

D.U.P. NO. 97-19

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

In the Matter of

P.B.A. LOCAL NO. 134 and
BERGEN COUNTY SHERIFF'S DEPARTMENT,

Respondents,

-and-

Docket No. CI-96-56

DONALD CRANDALL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that the Bergen County Sheriff committed an unfair practice by denying Officer Donald Crandall a disciplinary hearing for a three-day suspension. The Director finds that Crandall did not allege that the Sheriff treated him differently than other employees by failing to grant him a hearing for a minor discipline or that he was treated differently because he was not a PBA member. The Director also finds that the Commission has no jurisdiction over Crandall's allegations that the Sheriff violated N.J.S.A. 40A:14-147.

The Director issues a complaint on Crandall's allegations that PBA Local 134 refused to accept Crandall's grievance because Crandall was not a PBA member.

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Appearances:

For the Sheriff,
Edwin C. Eastwood, Jr., attorney
(Peter A. Scandariato, of counsel)

For PBA Local No. 134,
Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

For the Charging Party,
A.J. Fusco, Jr., attorney

DECISION

On March 11, 1996, Donald Crandall filed an unfair practice charge with the Public Employment Relations Commission against the Bergen County Sheriff and P.B.A. Local 134. Crandall alleges that the Sheriff violated subsections 5.4(a)(1), (3) and (7)^{1/} of the

^{1/} These subsections prohibit 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. (3) Discriminating in

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by denying him a disciplinary hearing for a three-day suspension.

Crandall alleges that Local 134 violated subsections 5.4(b)(1), (3) and (5)^{2/} of the Act by refusing to grieve the employer's denial of a disciplinary hearing. A Commission staff agent conducted an exploratory conference concerning these matters on May 26, 1996 and position statements were received from the parties by July 1, 1996.

On January 11, 1996, Officer Donald Crandall was served with a notice of minor disciplinary action for an incident that occurred on November 25, 1995. The Sheriff alleged that while home from work on injury leave, Crandall was observed performing physical activity that was not authorized by his doctor. Crandall was charged with violating both the Bergen County Sheriff's Department Rules and Regulations and the New Jersey Administrative Code.

1/ Footnote Continued From Previous Page

regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

2/ 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. (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. (5) Violating any of the rules and regulations established by the commission."

On January 13, 1996, Crandall requested a hearing on the charges and on January 18, 1996, Crandall's attorney requested a hearing in accordance with N.J.S.A. 40A:14-147 and N.J.A.C. 4A:2-2.6. On January 31, 1996, the Undersheriff denied Crandall's request for a hearing, stating that Crandall was served with a notice of minor disciplinary action and that N.J.A.C. 4A:2-2.6, which governs major disciplinary action, was not applicable. Crandall was suspended for three days without pay on January 13, 14 and 15, 1996. On February 1, 1996, Crandall's attorney again requested a hearing. The Sheriff's Office did not respond to this request.

On February 29, 1996, Crandall attempted to give Local 134 representative Richard Wilsterman a grievance regarding this matter. Crandall alleges that Wilsterman refused to take the grievance because Crandall was not a member of Local 134.

Crandall alleges that the Sheriff violated the Act by failing to provide him with a hearing for minor discipline resulting in a three-day suspension. The employer states that its practice is not to grant hearings for minor discipline, which is defined in N.J.A.C. 4A:2-3.1(a) as suspensions of five working days or less. Crandall also alleges that the employer denied him his due process rights and the right to confront his accuser.

Crandall also alleges that he received the notice of minor discipline 49 days after the incident, in violation of N.J.S.A.

40A:14-147, which provides in pertinent part that:

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based.

Crandall asserts that Town of Harrison, P.E.R.C. No. 93-111, 21 NJPER 247 (¶26157 1995) supports his contention that the Commission has jurisdiction over N.J.S.A. 40A:14-147. In Harrison, the Commission found that procedures surrounding a disciplinary charge are negotiable to the extent they do not conflict with the express provisions of N.J.S.A. 40A:14-147; Borough of Hopatcong, P.E.R.C. No. 95-73, 21 NJPER 157 (¶26096 1995); Town of Harrison, P.E.R.C. No. 95-111, 21 NJPER 247 (¶26157 1995).

Harrison does not support the contention that an alleged violation of N.J.S.A. 40A:14-147 constitutes a violation of the New Jersey Employer-Employee Relations Act. The Commission has no jurisdiction over Crandall's allegations against his employer. Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985). He has not alleged that the Sheriff has treated him differently than other employees by failing to grant him a hearing for minor discipline or that the Sheriff denied him a hearing because he was not a member of Local 134. Therefore Crandall has failed to alleged facts that, if true, would show that the Sheriff violated the Act by denying Crandall a disciplinary hearing for his three day suspension.

Crandall alleges that on February 29, 1996, Local 134 representative Richard Wilsterman refused to process his grievance regarding the minor discipline because Crandall is not a member of Local 134. Crandall contends that Local 134 was responsible for processing his grievance to arbitration and that its refusal to do so violates the Act.

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has 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, discriminatory, or in bad faith.' Vaca v. Sipes, 386 U.S. 171, 190 (1967) (Vaca).

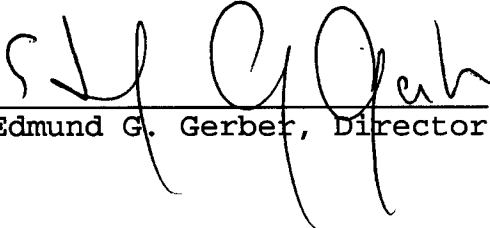
A union should attempt to exercise reasonable care and diligence in investigating, processing and presenting grievances; and it should exercise good faith in determining the merits of the grievance. Mackaronis and Middlesex Cty. and NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd. App. Div. Docket No. A-1455-80 (4/1/82), certif. den. 91 N.J. 242 (1982); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); and In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

Crandall states that he was served with the notice of minor discipline on January 11, 1995, and that he asked Wilsterman to process his grievance on February 29, 1996. Section 15.7 of the parties' grievance procedure states that "Grievances must be initially filed within 30 days of the incident, or the employees' knowledge of such incident." Crandall's grievance was therefore untimely on the date he asked Wilsterman to process it.

Although Crandall's grievance was apparently untimely so Local 134 may have been unable to process it, the allegation that Local 134 refused to accept the grievance because Crandall was not a union member, if true, may constitute an unfair practice. Therefore, I will issue a complaint and notice of hearing as to this allegation.

The Commission's complaint issuance standard has not been met as to all other allegations in Crandall's charge. Accordingly, the balance of the allegations of this charge are dismissed.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 23, 1996
Trenton, New Jersey