

P.E.R.C. NO. 2009-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IAFF LOCAL 2081,

Respondent,

-and-

Docket No. CI-2008-049

NICHOLAS SARAPUCHIELLO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Director of Unfair Practices refusing to issue a complaint based on an unfair practice charge filed by retired City of Hackensack firefighter Nicholas Sarapuchiello against IAFF Local 2081. D.U.P. No. 200-4. The charge alleges that the IAFF violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to arbitrate Sarapuchiello's grievance. Specifically, Sarapuchiello alleges that the health benefits for his dependents were prematurely and improperly terminated when he turned 65, in violation of the terms of the collective negotiations agreement in effect when he retired. The Commission finds that a retiree is not an employee within the meaning of the Act and sustains the refusal to issue a complaint.

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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For the Respondent, Cohen, Leder, Montalbano &
Grossman, attorneys (Bruce D. Leder, of counsel)

For the Charging Party, Calo Agostino, P.C. (Beverly M.
Wurth, of counsel)

DECISION

Nicholas Sarapuchiello, a retired City of Hackensack fire fighter, has appealed from a decision of the Director of Unfair Practices. That decision refused to issue a complaint based on an unfair practice charge and amended charge that Sarapuchiello filed against his former majority representative, IAFF Local 2081. D.U.P. No. 2009-4, ___ NJPER ___ (§ ___ 2009). The IAFF urges that we sustain Director's decision.

The charge alleges that the IAFF violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(1) and (5),^{1/} when it failed to arbitrate

1/ These provisions prohibit employee organizations, their
(continued...)

Sarapuchiello's grievance. The grievance alleges that the health benefits of his dependents were prematurely and improperly terminated when he turned 65, in violation of the terms of the collective negotiations agreement in effect when he retired.

We affirm the refusal to issue a complaint. 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.

The charging party argues that unless he can proceed to arbitration, he will be left without any remedy. However, we note that the inability of a retired employee to file an unfair practice does not mean that the negotiated benefit or contractual right may not be able to be enforced in another forum. See, e.g., Grasso v. FOP, Glassboro Lodge No. 108, App. Div. Dkt. No. A-2517-07T3 (9/4/08) (noting that the retired police officer won

1/ (...continued)
representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. . . . [and] (5) Violating any of the rules and regulations established by the commission."

a civil suit to enforce a contract article requiring reimbursement of Medicare premiums).

ORDER

The refusal to issue a complaint is sustained.

BY ORDER OF THE COMMISSION

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

ISSUED: March 26, 2009

Trenton, New Jersey