

P.E.R.C. NO. 98-163

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY SPORTS AND EXPOSITION
AUTHORITY and GUARDS AND SECURITY,
LOCAL 1412,

Respondents,

-and-

Docket No. CI-H-96-5

ROBERT K. ANDES,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies motions to dismiss made by the New Jersey Sports & Exposition Authority and Guards and Security Local 1412 and remands the matter to the Hearing Examiner for further proceedings. The motions sought to dismiss, at the end of the charging party's case-in-chief, a Complaint based on an unfair practice charge filed by Robert K. Andes against the respondents. The Commission concludes that based on the record to date and granting every reasonable inference to the charging party, it can infer he was discharged without cause and that the union's unexplained failure to pursue his grievance was arbitrary, discriminatory or in bad faith. The Commission declines, at this stage, to answer whether the employer's alleged breach of contract coupled with the union's alleged breach of the duty of fair representation could constitute an unfair practice against both the employer and the union.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, New Jersey Sports & Exposition
Authority, Grotta, Glassman & Hoffman, P.A., attorneys
(Beth A. Hinsdale, of counsel)

For the Respondent, Local 1412, Schneider, Goldberger,
Cohen, Finn, Solomon, Leder & Montalbano, P.C., attorneys
(Bruce D. Leder, of counsel)

For the Charging Party, Ball Livingston, LLP, attorneys
(Richard Vuernick, on the appeal); Robert K. Andes, pro
se at the hearing

DECISION

On July 25 and August 16, 1995, Robert K. Andes filed an
unfair practice charge against the New Jersey Sports & Exposition
Authority and Guards & Security Local 1412. The charge, as
amended, alleges that the respondents violated the New Jersey
Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,

specifically 5.4a(1) and (7),^{1/} and 5.4b(1) and (5),^{2/} by failing to arbitrate the charging party's allegedly unjust discharge.

On February 19, 1997, a Complaint and Notice of Hearing issued. On February 27, Local 1412 filed an Answer denying that its refusal to arbitrate the discharge was arbitrary, discriminatory, or in bad faith. Local 1412 further asserted that the charge was untimely.

On February 17, 1998, after postponements initiated by the charging party, Hearing Examiner Arnold H. Zudick conducted a hearing. The charging party, appearing pro se, examined witnesses and introduced exhibits.

At the conclusion of the charging party's case-in-chief, the respondents renewed earlier motions to dismiss. The Hearing Examiner granted the motions on the record. He found that the charging party had not shown that the employer discharged him in violation of the Act or that Local 1412 breached its duty of fair representation.

^{1/} These provisions prohibit 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. (7) Violating any of the rules and regulations established by the commission."

^{2/} 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. (5) Violating any of the rules and regulations established by the commission."

On April 1, 1998, after an extension of time, the charging party appealed the dismissal. He argues that the Authority erred in discharging him for noting on an employment application that he had not been convicted of a crime and for failing to answer questions in an administrative proceeding; the Authority discharged him without just cause in violation of the collective negotiations agreement; and Local 1412 arbitrarily failed to pursue a grievance challenging his termination.

On April 17, 1998, Local 1412 filed a response. It argues that its decision not to arbitrate the charging party's termination was within the wide range of reasonableness afforded unions in processing grievances. It further argues that absent proof that the Authority violated the contract, the charging party is barred from any claim that Local 1412 breached its duty of fair representation.

On April 27, 1998, the Authority filed a response. It argues that there were no allegations of anti-union animus to support a finding that the Authority violated 5.4a(1) or (7).

We have reviewed the record and grant the charging party's appeal. In summary, the charging party was terminated. His shop steward/grievance coordinator investigated the circumstances and concluded that the termination was without just cause. He communicated that information to the union business manager. The charging party alleges that he continually sought

information from the union about his case and that he received no response. On June 14, 1995, the charging party wrote to the business manager that he had repeatedly tried to beep him with no response and that he was still waiting to hear from him on the arbitration case. On July 25, 1995, the charging party filed the instant charge.

In New Jersey Turnpike Auth., P.E.R.C. No. 79-81, 5 NJPER 197 (1979), we set forth the standards for determining whether to grant a motion to dismiss:

[T]he Commission utilizes the standard set forth by the New Jersey Supreme Court in Dolson v. Anastasia, 55 N.J. 2 (1959). Therein the Court declared that when ruling on a motion for involuntary dismissal the trial court "is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion" (emphasis added).
[Id. at 198]


See also Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 535-542 (1995).

Based on the record to date and granting every reasonable inference to the charging party, we can infer he was discharged without cause and that the union's unexplained failure to pursue his grievance was arbitrary, discriminatory or in bad faith. At this stage, we decline to answer whether the employer's alleged breach of contract coupled with the union's alleged breach of the duty of fair representation could constitute an unfair practice against both the employer and the union.

ORDER

The motion to dismiss is denied and the matter remanded to the Hearing Examiner for further proceedings.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: June 25, 1998
Trenton, New Jersey
ISSUED: June 26, 1998