

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LAKEWOOD,

Respondent,

-and-

Docket No. CI-84-83-15

JOHN A. TILTON,

Charging Party.

P.B.A., Local 71,

Respondent,

-and-

Docket No. CI-84-84-16

JOHN A. TILTON,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses complaints based on unfair practice charges filed by John A. Tilton against the Township of Lakewood and P.B.A. Local 71. One charge alleged the Township violated the Act when it (1) refused to permit him to review his personnel file; (2) cancelled a training course he was scheduled to attend in retaliation against his filing a grievance; (3) failed to provide for a grievance procedure consistent with law; and (4) scheduled work and overtime in violation of law. The other charge alleged the PBA violated the Act when it: (1) refused to process grievances submitted by Tilton; and (2) failed to negotiate a grievance procedure and workweek schedule consistent with law. The Commission finds, in agreement with the Hearing Examiner, that the charging party did not prove these allegations by a preponderance of the evidence.

P.E.R.C. NO. 86-73

STATE OF NEW JERSEY
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Docket No. CI-84-84-16

JOHN A. TILTON,

Charging Party.

Appearances:

For the Respondent, Township of Lakewood,
Dominick M. Manco, Esq.

For the Respondent, PBA Local 71, Citta, Holzapfel &
Citta (James W. Holzapfel, of Counsel)

For the Charging Party, Robert J. Hrebek, Esq.

DECISION AND ORDER

On June 1 and July 9 and 23, 1984, respectively, John A. Tilton filed an unfair practice charge and amended charges against the Township of Lakewood ("Township") and PBA, Local 71 ("PBA"). Tilton, a police officer, alleged that the Township violated

subsections 5.4(a)(1), (2), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it allegedly: (1) refused to permit him to review his personnel file and included some documents and excluded others without his knowledge; (2) cancelled a training course Tilton was scheduled to attend in retaliation against his grieving this refusal; (3) failed to provide a grievance and disciplinary review procedure consistent with N.J.S.A. 34:13A-5.3; (4) violated N.J.S.A. 40A:14-133 concerning the workweek of police officers and (5) refused to pay overtime in accordance with the collective negotiations agreement and State law.

Tilton alleged the PBA violated subsections 5.4(b)(1), (3) and (5)^{2/} of the Act when it: (1) refused to process grievances he

1/ These subsections 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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; and (7) Violating any of the rules and regulations established by the commission."

2/ These subsections 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; (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; and (5) Violating any of the rules and regulations established by the commission."

had submitted; (2) failed to negotiate a grievance and disciplinary review procedure consistent with N.J.S.A. 34:13A-5.3 and (3) failed to negotiate a workweek schedule consistent with N.J.S.A. 40A:14-133.

On August 9, 1984, Complaints and Notices of Hearing issued and the two cases were consolidated.

On March 5 and 6, 1985, Hearing Examiner David F. Corrigan conducted a hearing. At the conclusion of Tilton's case, both respondents moved to dismiss. The Hearing Examiner granted the Township's motion to dismiss with respect to Tilton's claim to overtime compensation since it involved, at most, a good faith difference concerning the interpretation of a collective negotiations agreement. The Hearing Examiner denied both respondents' motion to dismiss with respect to the Complaints' remaining allegations. The parties filed post-hearing briefs by April 9, 1985.

On September 17, 1985, the Hearing Examiner recommended dismissing the Complaints. H.E. No. 86-12, 11 NJPER ____ (¶ 1985) (copy attached).

On October 7, 1985, Tilton filed exceptions. He excepts to several findings of fact and to each conclusion of law.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-9) are accurate with some minor modifications. We specifically accept his credibility determinations. We incorporate these findings of fact here. We add that Tilton's immediate supervisor, Sergeant Craef, informed him on

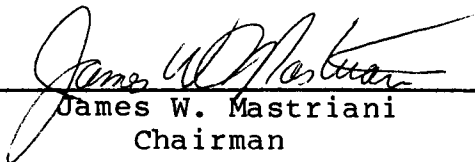
March 27, 1984 that he could attend the training course. Also, the PBA did not advise Tilton it would not process his grievance until after the contractual statute of limitations expired.^{3/}

We agree with the Hearing Examiner's analysis and disposition of Tilton's allegations. His conclusions rest in large part on credibility determinations and no basis exists on which to disturb them.

