

P.E.R.C. NO. 98-156

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CI-90-25

BENJAMIN ADAMS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands to the Director of Unfair Practices for further proceedings an unfair practice charge filed by Benjamin Adams against the City of Jersey City. Under the particular circumstances of this case, where the charging party was never notified that his case was dismissed and where he asserts that his attorney told him that it was likely that the Commission was holding the case pending related federal litigation, the Commission reopens the case and directs that an exploratory conference be held. If the case is not settled after the conference, the Director can then make a formal determination as to whether a Complaint should issue.

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, Paul W. Mackey, Assistant
Corporation Counsel

For the Charging Party, Reitman Parsonnet, P.C.,
attorneys (Bennett D. Zurofsky, of counsel)

DECISION

On April 13, 1998, Benjamin Adams appealed a decision of the Director of Unfair Practices refusing to reopen his unfair practice charge. On May 12, the employer filed a response opposing the charging party's request.

This charge was filed on September 18, 1989. On July 23, 1991, the Director of Unfair Practices wrote to the charging party's attorney asking for information on the status of the charge and asking, if the matter had been resolved, for an enclosed withdrawal form to be filed. No further action is recorded in the file before a June 20, 1997 letter from the charging party's new attorney. That letter inquired as to the current status of the case.

After retrieving the case file from record storage, a Commission staff agent informed the charging party's attorney that there did not appear to have been any formal action closing the file. On December 19, 1997, that attorney requested a new exploratory conference to clarify the issues. That request was denied by the Director of Unfair Practices. He found no extraordinary circumstances warranting reopening the case.

On March 30, 1998, the Director of Unfair Practices denied the charging party's formal motion to reopen the case. He found that the charge was properly deemed withdrawn. He further found that, absent an allegation that the union breached its duty of fair representation, an individual does not have standing to file a charge alleging that the employer City breached the collective negotiations agreement.

Under the particular circumstances of this case, where the charging party was never notified that his case was dismissed and where he asserts that his attorney told him that it was likely that the Commission was holding the case pending related federal litigation, we reopen the case and direct that an exploratory conference be held. At that conference, the issues can be explored, including the charging party's assertion that the POBA, an employee organization with standing to pursue a 5.4a(5) allegation against the City, joined in the charge. If the case is not settled after the conference, the Director can then make a formal determination as to whether a Complaint should issue.

ORDER

This matter is remanded for further proceedings
consistent with this opinion.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

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