

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY PARK POLICE,
PBA, LOCAL NO. 156,

Respondent,

-and-

Docket No. CI-81-7-33

JOSEPH M. DICEMBRINO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint filed by Joseph M. Dicembrino, a retired police officer, against the Middlesex County Park Police, PBA, Local No. 156 ("Local No. 156"). Dicembrino had alleged that Local No. 156 breached the duty of fair representation it owed him when it refused to pay his legal bills in connection with a pension matter and hearings before Civil Service and this Commission. The Commission finds, however, that Dicembrino failed to prove, by a preponderance of the evidence, that Local No. 156 had any obligation to pay his legal bills.

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Appearances:

For the Respondent, Booream & Seguin, Esqs.
(Robert S. Seguin, of Counsel)

For the Charging Party, Joseph M. Dicembrino, Pro Se

DECISION AND ORDER

On August 25, 1980, Joseph M. Dicembrino (the "Charging Party" or "Dicembrino") filed an unfair practice charge against the Middlesex County Park Police, P.B.A., Local No. 156 ("Respondent" or "Local 156") with the Public Employment Relations Commission. The charge, as amended on September 5 and October 6, 1980, alleged that Local 156 violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically N.J.S.A. 34:13A-5.4(b)(1), (4) and (5),^{1/} when it refused to pay an attorney's bill for services rendered to Dicembrino in connection with a pension matter and hearings involving Civil Service and this Commission. The charge also alleged that

^{1/} These subsections prohibit public employee representatives, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; and (5) Violating any of the rules and regulations established by the commission."

Dicembrino received the bill on November 23, 1979, and turned it over to Local 156 for payment and that on April 15, 1980, he sent a letter to the president of Local 156 inquiring why it had not yet paid his bill. Additionally, the charge alleged that no reason was given for refusing payment although the P.B.A. had paid bills for attorney's fees and medical expenses incurred by other P.B.A. members.

Pursuant to a Complaint and Notice of Hearing, hearings were held before Commission Hearing Examiner Alan R. Howe on December 7, 1981^{2/} and January 7, 1982. Both parties examined witnesses, presented relevant evidence, argued orally^{3/} and waived the filing of post-hearing briefs.

On January 18, 1982, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-26, 8 NJPER ____ (¶ ____ 1982) (copy attached). He recommended that the Commission dismiss the Complaint because the Charging Party failed to file within the six-month limitation period contained in subsection 5.4(c)

2/ The Respondent failed to appear on December 7. After taking evidence ex parte from the Charging Party indicating that Respondent had actual notice of the hearing, the Hearing Examiner was prepared to proceed by default, notwithstanding the absence of a return receipt from the Respondent. On December 9, an attorney for the Respondent telephoned, stated that he first learned of the case on December 8, and requested an opportunity to appear and defend. This request was granted over the objection of the Charging Party. On December 11, 1981, the P.B.A. filed an answer in which it denied all claims of discrimination and unfair labor practices.

3/ The Respondent moved at the opening of the hearing to dismiss on the ground that the Commission has no jurisdiction over the internal affairs of a public employee representative. Decision was reserved. The Respondent next moved to dismiss on the same ground at the conclusion of the Charging Party's case. Again, decision was reserved and the Respondent proceeded to put on its defense without prejudice.

of the Act. The Hearing Examiner, citing Township of Teaneck, P.E.R.C. No. 81-142, 7 NJPER 351, 353 (¶ _____ 1981), raised this issue sua sponte.^{4/}

On January 29, 1982, Dicembrino filed Exceptions to the Hearing Examiner's decision. He contended that he had filed a timely charge because Local 156 did not refuse to pay his bill until after the charge was filed. On April 26, 1982, Dicembrino submitted a letter alleging that erroneous testimony concerning Local 156's failure to pay another person's legal bills had been given. Local 156 filed a response supporting the Hearing Examiner's decision. On May 21, 1982, Dicembrino and his former attorney submitted additional statements.