ORDER

The Complaints are dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves abstained.

DATED: Trenton, New Jersey
November 18, 1985
ISSUED: November 19, 1985

^{3/} We reject Tilton's exceptions to the Hearing Examiner's decision to credit Priscoe's testimony and his finding that Lynch's training recommendations were sometimes followed, sometimes not.

H.E. NO. 86-12

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LAKEWOOD,

Respondent,

-and-

Docket No. CI-84-83-15

JOHN A. TILTON,

Charging Party.

P.B.A., LOCAL 711,

Respondent,

-and-

Docket No. CI-84-84-16

JOHN A. TILTON,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission dismisses Complaints based on unfair practice charges that John A. Tilton, a patrol officer, filed against the Township of Lakewood and PBA Local 71.

The charges had alleged that the Township violated the Act when it refused to permit him to review his personnel file; cancelled a training course he had been scheduled to attend in retaliation against his filing a grievance; failed to provide a grievance procedure consistent with N.J.S.A. 40A:14-133 concerning the workweek of police officers. The charges had further alleged that the PBA violated the Act by failing in its duty of fair representation to Tilton. Specifically, that it failed to process grievances filed by Tilton; failed to negotiate a grievance procedure consistent with N.J.S.A. 34:13A-5.3 and failed to negotiate a workweek schedule consistent with N.J.S.A. 40A:14-133. The Hearing Examiner concludes that Tilton did not prove these allegations by a preponderance of the evidence.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 86-12

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Docket No. CI-84-84-16

JOHN A. TILTON,

Charging Party.

Appearances:

For the Respondent Township of Lakewood, Dominick M. Manco, Esquire

For the Respondent PBA Local 71, Citta, Holzapfel & Citta (James W. Holzapfel, of Counsel)

For the Charging Party, Robert J. Hrebek, Esquire

HEARING EXAMINER'S REPORT AND
RECOMMENDED DECISION

On June 1, and July 9 and 23, 1984, respectively, John A. Tilton filed unfair practice charges and amended charges against the Township of Lakewood ("Township") (Docket No. CI-84-83-15) and PBA, Local 71 ("PBA") (Docket No. CI-84-84-16) with the Public Employment Relations Commission. Tilton, a police officer employed by the

Township, alleged that the Township violated subsections 5.4(a)(1), (2), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it: (1) refused to permit him to review his personnel file and placed and removed information from the file without his knowledge; (2) cancelled a training course Tilton had been scheduled to attend in retaliation against his filing a grievance concerning the refusal to review his personnel file; (3) failed to provide a grievance and disciplinary review policy consistent with N.J.S.A. 34:13A-5.3; (4) violated N.J.S.A. 40A:14-133 concerning the workweek of police officers and (5) refused to pay overtime in accordance with the collective negotiations agreement and state law.

Tilton alleged the PBA violated subsections 5.4(b)(1), (3) and (5) of the Act when it (1) refused to process grievances he had submitted; (2) failed to negotiate a grievance and disciplinary review policy consistent with N.J.S.A. 34:13A-5.3 and (3) failed to negotiate a workweek schedule consistent with N.J.S.A. 40A:14-133.

^{1/} These subsections 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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; and (7) Violating any of the rules and regulations established by the commission."

On August 9, 1984, the Administrator of Unfair Practice Proceedings issued Complaints and Notices of Hearing and an Order consolidating the two cases. On August 13, 1984, the Township filed its answer denying, in general terms, the material allegations contained in the charge. On August 15, 1984, the PBA filed its answer. It also denied the material allegations contained in the charge.

