

D.U.P. No. 2005-5

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

In the Matter of

COUNTY OF HUDSON (CORRECTIONS)  
AND PBA LOCAL 109,

Respondents,

-and-

Docket No. CI-2002-028

PATRICIA WEST,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices declines to issue a complaint on an unfair practice charge filed by Patricia West against her former employer, the Hudson County Department of Corrections, and her former majority representative, PBA Local 109. The Director found that West's allegations that the County retaliated against her for filing civil and criminal actions, and her challenge to the legitimacy of her termination, were not related to activity protected by the Act. Moreover, West's allegations that the County committed certain civil rights violations were outside Commission jurisdiction. The Director further found that West's allegations that the PBA denied her the representative of her choice at her termination hearing lacked merit, and that her remaining allegations against the PBA were untimely and/or lacked specificity.

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Appearances:

For the Respondent - Hudson County,  
Scarinci & Hollenback, attorneys  
(Karen Sutcliffe, of counsel)

For the Respondent - PBA,  
Griffin & Griffin, attorneys  
(Robert Griffin, of counsel)

For the Charging Party,  
Patricia West, pro se

**REFUSAL TO ISSUE COMPLAINT**

On December 20, 2001, Patricia West filed an unfair practice charge with the Public Employment Relations Commission against her former employer, the Hudson County Department of Corrections (County), and her former majority representative, PBA Local 109 (PBA). West alleges that the County refused to permit her to call a witness and to have a PBA representative of her choosing at a termination hearing in November 2001, in violation of

N.J.S.A. 34:13A-5.4a(1), (2), (3), (4), (5), (6) and (7).<sup>1/</sup> West further alleges that PBA Local 109 failed to properly represent her in connection with her termination, in violation of N.J.S.A. 34:13A-5.4b(1), (2), (3), (4) and (5).<sup>2/</sup>

Charging Party West alleges that she was terminated in November 2001; she was denied a witness and her choice of PBA

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

2/ These provisions prohibit 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

representative at her departmental termination hearing, in retaliation for civil and criminal charges she filed against individuals in authority at the correctional facility; the administration and the PBA conspired to force her to accept a representative she did not want in her hearing; the administration and PBA generally enforce selective, discriminatory disciplinary action against senior minority employees; the administration and PBA refuse to process grievances and complaints; and, that "the union is so dominated by the administration it's like there's no union." West references two previously filed unfair practice charges, CI-94-64 and CI-97-31 that she had filed.

The County denies engaging in any unfair practice, and asserts that all of the charges should be dismissed because they lack a factual basis. The County notes that West has pending appeals concerning her termination and earlier disciplinary actions and requests that disposition of this matter be stayed pending a determination of which agency, the Department of Personnel or this Commission, has jurisdiction.

The PBA denies engaging in any unfair practice. The PBA denies refusing to file grievances and that it is dominated by the County administration. It further denies any knowledge concerning West's retaliation claim against the County, and specifically denies that charge to the extent it raises

allegations against the PBA. The PBA takes no position concerning the remaining allegations against the County.

Further, the PBA specifically denies that West was denied the representative of her choice at her departmental hearing or that it conspired to force her to accept a particular PBA representative at her departmental hearing.

The PBA maintains that West withdrew her previous unfair practice charge(s) in exchange for the PBA's agreement to represent her in a related grievance matter, and that withdrawal precludes consideration of any allegation pre-dating the settlement of that charge.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated April 12, 2004, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither the County nor the PBA filed responses.

On May 9, 2004, West filed a response disputing certain factual findings and raising additional allegations.<sup>3/</sup> Based upon the following, I find that the complaint issuance standard has not been met.

Patricia West was employed as a corrections officer with the Hudson County Department of Corrections since April 2, 1990. On or about March 17, 1997, West alleged she was unlawfully harassed by corrections officers, Captain Kurt Thoens and Sergeant Tracy Andino. On March 19, 1997, Hudson County Correctional Center Personnel Officer Anthony Staltari issued a cease and desist order to West to prevent any interaction between West, Thoens, and Andino. On March 21, 1997, after referring West's allegations to the Correctional Center Review Board for investigation, Hudson County Correctional Center Director Ralph Green issued an order which restricted West, whose regular shift was 8:00 a.m. to 4:00 p.m., from working either voluntary or mandatory overtime on the 4:00 p.m. to 12:00 a.m. shift because Thoens and Andino were regularly scheduled to work on that shift.

On July 5, 2000, Director Green issued a memorandum to West informing her that since neither Thoens or Andino were presently

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<sup>3/</sup> The April 12 correspondence was mailed to West by certified mail, but was returned unclaimed to the Commission after three delivery attempts. The correspondence was remailed via regular mail on April 28. Any reply by West was due by the close of business on April 22, 2004; in her May 9 response, West indicated that she received the April 12 correspondence on May 1, 2004. I have considered West's response.

assigned to the 4:00 p.m. to 12:00 a.m. shift, West was now eligible to work overtime on that shift when required.

