

D.U.P. NO. 99-17

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

In the Matter of

STATE OF NEW JERSEY
(HAGEDORN PSYCHIATRIC HOSPITAL),

Respondent,

-and-

Docket No. CI-99-63

ARTHUR F. KNAPP,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Arthur F. Knapp against the State of New Jersey, Hagedorn Psychiatric Hospital. The Director finds that Knapp does not have standing to assert an a(5) or b(5) violation. Further, the Director finds that Knapp has not named his majority representative, Local 195, as a respondent in his charge and that even if he had, no facts were alleged which establish that Local 195 violated the Act. In addition, the Director finds that Knapp's 5.3 allegation is also not appropriate, as this provision does not set forth any unfair practices under the Act.

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Appearances:

For the Respondent,
Office of Employee Relations
(Philip Whitcomb, Director)

For the Charging Party,
Arthur F. Knapp, pro se

REFUSAL TO ISSUE COMPLAINT

On March 10, 1999, Arthur F. Knapp, an employee of the State of New Jersey, Hagedorn Psychiatric Hospital (Hospital) filed an unfair practice charge with the Public Employment Relations Commission alleging that the Hospital violated provisions 5.3^{1/},

^{1/} This section, in pertinent part provides:

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. Proposed new rules or modifications of existing rules governing working conditions

Footnote Continued on Next Page

5.4a(5)^{2/} and 5.4b(3)^{3/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it unilaterally changed Knapp's days and hours of work. Specifically, Knapp, who is part of a negotiations unit that is represented by Local 195, IFPTE, AFL-CIO, alleges that the Hospital violated the Act by 1) failing to meet with Local 195 before establishing new working conditions; 2) refusing to negotiate in good faith with Local 195; and 3) violating the parties' collective negotiations agreement.

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

1/ Footnote Continued From Previous Page

shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

2/ This provision prohibits public employers, their representatives or agents from: "(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."

3/ This provision prohibits employee organizations, their representatives or agents from: "(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."

standard has not been met, I may decline to issue a Complaint.

N.J.A.C. 19:14-2.3. I find the following facts.

In December 1998, Knapp's hours and days of employment were unilaterally changed. Knapp spoke to Local 195 representative Debbie Spencer about the situation and Spencer investigated it. She spoke to Hospital representatives in an effort to resolve it. She also reviewed the situation and applicable provisions of the parties' collective agreement with the Trustees of Local 195. She determined that the Hospital had not violated the agreement with respect to the changes and, therefore, the matter could not be grieved.

ANALYSIS

A violation of a(5) occurs when an employer fails to negotiate an alteration of a mandatory subject of negotiations with the majority representative or knowingly refuses to comply with the terms of the collective negotiations agreement or refuses to process grievances presented by the majority representative. However, an individual employee normally does not have standing to assert an a(5) violation, as the employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980); Camden Cty. Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). An individual employee may file an unfair practice charge and independently pursue a claim of an a(5) violation only where that individual has also asserted a viable claim of a breach of the duty of fair

representation against the majority representative. Jersey City College, D.U.P. No. 97-18, 23 NJPER 1 (¶28001 1996); N.J. Turnpike, D.U.P. No. 80-10, 5 NJPER 18 (¶10268 1979).

Knapp has not claimed that his majority representative has breached its duty of fair representation. Thus, under the circumstances, he has no standing as an individual to assert a violation of a(5). N.J. Turnpike Authority. Jersey City College. Further, a mere breach of contract does not constitute an unfair practice within the meaning of the Act. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Moreover, Knapp's allegation that the Hospital unlawfully failed to meet with Local 195 before establishing new working conditions is also inappropriate, since, generally, only the exclusive majority representative, not an individual can make such a claim. State of New Jersey (Human Services) and Bright, D.U.P. No. 96-5, 21 NJPER 309 (¶26196 1995). In addition, Knapp's 5.3 allegation is also not appropriate, as this provision does not set forth any unfair practices under the Act.

Finally, Knapp alleges a 5.4b(3) violation. However, this subsection applies to employee organizations and Knapp has not named his employee organization, Local 195, as a respondent in this matter. Further, the Commission has held that individual employees do not have standing to assert a 5.4b(3) violation. Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978); Tp. of Edison and Joseph Cies, D.U.P. No. 99-15, 25 NJPER ____ (¶____ 1999). Therefore, this allegation is not viable.

In any event, no facts were alleged by Knapp which establish that Local 195 violated the Act, or in particular, breached its duty of fair representation towards him. A breach of the duty of fair representation occurs only when a representative's conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983); Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967).

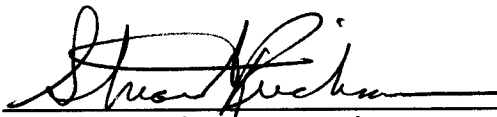
An employee representative is obligated to exercise reasonable care and diligence in investigating the merits of a claimed grievance. Middlesex Cty. and NJCSA (Makaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd NJPER Supp.2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982); Carteret Ed. Assn. (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997). Local 195 did that here. As Knapp avers, Local 195 representative Debbie Spencer diligently investigated Knapp's situation. She spoke with Hospital representatives in an effort to resolve it. She, along with the Trustees of Local 195, reviewed and evaluated his situation in light of the parties' agreement. She then, in good faith, determined the collective agreement had not been violated and thus the matter could not be grieved. Under these circumstances, Local 195 did not violate the Act, or in particular, breach its duty of fair representation. There is no evidence that Local 195 acted arbitrarily, discriminatorily or in bad faith. OPEIU Local 153.

Based upon all of the above, I find that the Commission's complaint issuance standard has been not been met and I decline to issue a complaint on the allegations of this charge.^{4/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: May 21, 1999
Trenton, New Jersey

^{4/} N.J.A.C. 19:14-2.3.