On March 5 and 6, 1984, I conducted a hearing in Trenton. At both hearings, the parties examined witnesses and presented evidence. At the conclusion of the charging party's case, both respondents made motions to dismiss. I granted the Township's motion to dismiss with respect to Tilton's claim to overtime compensation since it involved, at most, a good faith difference concerning the interpretation of a collective negotiations agreement. See New Jersey Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). I reserved decision with respect to the other claims concerning alleged violations of the collective negotiations agreement and denied both respondents' motion to dismiss with respect to the remaining allegations in the Complaint.

Post-hearing briefs were filed by April 9, 1985.

FINDINGS OF FACT

1. The Township of Lakewood ("Township") is a public employer within the meaning of the Act and is subject to its provisions. PBA Local 71 ("PBA") is a public employee

representative within the meaning of the Act and is also subject to its provisions. PBA is the majority representative of "all employees of the Police Department, excluding the Chief of the Department, and the Deputy Chiefs and non-police personnel employed in the Police Department." John Tilton is a police officer employed by the Township and is a member of the negotiations unit represented by the PBA.

2. In March 1983, Tilton reviewed his personnel file with Lieutenant Lynch. During this time, he complained to both the Lieutenant and Deputy Chief Priscoe concerning the maintenance of the file. Specifically, Tilton wanted the right to submit letters of rebuttal to material contained in the file and that the collective negotiations agreement gave him the right to respond. (1T40-41)^{2/} Deputy Chief Priscoe responded that this concern was trivial and "so what is a contract." (1T41) Tilton then left.
3. On March 15, 1984, Tilton returned with Dennis Poane, an attorney, to review his personnel file. Poane was also a PBA attorney, but was acting as Tilton's personal representative. (1T42) Lynch retrieved the personnel file from the adjoining room, but according to Tilton, removed certain items from the folder. (1T44) Lynch denied removing any material (2T40) I

^{2/} 1T refers to transcript of March 5, 1984 hearing. 2T refers to transcript of March 6, 1984 hearing.

resolve this dispute in favor of Lynch's version. It appears that Tilton was not close to Lynch and could not actually see what he was doing. Tilton saw the file, but complained that some material (such as accident reports) should not be in the file and the file appeared to be missing items, such as recommendations which should have been present. (1T45) The Lieutenant responded that "this is your personnel file...you have to live with it and that is it. Grieve it." (1T46).

4. On March 29, 1984, Tilton met with Chief Belitrand concerning his grievance. Belitrand told him to put it in writing. He subsequently did. (CP2-A)

Tilton served copies of this letter to PBA President Tom Ottmer and Poane. He told both Ottmer and the Chief that he wanted the matter handled "informally" and did not want to make a "big deal out of it." (1T67) Ottmer advised Tilton that there was a timeliness problem with the grievance (1T49) and it was not processed. Nevertheless, Ottmer spoke to the Chief of Police concerning the proper placement of the personnel files. (2T11)

5. Lieutenant Lynch is the "training officer" for the Lakewood Police Department. His duties include scheduling officers for training and conducting in-service training classes. (2T33) The following procedure is employed for selecting officers to attend training courses at the Sea Girt Police Academy: Lynch requests the watch commanders to determine the availability of

officers to attend. Based upon their responses, Lynch makes a recommendation to the Deputy Chief of Police to assign an officer to the school. The final determination is made by the Deputy Chief. Lynch's recommendations are sometimes followed, but sometimes are not. (2T41-42) On March 28, 1984, Lynch recommended that Officer Tilton attend training school in Sea Girt on April 2. (2T42-43; 1T50) Tilton was interested in attending and Sergeant Graef advised him that he had been selected. (1T50) On April 1, 1984, Graef advised him the course was cancelled. (1T51) Lynch had earlier told Graef to advise Tilton "the school was cancelled." (1T25) However, the course was held as scheduled. (1T52) Lynch had originally recommended Tilton because:

It met our schedule. After speaking with his watch commander, checking vacation schedules and sick time, injury leave, he was--his crew was the most logical crew to send an officer to school at that particular time. It depends on what shift they are working, how many men on vacation, there's a lot of factors that I have to look at, but there's other factors being considered by other people as it gets approved through the chain of command. There may be things that I am unaware of why an officer wouldn't attend or be disapproved. [2T44]

At the time the order to attend school was cancelled, Lynch was unaware of Tilton's grievance. (2T45) Michael Prisco, Deputy Chief of Police, disapproved the training order. (2T72) His reasons were:

I did not think it was appropriate. I considered the course, I considered the man, I considered what he did before, I questioned Lieutenant Lynch

about it, I asked him if there was something that I thought was more appropriate for as far as training was concerned, he suggested something, I said when you bring something back, I will probably sign it.
[2T74]

Chief Belitrand played no role in this decision (2T76) and, at the time Prisco made his decision, was unaware of Tilton's grievance. (2T77).

