

D.U.P. NO. 94-38

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

In the Matter of

CIVILIAN EMPLOYEES ASSOCIATION OF
MORRIS COUNTY,

Respondent,

-and-

Docket No. CI-94-2

SANDRA E. MOORE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the Civilian Employees Association of Morris County violated its duty of fair representation towards Sandra Moore. The Director finds that many of Moore's allegations concern events from 1988 to 1992, and are therefore untimely.

The Director also dismisses Moore's timely allegation concerning her ineligibility for a retroactive raise after she was terminated. The Director holds that it is not unlawful for an employee representative to negotiate an agreement which restricts retroactive benefits to current unit employees.

Finally, the Director finds that Moore's allegations that the Association "did not assist her" when she was terminated are vague, unsubstantiated and do not rise to the level of an unfair practice.

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Appearances:

For the Respondent,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

For the Charging Party,
Sandra E. Moore, pro se

REFUSAL TO ISSUE COMPLAINT

On July 26 and August 20, 1994, Sandra E. Moore filed an unfair practice charge and an amendment with the Public Employment Relations Commission against the Civilian Employees Association of Morris County. Moore alleges that the Association violated subsections 5.4(b) (3) and (4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. On

^{1/} These subsections prohibit 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; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

October 25, 1993, the Association filed a position statement denying that it violated the Act and urging dismissal of the charge.

Moore worked for the Morris County Sheriff's department from 1988 to 1993. She was terminated on February 26, 1993 because of a budget cut. She alleges that the Association did not represent her in several situations, including the issue of her eligibility for retroactive pay after she was terminated. She seeks a refund of her 1992 Association dues.

Moore alleges that when she was suspended from work for three days in 1990, she didn't hear from the Association and its president never returned her calls. Moore further alleges that she was promised a pay increase for learning new job skills in 1992, but never received it. Moore also states that the County changed her job "off and on" through 1992, including a transfer to the commissary that she disliked. She talked to an Association representative, "...but never got a response from anyone."

Moore states that during medical leaves in 1988 and 1991, the Association did not contact her or send her a card or flowers. In 1992, Association members approved the use of dues for a memorial contribution and to send flowers to an ill member. Moore contends that the Association never accorded her the same treatment when she was ill.

In 1992, Moore had three stress and angina attacks caused by covering another employee's job. Two resulted in hospitalization. When she returned to work, the employer wanted her

to cover for another employee on maternity leave. Moore alleges that she did not hear from the Association while she was in the hospital and that it never came to her aid for these incidents.

Moore alleges that employer representatives promised her a retroactive raise when she was terminated in 1993, which she did not receive. Moore asserts that the Association failed to represent her when she sought the contractual pay increase that was retroactive for other employees to January 1992.

Moore provided two letters regarding the retroactive raise issue. A June 16, 1993 letter from Chief Kranz advises Moore that she is ineligible for retroactive pay according to the new contract. He acknowledges discussing the issue with her, but states that any prediction he made concerning her eligibility for retroactive pay was contingent upon contract terms.

A June 30, 1993 letter from Sheriff Rochford reiterates Moore's ineligibility for retroactive pay based upon the Association's contract. Article XXI of the Association's 1990-1991 agreement with the employer contains the following language:

...Further, the provisions of this agreement shall not apply to any employee who has left the employ of the office of the Sheriff; Morris County prior to the date of signing of this agreement by both parties...

The successor agreement was ratified on May 28, 1993 and contains an identical clause. Rochford states when Association representatives spoke to him about Moore's eligibililty for retroactive pay, he responded that the contract restricted retroactive pay to those

currently employed. The Association advised Moore that the clear and unambiguous language of the agreement applied and that there were no grounds to pursue a retroactive pay claim for a former employee. Although Rochford invited the Association to send a letter indicating the reasons, including any contractual provisions, that would require him to give Moore retroactive pay, the Association did not pursue the matter further.

Moore states that when she was terminated, she was not certified in her position of senior clerk. She contends that she should not have been terminated because there were other uncertified employees with less seniority who were not terminated. She claims that she was not given the opportunity to move into another position to become certified.

Finally, Moore states that the Association "did not assist" her when she was terminated. She alleges that she reported the incident to Association representative Sarah Henderson, who "did not follow through with the complaint". Moore also alleges that she contacted then Association President James Grissom "more than once regarding this problem."

The Association states that Moore never requested representation when she was terminated and that she did not contact it for assistance until five months later. The Association also states that Moore held a civil service position and that she therefore would have received a 45 day notice of termination from the Department of Personnel. The Association contends that Moore

did not contact it during or after the 45 day notice period to request representation regarding the discharge and did not request information on alternatives or benefits available to her. It urges dismissal of the charge.

