

D.U.P. NO. 2001-1

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

In the Matter of

COUNTY OF MERCER and,
PBA LOCAL 167, and
STATE OF NEW JERSEY (CORRECTIONS),

Respondents,

-and-

Docket Nos. CI-99-58, CI-99-59
and CI-99-60

DAWN L. DEAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by a county corrections officer against her former employer, her majority representative, and the New Jersey State Department of Corrections. Charging Party alleged that her former Employer deprived her of an opportunity to attend the police training academy, resulting in her inability to attain permanent job status and her layoff. She further alleged that her majority representative did not properly represent her, and that the State Department of Corrections refused to hire her because of her race. The Director found that the Commission had no jurisdiction to review Charging Party's claim to permanent status or her layoff, or the Employer's cancellation of police training courses. The Director further found that we lack jurisdiction to review the claimed racial discrimination. Finally, no facts were presented to support a finding that the Union acted inconsistently with its duty of fair representation, since the Employee did not request that the Union take any action on her behalf.

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Appearances:

For the Respondent, County
Alfred B. Vuocolo, Jr., County Counsel

For the Respondent, State
David Collins, Deputy Director

For the Respondent, PBA
Szaferman, Lakind, Blumstein, Watter & Blader, of counsel
(David B. Beckett, of counsel)

For the Charging Party
Dawn L. Dean, pro se

REFUSAL TO ISSUE COMPLAINT

On February 10, 1999, Dawn L. Dean, a former employee of the Mercer County Detention Center, filed unfair practice charges against Mercer County (County) (Docket No. CI-99-58), the State of New Jersey, Department of Corrections (State) (Docket No. CI-99-60), and PBA Local 167 (PBA) (Docket No. CI-99-59) alleging violations of the New Jersey Employer-Employee Relations Act,

N.J.S.A. 34:13A-5.4a(3), (4), (5), ^{1/} and (6) ^{2/} against the State, County and the PBA, and 5.4b(6) ^{3/} against the PBA.

On March 15, 1999, we advised Dean that the charges did not comply with N.J.A.C. 19:14.3 in that the charges stated no facts or dates, but only recited the statute's provisions. In addition, the charges did not include proof of service on the Respondents. On May 7, 1999, Dean amended the charges to include facts, dates, and proof of service. However, no dates were supplied as to the allegations against the State.

Dean alleges in her charge against the County that it violated subsections 5.4a(3), (4), and (6) by cancelling a police training course she was scheduled to attend on May 14, 1998, after several prior cancellations, in violation of N.J.S.A.

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- ^{1/} Although Dean does not list 5.4a(5) on the portion of the charge form which requests identification of the provisions of the Act alleged to have been violated, she did recite this provision on the portion of the form which requests the charging party to set forth a narrative of her allegations.
- ^{2/} These provisions 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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."
- ^{3/} N.J.S.A. 34:13A-5.4b does not contain a subsection (6).

52:17B-69.^{4/} Dean claims that if she had attended the course within the first year of her employment, she would have attained permanent job status. Dean also alleges that she was laid off on September 11, 1999 as a result of not being a permanent employee. In the charge against PBA Local 167, Dean contends that it did not properly represent her, in violation of subsections 5.4a(3), (4), (5) and (6) and 5.4b(6). In her charge against the State, Dean alleges that the Department of Corrections discriminated against her by refusing to hire her because of her race, while hiring white applicants with poor motor vehicle records or criminal charges, in violation of 5.4a(3), (4), (5) and (6).

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.^{5/} By letter of June 19, 2000, I advised the

^{4/} N.J.S.A. 52:17B-69 provides that a probationary or temporary appointment as a police officer may be made for a total period not exceeding one year for the purpose of enabling a person seeking permanent appointment to take a police training course.

^{5/} On June 10, 1999, an exploratory conference was scheduled in this matter. Dean appeared for the conference but declined to participate, requesting rescheduling and additional time

parties that I did not intend to issue a Complaint on any of the allegations as set forth in the charge, and I explained the basis for that conclusion. I provided the parties with an opportunity to respond by June 29, 2000. No responses were filed. Based upon the following, I find that the Complaint issuance standard has not been met.

Dean was employed by the County as a corrections officer in its detention center from November 13, 1995 to September 11, 1998. While employed, Dean did not attend a police training course. The police training course was run by Camden County Corrections. Attendance was based upon employee seniority and space was limited. Dean was enrolled in the police training course, but the course was cancelled by the training facility.

On September 11, 1998, the County closed its detention center facility and Dean, together with 90 other corrections officers, was laid off from the County. Litigation filed by the PBA challenging the County's decision to close the center resulted in an agreement between the County and the State that the State would hire 60 of the 90 detention center officers at the State Department of Corrections. The PBA did not file a grievance on

5/ Footnote Continued From Previous Page

to retain an attorney. The conference went forward with the participation of representatives of the County and the PBA as well as the assigned Commission staff agent. The State was not represented. At the conference, the County and PBA representatives set forth their positions. Both denied that unfair practices had been committed.

behalf of the employees not rehired because it felt it had achieved the best possible accommodation for its members. Dean was one of those not hired. Among those not hired were permanent employees who had attended the police training course.

