

D.U.P. No. 2009-4

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

In the Matter of

IAFF LOCAL 2081,

Respondent,

-and-

Docket No. CI-2008-049

NICHOLAS SARAPUCHIELLO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by an individual charging party against IAFF Local 2081. The Director finds that Local 2081 had no duty to represent Sarapuchiello under the Act because he was no longer a public employee at the time Local 2081 refused to advance his grievance to arbitration.

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

In the Matter of

IAFF LOCAL 2081,

Respondent,

-and-

Docket No. CI-2008-049

NICHOLAS SARAPUCHIELLO,

Charging Party.

Appearances:

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)

REFUSAL TO ISSUE COMPLAINT

On July 16, 2008, Nicholas Sarapuchiello (Sarapuchiello) filed an unfair practice charge against his former majority representative, IAFF Local 2081 (Local 2081). Sarapuchiello alleges that in November or December, 2007, Local 2081 unlawfully refused to advance his grievance to arbitration. Local 2081's omission allegedly violates sections 5.4b(1) and (5)<sup>1/</sup> of the New

---

<sup>1/</sup> 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. (5) Violating any of the rules and regulations established by the commission."

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

Local 2081 contends that Sarapuchiello was not a public employee at the time it refused to advance his grievance to arbitration and had no duty under the Act to represent him.

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. On December 8, 2008, I wrote a letter to the parties, advising that I was not inclined to issue a complaint in this matter and setting forth the reasons for that conclusion. The parties were provided an opportunity to respond. Sarapuchiello filed a certification and supporting documents. I find the following facts.

Nicholas Sarapuchiello was employed as a firefighter by the City of Hackensack from 1969 until his retirement in 1980. The collective negotiations agreement in effect at the time of his retirement entitled him to health coverage until age 65. Sarapuchiello turned 65 in 2007. On June 13, 2007, Sarapuchiello received notice that the health coverage provided in the agreement for his wife and dependent daughter would also

terminate when he reached age 65. Sarapuchiello contacted his former majority representative, IAFF Local 2081, and asked that a grievance be filed contesting the termination of health coverage for his wife and daughter.

Local 2081 filed a grievance with the City, contesting the termination of health coverage. The City denied the grievance at each step before arbitration. On November 22, 2007, Local 2081 informed Sarapuchiello that it would not pursue his grievance to arbitration.

On December 11, 2007, Sarapuchiello sent a letter to Local 2081 President John Hynes seeking his reasons for refusing to advance his grievance to arbitration. Hynes did not reply to the letter. On or about April 13, 2008, Sarapuchiello met with the new president of Local 2081, John Linquinto, and implored him to advance his grievance to arbitration. On May 1, 2008, Linquinto informed Sarapuchiello that he had met with Local 2081's executive board, which determined that it "did not want to upset the City" by seeking to arbitrate the grievance. Linquinto informed Sarapuchiello that the City was eliminating eight emergency medical technician positions in the unit and that arbitrating his grievance would not help the parties' relationship.

Local 2081 contends that it did not pursue Sarapuchiello's grievance to arbitration because the 1980 collective agreement provides that health coverage ends for the retiree, his or her spouse and dependent(s) when the retiree turns 65 years old. It further contends that many retirees under the 1980 contract have reached age 65 before Sarapuchiello at which time their health coverage and the coverage extended to their spouses and dependent(s) ceased.

#### ANALYSIS

Sarapuchiello argues that Local 2081 violated its duty of fair representation because it unlawfully refused to advance his grievance contesting the termination of health coverage for his wife and daughter to arbitration.

N.J.S.A. 34:13A-3(d) provides that a public employee is ". . . any person holding a position, by appointment or contract, or employment in the service of a public employer . . ." (emphasis added). N.J.S.A. 34:13A-5.3 provides, in a relevant part, that "[a] majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit . . ." (emphasis added). N.J.A.C. 19:14-1.1 provides that an unfair practice charge alleging violations of N.J.S.A. 34:13A-5.4 may be filed by public employers, public employees, employee organizations, or their representatives.

The Commission has ruled that retirees are not employees within the meaning of the Act. Belmar Bor., P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988); Town of West New York & PBA Local 88 (Sancho), D.U.P. No. 2001-3, 26 NJPER 353 (¶31139 2000); PBA Local 245 (Maggio), D.U.P. No. 97-27, 23 NJPER 72 (¶28043 1996); Oakcrest-Absegami Teachers Ass'n (Butler), D.U.P. No. 97-35, 23 NJPER 261 (¶28125 1997) (non-unit member lacked standing to allege fair representation claim); Teamsters Local 866 (Mejia), D.U.P. No. 99-13, 25 NJPER 265 (¶30112 1999) (following resignation, public employee no longer entitled to receive a copy of the collective agreement); see also, Grasso v. FOP, Glassboro Lodge No. 108, App. Div. Dkt. No. A-2517-07T3 (9/4/08).

Maggio is instructive. There, a police officer, following his retirement, sought compensation for accumulated leave time and other emoluments. He filed grievances and ultimately requested that his majority representative file for arbitration. The union refused to arbitrate, claiming that it had no obligation to represent Maggio since he was retired and no longer a unit member. Maggio filed an unfair practice charge against the PBA, alleging a breach of the duty of fair representation. The Director held that Maggio, as a retiree, was no longer a public employee and, accordingly, had no standing under N.J.A.C. 19:14-1.2 to file an unfair practice charge. The charge was dismissed.

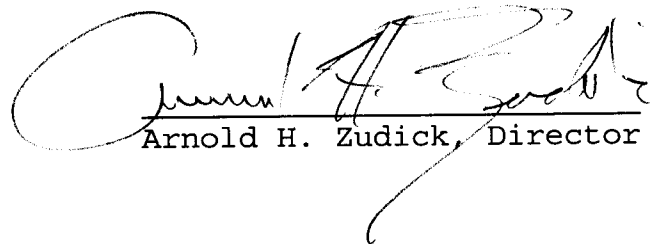
Sarapuchiello retired as a firefighter in 1980 and was neither employed by the City nor included in the negotiations unit represented by Local 2081 at the time he demanded that his grievance be arbitrated. Nor does it appear that the dispute arose during the time he was employed by the City.

Local 2081 had no duty to represent Sarapuchiello under the Act because he was no longer a public employee at the time Local 2081 refused to advance his grievance to arbitration. Local 2081's refusal under these facts is not an unfair practice. Accordingly, I dismiss the charge.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: January 9, 2009  
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 January 20, 2009.