

D.U.P. NO. 2000-2

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

In the Matter of

COUNTY OF SOMERSET (SHERIFF),

Respondent,

-and-

Docket No. CO-99-123

PBA LOCAL NO. 177,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that the County of Somerset violated the Act when it declined to pay a correction officer for shift overlap, holiday leave payments and personal time as part of back pay upon reinstatement. The Director finds that the charge merely asserts a contractual dispute which must be dismissed under Human Services.

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Appearances:

For the Respondent,
Stanton, Hughes, Diana, Salsberg, Cerra
& Mariani, attorneys
(Mark Diana, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 26, 1998, PBA Local 177 filed an unfair practice charge against the County of Somerset. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), provisions 5.4a(1), (3), (5) and (7)^{1/} by unilaterally withholding payment for shift overlap, holiday

^{1/} These provisions 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. (3) Discriminating in regard to hire or tenure of employment or any term or

leave payments, and personal time from back pay paid to Correction Officer George Pearson when Pearson was reinstated to employment after being found not guilty subsequent to a grand jury indictment.

The County denies it engaged in unfair practices. It asserts that this matter essentially raises a contractual dispute and should be dismissed. The County further contends that the decision not to compensate Officer Pearson for the stated payments was consistent with the terms of a prior arbitration award between the County and Local 177.

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 June 25, 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. Neither party filed a response.

1/ Footnote Continued From Previous Page

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 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."

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

The agreement between the County and Local 177^{2/} covering corrections officers provides, in pertinent part:

Article II, Salaries:

E. Muster or Shape-Up Compensation. Each employee shall be paid one-half (1/2) hour per day at the rate of one and one-half (1 1/2) times their regular hourly rate in compensation for any muster, shape-up time, or shift overlap not to exceed one half (1/2) hour per day, which may be designated by the Warden.

Article VI, Holidays:

In the event that the County shall declare a holiday or other time off with pay for all other County employees, then the individuals of the unit shall receive like treatment. An employee who shall be scheduled for, and shall actually work during such period of time, shall receive time and one-half pay for the applicable period covered by the declaration of the County.

Article VIII, Personal Days:

B. Full time employees shall be granted three (3) days personal time per year. These days may be taken in no less than half day increments.

The PBA contends that Pearson is entitled to the above contractual benefits for the period of his suspension. The County maintains that such payments are only due when the employee actually

^{2/} These provisions appear in the parties' agreement covering the period January 1, 1995 through December 31, 1997. The employer submits that the parties have agreed to, but not yet prepared, a 1998 through 2000 agreement, and that no article material to this dispute was changed in the successor contract.

works on the day in question. The County relies on a December 4, 1994 arbitration award, finding that the employer did not violate the parties' agreement when it denied muster pay and holiday pay for the period of an employee's leave due to a work-related injury.

In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

a 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 and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures. [10 NJPER at 421.]

It appears that, at best, the parties have a good faith dispute concerning the proper interpretation of the contract provisions in question. The Commission will not substitute its unfair practice jurisdiction for the parties' agreed-upon grievance procedure to resolve contract disputes. It appears that the underlying facts of the charge merely involve a contract dispute and must be dismissed. Human Services.

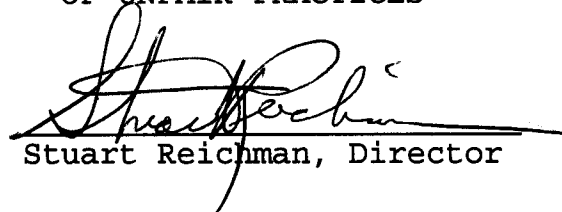
Therefore, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{3/}

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

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: July 20, 1999
Trenton, New Jersey