

D.U.P. No. 2009-11

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

In the Matters of

COUNTY OF HUDSON,

Respondent/Public Employer,

-and-

Docket No. CI-2009-025

HAMIDA B. KONECKO/LATONGIA A. TAYLOR,

Charging Parties.  
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AFSCME COUNCIL 52  
(FOR AFSCME LOCAL 2306),

Respondent/Employee Representative,

-and-

Docket No. CI-2009-026

HAMIDA B. KONECKO/LATONGIA A. TAYLOR,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by Hamida Konecko and Latongia Taylor against Hudson County and AFSCME Council 52. The Director finds that the individuals do not have standing to assert an a(5) or b(3) violation. The Director noted that an individual employee may 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. The Director found no breach of the duty of fair representation since the majority representative does not have a duty to process every grievance to arbitration and there was no allegation that the union's conduct was arbitrary, discriminatory or in bad faith.

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Appearances:

For the Respondent/Public Employer,  
(Louis C. Rosen, attorney)

For the Respondent/Employee Representative,  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,  
attorneys  
(Sidney H. Lehmann, of counsel)

For the Charging Parties,  
Hamida B. Konecko/Latongia A. Taylor, pro se

REFUSAL TO ISSUE COMPLAINT

On February 11, 2009, I issued a letter dismissing unfair practice charges filed by Hamida Konecko and Latongia Taylor against their majority representative, AFSCME Council 52

(AFSCME), and their employer, Hudson County (County). The charge against AFSCME alleges a violation section 5.4b(3)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq (Act), by its refusal to enforce timelines set forth in the respondents' collectively negotiated grievance procedure. The charge against the County alleges that it violated section 5.4a(5)<sup>2/</sup> of the Act, by refusing to process their grievances contesting work assigned to them outside of their Civil Service titles.

I wrote that the charge filed against AFSCME alleged no facts suggesting that it violated the duty of fair representation or that its "failure or refusal to advance the matter to the next contractual step was for arbitrary, discriminatory or capricious reasons." I wrote that the charge "concern[ed] only dissatisfaction with a January 12, 2009 written grievance determination at step 3." I also wrote that only a public

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<sup>1/</sup> 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."

<sup>2/</sup> 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."

employer has legal standing to allege that a majority representative has violated 5.4b(3).

I also dismissed the charge filed against the County, writing, "[n]o facts suggest that the employer violated any protected rights under the Act [and], the County admittedly issued a grievance determination at step 3, thereby fulfilling an obligation to the majority representative."

On February 17 and 26, 2009, Konecko and Taylor wrote a letter to the Commission, objecting to the dismissal of their charges, together with copies of the charges and attachments. On February 27, 2009, the Commission's Deputy General Counsel wrote to the charging parties, advising that their correspondence would be treated as a motion to the Director to re-open their case, pursuant to N.J.A.C. 19:4-1.5.

On March 5, 2009, I wrote to the parties, confirming that the charges were referred to me for reconsideration and providing them the opportunity to file letters setting forth their positions or amendment(s). On March 13, 2009, the County filed a letter, asserting that the substance of the charge concerns a Civil Service matter and/or an arbitrable contractual dispute, neither of which are appropriate before the Commission. Neither AFSCME nor the charging parties filed a response.

On June 19, 2009, charging parties sent an email to the Commission, "adding additional information to [their] unfair practice charges." The charging parties allege that the County

is "attempting to harass" them by requiring them to commence a Civil Service process, which would negate the Commission's jurisdiction over the instant charges. The charging parties do not specify to which subsection of the Act the "additional information" pertains, but state that the County's requirement is "a blatant act of bad faith."

The Commission has authority to issue a complaint where it appears that the charging parties' 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 standard has not been met, I will decline to issue a complaint. N.J.A.C. 19:14-2.3. Here, I find that the complaint issuance standard has not been met.

On November 19, 2008, Konecko and Taylor filed separate grievances alleging that they were working out-of-title in violation of the parties' collective negotiations agreement. Konecko amended her grievance on November 23, requesting additional remedies for the alleged violation.

The parties' collective negotiations agreement provides a four-step grievance procedure. By that procedure, the grievance is first discussed with the grievant's immediate administrative supervisor. If the dispute is not resolved, it can be appealed to the division chief or his/her designee. The personnel director or his/her designee hears the grievance at Step 3, and

provides a "written answer." The final step is binding arbitration and that option is reserved exclusively to the County or the union.

