

D.U.P. NO. 87-5

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

In the Matter of

CITY OF JERSEY CITY AND POLICE
OFFICERS BENEVOLENT ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-87-6

JAMES O'BRIEN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by a POBA member, who alleged that the POBA and the City unlawfully negotiated mid-contract wage freezes and put the agreement to a ratification vote. The allegations, even if true, would not constitute a violation of the POBA's duty to fairly represent its unit members. [Ford Motor Company v. Hoffman, 346 U.S. 330, 23 S.Ct. 681 (1983); Belen v. Woodbridge Twp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976)]. Further, an individual lacks standing to charge an employer with the violation of a negotiations obligation, which it owes exclusively to the majority representative. Newark Bd. of Ed. and Michael Cooper, D.U.P. No. 84-7, 9 NJPER 555 (¶14230 1983).

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Appearances:

For the Respondents

Thomas Smith, City Clerk
Larry Doyle, President P.O.B.A.

For the Charging Party,

Edward J. Bowen, Esq.

REFUSAL TO ISSUE COMPLAINT

On July 22, 1986, James O'Brien filed an unfair practice charge against the City of Jersey City ("City") and the Jersey City Police Officers Benevolent Association ("POBA"). O'Brien alleges that the City violated §5.4(a)(1)^{1/} and the POBA violated §5.4(b)(1)^{2/} of the New Jersey Employer-Employee Relations Act,

1/ This subsection prohibits 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/ This subsection prohibits 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"

N.J.S.A. 34:13A-1 et seq. ("Act").

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.^{3/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{4/} However, if this standard has not been met I may decline to issue a complaint.^{5/}

For the reasons stated below, it appears to me that the Commission's complaint issuance standards have not been met.

O'Brien alleges that the City and POBA violated the Act by negotiating salary freezes mid-contract and putting the agreement to

^{3/} N.J.S.A. 34:13A-5.4(c) provides: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof..."

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

a ratification vote by members of the POBA, in order to avoid layoffs.

These allegations, if true, would not constitute violations of the Act.

The test in determining whether a representative lived up to its duty of fair representation was stated by the U.S. Supreme Court in Ford Motor Company v. Hoffman, 346 U.S. 330, 23 S. Ct. 681 (1983)

"the complete satisfaction of all who are represented is hardly to be expected and a wide range of reasonableness must be allowed a statutory bargaining representative in servicing the unit it represents, subject to the complete good faith and honesty of purpose in the exercise of its discretion."


See also Belen v. Woodbridge Twp. Bd. of Ed., 142 N.J. Super 486 (App. Div. 1976); Lawrence Twp. PBA Local 119 and Joseph Burns, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983). There is no allegation here that the POBA acted in bad faith.

Moreover, an individual does not have standing to bring an unfair practice charge concerning negotiations against an employer. An employer's duty to negotiate is owed exclusively to the majority representative and the Charging Party cannot stand in the shoes of the majority representative to assert negotiation rights. Newark Board of Education and Michael Cooper, D.U.P. No. 84-7, 9 NJPER 555 (¶14230 1983). O'Brien has failed to allege facts that would substantiate claims that the POBA has failed to fairly represent the employees in its negotiations unit or that the City has interfered

with, restrained or coerced employees in the exercise of rights guaranteed by the Act.

Accordingly, I decline to issue a complaint and dismiss the charge in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 25, 1986
Trenton, New Jersey