

D.U.P. No. 2008-3

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

In the Matter of

COUNTY OF HUDSON

Respondent,

-and-

Docket No. CI-2007-053

ARTHUR MURPHY,

Charging Party.

DISTRICT 1199J AFSCME,

Respondent,

-and-

Docket No. CI-2007-054

ARTHUR MURPHY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges and an amendment to those charges filed by an individual charging party against the County of Hudson and District 1199J AFSCME. The Director finds in both cases that the activity alleged to have violated the New Jersey Public Employer-Employee Relations Act occurred prior to the six-month statute of limitations for filing timely unfair practice charges. N.J.S.A. 34:13A5.4(C). Moreover, a subsequent phone call made by the charging party to 1199J, as asserted in the amended charge, did not render the charges timely. The Director further finds that even assuming timeliness, the facts alleged do not indicate that the charging party was discriminated against for engaging in protected activity or that 1199J violated its duty of fair representation.

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Appearances:

For the Respondent - County,
Donald J. Battista, County Counsel
(Louis C. Rosen, Deputy County Counsel)

For the Respondent - AFSCME,
Oxford Cohen, attorneys
(Arnold Cohen, of counsel)

For the Charging Party,
Arthur Murphy, pro se

REFUSAL TO ISSUE COMPLAINT

On April 16 and April 26, 2007, Arthur Murphy (Murphy or Charging Party) filed unfair practice charges and an amended charge against his employer, the County of Hudson (County), and his majority representative, District 1199J of the American

Federation of State, County and Municipal Employees (1199J or the Union). The charges allege that the County violated subsections 5.4a(1), (2), (3) and (5)^{1/} and that District 1199J violated 5.4b(1), (2) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

Murphy alleges that the County has unlawfully denied him back pay from July 15, 2002, when he was promoted to Traffic Signal Tech 2 and allegedly did not receive the correct contractual salary increase. He also alleges that 1199J failed to "make progress on the issue" because it did not obtain the

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. (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."

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. (5) Violating any of the rules and regulations established by the commission."

back pay to which he claims to be entitled. Murphy's April 26 amended charge alleges that the County violated Article VIII, Section C, paragraph 6 of the collective negotiations agreement^{3/}. Murphy also writes that he did not file unfair practice charges in July 2002 because he was led to believe that his case was "being handled" by the County and 1199J. He alleges that he did not receive back pay to the date of his July 15, 2002 promotion and therefore he filed a grievance on February 17, 2006. Incorporated into Murphy's charges and attachment to the charges are numerous documents intended to show the sequence of events from July 15, 2002 to the filing of his charges and amended charge.

Respondents filed written replies to the charges and amendments by July 12, 2007.

On November 19, 2007 Murphy attended an informal meeting conducted by Commission staff agents. Murphy promptly informed the staff agents that he was attending the meeting without assistance from any other individual and agreed to proceed. The agents explained that the purpose of the meeting was to discuss the charges, explore the applicable law, and consider possible informal dispositions. The agents also explained to Murphy the

^{3/} This article does not exist in the parties' negotiations agreement. However, Murphy refers to Article VIII Seniority, Section 6 Promotions, paragraph B. in his grievance, which establishes the rate of increase for an employee upon promotion.

Commission procedure for processing the case if an informal disposition was not achieved.

Murphy acknowledged that his salary had been adjusted and confirmed that he had received 15 days of back pay. Murphy signed and dated withdrawal forms on both charges, their effectuation contingent upon the County providing him a specified sum that Murphy had proposed at the November 19 meeting. Murphy agreed that the staff agent would retain the signed withdrawal forms until the agent could present Murphy's proposed monetary offer to the County and the agent had informed Murphy of the County's response.

On November 21, 2007 the County agreed to Murphy's proposal, particularly in light of his execution of the withdrawal forms, subject only to his receipt of the specified amount. On the same date, a PERC agent informed the 1199J representative that Murphy had withdrawn all charges. On November 23, a PERC agent telephoned Murphy and informed him of the County's willingness to settle the matter as Murphy had proposed. Murphy replied that he no longer wished to withdraw either charge. The agent informed him that given his position, the County was not obligated to pay the sum proposed at the November 19th conference. Murphy was also told that the Director of Unfair Practices would determine whether a complaint should issue on the charges.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice. 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. The following facts appear.