On April 30, July 2, and September 20, 2001, the County issued Preliminary Notices of Disciplinary Action against West for her alleged repeated refusal to work mandatory overtime. The disciplinary notices specified charges of insubordination, conduct unbecoming a public employee and neglect of duty, and detailed West's alleged refusal to work mandatory overtime on fifteen occasions between February 22 and July 18, 2001.

On October 1, 2001, a hearing was conducted on the disciplinary charges. The hearing officer's report indicated that both the County and West were represented by counsel and they presented evidence and examined and cross examined witnesses. West did not testify. The report also indicated that both parties stipulated that West had refused to work mandatory overtime on the fifteen occasions in question.

At the hearing, West presented Staltari's testimony describing Staltari's issuance of the cease and desist order in response to West's allegations against Thoens and Andino.

On November 8, 2001, the hearing officer issued a decision ordering West's termination finding that West apparently refused to work mandatory overtime because it was her opinion that such would violate the previous cease and desist order. West has apparently appealed her termination to the Merit System Board.

West asserts that she was denied a PBA representative at a December 2000 disciplinary hearing, and that Anthony Staltari and PBA Local 102 President Carita Sutton conspired to force her to accept Sutton as her PBA representative at that hearing, in that Staltari, the hearing officer, gave Sutton "a direct order to stay and conduct the hearing without (West)." In the unfair practice charge, West alleges that Staltari ordered Sutton to remain at that hearing against West's wishes, and that the PBA is dominated by the administration as if "there's no union." In her May 9, 2004 response, West newly alleges that Sutton was the personal secretary of Kirk Thoens, against whom West raised allegations of harassment in 1997.

In the charge, West alleges that the 2001 disciplinary actions and alleged denial of a witness and/or representation were taken against her "in retaliation for the civil and criminal charges she filed against (Thoens, Andino and certain other) individuals holding authority within the correctional center," in May 2001, and that West's request to Sergeant Joseph Stout, who had been in charge of investigating West's criminal charges, for representation at the October 2001 hearing was denied. In the May 9, 2004 response, West alleges for the first time that Stout failed to properly investigate the criminal and internal affairs complaints filed by West in June 2001, and further alleges that Stout failed to file the complaints in court without West's knowledge. West further alleges that "(t)he administration and



the union enforced selective disciplinary (discrimination) action against senior minority employees especially after the last contract." West further contends that she received no hearing prior to being terminated on November 8, 2001; in her May 9, 2004 response to my intent to dismiss this case, West alleges that when she reported for work on November 8, she was "served and terminated on the spot" by Kirk Eady, Stevette Scott (and) Stout;" and that Stout "refused to allow anyone to witness the method of the termination."

The PBA states that, at West's request and with the PBA's agreement, West's non-attorney friend was allowed to represent her at the October 2001 hearing; and that she was further advised that a PBA representative would be present at the hearing solely to protect the rights of the PBA. West disputes the PBA's assertion. In her May 9 response, West alleges that "(t)he County disregarded a court order to produce discovery documents . . . (t)herefore, obviously they have something to hide." It is unclear to which court order West refers. Moreover, West contends that if the PBA never refused to file grievances on her behalf, "then the PBA should be able to produce all which were filed."

For the reasons provided below, I decline to issue a Complaint on either the charge against the County or the charge against the PBA.

#### ANALYSIS

Claims against the County

N.J.S.A. 34:13A-5.3 provides, in pertinent part, as follows:

. . . public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity.

West's charges that the County retaliated against her for filing civil and criminal actions do not involve activity protected under our Act. The Commission lacks jurisdiction to hear those allegations because they are not inter-related with an allegation of an unfair practice.

Further, West's claim that the County selectively disciplines minority employees alleges a civil rights violation which is also outside the Commission's jurisdiction. Such allegations should be filed with the New Jersey Division on Civil Rights. Therefore, I dismiss those charges. See Oakcrest-Absegami Teachers' Assn. (Medica and Butler), D.U.P. No. 97-35, 23 NJPER 261 (¶28125 1997); State of New Jersey, D.U.P. No. 97-15, 22 NJPER 339 (¶27176 1997), Elizabeth Ed. Ass'n (Jefferson), D.U.P. No. 95-33, 21 NJPER 245 (¶26154 1995).

With regard to West's remaining allegations against the County, her claim that the actions taken against her, specifically her termination, were unjustified and that she should be compensated for losses related to them cannot appropriately be pursued before the Commission. Her termination was not in reaction to her exercise of protected activity. West

also claims that she was denied permission to have a witness and to have a PBA representative of her choice at her termination hearing. She does not allege the unlawful actions were based on union activity which would fall within the purview of the Act. Rather, she merely disputes the legitimacy of the alleged actions, specifically, her termination and the conduct of the departmental hearing. In the absence of a claim of retaliation for protected activity, this Commission has no jurisdiction to either hear claims concerning the merits of her termination or the hearing procedures by which the County terminated her. Such a matter appropriately belongs before the Department of Personnel and, in fact, West has filed an appeal there regarding her termination. City of Atlantic City (Jones), D.U.P. No. 99-18, 25 NJPER 312 (¶30133 1999). The termination claim cannot separately be litigated before the Commission. Thus, I dismiss that allegation.

