

P.E.R.C. NO. 2009-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 351-A (SOA),

Respondent,

-and-

ANTHONY PIZARRO,

Docket No. CI-2007-024

CI-2007-026

CI-2007-027

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants a Motion for Summary Judgment filed by PBA Local 351-A (SOA) seeking dismissal of unfair practice charges filed against the SOA by Anthony Pizarro. The unfair practice charges allege that the SOA, through its president, violated the New Jersey Employer-Employee Relations Act. The SOA has submitted certifications in support of its motion. The charging party objected to the motion and requested a hearing on the charges. However, no rebuttal to the SOA's certification and/or brief or certification setting forth specific facts and showing that there is a genuine issue for hearing was submitted by the charging party. Accordingly, the Commission dismisses all three unfair practice charges.

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, Zazzali, Fagella, Nowak, Kleinbaum
& Friedman, attorneys (Paul L. Kleinbaum, of counsel)

For the Charging Party, Anthony Pizarro, pro se

DECISION

On June 25, 2008, PBA Local 351-A (SOA) filed a motion for summary judgment with the Commission Chairman. The motion seeks dismissal of three unfair practice charges filed against the SOA by Anthony Pizarro.

On July 3, 2008, the charging party wrote a letter to the Hearing Examiner indicating that he was opposed to dismissal without a hearing and would forward a brief to the Chairman. No brief was received. On July 14, a member of the Commission staff wrote to the charging party by certified mail to indicate that no brief had been received and that absent an extension of time to file a late brief, the Commission would treat the motion as

unopposed. The letter was returned unclaimed. We grant the motion and dismiss the Consolidated Complaint based on the three unfair practice charges.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). When a respondent files a motion for summary judgment and presents facts by way of certification, the charging party cannot rely on the allegations in its charge, but must file its own certification setting forth specific facts and showing that there is a genuine issue for hearing. Cf. R. 4:46-5.

The SOA represents deputy wardens, captains and lieutenants employed by the Camden County Department of Corrections. The charging party is a deputy warden. SOA President Steven Pease is a captain.

In CI-2007-024, the charging party alleges that Pease deliberately omitted the deputy warden rank from negotiated contractual fringe benefits, specifically Article X, Section 11 (late relief time) and Article VII (rates of pay with different pay scales). The charging party alleges that when he protested, Pease told him to start making donations to the Camden County

Democratic Party. Finally, the charging party alleges that on November 28, 2006, the department decided that personnel who do not relieve other employees will no longer receive late relief time; that change affected Pease's salary base; and Pease filed a grievance and for the first time called a union meeting. The charging party seeks an investigation by the Director of Unfair Practices into Pease's alleged malfeasance; that Pease step down; and that the deputy warden rank be included in the two contract articles.

The SOA has submitted Pease's certification in support of its motion. According to that unrebutted certification, deputy wardens received all of the benefits negotiated for other ranks. As for Article X, Section 11, captains and lieutenants receive compensation because they come in early or work late. This has been a practice for at least 17 years. Deputy wardens have never received the benefit. During the last round of negotiations, the charging party was on the negotiations committee and made no proposal to include deputy wardens in the benefit. Pease denies that he told the charging party to make donations to the Democratic Party and explains that the grievance was filed because the change affected three captains and five lieutenants and that the grievance was sustained in arbitration.

A union will breach its duty of fair representation and violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(1),^{1/} when its conduct toward a negotiations unit member is arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967). In Belen v. Woodbridge Tp. Bd. of Ed and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), the Court explained that the mere fact that a negotiated agreement results in a detriment to one group of employees does not establish a breach of duty by the union.

The 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 servicing the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. . . . [Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953)]

Here, the charging party has not responded to the SOA's motion for summary judgment and the undisputed facts do not suggest that the SOA acted arbitrarily, discriminatorily, or in bad faith in failing to negotiate to include deputy wardens in the disputed benefit. The remaining allegations in the charge are also factually unsupported since Pease denies them in his

^{1/} This provision prohibits 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."

certification and the charging party has not responded. We accordingly dismiss CI-2007-024.

In CI-2007-026, the charging party alleges that on December 6, 2006, Pease held a union meeting where he stated publicly that the deputy wardens were responsible for unit members' losing their early reporting time. Pease also allegedly distributed copies of the charging party's unfair practice charge (CI-2007-024) and solicited suggestions on how to help fight the deputy wardens. The charging party seeks an investigation by the Director of Unfair Practices into Pease's alleged malfeasance; that Pease step down; and that Pease stop discriminating against the deputy warden rank.

According to Pease's un rebutted certification, the purpose of the meeting was to solicit support to challenge the County's decision to eliminate a contractual benefit. The meeting was for SOA unit members and not a "public meeting." Pease acknowledges that he distributed copies of the unfair practice charge and discussed hiring a lawyer to investigate the charges and how they might affect the SOA. Pease denies making any statement about soliciting help to fight the deputy wardens or that the deputy wardens were responsible for the loss of early reporting/late relief compensation. Given these undisputed facts, there is no basis to conclude that the SOA acted arbitrarily,

discriminatorily or in bad faith. Accordingly, we also dismiss CI-2007-026.

In CI-2007-027, the charging party alleges that on December 5, 2006, several hours after the SOA meeting, Pease filed a harassment complaint and alleged that the charging party assaulted him when he passed him in a hallway. The charging party claims that Pease's allegations are false and were made in retaliation for his filing several unfair practice charges. The charging party seeks an investigation by the Director of Unfair Practices into Pease's alleged malfeasance; and that Pease step down.

According to Pease's un rebutted certification, he did not file a complaint against the charging party. He and another officer filed incident reports about an incident that the charging party instigated. Pease requested that the department do something about the charging party's abusive behavior and Pease was then transferred to a different assignment away from the charging party. Given these undisputed facts, there is no basis upon which to find that Pease retaliated against the charging party for filing unfair practice charges. Accordingly, we dismiss CI-2007-027.

ORDER

Summary judgment is granted. The Consolidated Complaint is dismissed.

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