The record on the merits in this case is well-developed; the record on the statute of limitations question is unclear and not fully developed. We have decided to reach the merits. We hold that the Charging Party has not proved by a preponderance of the evidence that Local 156 committed any unfair practices.^{5/}

Dicembrino has for many years been a member in good standing of the P.B.A. and has served as its recording secretary, president, and state delegate. He incurred legal expenses amounting

^{4/} Dicembrino was injured in 1977 and placed on injury leave. His date of retirement was October 1, 1977; however, it was not until October 23, 1979 that he was notified by the Pension Board. The Hearing Examiner concluded that Dicembrino was no longer a public employee after October 23, 1979, and that he lost his standing to file an unfair practice charge after April 23, 1980. He further concluded that Dicembrino had not filed the instant charge within six months of either the date of his submission of his bill (late November 1979) or the date (undetermined) Local 156's president notified him it would not pay his bill.

^{5/} We express no opinion on the correctness of the Hearing Examiner's analysis of the timeliness question.

to \$735.00 for the matters previously mentioned. His bill for these expenses was submitted to the P.B.A. president in November 1979 for payment, but not paid.

Dicembrino claims that Local 156 was obligated under Article II of the P.B.A.'s By-Laws to pay the legal or medical bills of all its members. He also relies on an alleged past practice.

Article II provides, in pertinent part:

This Association is formed for the mutual aid, protection, welfare and advancement of each local association and its members; to seek all legitimate aid and assistance for the purpose of promoting, advancing and improving financially, and otherwise, the welfare, conditions and interest of police and law enforcement officers throughout the State of New Jersey; to advance socially, financially, and otherwise, each member's interest and general welfare throughout the State of New Jersey...

On its face, Article II may permit, but does not guarantee a member payment of his legal bills.

A state P.B.A. delegate and the custodian of the P.B.A. minutes testified that payment of legal bills has never been automatic.^{6/} Instead, the membership must vote on each case. Generally, the membership will not pay any bill completely. It has approved partial payment of some bills in the past, but has also declined to pay others altogether. Thus, past practice does not establish any right to the payment of legal bills and does not

^{6/} Dicembrino has not attended a P.B.A. meeting since 1977 and was unaware of how questions concerning the payment of bills had been handled since then.

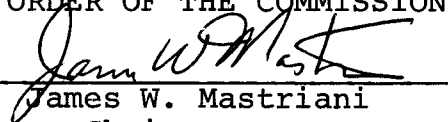
suggest that Dicembrino has been singled out.^{7/} Finally, Dicembrino did not produce any evidence suggesting that the membership of Local 156 acted in bad faith when it voted not to pay his bill.

Under all these circumstances, we do not believe that the Charging Party has established a breach of the duty of fair representation by a preponderance of the evidence. Our review of the record does not persuade us that the membership of Local 156 acted discriminatorily, arbitrarily, or in bad faith when it declined to pay the Charging Party's legal bills. Contrast In re City of Union City, P.E.R.C. No. 81-65, 8 NJPER 98 (¶13040 1982).^{8/}

ORDER

The Complaint is dismissed in its entirety.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch, Hipp and Newbaker voted for this decision. None opposed. Commissioner Suskin was not present at the time of the vote. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey
June 3, 1982
ISSUED: June 4, 1982

^{7/} In his April 26, 1982 letter, Dicembrino alleges that, contrary to the testimony of the state P.B.A. delegate, one of the police officers who did not receive payment of his legal bills did not in fact submit his bills to Local 156. Despite a request from the Commission that Dicembrino submit any pertinent affidavits or other evidentiary material, the allegation remains unsupported. Even if true, it would not affect the un rebutted testimony that a number of other officers submitted bills but did not receive full or, in some cases, even partial payment. Moreover, even if true, the allegation alone would not support Dicembrino's central claim, which he has the burden of proving, that a past practice of paying job-related legal bills existed.

^{8/} Given our analysis, we need not address the Respondent's argument that the Commission lacks the jurisdiction to review the validity of the internal affairs of an employee organization.

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Respondent,

-and-

Docket No. CI-81-7-33

JOSEPH M. DICEMBRINO,

Charging Party.