On September 30, 2005, Murphy requested from the County a salary adjustment and back pay from the date of his promotion on July 15, 2002. On February 17, 2006, Murphy filed a grievance contesting the County's omissions. The parties' collective negotiations agreement, Article XXXII Grievance Procedure, Step 1 provides an employee or his/her union representative 15 days from the date of the alleged violation to file a grievance. Responding to Murphy's grievance, the County determined (and 1199J agreed) that the back pay award would be retroactive to 15 days preceding the date of the grievance. The County adjusted Murphy's salary accordingly. The increase became effective on March 1, 2006. Murphy was dissatisfied with the determination and he continued to contact 1199J by telephone and fax for an additional remedy. The amended charge cites his latest attempt to contact 1199J on April 4, 2007.

The Union asserts that it did not pursue the grievance further because it agreed with the County's interpretation of the

contract as it pertained to the back pay obligation, which limited Murphy's back pay award to the 15 days from the date of his grievance. The Union further asserts that it acted in good faith, could not demand further remedial action on behalf of Murphy because the County followed the parties' collective negotiations agreement in responding to the grievance, and did not violate its duty of fair representation. According to 1199J, Murphy's charge is untimely because he received his increase on March 1, 2006, pursuant to the grievance settlement, and the instant charge was not filed until April 16, 2007, more than six months after the grievance was filed.

Analysis

The Act provides a six-month statute of limitations for unfair practice charges. N.J.S.A. 34:13A-5.4(c) provides:

. . . no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six month period shall be computed from the day he was no longer so prevented.

In Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978), our Supreme Court explained that the statute of limitations was intended to stimulate litigants to pursue claims diligently and prevent the litigation of stale claims. The Court cautioned that it would look to equitable considerations in deciding whether a charging party slept on its rights. Id. at 337-338.

Murphy filed charges on April 16, 2007 and an amended charge on April 26. All of the alleged unlawful events occurred more than six months before the charges were filed. The only date in the amended charge falling within the six-month period relates to Murphy's April 4, 2007 follow-up phone call on the subject of the grievance to District 1199J. That call does not render the charge timely filed.

Murphy was aware (at the latest) in March 2006 that the County and 1199J had resolved his grievance and that he received 15 days back pay and a promotion. Murphy also attached to his charge a copy of a February 27, 2006 memorandum from his department's Executive Assistant to the County Personnel Director. The memorandum reports that on or about September 25, 2005, Murphy discussed his salary with a representative from personnel and was told that his back pay was limited because several months had passed since the date to receive his raise and that under the contract he would only be entitled to 15 days of back pay from the date of the discovery of the error. The memo also reports that Murphy had no problem "with the 15 days of back pay as long as his salary was corrected." Murphy's salary was adjusted within the parameters of the collective agreement, effective March 2006. Accordingly, I find that Murphy's April 4, 2007 phone call to Local 1199J seeking a different resolution to

the grievance does not render his charges or the amended charge timely filed.

Even assuming that the charges and amendment were timely, I decline to issue a complaint because Murphy has not alleged facts indicating that he was discriminated against for engaging in protected conduct or that 1199J violated the duty of fair representation. The County processed Murphy's grievance and made the back pay adjustments to him thereby satisfying its contractual obligations.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances. It wrote:

In the specific context of a challenge to a union's representation in processing a grievance, the U.S. Supreme Court has held: 'A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith.' Vaca v. Sipes, 386 U.S. 171, 190 (1967). The courts and this Commission have consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See e.g. Saginario v. Attorney General, 87 N.J. 480 (1981) [other citations omitted]. [10 NJPER 13]

1199J filed and processed a grievance on Murphy's behalf. A resolution of the grievance resulted in an upgrade of Murphy's salary and a modest back pay reimbursement. No facts indicate that 1199J's conduct in resolving the grievance, based upon its

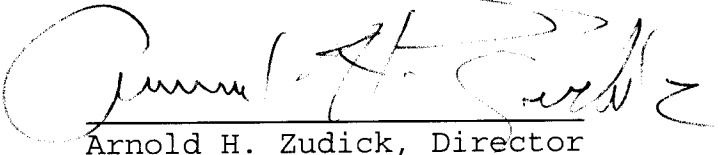
understanding of the applicable contract provision(s), was arbitrary, discriminatory or in bad faith. A union does not breach its duty of fair representation merely because the grievant does not concur with the result. See AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1979).

The Commission's complaint issuance standard has not been met and I decline to issue a complaint. N.J.A.C. 19:14-2.1, 2.2 and 2.3.

ORDER

The unfair practice charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: November 30, 2007
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 December 13, 2007.