

D.U.P. NO. 2001-3

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

In the Matter of

TOWN OF WEST NEW YORK  
& PBA LOCAL NO. 88,

Respondent,

-and-

Docket No. CI-2000-2

RAYMOND SANCHO,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge against the PBA alleging a violation of the duty of fair representation finding that Charging Party lacked standing as he was no longer a public employee but a resignee when he requested the PBA to file a grievance on his behalf and when he subsequently filed the captioned matter. The Director also dismisses the charge as it relates to the Town because it alleges a mere breach of contract and Charging Party lacks standing.

D.U.P. NO. 2001-3

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

In the Matter of

TOWN OF WEST NEW YORK  
& PBA LOCAL NO. 88,

Respondent,

-and-

Docket No. CI-2000-2

RAYMOND SANCHO,

Charging Party.

Appearances:

For the Respondent/Township  
Murray, Murray and Corrigan, attorneys  
(David F. Corrigan, of counsel)

For the Respondent/PBA  
Loccke & Correia, attorneys  
(Joseph Licata, of counsel)

For the Charging Party  
Lauren B. Cohen, attorney

REFUSAL TO ISSUE COMPLAINT

On July 8, 1999, Raymond Sancho (Sancho or Charging Party) filed an unfair practice charge against the Town of West New York (Town) and the Guttenberg-West New York Policeman's Benevolent Association, Local 88 (PBA) alleging violations of the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (Act) specifically 5.4a(1)<sup>1/</sup> and 5.4b(1).<sup>2/</sup>

Sancho alleges that the Town unlawfully withheld payment for accrued sick days, holidays, compensatory time and vacation time (referred to collectively as "severance benefits"). He asserts that these severance benefits were provided for by the PBA collective negotiations agreement and were owed to him upon his resignation from the Town's employ in February 1999. Sancho alleges that the PBA violated its duty of fair representation by failing to initiate and process an appropriate grievance related to the Town's refusal to pay him severance benefits.

The PBA contends that Sancho lacks standing to assert a violation of the duty of fair representation as he was no longer a public employee when he requested the PBA to initiate and process his grievance. The Town contends that the charge relates to a purely contractual dispute and should be dismissed pursuant to State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Moreover, it contends that Sancho lacks standing as an individual to contest the interpretation of the contract.

---

<sup>1/</sup> This provision prohibits 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."

<sup>2/</sup> This provision prohibits 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."

The Commission has authority to issue a Complaint where it appears that the Charging Party's 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 may decline to issue a Complaint. N.J.A.C. 19:14-2.3.

By letter dated June 23, 2000, I advised the parties that I was inclined to dismiss the allegations of the charge. I told the parties that I was inclined to find that Sancho lacks standing to assert a violation of the duty of fair representation because he was no longer a public employee, and thus not subject to the provisions and protections of the Act, either at the time he requested the PBA to process his grievance or at the time he filed this unfair practice charge. Additionally, I advised that it appeared that Sancho has no standing or basis to assert a violation of the Act against the Town; and his claims against the Town amount to a mere breach of contract. I provided the parties with an opportunity to respond. Neither party responded. Based on the following, I find that the Commission's Complaint issuance standard has not been met.

Sancho was employed by the Town as a patrolman from July 26, 1990 to January 28, 1999. In 1998, he was indicted with several other officers on, among other charges, conspiracy in violation of 18 U.S.C. § 1951(a). The Town suspended Sancho pending the indictment.

On January 29, 1999, Charging Party plead guilty to the conspiracy charges in United States District Court. On January 28, 1999, one day before he entered his plea, Sancho resigned from his patrolman position with the Town.<sup>3/</sup>

After he resigned, Sancho sought severance benefits from the Town pursuant to Article XIX of the collective negotiations agreement between the Town and the PBA which provides, in relevant part:

The Employer agrees to pay any employee who shall resign, retire (subject to Article XIII) or be discharged, all monies due on the payday immediately following the termination of employment. Said pay shall include pro-rata vacation pay and cash in lieu of compensatory time due.

The Town refused to pay Sancho accumulated benefits in accordance with the foregoing provision.