SYNOPSIS

A Hearing Examiner dismisses a charge of unfair practices by the Respondent on the ground that the Charging Party failed to file a timely Unfair Practice Charge within the six-month limitation period contained in Section 5.4(c) of the New Jersey Employer-Employee Relations Act. The Respondent had not raised this defense but the Hearing Examiner acted sua sponte based on the record developed at the hearing in accordance with the Township of Teaneck, P.E.R.C. No. 81-142, 7 NJPER 351, 353 (1981).

A Hearing Examiner's decision to dismiss is not a final administrative determination of the Public Employment Relations Commission. The Charging Party has ten (10) days from the date of the decision to request review by the Commission or else the case is closed.

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Appearances:

For the Respondent
Booream & Seguin, Esqs.
(Robert S. Seguin, Esq.)

For the Charging Party
Joseph M. Dicembrino, Pro Se

HEARING EXAMINER'S DECISION ON RESPONDENT'S
MOTIONS TO DISMISS

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on August 25, 1980, and amended on September 5, 1980 and October 6, 1980, by Joseph M. Dicembrino (hereinafter the "Charging Party" or "Dicembrino") alleging that the Middlesex County Park Police, PBA, Local No. 156 (hereinafter the "Respondent" or the "PBA") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter "Act"), in that the PBA since November 1979 has failed and refused payment of Dicembrino's bill for attorney's fees for services rendered to him in connection with his pension, a hearing before the Commission and a Civil Service hearing, with the PBA giving no reason for refusing payment of the bill, under the circumstances of the PBA having in at least five instances paid bills for attorney's fees and medical expenses incurred by PBA members

since 1970, all which was alleged to be a violation of N.J.S.A. 34:13A-5.4(b)(1), (4) and (5) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on September 21, 1981. Pursuant to the Complaint and Notice of Hearing, hearings were held on December 7, 1981^{2/} and January 7, 1982 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.^{3/} Both parties argued orally and waived the filing of post-hearing briefs.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the motions of the Respondent to dismiss and the oral argument of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

1/ These Subsections prohibit public employee representatives, their representatives or agents from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

"(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

"(5) Violating any of the rules and regulations established by the commission."

2/ The Respondent failed to appear on December 7 and after taking evidence ex parte from the Charging Party indicating that Respondent had actual notice of the hearing the Hearing Examiner was prepared to proceed by default, notwithstanding the absence of a return receipt from the Respondent. On December 9 an attorney for the Respondent, Robert Seguin, telephoned and stated that he first learned of the case on December 8 and requested an opportunity to appear and defend. This request was granted over the objection of the Charging Party.

3/ The Respondent moved at the opening of the hearing to dismiss on the ground that the Commission has no jurisdiction over the internal affairs of a public employee representative. Decision was reserved. The Respondent next moved to dismiss on the same ground at the conclusion of the Charging Party's case. Again, decision was reserved and the Respondent proceeded to put on its defense without prejudice.

It is noted that the Respondent did not raise as a defense the six-month limitation in Section 5.4(c) of the Act. The Hearing Examiner will, however, deal with the said limitation sua sponte hereinafter.

In disposing of the Motions to Dismiss, and upon the record made by the Charging Party, the Hearing Examiner makes the following interim:

FINDINGS OF FACT

1. The Middlesex County Park Police, PBA, Local No. 156 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
2. Joseph M. Dicembrino is a public employee within the meaning of the Act, as amended, and is subject to its provisions for the purpose of disposing of the ^{4/}within Motions to Dismiss.
3. Dicembrino has for many years been a member in good standing of the PBA and has at various times served as its Recording Secretary, President and State Delegate.
4. In the period between 1976 and 1979 Dicembrino incurred various legal expenses in connection with pursuing his pension rights, unfair practice proceedings before the Commission in 1978, and a Civil Service hearing on November 19, 1979. For these legal services Dicembrino received a bill for attorney's fees in sum of \$935.00 with an itemized statement dated November 21, 1979 (CP-1).
5. Dicembrino testified that during the extended period that he held office in the PBA all bills of members were paid for legal expenses, and in one case for medical expenses, by vote of the membership at a regular meeting on the PBA. Dicembrino referred to five instances of such payment, as follows:
 - a. The bill of Robert Strothers for legal expenses incurred with Anthony L. Mezzacca, Esq. was paid in or around 1970 by the PBA.

