

D.U.P. No. 2006-2

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

In the Matter of

COUNTY OF BERGEN,

Respondent,

-and-

Docket No. CO-2005-242

LOCAL 755 UNITED SERVICE WORKERS,  
IUJAT,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed by the Local 755, United Service Workers, IUJAT, (USW), alleging that the Bergen County Clerk violated sections 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act when it implemented a sick leave verification policy without first negotiating with the union. Applying the line of Commission cases beginning with Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), the Director finds that it is well-settled that the employer had a managerial prerogative to implement a sick leave verification policy. Therefore, complaint issuance was not warranted.

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Appearances:

For the Respondent,  
Thomas F. Portelli, attorney

For the Charging Party,  
Richard M. Greenspan, PC  
(Julie Pearlman Schatz, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On March 14, 2005, Local 755 United Service Workers, IUJAT, (USW), filed an unfair practice charge against the County of Bergen. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1) and (5)<sup>1/</sup>; when the Bergen County Clerk implemented a sick leave

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<sup>1/</sup> These provisions prohibit public employers, their representatives and agents from: "(1) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by 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

(continued...)

verification policy without negotiating with the USW.<sup>2/</sup> The County denies that it violated the Act and asserts that it - and/or the Clerk - has a managerial prerogative to implement such a policy.

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 September 21, 2005, 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. Based upon the following, I find that the complaint issuance standard has not been met.

USW represents Bergen County's white-collar employees. The unit is comprised of approximately 230 titles in various county

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1/ (...continued)  
representative."

2/ The charge also included an additional allegation regarding use of vacation time. However, the parties advised that this allegation has been resolved through settlement efforts and that the crux of USW's charge is the implementation of the sick leave verification policy.

departments, including employees in the County Clerk's office. The parties' current collective negotiations agreement covers the period January 1, 2004 through December 31, 2007. Article 13, Section D, Paragraph 2 of the agreement provides:

In any sick leave of five (5) consecutive work days or more, a doctor's certificate must be submitted. The Department Head retains the right in sick leave cases under five (5) days to request the Personnel Director to obtain a Physician's Certificate.

On January 12, 2005,, County Clerk Kathleen Donovan issued a memorandum to her employees which states:

There seems to be a need for yet another reminder of our policy on the use of CT, vacation and sick time.

If you call out sick on a Friday and/or Monday, or the day before or after a holiday, you will be required to bring in a doctor's note.

Beginning with Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982), the Commission has decided numerous cases regarding implementation of a sick leave verification policy despite the existence of a contractual provision regarding sick leave. In Piscataway, the Commission held that the employer had a prerogative to establish a verification policy and to use "reasonable means to verify employee illness or disability." Id. at 96. In subsequent years, the Commission has decided dozens of cases involving sick leave verification policies. It has repeatedly held that

employers have a prerogative to require employees to produce doctors' notes verifying their sickness. See, e.g., Morris Cty. and Morris Cty. Sheriff, P.E.R.C. No. 2002-33, 28 NJPER 58 (¶33020 2001); Rahway Valley Sewerage Auth., P.E.R.C. No. 96-68, 22 NJPER 137 (¶27068 1996); State of New Jersey (Dept. of Treasury), P.E.R.C. No. 95-67, 21 NJPER 129 (¶26080 1995).

The USW objects to the employer's sick leave verification policy. It argues that the contractual provision in Article 13 of the current contract precludes the employer from implementing a more stringent sick leave verification policy. It claims that the Clerk may only seek to change sick leave verification through collective negotiations with the USW. It maintains that the Commission should find, like jurisdictions outside New Jersey, that a sick leave verification policy is mandatorily negotiable. It asks that we order the new policy rescinded and make any affected employees whole.<sup>3/</sup>

The Clerk/County argues that she/it has a managerial prerogative to verify the use of employee sick leave by requiring doctor's notes.

Based upon the facts presented here, it appears that the Employer has a managerial prerogative to implement a sick leave

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<sup>3/</sup> USW has not advised of any employees that have been adversely affected by or disciplined pursuant to the sick leave verification policy.

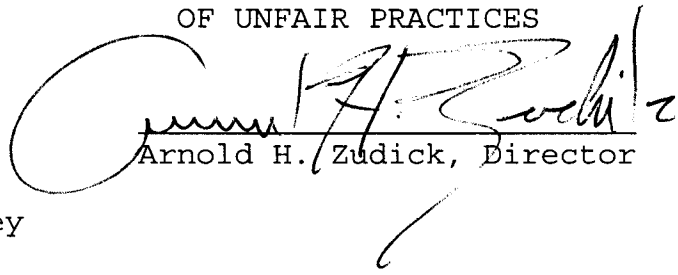
verification policy. As the Commission has previously held, the County's or Clerk's exercise of its managerial prerogative to verify sick leave is not precluded by a contrary provision in the parties' contract. USW has not distinguished the instant case from prior Commission holdings, nor has it raised any legal argument which would overcome the managerial prerogative in this case.

Based on the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the remaining allegation in this charge.<sup>4/</sup>

**ORDER**

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: October 19, 2005  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by November 1, 2005.

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<sup>4/</sup> N.J.A.C. 19:14-2.3.