

D.U.P. NO. 99-7

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket No. CO-98-299

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint on an unfair practice charge filed by the Communications Workers of America against the State of New Jersey, Department of Human Services. The Director found that the State did not violate an employee's rights under the holding in NLRB v. Weingarten Inc., 420 U.S. 251 (1975) by not informing him that a meeting with his supervisor might lead to discipline, where there was no allegation that the employee requested a union representative and was denied one.

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Appearances:

For the Respondent,
David Collins, Deputy Director

For the Charging Party,
Alan Kaufman, Representative

REFUSAL TO ISSUE COMPLAINT

On February 13, 1998, the Communications Workers of America, AFL-CIO filed an unfair practice charge with the Public Employment Relations Commission against the State of New Jersey, Department of Human Services. The charge alleges that the State violated section 5.4a(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it interviewed Family Service Specialist George Latham without

^{1/} This subsection prohibits 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.

informing him that discipline might be imposed as a result of the interview.

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. Based upon the following, I find that the complaint issuance standard has not been met.

Latham reports to Francine Root in the Camden Central Office of the Division of Youth and Family Services. CWA alleges that on October 9, 1997, Root called Latham into her office and interrogated him, without informing him that the meeting might result in discipline. It is further alleged that Latham was disciplined as a direct result of the interview. CWA claims that the State violated Latham's Weingarten rights "by not giving him any indication that the discussion during the meeting might lead to discipline."

The Commission has adopted the holding in NLRB v. Weingarten Inc., 420 U.S. 251 (1975).^{2/} The New Jersey Supreme Court approved this standard in UMDNJ and CIR, P.E.R.C. No.

^{2/} E. Brunswick Bd. of Ed. and E. Brunswick Ed. Ass'n, P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in pt., rev'd in pt., NJPER Supp.2d 78 (¶61 App. Div. 1980).

93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995), aff'd 144 N.J. 511 (1996). Under Weingarten, upon his or her request, an employee is entitled to have a union representative present at an investigatory interview which the employee reasonably believes might result in discipline. There is no allegation in the instant charge that Latham requested a union representative and was denied one. The complaint here is that Latham's supervisor did not inform him that discipline was a potential result of the meeting. We do not read Weingarten to require supervisors to so inform employees. Weingarten requires only that prior to or during an investigatory interview, an employer accede to an employee's request for a representative or terminate the interview.

The facts in this case do not support a violation of Latham's Weingarten rights. Therefore, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{3/4/}

^{3/} N.J.A.C. 19:14-2.3.

^{4/} On December 11, 1998, the parties were informed of my intention to dismiss the charge, and were invited to respond. Neither party responded.

ORDER

I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

A handwritten signature in cursive script, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman, Director

DATED: January 14, 1999
Trenton, New Jersey