4/ The Respondent refused to stipulate at the hearing on January 7 that Dicembrino was a public employee within the meaning of the Act. Dicembrino was advised by the "Pension Board" under date of October 23, 1979 that he was retired on disability effective October 1, 1977 (1 Tr. 4, 5). The Hearing Examiner finds and concludes for the purpose of this proceeding that Dicembrino was a public employee within the meaning of the Act as of October 23, 1979 and had standing to file an Unfair Practice Charge with the Commission within the six-month limitation period contained in Section 5.4(c), of the Act, i.e., until April 23, 1980.

b. The bill of Lawrence Mecca for a legal retainer in the amount of \$1000.00 incurred with Anthony L. Mezzacca, Esq. was paid in or around 1974 by the PBA.

c. The bill of Benjamin Zadaniewicz for legal expenses in the amount of \$250.00 was incurred with Anthony L. Mezzacca, Esq. was paid in or around 1975 by the PBA.

d. The bill of Ciro Sinagra for legal expenses was paid in or around 1975 by the PBA.

e. The bill of Joseph DeHanes for medical expenses in the sum of \$1000.00 was paid in or around 1977 by the PBA.

6. Decembrino cited as authority for the foregoing payments Article II of the PBA's By-Laws, which sets forth the "object" of the organization and makes reference to assistance and promoting the welfare and condition of the members (CP-2).

7. Shortly after the receipt of CP-1, supra, Decembrino attempted to obtain payment of his legal expenses by sending a copy of the attorney's bill to the then President of the PBA, Thomas Disbrow. Decembrino testified that Disbrow called him once and stated that the bill was turned down but Decembrino failed to establish the date of the call. Decembrino also testified that he wrote to Disbrow twice thereafter but received no response. Decembrino's last letter to Disbrow was dated April 15, 1980 and makes no reference to any prior telephone conversation with Disbrow (CP-3).

8. Payment of the bill (CP-1, supra) was never made by the PBA. Decembrino filed the instant Unfair Practice Charge on August 25, 1980.

DISCUSSION AND ANALYSIS

Although the Respondent did not raise as a defense the six-month limitation under Section 5.4(c) of the Act, it is clear under Commission precedent that the Hearing Examiner may raise the issue sua sponte: Township of Teaneck, P.E.R.C. No. 81-142, 7 NJPER 351, 353 (1981). Accordingly, the Hearing Examiner will not dispose

of this matter on the ground raised by the Respondent's Motions to Dismiss or deal with the merits of the Unfair Practice Charge, as amended.

The Hearing Examiner thus finds and concludes that the instant Complaint must be dismissed on the jurisdictional ground that no Unfair Practice Charge was filed by Decembrino during the six-month period that he remained a public employee under the Act following notification of retirement on October 23, 1979. The Hearing Examiner has previously found, for purposes of this proceeding, that the six-month limitation period expired on April 23, 1980. The instant Charge was not filed until August 25, 1980.

The Hearing Examiner also notes that even if public employee status for Dicembrino continued up to and including August 25, 1980, the instant Unfair Practice Charge and Complaint would be subject to dismissal on the ground that the operative event was either the submitting a bill for legal services (CP-1) to the PBA for payment in or around November 1979 or Disbrow's telephone call advising Decembrino that the bill was turned down on an unestablished date prior to April 15, 1980. Decembrino did not file an Unfair Practice Charge until some nine months after the submission of the November 1979 bill and the Hearing Examiner cannot speculate on when Disbrow's phone call occurred except that it was prior to April 15, 1980.

* * * *

Upon the foregoing, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Charging Party failed to file a timely Unfair Practice Charge under the six-month limitation of N.J.S.A. 34:13A-5.4(c).

ORDER

The Hearing Examiner ORDERS that the Complaint be dismissed in its entirety. ^{5/}



Alan R. Howe
Hearing Examiner

Dated: January 18, 1982
Trenton, New Jersey

5/ The Hearing Examiner having dismissed the Complaint without reaching the merits of the Unfair Practice Charge, as amended, his decision is in the nature of granting the Respondent's Motions to Dismiss. Accordingly, any request for review by the Commission is governed by the ten (10) day limitation in N.J.A.C. 19:14-4.7.