D.U.P. No. 2011-10

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

In the Matter of

PBA LOCAL 105,

Respondent,

-and- Docket No. CI-2009-020

JOSEPH MARTIN,

Charging Party.

SYNOPSIS

The Deputy Director of Unfair Practices dismisses allegations in an unfair practice charge that a majority representative violated its duty of fair representation by failing to collectively negotiate "equal" contractual terms and conditions of employment for all members of a negotiation unit comprised of corrections officers and parole officers. The Deputy determined that the allegations did not sufficiently indicate that the Respondent's conduct was arbitrary, discriminatory or in bad faith, as set forth in the standard announced in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). The Deputy also dismissed allegations that the Respondent's conduct violated 5.4b(3) and (5) of the Act. The charge was filed by a parole officer represented by PBA Local 105 in a collective negotiations unit which also includes corrections officers employed by the State of New Jersey.

The Deputy does not dismiss other allegations that the majority representative violated 5.4b(1) of the Act by promising the Charging Party that it was undertaking certain actions in processing grievance(s) on his behalf when in fact no action was taken. The Deputy shall issue a Complaint upon that allegation and upon an allegation that a representative of the Respondent claimed that parole officers should not have been included in the unit.

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Charging Party.

Appearances:

For the Respondent,
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,
attorneys
(Robert A. Fagella, of counsel)

For the Charging Party,
Joseph Martin, pro se

DECISION

On November 24, 2008, and December 7, 2009, Joseph Martin (Martin) filed an unfair practice charge and amended charge against his majority representative, PBA Local 105 (PBA or Local 105). Martin is a parole officer employed by the State of New Jersey (State) and alleges that parole officers comprise a minority of employees in a negotiations unit with corrections officers represented by Local 105.

Martin specifically alleges that the PBA violated its duty of fair representation by negotiating benefits "more beneficial to corrections officers" than parole officers, despite its

"guarantee" that it would represent all unit members equally if parole officers would vote for it as their majority representative; failing to respond to his telephone and electronic mail messages regarding it's alleged failure to fairly negotiate for parole officers; failing to respond to his requests for assistance in filing grievances, complaints and appeals of an alleged retaliatory action taken against him by the State for his exercise of rights under the Act and the parties' collective negotiations agreement; degrading him and failing to support his position in complaints concerning his supervisors; and by failing to schedule promised meetings with the State on his behalf to address all of these issues.

PBA denies violating the Act. It asserts that differences in contractual benefits between parole officers and corrections officers in the negotiations unit are consistent with the unique characteristics of each title. It also contends that no impropriety may be gleaned from differences in their terms and conditions of employment and that it represents all unit members, including parole officers and officers who are not members of the PBA.

On or about March 5, 2009, the PBA agreed to continue to investigate Martin's complaints and assist him in resolving his disputes with the State. On December 7, 2009, Martin filed an amended charge alleging that after March 5, 2009, the PBA

continued to fail to represent him and that the PBA representative assigned to represent his negotiations unit complained to Martin that he was busy with six thousand correction officers and that the parole officers should not have been added to the corrections unit.

On April 12, 2010, the parties met informally a second time with the assistance of a staff agent. The charge remained unresolved. In June, 2010, Martin requested that the charge be held in abeyance, in light of an election for a new PBA president. On October 12, 2010, we received a letter from Martin advising that the PBA has continued to fail to represent him concerning the matters raised in the charge.

On April 21, 2011, I issued a letter, advising of my tentative finding and conclusions and advising that I was likely to dismiss all but one specified allegation in the charge. No response was filed.

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. I find that the complaint issuance standard has not been met regarding Martin's 5.4b(3) and 5.4b(5)

allegations. Nor has the standard been met with respect to certain allegations regarding subsection 5.4b(1).

Subsection 5.4b(3) prohibits the refusal of a majority representative of public employees to negotiate in good faith with a public employer. Only a public employer has standing to allege a violation of subsection 5.4b(3). Martin is a employee of the State and a member of the negotiations unit. Accordingly, he has no standing to proceed on this allegation. I dismiss the 5.4b(3) allegation.

Subsection 5.4b(5) prohibits an employee organization, their representatives or agents from violating any of the rules and regulations established by the Commission. Martin's charge does not identify any Commission rule or regulation allegedly violated by PBA, nor does the charge set forth facts that, if true, would support this allegation. I find that the complaint issuance standard has not been met and I dismiss the 5.4b(5)allegation.

On January 30, 2008, PBA 105 President Joseph Malgrino distributed a memorandum to its member locals informing them that PBA 105 was preparing for interest arbitration. Malgrino wrote that PBA 105's negotiations committee agreed that its final negotiations proposal to the State, before commencing interest arbitration, provides salary increases and other economic and non-economic benefits which would "protect the integrity and representational rights of each PBA Local in the bargaining

unit." The final proposal would be "all for one and one for all." The PBA's final proposal reveals that wage demands for corrections officers and parole officers differed, in fact. Also, the allowances for uniforms and uniform maintenance were less for parole officers than for corrections officers.

Martin alleges that the PBA breached its duty of fair representation in violation of subsection 5.4b(1) of the Act by failing to propose and negotiate contractually equal terms and conditions of employment for both parole officers and corrections officers.

N.J.S.A. 34:13A-5.3 provides in a pertinent part:

> 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 and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court 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, capricious or in bad faith. [Id. At 190, 64 LRRM 2376]

The Commission and the New Jersey Courts have consistently adopted the Vaca standard in deciding fair representation cases arising under the Act. See Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Saginario v. Attorney General, 87 N.J. 480 (1981); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); Egg Harbor Twp. Ed. Assn. (Zelig), P.E.R.C. No. 2002-71, 28 NJPER 249 (¶33094 2002); Fair Lawn Bd. Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984). A union has a wide range of reasonableness in negotiating on behalf of unit employees, and is permitted to negotiate different terms and conditions of employment proposals presented by different groups in the same negotiations unit.

No facts show that the PBA's negotiations proposals, regardless of the alleged "guarantee," were arbitrary, discriminatory or offered in bad faith. The Vaca standard does not mandate that the PBA be held to its forecasted "guarantee" that proposals or final agreements would be identical for every group within the negotiations unit. Accordingly, I find that the complaint issuance standard has not been met and I dismiss this allegation.

5.4b(1) - Alleged PBA failure to represent Martin

In his amended charge, Martin alleges that PBA representative Greg Kelly repeatedly assured him that Local 105 would assist him in processing pending grievances and other work-related disputes with the State. Despite Kelly's assurances, Martin alleges that Kelly ignored his phone calls and falsely led him to believe he was scheduling meetings with the State concerning his grievances and other complaints. Martin further alleges that Kelly also told him that he was busy representing corrections officers and that parole officers should never have become members of the PBA negotiations unit. The PBA's conduct in this regard, if true, may constitute arbitrary discriminatory and/or bad faith conduct towards Martin. Accordingly, I will issue a Complaint under separate cover regarding only this 5.4b(1) allegation.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Jonathan Roth, Deputy Director

DATED: June 1, 2011
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 June 13, 2011.