ANALYSIS

Neither Dean's allegations against the County nor those against the State raise facts implicating a violation of the Act. N.J.S.A. 34:13A-5.3 gives public employees the right to join, form and assist an employee organization, or to refrain from doing so. It also gives employees the right to organize and negotiate collectively. Section 5.4a(3) and (4) make it an unfair practice for an employer to discriminate against an employee because of the the employee's activities which are protected by the Act. Dean's charges do not assert that the County's conduct in laying her off or failing to send her for academy training was in retaliation for any activities protected by our Act. Nor does she allege that the State refused to hire her because of any protected activities. Absent allegations of retaliation or discrimination based upon activities protected by our Act, we have no jurisdiction to review Dean's claim to permanent status or her layoff. Bridgewater Tp.,

95 N.J. 235 (1984).^{6/} Appeals challenging whether a layoff was conducted in good faith are governed by the New Jersey State Department of Personnel. Atlantic City (Woolbert), D.U.P. No. 88-6, 13 NJPER 805 (¶18308 1987).

Moreover, we do not have jurisdiction over claims that an employer violated N.J.S.A. 52:17B-69 by failing to schedule police academy training courses.

In addition, Dean's allegation that the State failed to hire her is also not within our jurisdiction. This charge did not include any dates of the State's alleged actions. In the absence of timely allegations, I may decline to issue a Complaint.

N.J.S.A. 34:13A-5.4(c). However, even if Dean's charge against the State were timely filed, Dean has not alleged that the State's failure to hire her was motivated by any activities which are protected by the Act. Rather, Dean appears to be asserting she was not hired because of her race. We have no jurisdiction over alleged violations of employees' civil rights, including race discrimination. Elizabeth Ed. Ass'n (Jefferson), D.U.P. No. 95-33, 21 NJPER 245 (¶26154 1995); Marlboro Tp. Bd. of Ed. (Watson), D.U.P. No. 91-1, 16 NJPER 420 (¶21176 1990).

^{6/} In the Bridgewater matter, the New Jersey Supreme Court set the standards for determining whether an adverse personnel action violates subsections 5.4a(3) of the Act: the charging party must prove that activity protected by the Act was a substantial or motivating factor in the adverse action.

Dean has raised no facts supporting a finding of an a(5) violation against the State or the County. Moreover, Dean, an individual, has no standing to allege that the State and the County have refused to negotiate in good faith with the PBA. Essex County College, P.E.R.C. No. 87-81, 13 NJPER 75 (¶18034 1986); Local 32, OPEIU/Official Court Reporters (Yuhasz), D.U.P. No. 98-30, 24 NJPER 147 (¶29074 1998); Woodbridge Tp., D.U.P. No. 94-14, 19 NJPER 523 (¶24243 1993). Accordingly, based upon all of the above, I find that the allegations against the County and the State must be dismissed.

Dean alleges the PBA violated 5.4a(3), (4) and (5), and 5.4b(6) of the Act by "not representing [her]" in connection with the County's failure to send her to training and by failing to prevent her layoff. Sections 5.4a of the Act relate to employer violations, not employee organization violations. There is no 5.4b(6) section. However, even if proper provisions of the Act relating to employee organization unfair practices were cited, no facts are alleged setting forth a violation of the Act.

Section 5.3 of the Act empowers an employee representative to exclusively represent employees in the negotiations and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly. The standards in the private sector for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of

the statutory duty of fair representation occurs only when a union's conduct toward a member of the negotiations unit is arbitrary, discriminatory, or in bad faith. Id. at 191. That standard has been adopted in the public sector. 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); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

A majority representative does not have an obligation to file every grievance which a unit member asks it to submit. Carteret Ed. Ass'n (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed (Salter), P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986). Rather, an employee representative is obligated to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith in determining the merits of the grievance; and it must treat individuals equally by granting 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); Carteret Ed. Assn.; New Jersey Turnpike Employees Union Local 194 (Kaczmarek), P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

Here, there are no facts presented which would support a finding that the PBA acted inconsistently with its duty of fair representation owed to a unit member. In the absence of an employee's request that the union investigate and pursue a grievance on the employee's behalf, the union can hardly be held responsible for failing to initiate and pursue a grievance. N.J. Sports and Exposition Auth. (Nichols), D.U.P. No. 84-10, 9 NJPER 611 (¶14261 1983). Dean does not claim that she sought representation from the PBA in connection with enforcing any of her contractual rights.

The State Supreme Court has determined in State v. State Supervisory Assn., 78 N.J. 54, 84-90 (1978) that the decision to abolish positions is an exercise of inherent managerial prerogative and not arbitrable. See also, State of New Jersey (Dept. of Military and Veterans Affairs), D.U.P. No. 94-12, 19 NJPER 520 (¶24240 1993). Therefore, PBA had no obligation to pursue a grievance over the County's decision to lay off employees. Nevertheless, the PBA did initiate litigation over the layoff, which it eventually settled when the County arranged with the State to rehire two thirds of the laid off County officers. Subject to good faith and honesty of purpose, an employee representative has wide latitude to represent the interests of its unit members in the best manner it sees fit. Vaca. See also Ford Motor Company v. Huffman, 345 U.S. 330 (1953). Here, it appears the PBA agreed to a settlement which it felt was the best deal it

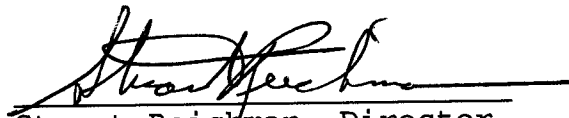
could obtain for its membership as a whole. I will not second-guess the PBA's judgment. Accordingly, I dismiss the allegations against PBA Local 167 as well.

Based upon the foregoing, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{7/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: July 11, 2000
Trenton, New Jersey

^{7/} N.J.A.C. 19:14-2.3.