Later, in April 1984, Tilton attended a driving while intoxicated course at Sea Girt. (2T45).

6. Tilton then filed, on April 4, 1984, a grievance that he had been retaliated against for filing the earlier grievance (CP-3; 1T54) and gave a copy to Tom Ottmer. (1T57)^{3/}
7. Ottmer said the PBA would convene a grievance committee meeting to discuss the matter. (1T59) Article VI, Section 1(b) of the 1982-1984 collective negotiations agreement, provides:

(b) The PBA shall appoint a Grievance Committee which shall include a grievance representative for each group shift to study all grievances submitted by employees of the Police Department. The aggrieved employee shall initiate his complaint through the group shift grievance representative who shall take up the matter with the aggrieved employee's immediate supervisor in an effort to adjust the grievance satisfactorily. If the grievance is not adjusted satisfactorily and the Grievance Committee of the PBA wishes to proceed further, it may submit such

^{3/} He also said Ottmer responded "well, we really got them now." (1T57) Ottmer, however, denied saying this. I credit Ottmer's denial. Tilton's credibility is quite suspect given his admitted falsification of an earlier grievance date in an attempt to avoid timeliness problems. (1T66-67)

grievances in writing to the Chief of Police Department within fifteen (15) days of occurrence or event giving rise to the grievance, if not timely filed, it is not grievable. Within fifteen (15) days after said Chief or his designated representative shall arrange to and meet with the Grievance Committee of the PBA and the employee initiating the grievance for the purpose of adjusting or resolving such grievances.

Nevertheless, there were no group shift representatives on any shifts from January 1982 through December 1984. (1T59-60) According to Ottmer, employees are reluctant to serve on the committee and the practice of the PBA, therefore, was to select five members, each of a different rank, to serve on the committee. (2T29) According to Ottmer, the PBA has been unable to find members of the negotiations unit who are willing to serve as grievance representative. Therefore, the PBA selects different ranks to serve on a grievance committee. (2T29)

8. Earlier, in September 1983, Tilton had written a letter to Ottmer requesting the PBA to grieve a holiday and personal day issue. (RP-1; 2T15) The PBA did so and processed the grievance to the Chief of Police level where it was satisfactorily resolved (2T15) The April 4, 1984 letter was addressed to the Chief of Police from Tilton. Ottmer received a copy of the letter and planned to discuss it with the chairman of the grievance committee, Sergeant Fred Capper to determine what course of action to take. (2T15) Capper, however, was out of work on injury leave at the time but met with him later.

Tilton spoke on several occasions to Larry Doyle, a member of the grievance committee concerning the processing of the April 4 grievance. (1T60) According to Doyle, he spoke to Ottmer on several occasions. (1T61) Ottmer first advised that the grievance was being worked on, but later advised that no action would be taken on the grievance. (1T126-127) The PBA concluded that it did not constitute a "grievance" under the contract (1T14; 1T30) Article VI, Section I(a) of the parties' collective negotiations agreement states that "A grievance is a complaint or interpretation, pertaining to violations of the contract by either party and conditions of employment."

ANALYSIS

1. The Personnel File Issue

Tilton claims that the Township violated the Act when it failed to: (a) properly maintain personnel files; (b) permit police officers to initial material before being placed in their files; (c) permit full review of personnel files. Tilton also claims that the content of these files violated the Act. The gravaman of this aspect of the Complaint is that these actions and inactions of the Township violated the collective negotiations agreement between the Township and the PBA which provides:

It is agreed between the parties that any writing or document that is to be placed in an employee's personnel file must be initialed by the employee and may be reviewed by the employee and said

employee has a right to enter a rebuttal statement which will become part of said file.

