

D.U.P. NO. 2023-28

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

In the Matter of

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 334,

Respondent,

-and-

Docket No. CI-2022-015

JUAN MENDOZA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses in part an unfair practice charge filed by Juan Mendoza against the Policemen's Benevolent Association, Local 334 (Local 334). The charge, as amended, alleges that Local 334 committed unfair practices by filing retaliatory union charges against Mendoza on May 24, 2021, and suspending Mendoza from the union on August 13, 2021 and by not processing a grievance on Mendoza's behalf despite his requests for assistance. The Director dismisses the claims pertaining to Mendoza's suspension, but will issue complaint for the section 5.4b(1) claim that Local 334 violated its duty of fair representation by not processing Mendoza's grievance.

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Appearances:

For the Respondent,
Detzky, Hunter & DeFillippo, attorneys
(Stephen B. Hunter, of counsel)

For the Charging Party,
(Juan Mendoza, pro se)

PARTIAL REFUSAL TO ISSUE COMPLAINT

On January 11, 2022 and February 25, 2022, Juan Mendoza (Mendoza) filed an unfair practice charge and an amended charge, respectively, against the Policemen's Benevolent Association, Local 334 (Local 334). The charge, as amended, alleges that Local 334 committed unfair practices by filing retaliatory union charges against Mendoza on May 24, 2021, and suspending Mendoza from the union on August 13, 2021 and by not processing a grievance on Mendoza's behalf despite his requests for assistance. Mendoza contends that the alleged conduct by Local

334 violates sections 5.4b(1), (2), (3), (4), and (5)^{1/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq.

On April 18, 2022, Local 334 filed and served upon Mendoza a position statement in which it denied any and all alleged violations of the Act. Local 334 contends that Mendoza was suspended only after being afforded all of the due process protections provided by the union's constitution and bylaws. Further, Local 334 asserts that assuming the allegations are true, it is not required to process and arbitrate every grievance.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute unfair practices on the part of the respondent. 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/} These provisions 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 adjustments of grievances; (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; (5) Violating any of the rules and regulations established by the commission."

standard has not been met, I will decline to issue a complaint.

N.J.A.C. 19:14-2.3.

I find the following facts.

Mendoza is employed by the County as a Sheriff's Officer and is represented by Local 334, the recognized majority representative for all non-supervisory Sheriff's Officers employed by the County. Local 334 and the County are parties to a contract ("CNA") effective January 1, 2016 through December 31, 2020. The grievance procedure of the CNA ends in binding arbitration. The parties recently reached a successor agreement.

On October 21, 2020, Mendoza filed a prior unfair practice charge docketed as CI-2021-008. He alleged that he had been president of PBA Local 334 until January 21, 2020, when he and the other officers of Local 334 were suspended from operating Local 334 and Local PBA Local 109 was assigned to administer the affairs of Local 334. Mendoza filed the charge against Local 109 claiming that Local 109's officers restricted him and the other officers from collective negotiations and contract administration and that they did not represent him fairly. This prior charge was dismissed as untimely on May 12, 2021.

According to the instant charge, on May 10, 2021, "[f]inancial audit reports were released to the PBA displaying misuse of union finances by certain members of the union." The amended charge does not allege any facts indicating that Mendoza

was involved in this release of information, or that Local 334 mistakenly believed Mendoza was involved.

According to the instant charge, on May 24, 2021, internal union charges were filed against Mendoza. Mendoza provided a copy of an August 13, 2021 email from Local 334 that provided an update to membership about those charges. The email advised that the NJSPBA Judiciary Committee held a hearing on June 15, 2021, to address several issues, including the internal charges brought against Mendoza by Michael Freeman for allegedly violating several by-laws. It explains that the Committee issued its decision on July 27, 2021, in which it unanimously voted to suspend Mendoza for three years.^{2/} Local 334's email concluded by reminding the membership that "you may not share PBA information or discuss PBA issues with a nonmember." During his suspension, Local 334 has excluded Mendoza from union meetings, negotiations, and communications.