Moreover, West raises no allegations or facts to support a finding that N.J.S.A. 34:13A-5.4a(6) or (7) were violated. Indeed, West must state which Commission rule the employer allegedly has violated. Burlington Tp. Bd. of Ed. (Horner), D.U.P. No. 97-31, 23 NJPER 152 (¶28073 1997). Therefore, I dismiss these allegations against the County as well.

#### Claims Against The PBA

The charges against the PBA lack merit. Section 5.3 of the Act empowers a union to negotiate on behalf of all unit employees

and to represent all unit employees in administering the contract. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. Section 5.3 specifically links the power to negotiate and administer with the duty to represent all unit employees "without discrimination and without regard to employee organization membership." The standards in the private sector for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory or in bad faith. Id. at 191. Those standards have been adopted in the public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Carteret Ed. Assn. (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390, 391 (28177 1997). Even an organization's negligence in processing grievances, standing alone, is not sufficient to establish a breach of its duty of fair representation. See Glen Ridge Ed. Assn (Tucker), P.E.R.C. No. 2002-72, 28 NJPER 251 (¶33095 2002); OPEIU (Wasilewski), P.E.R.C. No. 98-131, 24 NJPER 256 (¶29122 1998); Printing and Graphic Communication, Local 4, 249 NLRB 88, 104 LRRM 1050 (1980); Service Employees Int'l Union, Local No. 579 AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977).

West has not set forth any allegations or facts that show the PBA's conduct was arbitrary, discriminatory or in bad faith. Specifically, West does not have the right to choose a specific union representative to represent her. New Jersey Department of Corrections (Shoudt), I.R. 99-16, 25 NJPER 193 (¶30089 1999) (where union offered to represent member with regard to grievance in the same manner in which it represented other members, union did not breach duty of fair representation by failing to provide specific union representative member requested). Thus, I dismiss West's allegation that she was denied the right to have the union representative she wanted at the October 2001 hearing.

Moreover, West's allegation that she was "forced" to accept a PBA representative in a December 2000 hearing was not filed within the Commission's six-month limitations period and West has not demonstrated that she was prevented from raising those allegations during the limitations period. Therefore, I dismiss them as untimely. N.J.S.A. 34:13a-5.4c.

Further, West's allegation that the County and the PBA refused to process grievances lacks specificity in that it fails to present any supporting facts. Thus, it does not meet the requirements of N.J.A.C. 19:14-1.3a(3) which provides that a charge must contain the following:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must

specify the time and place the alleged acts occurred, the names of the persons alleged to have committed such acts and the subsection(s) of the Act alleged to have been violated.

Nevertheless, the facts demonstrate that a grievance West filed was, in fact, processed. Therefore, I dismiss this allegation. See Trenton Bd. of Ed. (Queval), D.U.P. No. 2000-8, 25 NJPER 437 (¶30192 2000).

Further, West's allegation that the PBA is dominated by the County lacks the specificity required under N.J.A.C. 19:14-1.3a. The allegation fails to specify the times and places of the alleged actions and the names of the County individuals who allegedly are responsible for the unlawful activity. Thus, pursuant to the above-cited rule, I dismiss this allegation. See Trenton Bd. of Ed. (Queval).

West does not assert allegations or facts to support a finding that N.J.S.A. 34:13A-5.4b(3), (4) or (5) were violated. In fact, West, as an individual, lacks standing to assert 5.4b(3) and b(4) allegations against the PBA. CWA Local 1034 and King, D.U.P. No. 2004-2, 29 NJPER 367 (¶113 2004); Tp. of Berkeley, D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985); Trenton Bd. of Ed., D.U.P. No. 81-26, 7 NJPER 406 (¶12179 1981). Moreover, West fails to indicate which Commission rule or regulation the PBA has allegedly violated with regard to her b(5) allegation. See

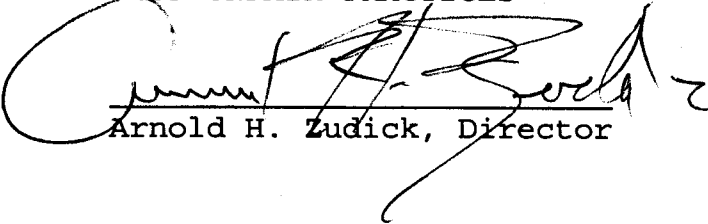
Burlington Tp. Bd. of Ed. Therefore, I dismiss these allegations as well.

Based upon the above analysis, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.<sup>4/</sup>

**ORDER**

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: September 29, 2004  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by October 12, 2004.

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<sup>4/</sup> N.J.A.C. 19:14-2.3.