It is not enough, however, for Tilton to establish a contract violation to prevail on the merits of the instant unfair practice charge. It is well-settled that an individual employee cannot litigate the merits of what is in effect a grievance alleging a breach of the collective negotiations agreement unrelated to activity protected by this Act, unless the employee establishes that the majority representative violated its duty of fair representation in its processing of the grievance. New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560, 561 (¶11284 1980); Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555, 557 (¶11282 1980). Accordingly, I must first consider whether the PBA's actions regarding this grievance violated its duty of fair representation. A breach of this statutory duty occurs only when a union's conduct towards a member of the unit is arbitrary, discriminatory or in bad faith. E.g., Middlesex County, supra; AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1979). The record in this case does not establish that the PBA acted arbitrarily in the processing of this grievance. Quite to the contrary, the PBA did exactly what Tilton wanted. Tilton wanted the matter handled informally; he "didn't want to make a big deal" about it. That is what PBA President Ottmer did. He spoke informally to the Police Chief about the storing of the personnel files. Beyond

that, there was no more that the PBA could have done on the merits. Tilton originally filed the grievance individually. It was untimely under the parties' collective negotiations agreement. Tilton had fraudulently backdated the grievance in a deceptive attempt at compliance with the grievance procedure's time limitations. By the time the PBA was requested to become involved, it was much too late. Given all the foregoing, I have no hesitancy in recommending dismissal of all these aspects of the Complaint.

2. The Retaliation Claims

Tilton first claims the Town unlawfully retaliated against him for filing the personnel file grievance by denying him permission to attend a police training session at the Sea Girt Police Academy.

In re Bridgewater Twp., 95 N.J. 235 (1984) sets forth the standard to determine whether an employer has illegally discriminated against an employee in retaliation against union activity:

...the employee must make a prima facie showing sufficient to support the inference that the protected union conduct was a motivating factor or a substantial factor in the employer's decision. Mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or a substantial reason for the employer's action. Transportation Management, supra. U.S. ___, 103 S.Ct. at 2474, 76 L.Ed.2d at 675. Once that prima facie case is established, however, the burden shifts to the employer to demonstrate by a preponderance of evidence that the same action would have taken place even in the absence of the protected activity. Id. at 244.

To establish a prima facie case, the charging party must show (1) that the employee engaged in protected activity; (2) that the employer had knowledge of this activity; and (3) that the employer was hostile toward the exercise of protected activity. Bridgewater, supra at 246; University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 86-5, 11 NJPER ____ (¶ ____ 1985); In re Gattoni, P.E.R.C. No. 81-32, 6 NJPER 443, 444 (¶11227 1980); In re North Warren Regional Board of Education, P.E.R.C. No. 79-9, 4 NJPER 417 (¶4187 1978). The Bridgewater court noted that there could well be conflicting proofs which would be for the fact-finder to resolve." Id. at 244.

I now consider whether Tilton has established a prima facie case. It is clear the first two elements have been established: Tilton engaged in protected activity when he filed the grievance and the Township, through the Chief of Police, had knowledge of this activity. The difficult issue is whether the employer was hostile toward the exercise of protected activity. There is no direct evidence of hostility. Nevertheless, it is settled that hostility can be inferred from employer conduct. Bridgewater supra. Here, there is no question but that evidence exists that would support a finding of hostility. The timing of the decision in itself is quite suspect. Tilton was set to attend school. He had been told by his Sergeant that he was going. He files a grievance. Almost