Mendoza alleges that he sustained a service-connected injury on December 15, 2021. On January 1, 2022, Mendoza requested assistance from Local 334 to file a grievance on his behalf that the County violated Article XVIII of the parties' CNA by charging

^{2/} The email also explained that Mendoza had thirty days to appeal the Committee's July 27, 2021 decision. It is unclear from the amended charge if Mendoza filed a timely appeal.

his sick leave for absences related to his service-connected injury.

Article XVIII of the CNA provides, in relevant part:

C. Members covered under this Agreement will be paid their regular straight time rate of pay for a period not in excess of 52 weeks, for each new and separate service-connected sickness, injury or disability, commencing on the first day of every such service-connected injury or disability. Temporary disability benefits paid by Workers' Compensation Insurance (WCI) to the member will be paid over to the County. Intentional self-inflicted injuries or those service connected injuries or disabilities resulting from gross negligence shall not be covered by the provision of this Section. Any member who accepts outside employment where physical demands are equal to or greater than his or her normal police activities during the periods of service connected sickness, injury or disability leave shall be deemed physically fit to return to duty and shall be subject to loss of service-connected sickness, injury or disability pay. When such sickness, injury or disability leave is granted, the member shall not be charged with any sick leave time for such time lost due to sickness, injury or disability.

Local 334 did not file a grievance on Mendoza's behalf regarding the County's alleged violation of Article XVIII of the CNA. However, on February 2, 2022, Mendoza filed his own grievance after not receiving a response from Local 334. Article IX of the CNA governs the parties' grievance arbitration procedure. Section E provides in pertinent part that "[n]othing herein shall prevent any employee from processing his own grievance, provided a PBA Representative may be present as [sic] observer at any hearing on the individual's grievance." In a

December 5, 2022 letter, Local 334 counsel advised that the grievance may still be pending.

ANALYSIS

As a preliminary matter, I dismiss the 5.4b(2), (3), and (4) claims because Mendoza, as an individual, lacks standing to pursue these claims. See N.J. State PBA & PBA Local 199 (Rinaldo), D.U.P. No. 2011-4, 38 NJPER 53 (¶7 2010), aff'd P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011) (Commission agrees with the Director of Unfair Practices that "an individual employee does not have standing to assert a violation of the employer's right to select its own negotiations or grievance representatives . . ." under section 5.4b(2)); Essex Cty. (Miller), D.U.P. No. 2018-12, 44 NJPER 475 (¶132 2018), aff'd P.E.R.C. No. 2019-16, 45 NJPER 195 (¶50 2018) (holding individual employees do not have standing to pursue a section 5.4b(3) claim); Hudson Cty. (Corrections), D.U.P. No. 2005-5, 30 NJPER 396 (¶128 2004) (citing CWA Local 1034 (King), D.U.P. No. 2004-2, 29 NJPER 367 (¶113 2003)) (individual employees do not have standing to pursue a section 5.4b(4) claim). I also dismiss the section 5.4b(5) claim because the charge does not allege that any rule or regulation of the Commission was violated. See Hudson Cty. (Corrections), 30 NJPER 396 (citing Burlington Tp. Bd. of Ed. (Horner), D.U.P. No. 97-31, 23 NJPER 152 (¶28073 1997)).

Turning to the remainder of Mendoza's claims, section

5.4b(1) of the Act regulates the relationship between a union and the employees it represents. This section provides that "employee organizations, their representatives or agents are prohibited from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act." N.J.S.A. 34:13A-5.4b(1). The Commission has recognized two types of claims a unit employee may bring against his or her majority representative under section 5.4b(1). One of the recognized claims is where a majority representative arbitrarily, discriminatorily, or invidiously suspends or expels a negotiations unit employee seeking to participate in majority representative affairs affecting his or her employment conditions. N.J. State PBA & PBA Local 199 (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011); In re Probation Ass'n, 442 N.J. Super. 185, 195-96 (App. Div. 2015). The other is where a majority representative violates its duty to represent its members fairly in contract negotiations and grievance processing. N.J. State PBA & PBA Local 199 (Rinaldo), 38 NJPER 56. Mendoza has alleged both types of claims in his charge, and I address each in turn.

