

D.U.P. NO. 95-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MONMOUTH,

Respondent,

-and-

Docket No. CO-95-16

AFSCME COUNCIL 73, LOCAL 2284,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses part of a charge and issues a Complaint on part of a charge filed by AFSCME against Monmouth County. The Director issues a Complaint concerning allegations of a discriminatory transfer of the local's president and consolidates that issue with Docket No. CI-H-95-11. The Director dismisses that part of the charge concerning AFSCME's cross-examination rights at disciplinary hearings, the treatment of suspended employees, the requirement for written decisions of disciplinary hearings, the County's alleged refusal to give medical treatment for on the job injuries, the County's right to bring multiple disciplinary charges against employees for one incident, the right of the County to require unit members to issue incident reports concerning other unit members and the use of leave to attend disciplinary hearings. The Director found that these issues were primarily ones appropriate for the negotiated grievance procedure or properly raised at collective negotiations.

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Appearances:

For the Respondent
Robert J. Hrebek, Esq.

For the Charging Party
Harold Adams, Representative

REFUSAL TO ISSUE COMPLAINT

On July 15, 1994, AFSCME Council 73, Local 2284, AFL-CIO, filed an unfair practice against Monmouth County (Medical Homes) alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4) and (5)^{1/} In count

^{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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or

one of the charge, AFSCME alleges that the County constructively forced Carson Givens, the President of Local 2284, to take a leave of absence and transferred him to a different shift to discourage his union activity. In counts two through eight, the Charging Party alleges that (2) the County failed to give suspended employees an opportunity to cross-examine a patient whose allegations resulted in their receiving discipline; (3) the County ordered suspended employees off the premises immediately without conducting a pre-termination hearing; (4) the County brought multiple disciplinary charges against employees, all of which arose from one incident; (5) the disciplinary hearing process does not provide written decisions; (6) unit members must use their own vacation or administrative leave to attend all disciplinary hearings; (7) unit members are required to write incident reports which form the basis for discipline of fellow unit members; and (8) unit members were refused medical treatment for job related injuries.

The County denies that it engaged in any unfair practices. It asserts that all of the allegations except those concerning Carson Givens are undated and/or do not allege unfair practices within the meaning of the Act.

1/ Footnote Continued From Previous Page

complaint or given any information or testimony under this act; and (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."

Count one alleges that the transfer and constructive, forced leave of absence of Givens was implemented because of his actions as president of the local, on behalf of unit members. If this allegation were true, it would constitute a violation of the Act. The same issue has been raised in a separate individual charge filed by Mr. Givens, docketed as CI-H-95-11. Accordingly, count one of this matter will be consolidated with this other, related unfair practice charge.

AFSCME does not allege any facts in support of its §5.4(a)(2) or (4) allegations. Further, AFSCME does not allege that the County unilaterally changed a term or condition of employment or refused to process its grievances. §5.4(a)(5). Accordingly, as to these allegations, I refuse to issue a complaint and the charge is dismissed. N.J.A.C. 19:14-2.1.

As to the allegations that the County's hearing and disciplinary procedures do not give unit members certain rights of due process, I find that these allegations merely state complaints about the parties' previously negotiated grievance procedures. If the substance of the claim is that the County has breached the terms of the parties' agreement, then the preferred method of resolving such dispute is through the parties' negotiated grievance procedure. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) (mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice

proceedings). If the claim is that the County has not properly processed AFSCME's grievances, the Commission has repeatedly held that assertions of an employer's refusal to respond to a grievance, or its improper treatment of a grievance at an intermediate step of the grievance procedure, in and of itself, is not a violation of subsection 5.4(a)(5) when the contract provides for a self-executing grievance procedure which culminates in binding arbitration. See New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982). Here, the collective agreement between AFSCME and the County ends in binding arbitration of minor disciplinary actions. For disciplinary matters which rise above the level of minor discipline, employees have the right to appeal to the Merit Systems Board and in many cases, have a de novo hearing before the Office of Administrative Law. The parties' agreement permits the grievant, if not satisfied with the result of any step of the grievance procedure, to simply proceed to the next step.

If AFSCME's concern is with the fairness of what was negotiated, AFSCME is only entitled to the benefit of its bargain. AFSCME is free to try to negotiate a grievance procedure which includes cross-examination, written decisions, use of leave to attend all disciplinary hearings, limitations on the County's right to order suspended employees off its premises immediately; number

and type of disciplinary charges which can be brought against employees; and who can be required to write incident reports against unit members. Certain of these matters may predominantly concern important governmental policy issues and may not be mandatorily negotiable. However, even if the allegations herein were proven true, they would not be unfair practices within the meaning of the Act. Many of these issues are best raised and resolved during contract negotiations.

Finally, N.J.A.C. 19:14-1.3 provides that a charge shall contain:

...a clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of Respondent's agents or other representatives by whom committed....
(Emphasis supplied)

Counts two through eight of the charge as submitted do not meet the requirements of this rule.^{2/} There are no dates included as to any of the acts described in the charge, except for those in count one.

Accordingly, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on counts two through eight of the charge. N.J.A.C. 19:14-1.5 and 2.1. Counts two through eight are dismissed. A Complaint and Notice of Hearing

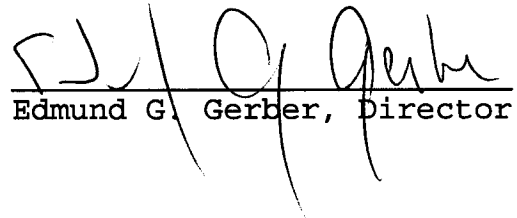
^{2/} AFSCME was apprised of this defect by a Commission staff agent prior to and at the exploratory conference and was also made aware that it could cure this defect. To date, no amendments have been received.

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will issue on count one and the hearing consolidated with docket no.
CI-H-95-11.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 14, 1994
Trenton, New Jersey