immediately, he is falsely advised by the Township that the training session was cancelled. That was not true. The training session was not cancelled. Thus, although there is no direct evidence of hostility, the foregoing facts are sufficient to permit a finding of hostility. This, however, is not the end of the matter. This is a case where there are conflicting proofs which I must resolve. Specifically, Lakewood Deputy Chief of Police Priscoe denied that Tilton's grievance was a factor in the decision not to send him to traffic school. The issue is whether I believe this testimony. I find that it is believable. Therefore, I conclude that Tilton's filing of the grievance was not a motivating force or a substantial reason for his not being permitted to attend school. I make this finding for the following reasons. First, Priscoe denied being aware of the filing of the grievance. This explanation makes sense under the circumstances of this case. The grievance was sent to the Chief and there is no evidence that the Chief and the Deputy Chief discussed the matter. Secondly, it is clear that Tilton's orders to attend the school were only tentative and were subject to final approval by Priscoe. Lynch could only make recommendations and both Lynch and Priscoe testified that these recommendations were subject to review by Priscoe. Third, Priscoe's testimony of the reasons he denied Tilton's request is believable. He simply did not believe Tilton was

"right" for the traffic school. Although that may seem somewhat conclusory under other circumstances, it seems to me that this decision is somewhat subjective and it would be difficult to demarcate more concrete reasons. Fourth, soon after this denial, Tilton was offered the opportunity and did attend another school (involving another topic -- driving while intoxicated) at Sea Girt. Finally, although disturbing, I do not believe Tilton being advised that the course was cancelled when in fact it was not, demonstrates animus. This communication went from Priscoe to Lynch to Graef to Tilton and it is not surprising that along the way the message as inadvertently changed. "Tilton was cancelled" as opposed to "the course was cancelled" is a small difference and I am not prepared to find an unfair practice based upon what appears to me to have been an inadvertent miscommunication.

Given all the foregoing, I conclude that the charging party did not establish that anti-union animus was a motivating factor for the Township's decision to not send Tilton to traffic school at Sea Girt. Accordingly, I recommend dismissal of this aspect of the Complaint.

The other retaliation claim is that the Township discriminated against Tilton when it requested other officers to review and initial their personnel file and did not provide Tilton with the same opportunity. I do not believe these actions violated the Act. It is more than reasonable to assume

that the Township took these actions not in retaliation against Tilton's activities, but because Tilton's activities alerted them that they had not been in conformance with the collective negotiations agreement. There was no need to give Tilton this opportunity since he had demonstrated awareness of his contractual right to review his file and initial its contents.

3. Alleged Deficiencies in the Grievance Procedure

Tilton claims that the negotiated grievance procedure contained in the 1982-1984 contract is invalid because it does not permit an employee to process and pursue a grievance individually. This claim presumes that an individual has the right under our Act to process and pursue such grievances. It is not, however, quite so clear that he has such a right. In fact, the Supreme Court has specifically left that question open. Red Bank Reg. Ed. Assn. v. Red Bank Reg. High Sch. Bd. of Ed., 78 N.J. 122, 134-135 (1978). In any event, this question need be addressed by me. First of all, Tilton was permitted to file grievances. He filed two. Neither the PBA or the Township interfered with his filing of these grievances. In fact, it is somewhat anomalous for Tilton to make this claim when he is also claiming that the PBA failed in their duty by not also pursuing these grievances. Beyond that, it would certainly appear this this matter is moot since the parties have since negotiated a grievance procedure which explicitly permits what Tilton did. Cf. Galloway Tp. Bd. of

Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 46-47 (1978).

4. The Claim that the Contract violates

N.J.S.A. 40A:14-133

Tilton claims that the Town and the PBA violated the Act when they agreed to an hours clause which provides that "the standard weekly work schedule for employees covered by this agreement requires employee services continuously throughout the seven (7) day week and the average work week for each employee shall be forty (40) hours." Tilton claims that this clause conflicts with N.J.S.A. 40A:14-133 which provides:

The days of employment of any member or officer of the police department or force, including any officer having supervision or regulation of traffic upon county roads, parks and parkways shall not exceed 6 days in any one week, except in cases of emergency the officer, board or official in charge of such police department or force shall have authority to retain on duty any member or officer during the period of the emergency, but in any such case and within 12 months thereafter, such member or officer shall be given a day off for each extra day so served by him during the emergency.

