

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent/Public Employer,

-and-

Docket No. CI-2009-025

HAMIDA B. KONECKO/LATONGIA A. TAYLOR,

Charging Parties.

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 Public Employment Relations Commission sustains the Director of Unfair Practice's refusal to issue complaints based on unfair practice charges filed by Hamida B. Konecko and Latongia A. Taylor against the County of Hudson and AFSCME Council 52 (for AFSCME Local 2306). The charge against the County alleges it violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it required the charging parties to perform duties not required by their Civil Service titles; refused to process their grievances contesting work assignments; and required them to commence a Civil Service process that would allegedly negate the Commission's jurisdiction in this matter. The charge against AFSCME alleges it violated the Act when charging parties' grievances alleging out-of-title work were not addressed at steps one or two of the grievance procedure and a step 3 hearing was conducted even though it was not provided for in the grievance procedure. Charging parties sought to have their grievance arbitrated. The Commission holds that charging parties do not have standing to assert a violation of 5.4a(5) and even if they did, there is no factual basis for an allegation the County violated the Act. The Commission also holds that there are no allegations that the charging parties were adversely impacted by the way their grievances were processed and finds no factual allegations that AFSCME acted arbitrarily, discriminatorily or in bad faith.

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.

P.E.R.C. NO. 2010-15

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Charging Parties.

Appearances:

For the Respondent/Public Employer, Donato Battista,  
Hudson County Counsel (Louis C. Rosen, Deputy County  
Counsel)

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

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

DECISION

This case is an appeal of a June 25, 2009 decision of the  
Director of Unfair Practices that refused to issue complaints on

unfair practice charges and amendments filed by Hamida Konecko and Latongia Taylor against their employer, Hudson County and their majority representative, AFSCME Council 52.<sup>1/</sup> The charge against the County, as amended, alleges that it violated sections 5.4a(1) and (5)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by requiring the charging parties to perform duties not required of their Civil Service titles; refusing to process their grievances contesting work assigned to them outside of their titles; and requiring them to commence a Civil Service process that would negate our jurisdiction in this matter. The charge against AFSCME, as amended, alleges a violation of sections 5.4b(3)<sup>3/</sup> of the Act, when their grievances alleging out-of-title work were not addressed at steps one or two of the grievance procedure, the contractual time limits were not

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1/ D.U.P. No. 2009-11, 35 NJPER 234 (¶83 2009)

2/ These 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 . . . (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."

3/ 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."

adhered to, and a step three hearing was conducted even though it was not provided for in the grievance procedure. As a remedy, the charging parties seek arbitration of their grievances. We sustain the Director's refusal to issue a Complaint and dismiss the charges.<sup>4/</sup>

In a February 11, 2009 letter, the Director dismissed the charge against AFSCME. He found that the charge alleged no facts suggesting that AFSCME 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." The Director further found that the charges "concern only dissatisfaction with a January 12, 2009 written grievance determination at step 3," and that only a public employer has legal standing to allege that a majority representative has violated 5.4b(3).

The Director also dismissed the charge against the County, writing that "[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 any obligation to the majority representative."

On February 17 and 26, 2009, the charging parties wrote letters to the Commission, objecting to the dismissal of their

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<sup>4/</sup> We deny Konecko and Taylor's request for oral argument. The issues have been fully briefed.

charges. On February 27, the charging parties were advised 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, the Director wrote to the parties, confirming that the charges were referred to him for reconsideration and providing the respondents with an opportunity to file a response to the charging parties' submissions.

On March 13, 2009, the County filed a response asserting that the substance of the charge concerns a Civil Service matter and/or an arbitrable contractual dispute, neither of which are appropriately before the Commission. AFSCME did not file a response.

On June 19, 2009, the 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 that would negate the Commission's jurisdiction over the instant charges. The charging parties further allege that the County's requirement is "a blatant act of bad faith" and violates subsection 5.4a(1).

On June 25, 2009 the Director issued his decision dismissing the charges. This appeal ensued.

