

D.U.P. NO. 99-10

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CI-90-25

BENJAMIN ADAMS,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge brought by Benjamin Adams, an individual. Adams alleged that the City of Jersey City committed an unfair practice when it reorganized its police department and eliminated detective positions thereby depriving Adams of his detective assignment and extra compensation for that assignment without just cause. Adams alleged that he was tenured in the detective position and could not be removed from that position except for disciplinary reasons.

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Appearances:

For the Respondent,  
Sean M. Connelly, Corporation Counsel  
(Paul W. Mackey, First Asst. Corp. Counsel)

For the Charging Party,  
Reitman Parsonnet, attorneys  
(Bennet D. Zurofsky, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On September 18, 1989, Benjamin Adams filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Jersey City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(3), (5) and (7)<sup>1/</sup> when it reorganized its police department, eliminated the

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(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

detective positions and reassigned Detective Adams to the patrol division, thereby depriving him of the detective assignment and attendant extra compensation without just cause. Adams claims that, as a tenured 14-year detective, he could not be lawfully removed from the position except for disciplinary reasons.

This matter was deemed withdrawn and closed in 1991. On June 25, 1998, the Commission granted Adams' request to reopen the charge and ordered that an exploratory conference be conducted. City of Jersey City (Adams), P.E.R.C. No. 98-156, 24 NJPER 346 (¶29163 1998).

The Commission has authority to issue a Complaint where it appears that the 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. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. In correspondence dated February 19, 1999, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond.

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1/ Footnote Continued From Previous Page

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

Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

In 1988, the City's Mayor appointed the Hudson County Prosecutor as the Director of Police. The Director conducted a study of police operations and reorganized the department. One of the changes resulted in the elimination of the detective assignment and the extra compensation associated with that assignment.<sup>2/</sup> The City also created a new title of police investigator.

The Police Officers Benevolent Association (POBA), the majority representative for City police officers, filed several individual and group grievances alleging that certain individuals who were reassigned from the detective division to patrol were entitled to hearings under Article 24c(8) of the POBA's collective negotiations agreement with the City. Under that provision, no police officer could be disciplined or reduced in compensation without just cause.<sup>3/</sup> The grievance further alleged that officers who had been functioning as detectives without additional compensation were entitled to retroactive compensation under the contract. The POBA also asserted that the new position of investigator performed the same functions as the detective

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<sup>2/</sup> Apparently, some police officers were assigned as detectives but did not receive additional compensation. Therefore, the reorganization represented only a loss of assignment for them.

<sup>3/</sup> Both the City and the POBA agreed that detective is not a rank but is an assignment. Therefore, the reassignment from detective division to patrol did not represent a demotion.

assignment and, therefore, employees performing the investigator function were entitled to the negotiated compensation for detective.

Adams did not file an individual grievance nor did he request that the POBA file a grievance on his behalf. However, Adams did file suit in the United States District Court against the City, claiming that he was unconstitutionally deprived of his property right in the rank of detective when the City reorganized the police department and eliminated the detective position and salary differential. Adams' federal claim was eventually dismissed on the grounds that the grievance mechanisms available under the parties' contract provided adequate due process.<sup>4/</sup>

On March 21, 1990, a Commission staff agent conducted an exploratory conference among the parties in this matter. Adams participated in the conference, as did POBA counsel David Solomon and City counsel Paul Mackey. However, no charge was ever filed by the POBA pursuant to N.J.A.C. 19:14-1.2; nor was Adams' charge ever amended to include POBA as a charging party pursuant to N.J.A.C. 19:14-1.5. Current POBA counsel Bruce Leder<sup>5/</sup> states that POBA is not a party to this charge.

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<sup>4/</sup> The U.S. Supreme Court denied certiorari on October 6, 1997.

<sup>5/</sup> Solomon is deceased.

**ANALYSIS**

A violation of 5.4a(5) of the Act occurs when an employer fails to negotiate an alteration of an established practice with the majority representative or repudiates the terms of the collective negotiations agreement. However, an individual employee normally does not have standing to assert an a(5) violation, as the employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike Authority, P.E.R.C. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt No. A-1263-80T3 (10/30/81). An individual employee may pursue an alleged 5.4 a(5) violation only where the charging party has also asserted and proven a breach of the duty of fair representation against the majority representative. Jersey City State College, D.U.P. No. 97-18, 23 NJPER 1 (¶28001 1996), N.J. Turnpike, D.U.P. No. 80-10, 5 NJPER 18 (¶10268 1979). Therefore, Adams does not have standing to assert that the City violated 5.4 a(5) of the Act.

Adams' contention that the POBA is constructively a co-charging party in this matter must also be dismissed. The Commission's Rules specifically delineate procedures for either filing or amending a charge. N.J.A.C. 19:14-1.1 et seq. POBA never filed a separate charge, nor sought to intervene in Adams' charge so as to include the POBA as a charging party. Counsel for POBA's attendance at the conference does not support a conclusion that the POBA even sought to be joined as a charging party. Indeed, the assertion of POBA's attorney that it is not a party in this case contravenes that contention.

Further, even if Adams had standing to assert a 5.4 a(5) violation, it cannot be said that the City violated that provision of the Act by failing to process a grievance under the parties' contract. Adams did not file a grievance on his own behalf, nor did the POBA include him in its group grievance. Adams, like other detectives, could have initiated a grievance asserting the alleged violation of his contractual right. He did not do so.

I next consider whether the employer violated 5.4a(3). The standards for proving a 5.4(a)(3) violation are set forth in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). No violation will be found unless the charging party proves that protected conduct was a substantial or motivating factor in the adverse action.

Here, there is no allegation that Adams was engaged in any activities protected by the Act, that the City discriminatorily reassigned him from the detective division to patrol because of his Association activity, or that protected activity was in any way a substantial or motivating factor in the reassignment and loss of the salary differential. Accordingly, I decline to issue a complaint on this alleged violation.


Further, no facts were alleged in support of his 5.4a(7) claims. Specifically, Adams has alleged no facts that our rules or regulations were violated.

Based upon all of the above, I find that the Commission's complaint issuance standard has been not been met and I decline to issue a complaint on the allegations of this charge.<sup>6/</sup>

**ORDER**

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Stuart Reichman, Director

DATED: March 9, 1999  
Trenton, New Jersey