There is no merit to Tilton's claim. First, the contract does not violate the aforementioned statute. It does not require employees to work more than six days per week. It requires "continuous" service, but I read that to mean what it quite obviously was intended to mean: police services are required continuously. It does not mean that an employee is required to work continuously throughout the week or more than 6 days in any one week. Tilton's claim to the contrary belies

common sense. In fact, there was no testimony that such work was, in fact, required. Accordingly, I need not reach the question whether an unfair practice would have been committed if the statute had been violated.

5. The Claim that the PBA violated its Duty of Fair Representation to John Tilton

Tilton has also claimed that the PBA violated its duty of fair representation to Tilton. Specifically, he points to the following: (1) The PBA did not have a group shift representative; (2) The PBA did not process grievances submitted by Tilton; (3) the PBA failed to maintain a working grievance committee and (4) the PBA failed to distribute the 1985 contract to its members.

I conclude, for the following reasons, that Tilton has not established that the PBA violated its duty. With respect to the absence of a "group shift representative", it is true that one had not been appointed by the PBA, contrary to the collective negotiations agreement which provided, in pertinent part, that "The PBA shall appoint a Grievance Committee which shall include a grievance representative for each group shift to study all grievances submitted by employees of the Police Department." It is not necessary for me to decide whether Tilton, as an individual, was intended to be a beneficiary to that agreement between the Township and the PBA. The issue is not whether the contract was violated but whether the PBA breached its duty. The failure to appoint a grievance

representative for each group shift did not, under the circumstances of this case, violate the PBA's duty. First, according to uncontradicted testimony, the PBA was unable to find individuals willing to take this assignment. Therefore, they chose the most reasonable alternative: selected a grievance committee composed of officers of different ranks. Beyond that, the more important point is that Tilton was not denied access to the PBA committee. To the contrary, according to his own testimony, he spoke on several occasions with a member of the committee, Larry Doyle, who was also his personal friend. Given this, the PBA's failure to have appointed a group shift representative did not adversely affect Tilton. To the contrary, it appears that the PBA's alternate arrangement to that contained in the contract was a more effective means towards fulfilling their duty of fair representation.

Secondly, I also do not believe that the PBA violated its duty by failing to process grievances submitted by Tilton. I have already discussed its processing of his personnel file grievance and it need not be repeated here. The other grievance pertained to the cancelling of his training course. The matter was discussed between Ottmer and Sergeant Fred Capper, both members of the grievance committee. Both concluded that it was not a grievance under the contract. While this decision is more than questionable on the merits, I do not find it to constitute arbitrary conduct. To the contrary, it does appear, albeit belatedly, that Tilton's request was duly considered by the appropriate PBA officials.

He may have been disappointed by their ultimate decision; in fact, their ultimate decision may well have been erroneous, but this does not, in itself, constitute unfair practice. Moreover, it does appear that there was some confusion as to what role the PBA was to play in the processing of the grievance. This was an individual filing by Tilton. This is in contrast to an earlier Tilton grievance where he specifically requested that the PBA file on his behalf. Given this, it is more than reasonable for the PBA to have concluded that Tilton, after having filed on his own, had waived any right he may have had for PBA representation.


Tilton next claims that the PBA failed to maintain a working grievance committee. It is true, by Ottmer's own admission, that there was some delay in considering Tilton's grievance. But this was because Capper had been on injury leave. This is a perfectly reasonable explanation for delay. In any event, the issue was ultimately discussed between Capper and Ottmer and it was determined to not proceed. This was, of course, an informal meeting but I see no harm in that. I am disinclined to adopt a rule which would require a relatively small PBA to conduct itself in the same manner as a large bureaucratic organization. It would be contrary to both common and labor relations sense.

Finally, Tilton complains that the 1985 collective negotiations agreement was not distributed to its members. Tilton notes the contract was signed two months prior to the hearing in this matter, yet the members had not yet received

their copies. I see no violation here. There is no evidence that the members have been denied access to the PBA's contract or that the delay, (which in itself does not appear to be unreasonable) was wilful.

RECOMMENDED ORDER

I recommend that the Commission order the Complaints dismissed.



David F. Corrigan
Hearing Examiner

DATED: Trenton, New Jersey
September 17, 1985