Suspension and Exclusion from Union Participation

Mendoza alleges that Local 334 committed an unfair practice by suspending him from the union. The standard for testing the propriety of an employee organization's decision to suspend,

expel, or deny membership is whether the employee organization's actions were arbitrary, capricious, or invidious. In re Probation Ass'n, 442 N.J. Super. at 195-96; CWA Local 1037 (Schuster), P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 1985); FMBA Local 35 (Carragino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983); Council No. 5, NJCSA (Labriola), P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982); City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982); PBA Local 199 (Abdul-Haqg), P.E.R.C. No. 81-14,6 NJPER 384 (¶11198 1980).

Mendoza first claims that Local 334 suspended him from the union in retaliation for filing unfair practice charge CI-2021-008 against Local 109. However, Mendoza fails to provide specific factual allegations to support his retaliation claim or in any way explain why his prior charge contesting actions taken by Local 109 would lead to retaliation by Local 334. Instead, Mendoza merely asserts that the charge was used as "leverage." Accordingly, I cannot find a nexus between the filing of the charge against Local 109 and Mendoza's suspension by Local 334 to warrant the issuance of a complaint on this allegation. See UMDNJ & Teamsters Local 286, D.U.P. 82-31, 8 NJPER 240 (¶13104 1982) (dismissing unfair practice charge filed by a unit member against the majority representative where no nexus could be discerned between the factual allegations and the alleged violations of section 5.4b).

Similarly, Mendoza's claim that Local 334 suspended him to prevent him from addressing the alleged misuse of union funds is deficient because Mendoza has not alleged any facts whatsoever in support of this allegation. While he asserts financial audit reports had been released allegedly showing the misuse of funds by certain members, Mendoza fails to allege that he had any role in their disclosure or that membership mistakenly believed he was connected to the disclosure. As a result, this allegation is also conclusory and fails to meet the complaint-issuance standard. See City of Clifton & IBEW Local 1158, D.U.P. No. 2022-11, 19 NJPER 379 (¶86 2022) (citing Springfield Tp., D.U.P. No. 79-13, 5 NJPER 15 (¶10008 1978)) ("For the purposes of complaint issuance . . . an unfair practice charge must contain sufficient factual allegations, not conclusionary statements that the conduct of the majority representative is arbitrary, discriminatory, or in bad faith."); Borough of Kenilworth, D.U.P. No. 2004-4, 29 NJPER 419 (¶141 2003) ("it is not appropriate to issue a complaint on merely conclusory allegations").

With regard to the allegations that Local 334 violated the Act by excluding Mendoza from participating in union activities, the Commission "will not intercede in intra-union disputes unconnected to allegations and proof that an unfair practice has been committed." Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25 (¶32014 2000). Because Mendoza has failed

to set forth sufficient facts establishing that Local 334 committed an unfair practice by suspending him from the union, I decline to address Mendoza's alleged exclusion from union participation during his suspension as it is an intra-union matter.

Moreover, Mendoza's allegations contesting the union discipline are untimely. N.J.S.A. 34:13A-5.4c; Kaczmarek vs. N.J. Turnpike Auth., 77 N.J. 329 (1978). According to the amended charge, a member filed union charges against him on May 24, 2021. The instant charge was not originally filed until January 11, 2022. His prior unfair practice charge was also dismissed as untimely so Mendoza should have been aware of our six-month statute of limitations, and there are no facts indicating that he was prevented from timely filing.

For all of the reasons stated above, I find that Mendoza has failed to set forth sufficient facts to warrant the issuance of a complaint on allegations that Local 334 violated section 5.4b(1) of the Act by suspending him from the union and excluding him from union participation during his suspension.

Duty of Fair Representation

Mendoza asserts that Local 334 breached its duty of fair representation by refusing to process a grievance on his behalf after the County allegedly violated the CNA by charging him sick

leave for absences incurred after he sustained an alleged service-connected injury. According to the CNA between Local 334 and the County, employees shall not be charged with any sick leave for time lost due to a service-connected injury. Mendoza avers that he asked Local 334 to file a grievance on his behalf regarding the alleged contract violation but received no response. Then, on February 2, 2022, Mendoza filed his own grievance, but Mendoza maintains that Local 334 has continued to ignore his grievance.