We have authority to issue a complaint where it appears that a 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.

We begin with the allegations against the County.

Individual employees do not have standing to assert a violation of 5.4a(5) because the employer's duty to negotiate in good faith runs to the majority representative, not individual employees.

New Jersey Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560

(¶11284 1980). Even if the charging parties could stand in the shoes of the majority representative to pursue a 5.4a(5) claim, their out-of-title work allegation involves a mere breach of contract claim, not an unfair practice. State of New Jersey

(Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191

1984). Even if a majority representative has breached its duty of fair representation in refusing to arbitrate a grievance, that fact alone would not convert an employer's mere breach of contract into an unfair practice.

In addition, in this case there can be no factual basis for an allegation that the County violated the Act by refusing to process the charging parties' grievance to binding arbitration because there is no allegation that AFSCME ever sought to move the grievances to binding arbitration.

As for the 5.4a(1) allegation, even if true, requiring the charging parties to perform duties not required of their Civil Service titles; refusing to process their grievances contesting

work assigned to them outside of their titles; and requiring them to commence a Civil Service process that would negate our jurisdiction in this matter, would not constitute a violation of the Act. An employer independently violates subsection 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No 80-73, 5 NJPER 550 (¶10285 1979); Gorman, Basic Text on Labor Law, at 132-34 (1976). The New Jersey Employer-Employee Relations Act does not protect against out-of-title assignments or require that a grievance be commenced at step one rather than step three. Thus, an employer would not violate 5.4a(1) if it engaged in such conduct. As for the allegation that the County required the charging parties to commence a Civil Service proceeding that would divest this Commission of jurisdiction, we note that no Civil Service process can negate our jurisdiction. Accordingly, that action, even if attempted, would not violate 5.4a(1). We therefore sustain the Director's decision to dismiss the allegations against the County.

We next address the allegations against AFSCME. In Vaca v. Sipes, 386 U.S. 171 (1967), the United States Supreme Court articulated the standard for determining whether a labor

organization violates 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]

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]

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).

While the charging parties allege that their grievances were not addressed at steps one or two of the grievance procedure, that the contractual time limits were not adhered to, and that the step three hearing was not provided for in the grievance procedure, there is no allegation that the charging parties were



adversely impacted by the way their grievances were processed. Their grievance was heard at step three and binding arbitration is a final step that a majority representative normally has the discretion to invoke, so long as the majority representative does not refuse to seek arbitration for arbitrary, discriminatory or bad faith reasons. Even though the charging parties allege that AFSCME ignored their inquiries and protests about the alleged failure to follow the grievance procedure, they do not allege that AFSCME handled their grievances differently than the way it handles grievances filed by other AFSCME unit members. As for AFSCME's alleged failure to enforce contractual time lines, we note that documents supplied by the charging parties indicate that their grievances were presented to AFSCME on November 19, 2008, filed with the County on December 9, heard at step three on December 18, and denied in a written decision dated January 12, 2009. Even if the County did not respond to the initial grievance in the time frames set by the contract, the grievance procedure provides only that a dissatisfied grievant can move the grievance to the next step. The grievance was heard and denied at step three and there is no allegation of harm to the charging parties in how the grievance was processed up to this point. Finding no factual allegations that AFSCME acted arbitrarily,

discriminatorily or in bad faith, we dismiss the allegations against AFSCME.<sup>5/</sup>

ORDER

The refusal to issue complaints is sustained. The unfair practice charges are dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Fuller recused herself.

ISSUED: September 24, 2009

Trenton, New Jersey

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<sup>5/</sup> Civil Service rules establish that unless otherwise provided for by law or Civil Service rules, employees should not be assigned to perform duties other than those pertaining to their title. N.J.A.C. 4A:3-3.4. Pursuant to N.J.A.C. 4A:3-3.5(b), an employer, employee, or union representative may request a classification review. In view of charging parties' continued assertions that they are working out of title, if such a review has not been requested, perhaps it should be.