

D.U.P. NO. 97-27

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

In the Matter of

POLICEMENS BENEVOLENT ASSOCIATION, INC.,  
LOCAL #245,

Respondent,

-and-

Docket No. CI-96-68

RUSSELL MAGGIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that PBA Local 245 committed an unfair practice by refusing to arbitrate two grievances filed by retired police officer Russell Maggio. The Director finds that Maggio was no longer a public employee when the grievances were filed, therefore he lacks standing to file this unfair practice charge.

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Appearances:

For the Respondent,  
Loccke & Correia, attorneys  
(Richard D. Loccke, of counsel)

For the Charging Party,  
Vincent J. D'Elia, attorney

REFUSAL TO ISSUE COMPLAINT

On May 3, 1996, Russell Maggio filed an unfair practice charge against PBA Local 245. Maggio alleges that Local 245 violated subsections 5.4(b)(1) and (2)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by refusing to process two grievances.

Maggio was employed as a police officer by the Borough of Fort Lee. Upon his retirement in 1994, Maggio sought compensation

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<sup>1/</sup> These subsections 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.

for accumulated leave time. Maggio also sought payment for money he contends was improperly withheld from a retirement settlement check. Subsequently, when these matters were not resolved to Maggio's satisfaction, he grieved them both and was represented by Local 245 through all steps of the grievance procedure up to binding arbitration, the grievance procedure's terminal step.

Neither grievance was settled and Maggio requested that Local 245 file for arbitration. Local 245 refused to do so, stating that it had no obligation to represent Maggio since he was retired and therefore no longer a unit member. Maggio individually filed for arbitration, but his request was not processed because under the contract, only the majority representative may initiate arbitration. Maggio contends that Local 245's refusal to arbitrate his grievances without considering their merits constitutes an unfair practice.


Local 245 argues that since Maggio retired before the grievances were filed, he is not a public employee within the meaning of the Act. Accordingly, he does not have standing to file an unfair practice charge. I agree.

N.J.A.C. 19:14-1.1 provides in pertinent part that unfair practice charges may be filed by "...any public employer, public employee, public employee organization, or their representative." Retirees are not public employees within the meaning of the Act. Borough of Belmar, P.E.R.C. 89-27, 14 NJPER 625 (¶19262 1988). Therefore, I find that since Maggio was no longer a public employee

when he filed his grievance, i.e., when his dispute with Local 245 first arose, he does not have standing to file this unfair practice charge.

Accordingly, I find that the Commission's complaint issuance standard had not been met and I decline to issue a complaint on the allegations of this charge<sup>2/</sup>. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: December 24, 1996  
Trenton, New Jersey