

P.E.R.C. NO. 2009-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FOP LODGE 12,

Respondent,

-and-

Docket No. CI-2008-015

SHARON DAVIS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands an unfair practice charge to the Director of Unfair Practices for further processing. The charge was filed by Sharon Davis against FOP Lodge 12 alleging that the FOP violated the New Jersey Employer-Employee Relations Act by unlawfully refusing to provide her satisfactory legal counsel or union representation throughout internal departmental hearings and before the Office of Administrative Law relating to disciplinary charges. The charging party also alleges that this lack of representation resulted in her termination. Because an allegation was made that the FOP provided counsel to other members that, if true, might constitute an unfair practice, the Commission remands the case to the Director for issuance of a Complaint on that allegation.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

For the Charging Party, Sharon Davis, pro se

DECISION

On June 27, 2008, Sharon Davis appealed a decision of the Director of Unfair Practices that refused to issue a complaint based on Davis's unfair practice charge against FOP Lodge 12. D.U.P. No. 2008-8, 34 NJPER 138 (¶58 2008). The FOP has not responded to the appeal. Because an allegation in the charge was made that, if true, might constitute an unfair practice, we remand the case to the Director to issue a complaint on that allegation.

The charge alleges that the FOP violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,

specifically 5.4a(1), (3) and (5),^{1/} by unlawfully refusing to provide her satisfactory legal counsel or union representation throughout internal departmental hearings and before the Office of Administrative Law relating to disciplinary charges levied against her by the City of Newark. Davis further alleges that this lack of representation resulted in her termination.

The Director wrote to both parties indicating that he was not inclined to issue a complaint because Davis's allegations did not suggest a breach of the FOP's duty to represent unit members in a manner that is not arbitrary, discriminatory or in bad faith. See Vaca v. Sipes, 386 U.S. 171 (1967); Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976). The Director afforded the parties an opportunity to present additional facts and a letter brief.

^{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] (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 May 23, 2008, Davis filed a response alleging, among other things, that the FOP has hired attorneys to represent other officers fired by the City. Davis also alleged that the FOP's president was retaliating against her for conversations she had with him about the attorney assigned to her. Davis was not satisfied because the attorney she was assigned was allegedly not communicating with her and did not prepare her for hearing.

The Director then issued his decision refusing to issue a Complaint and Davis has appealed. The Director found that Davis's allegations regarding events of April 23, 2007 and earlier are untimely and cannot be the basis for an unfair practice finding. We agree. They occurred more than six months before the filing of the charge. N.J.S.A. 34:13A-5.4c. However, Davis also alleges that in response to her April 23, 2007 complaints to the FOP's president about the attorney assigned to her through the FOP Legal Defense Plan, the president acknowledged that the FOP had an obligation to provide another attorney, and did not do so even though it had used or paid for other attorneys for other unit members. Davis continues that the FOP failed to provide an attorney or representative at her June 15, 2007 OAL proceeding. We are not able, at this stage of the litigation, to definitively decide the extent of the FOP's obligation to Davis. While a majority representative may not be required to provide an attorney or union representative to all

unit members facing discipline, it is obligated to treat all unit members in a manner that is not arbitrary, discriminatory or in bad faith. In this case, if the FOP has provided attorneys or union representatives to similarly situated unit members, not providing one to Davis might constitute a breach of the duty of fair representation. Accordingly, we remand this case to the Director to issue a complaint on this allegation.

ORDER

The unfair practice charge is remanded to the Director of Unfair Practices for further processing consistent with this opinion.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: September 25, 2008

Trenton, New Jersey