In late February 1999, Sancho requested the PBA to initiate and prosecute a grievance contesting the Town's refusal to pay him in accordance with Article XIX. Sancho claims that PBA President Brian Fava advised him that since he was no longer an employee of the Town or a member of the PBA, the PBA could not initiate a grievance on his behalf.

Sancho also tried dealing directly with the Town. Following several requests and the exchange of correspondence, the

---

<sup>3/</sup> It is unclear from the charge and the parties' various position statements whether the resignation was an express condition of the plea.

Town's attorney advised Charging Party's counsel on June 9, 1999, that the Town refused to pay the severance benefits. The Town contends that Sancho forfeited contractual severance benefits due to the circumstances surrounding his resignation.

#### ANALYSIS

The claims against the PBA and the Town will be evaluated independently, on their merits. My finding regarding the claim against the PBA is not dependent on my finding regarding the claim against the Town, and vis-a-versa.

#### Charge Against the PBA

Sancho contends that the PBA violated its duty of fair representation because it refused to initiate and prosecute a grievance over the Town's refusal to pay Sancho's severance benefits in accordance with the parties' collective negotiations agreement. Sancho asserts that he requested the PBA to initiate appropriate proceedings against the Town in February 1999, when the Town failed to pay him severance benefits following his resignation.

N.J.S.A. 34:13A-3(d) states that a public employee is "...any person holding a position, by appointment or contract, or employment in the service of a public employer..." (emphasis added). N.J.S.A. 34:13A-5.3 states, in relevant part, that "[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..." (emphasis added). N.J.A.C. 19:14-1.1 provides that unfair practice charges alleging violations of N.J.S.A. 34:13A-5.4 may only be filed by public employers, public employees, employee organizations, or their representatives.

Since Sancho resigned on January 28, 1999, he was no longer employed by the Town or included in the negotiations unit. Thus, as of January 28, Sancho was no longer a public employee at the time he requested the PBA to file a grievance on his behalf. See PBA Local 245 (Maggio), D.U.P. No. 97-27, 23 NJPER 72 (¶28043 1996); Borough of Belmar, P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988) (retired police officers not public employees under the Act); Oakcrest-Absegami Teachers Ass'n (Butler), D.U.P. No. 97-35, 23 NJPER 261 (¶28125 1997) (non-unit member lacked standing to allege fair representation claim); Teamsters Local 866 (Mejia), D.U.P. No. 99-13, 25 NJPER 265 (¶30112 1999) (following resignation, public employee no longer had right to collective agreement).

Maggio is particularly instructive. In Maggio, the charging party (Maggio) was a police officer. Upon his retirement, he sought compensation for accumulated leave time and certain additional reimbursements. Maggio filed a grievance with the assistance of his PBA local. Ultimately, he requested the local to file for arbitration. The local refused to go to arbitration, claiming that it had no obligation to represent Maggio since he was retired and no longer a unit member. Maggio filed an unfair practice charge against the PBA alleging a breach of the duty of

fair representation. The Director of Unfair Practices held that Maggio, as a retiree, was no longer a public employee and, therefore, had no standing under N.J.A.C. 19:14-1.2 to file an unfair practice charge. The charge was dismissed.

Since Sancho resigned on January 28, 1999, he severed his relationship with both the Town and the PBA. He was no longer a public employee or a unit member when he requested the PBA to "initiate proceedings" on his behalf. The PBA has no duty under the Act to represent him. Accordingly, the PBA's refusal to "initiate proceedings" under these facts does not constitute an unfair practice and Sancho's charge against the PBA must be dismissed.