On December 15, 2008, County Personnel Officer Brian Lonergan informed AFSCME and the charging parties that a grievance hearing was scheduled for December 18 at 9:00 a.m. On December 16, AFSCME representative Carole Lanni wrote a letter to Konecko and Taylor, advising of the grievance hearing date and time.

Lonergan conducted the grievance hearing on December 18, 2008. Konecko, Taylor, Lanni, AFSCME President Roger Quintana, Division Head of Work Force Development Robert Martinovich, and Division of Work Force Development Administrative Supervisor Anthony Paul were present at the hearing.

On January 12, 2009, Lonergan issued a written decision, denying the grievance. The decision sets forth a list of attendees, a summary of the grievances, the employer's position, analysis and decision. Lonergan wrote that the grievance was denied; that the duties performed by Konecko and Taylor are not subject to the grievance procedure. AFSCME declined to arbitrate the grievances.

#### ANALYSIS

A violation of N.J.S.A. 34:13A-5.4a(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. Individual employees normally do not have standing to assert an a(5) violation because 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 518 (¶10268 1979).

N.J.S.A. 34:13A-5.3 provides in part:

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 interests of all such employees without discrimination and without regard to employee organization membership.

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the U.S. Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court 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. [Id. at 190, 64 LRRM 2376]

Vaca concerned the refusal of a union to process a grievance to binding arbitration. The Court wrote:

. . . Nor do we see substantial danger to the interests of the individual employee if his statutory agent is given the contractual power honestly and in good faith to settle grievances short of arbitration . . . [386 U.S. 192, 64 LRRM 2377]

New Jersey has adopted the Vaca standard in deciding fair representation cases arising under the Act. See Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); See also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Saginario v. Attorney General, 87 N.J. 480 (1981); OPEIU Local 153 (Johnstone), P.E.R.C. No 84-60, 10 NJPER 12 (¶15007 1983).

The charge alleges no facts indicating that AFSCME acted arbitrarily, discriminatorily or in bad faith when it declined to pursue the grievances to arbitration. The grievances were processed by AFSCME, the majority representative, through Step 3 of the contractual grievance procedure. No facts suggest that the quality of that representation implicated a possible violation of AFSCME's duty.

Under these circumstances and applicable law, I must, therefore, find that Konecko and Taylor have no legal standing to allege that their employer, the County, violated 5.4a(5) of the Act.



I dismiss that allegation. N.J. Turnpike Authority; Jersey City College.

The Commission has also held that individual employees do not have standing to assert a 5.4b(3) violation. See 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 274 (¶30116 1999); CWA Local 1034 and Renaldo A. King, D.U.P. No. 2004-2, 29 NJPER 367 (¶113 2003); State of New Jersey (Hagedorn) and Knapp, D.U.P. No. 99-17, 25 NJPER 311 (¶ 30132 1999).

N.J.S.A. 34:13A-5.4b(3) prohibits employee organizations, their representatives or agents from "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" (emphasis added). The majority representative's duty to negotiate in good faith extends only to the public employer. Accordingly, I find that Konecko and Taylor lack standing to assert a violation of 5.4b(3) of the Act. That allegation is also dismissed.

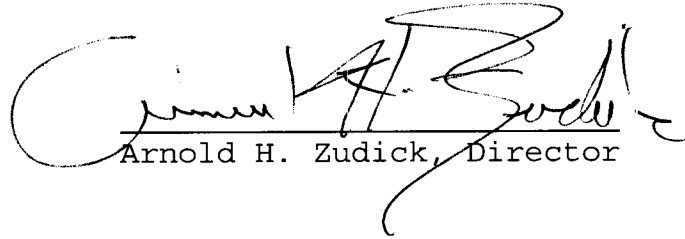
Furthermore, the charging parties allegation that the County's requirement to commence a Civil Service process is "bad faith" and would negate the Commission's jurisdiction over the instant charges is unsubstantiated. The Commission and Civil Service are separate entities with separate and distinct jurisdictions. Civil Service processes do not "negate" this Commission's jurisdiction.

Based upon the above findings and law, I conclude there is insufficient basis to issue complaints in these matters.

ORDER

The unfair practice charges are dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Arnold H. Zudick, Director

DATED: June 25, 2009  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by July 6, 2009.