The Commission is precluded from issuing a complaint where a charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A.

34:13A-5.4(c) provides:

that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented.

Moore filed this charge on July 26, 1993. Many of her allegations are from 1988 to 1992, and are therefore untimely. However, even if timely, these allegations do not rise the level of an unfair practice. Moore misperceives the Association's duty of fair representation. A majority representative is responsible for negotiating a collective agreement on behalf of unit employees and fairly administering that agreement. Majority representatives must represent the interests of all unit members without discrimination. N.J.S.A. 34:13A-5.3. 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." 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).

None of Moore's allegations implicate the Association's duty of fair representation towards its members. Moore's allegations concerning the Association's lack of attentiveness when she had various medical problems do not constitute arbitrary, discriminatory or bad faith conduct. Moore's untimely allegations that the Association did not contact her regarding both her three day suspension and her lack of additional pay for bookkeeping work are also not unfair practices. These allegations are vague, and Moore does not claim that she asked the Association to take any specific action on her behalf.

Moore's timely allegations concern the Association's conduct related to her termination, including the issue of her eligibility for a retroactive raise after she was terminated. Moore's allegations that the Association "did not assist" her when she was terminated are vague and unsubstantiated. Moore states that the Association did not follow through with an unspecified complaint. She does not assert that she asked the Association to file a grievance on her behalf or take any other specific action regarding her termination. Although Moore contends that she should have been retained over other uncertified employees with less seniority, she does not allege that she requested the Association to take any specific action regarding this claim. Additionally, disputes relating to civil service classification and seniority are properly filed with the Department of Personnel, and are not within the jurisdiction of this Commission. These vague allegations do not rise to the level of an unfair practice.

Moore also believes that she should have obtained a retroactive raise after she was terminated. A majority representative has the sole right to negotiate a contract for all unit employees, although that right

...must always be exercised with complete good faith, with honesty of purpose and without unfair discrimination against a dissident employee or group of employees. Lullo v. IAFF, 55 N.J. 409 (1970), 427, 428.

Here, the Association did not appear to act inconsistently with the standard for the duty of fair representation for contract negotiations. In Ford Motor Co. v. Huffman, 346 U.S. 330 (1953), the Court stated:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. Ford Motor Co., at 338.

Absent evidence of bad faith or fraud, unions may make compromises which adversely affect some members of a negotiations unit and result in greater benefits for other members. The fact that a negotiated agreement results in less than complete satisfaction for one member of the unit does not establish a breach of the union's duty of fair representation. Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); Lawrence Tp. PBA,

Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15073 1983); Union City and F.M.B.A., P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982); Hamilton Tp. Ed. Assn., P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978).

While Moore is unhappy that the Association did not secure retroactive raises for former employees, the Association's actions do not violate the Act. It is neither uncommon nor unlawful for an employee representative to negotiate an agreement which restricts retroactive benefits to current unit employees. Mercer Cty. (Prettyman), D.U.P. No. 92-19, 18 NJPER 297 (¶23126 1992).

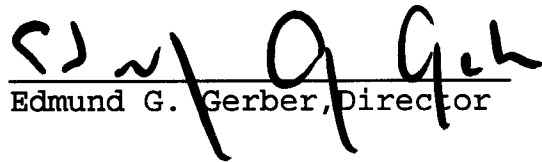
Moore also alleges that the Association did not assist her in obtaining a retroactive raise after she was terminated. The letters Moore attached to her charge indicate that she attempted to resolve this issue herself with both Chief Kranz and Sheriff Rochford.^{2/} However, Sheriff Rochford's letter indicates that the Association did contact him to discuss Moore's eligibility for retroactive pay. Rochford pointed to the contract clause restricting retroactive pay to current employees and asked the Association to send him a letter indicating the reasons, including any contractual provisions, that would require him to grant Moore retroactive pay. Moore believes that the Association's lack of response to Rochford constitutes an unfair practice. However, in

^{2/} Moore also alleges that Rochford and Kranz represented that she was eligible for a retroactive raise after she was terminated. However, the Association cannot be held responsible for an employer representative's promise that such a benefit would be received. Sayreville Municipal Supervisors Assoc., D.U.P. No. 94-3, 19 NJPER 430 (¶24195 1993).

the face of explicit contract language prohibiting former employees from receiving retroactive raises, it appears that even if the Association had responded, that there would have been no basis to secure Moore the retroactive raise she sought.

Based upon the foregoing, I conclude that the Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1. Accordingly, I decline to issue a complaint and dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 12, 1994
Trenton, New Jersey