#### Charge Against the Town

The charge specifically states that the Town has "withheld Charging Party's pay for accrued vacation time, sick days, holidays and comp[ensatory] time upon [his] discharge from employment, in violation of the collective bargaining agreement, Article XIX" (emphasis added).<sup>4/</sup>

The recognition clause of the collective negotiations agreement, Article I, authorizes the PBA to act as the "exclusive negotiating agent for all police officers and detectives below the rank of sergeant...for the purpose of, but not limited to,

---

<sup>4/</sup> Charging Party does not allege that the Town's failure to pay severance benefits violates section 5.4a(5) of the Act. He only alleges that the Town's conduct violates section 5.4a(1).



collective negotiations, grievance procedure and all terms and conditions of employment." The grievance procedure at Article XXV provides a three-step grievance process which may only be initiated by the PBA. It culminates in final and binding arbitration. Arbitration, according to the terms of the procedure, may only be requested by the PBA, not its individual members.

Charging Party, as an individual member of the PBA, does not have standing to contest the interpretation or application of the PBA contract with the Town. Only the PBA, which negotiated and administered the contract, has standing to allege that a contractual requirement was not followed. See N.J. Turnpike Auth. (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp. 2d 101 (¶85 App. Div. 1981); 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); Burlington Cty., D.U.P. No. 95-16, 21 NJPER 23 (¶26013 1994) (individual unit member's charge alleging breach of contractual promotional clause dismissed); City of Brigantine, D.U.P. No. 92-14, 18 NJPER 215 (¶23097 1992).

Even if Charging Party had standing to claim that the Town breached the PBA agreement, violations of a collective agreement are ordinarily not litigated as unfair practices. Rather, issues of contract violations are appropriately presented through the contractual grievance procedure. In Human Services, 10 NJPER at 421, the Commission held that:

a mere breach of contract claim does not state a cause of action under section 5.4a(5) which may

be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

Sancho's claim against the Town appears, at most, to allege a mere breach of contract. Sancho claims he is entitled to certain severance benefits pursuant to the terms of the PBA agreement. The Town claims that severance benefits paid pursuant to Article XIX are contingent upon honorable service and discharge, not resignation under suspicion of criminal conduct. Even assuming that the Town's interpretation of the severance provision is incorrect, that does not amount to a violation of the Act. See City of Newark (Montgomery), P.E.R.C. No. 2000-57, 26 NJPER 91 (¶31036 2000), (the Commission held that, "[a] denial of contractual benefits to an individual employee is generally a breach of contract that does not rise to the level of an unfair practice). The Charging Party would have to pursue any breach of contract claim in another forum." (citation omitted); Franklin Tp. Bd. of Ed., D.U.P. No. 85-22, 11 NJPER 278 (¶16100 1985); East Brunswick Tp., D.U.P. No. 97-9, 22 NJPER 330 (¶27170 1996). The Commission will not substitute its jurisdiction for that of a grievance arbitrator. To do so would impose a different grievance forum from that contemplated, negotiated and reduced to writing by the Town and PBA.

Also, as noted and discussed above, Sancho is no longer a public employee and, consequently, does not have standing to file an unfair practice charge. N.J.S.A. 34:13A-5.3; N.J.A.C. 19:14-1.2. For the foregoing reasons the Commission's Complaint issuance

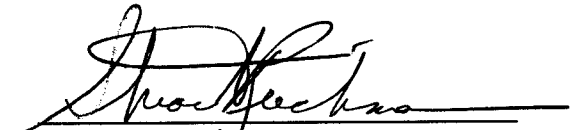
standard has not been met as the charge relates to the Town, therefore, it must be dismissed. N.J.A.C. 19:14-2.3.

Based on the foregoing, I find that Sancho lacks standing to assert a violation of the duty of fair representation because he was no longer a public employee, and thus not subject to the provisions and protections of the Act, either at the time he requested the PBA to process his grievance, or at the time he filed this unfair practice charge.<sup>5/</sup> Likewise, I also find that Charging Party has no standing or basis to assert a violation of the Act against the Town. The Commission's Complaint issuance standard has not been met as the charge relates to the PBA or the Town and must be dismissed. N.J.A.C. 19:14-2.3.

ORDER

The Unfair Practice Charge is dismissed.

By Order of the Director  
of Unfair Practices



Stuart Reichman

Dated: July 12, 2000  
Trenton, New Jersey

---

<sup>5/</sup> Charging Party is not precluded from pressing his breach of contract claim in another forum of proper jurisdiction. I make no finding concerning any such action.