

D.U.P. No. 2006-4

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF PERSONNEL,

Respondent,

-and-

Docket No. CI-2006-001

DONALD COUGHLAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint in a charge filed by an individual alleging a 5.4a(5) allegation which normally can only be filed by a majority representative. The Director also refused to issue a complaint on an allegation that certain requirements issued by the State Department of Personnel violated the Act. Appeals of such DOP requirements must be filed with DOP through its own appeal procedures.

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Appearances:

For the Respondent,
Peter Harvey, Attorney General
(Stephen Schwartz, Deputy Attorney General)

For the Charging Party,
Donald Coughlan, Pro Se

REFUSAL TO ISSUE COMPLAINT

On July 7, 2005, Donald Coughlan (Charging Party), an employee of the New Jersey Department of Corrections, filed an unfair practice charge against the State of New Jersey, Department of Personnel (DOP), alleging that the DOP unilaterally implemented certain promotional procedures for the position of Director of Custody Operations 1, in violation of N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} Coughlan further alleges that the DOP

^{1/} These provisions prohibit public employers, their representatives or agents from "(1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)

refused to negotiate in good faith with FOP Lodge 187, Coughlan's majority representative, concerning promotional procedures in violation of the Act.

The DOP responds that it is not a public employer; rather, it is an independent regulatory agency over which the Commission does not have jurisdiction and, therefore, it cannot consider Coughlan's allegations. The DOP further asserts that Coughlan lacks standing to demand negotiations on behalf of FOP Lodge 187.

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.

For the reasons stated below, I find that the Commission's complaint issuance standard has not been met.

Coughlan is employed by the Department of Corrections as a Captain. He also serves as the Vice-President of FOP Lodge 187. Coughlan alleges that on October 1, 2004, the DOP issued a notice

1/ (...continued)
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."

of promotional examination for the position of Director of Custody Operations 1. Subsequently, the DOP advised members of FOP Lodge 187 who were interested in competing for the promotion that the examination would consist of a written component (worth 70% of the final score) and an oral component (worth 30% of the final score), and that any candidate who did not receive a score of 70% on the written component would be barred from the oral component. At a meeting with DOP in February 2005, Coughlan attempted to negotiate the qualification for the oral component on behalf of the membership of FOP Lodge 187, but was told by DOP representatives that the issues were non-negotiable.

ANALYSIS

The Commission has found, in accordance with precedent from the Supreme Court of New Jersey, that the DOP is not an employer. New Jersey Department of Personnel, P.E.R.C. No. 89-67, 15 NJPER 76 (¶20031 1988), citing Council of N.J. State College Locals v. State Bd. of Higher Education, 91 N.J. 18 (1982). Since the DOP is not an employer, its regulations are entitled to preemptive effect over which the State has no duty to negotiate. New Jersey Department of Personnel, 15 NJPER at 80. Specifically, in a civil service jurisdiction, qualifications for promotional positions are announced through DOP notices, as occurred in the matter at hand on October 1, 2004. See N.J.A.C. 4A:4-2.1. Appeals of final promotion decisions by the DOP are

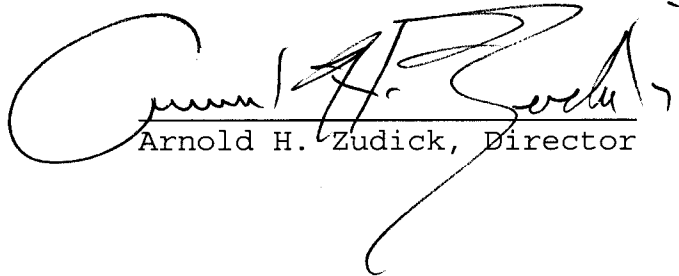
not properly before the Commission, but must be made to the DOP. Cf. Woodbridge Tp., P.E.R.C. No. 89-63, 15 NJPER 25 (¶20010 1988) (grievance not arbitrable where demotional rights in dispute were covered by DOP review and appeal procedures); see also N.J.A.C. 4A:2-1.1(b). Thus, the Commission does not have jurisdiction over determinations made by the DOP.

Furthermore, even where an employer has a duty to negotiate in good faith, such obligation runs to the majority representative, not to any individuals or groups. Therefore, only the recognized or certified majority representative has standing to assert claims that the employer violated 5.4 a(5) of the Act by failing to negotiate in good faith with the majority representative. N.J. Turnpike Authority (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980); State of New Jersey (SLEC), P.E.R.C. No. 90-100, 16 NJPER 303 (¶21125 1990). Accordingly, even if the DOP's regulations were not preemptive, Coughlan, who filed this charge as an individual, lacks standing to allege that there was a failure to negotiate over the promotional examination criteria.

Based upon the above facts and analysis, the Commission's complaint issuance standard has not been met and I refuse to

issue a complaint on the allegations of this charge. N.J.A.C.
19:14-2.1, 2.2 and 2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: December 6, 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 December 19, 2005.