The Supreme Court of the United States has held that “[a] breach of the statutory duty of fair representation occurs when a union’s conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.” Vaca v. Sipes, 386 U.S. 171, 190 (1967). To establish a breach of the duty of fair representation, the claimant must “adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives.” Amalgamated Ass’n v. Lockridge, 403 U.S. 274, 301 (1971). New Jersey courts and the Commission have adopted the Vaca standard in deciding fair representation cases arising under the Act. See Lullo v. Int’l Ass’n of Fire Fighters, 55 N.J. 409, 427-28 (1970); Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486, 491 (App. Div. 1976); Saginario v. Attorney General, 87 N.J. 480 (1981); Jersey City Housing Auth., P.E.R.C. No. 2015-70, 41 NJPER 477 (§148

2015), aff'd 43 NJPER 255 (¶77 App. Div. 2017); OPEIU Local 133, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). In examining a duty of fair representation claim, the majority representative must be afforded a wide range of reasonableness in serving the unit it represents. PBA Local 187, P.E.R.C. No. 2005-78, 31 NJPER 173 (¶70 2005) (citing Belen, 142 N.J. Super. at 490-91).

The duty of fair representation does not require a union to file every grievance a unit member asks it to submit. Id. (citing Carteret Ed. Ass'n, P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997)); N.J. Tpk. Auth. (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981) (union's decision not to arbitrate was based on good faith belief that grievance lacked merit); Camden Cty. Coll. (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Fair Lawn Ed. Ass'n (Solomons), P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984) (no violation where union in good faith refused to take grievance to arbitration since it lacked merit); N.J. Tpk. Employees Union, Local 194 (Kaczmarek), P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) (no breach of the duty of fair representation where the union decided that it could not win in arbitration). Rather, in handling grievances, unions must exercise reasonable care and diligence in investigating, processing, and presenting grievances; make a good faith determination of the merits of a grievance; and grant unit members equal access to the grievance

procedure and arbitration for similar grievances of equal merit. Middlesex Cty. (Mackaronis), 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). "Proof of union negligence, poor judgment, or even ineptitude" in grievance handling, alone, does not suffice to prove a breach of the duty of fair representation. N.J. Tpk. Auth. (Papajani), P.E.R.C. No. 2022-38, 48 NJPER 393 (¶90 2022).

Mendoza alleges that he sustained a service-connected injury on December 15, 2021 and was charged with sick leave for absences related to his injury. Further, the CNA explicitly provides that employees shall not be charged with sick leave for absences due to service-connected injuries. Therefore, accepting the alleged facts as true, i.e., that Mendoza suffered a service-connected injury and was charged sick leave for absences related to his injury, Mendoza's grievance appears to have arguable merit.

Despite this, Local 334 has not provided any reason whatsoever for its decision not to process Mendoza's grievance, despite his request for assistance. Instead, Local 334 merely proclaims that it is not required to process and arbitrate every grievance. While it is true that Local 334 is not required to arbitrate every grievance, see PBA Local 187, 31 NJPER 173, unions must nevertheless exercise reasonable care and diligence in investigating, processing, and presenting grievances.

Middlesex Cty. (Mackaronis), 6 NJPER 555. Here, however, Local 334 has not claimed to have exercised reasonable care in investigating or processing Mendoza's grievance, as is required under Commission precedent. For these reasons, I find that Mendoza has alleged sufficient facts to warrant the issuance of a complaint that Local 334 breached its duty of fair representation, in violation of section 5.4b(1) of the Act, by not processing his grievance.

ORDER

Accordingly, I will issue a complaint under separate cover only for the section 5.4b(1) claim that Local 334 violated the duty of fair representation by not processing Mendoza's grievance. I decline to issue a complaint on all of the remaining allegations in this charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Director of Unfair Practices

DATED: June 22, 2023
Trenton, New Jersey

This decision may not be appealed pre-hearing except by special permission to appeal from the Chair pursuant to N.J.A.C. 19:14-4.6. Any request for special permission to appeal due by June 29, 2023. See N.J.A.C. 19:14-2.3(c); N.J.A.C. 19:14-4.6(b).

Any appeal is due by June 29, 2023.