.J.A.C. 19:14-2.3.

Neither the PBA nor Captain Holovaco can stand in the shoes of the majority representative. City of Jersey City and P.O.B.A., P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986). Accordingly, that portion of the charge alleging an (a)(5) violation must be dismissed.

However, we will issue a Complaint as to the allegations that the City discriminated against certain employees in the exercise of their protected rights. These facts, if true, might constitute an unfair practice and accordingly, the charge may go forward on that portion of the charge alleging violations of subsections (a)(1) and (3). A Complaint and Notice of Hearing in this matter is being issued under a separate cover.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 10, 1987
Trenton, New Jersey