

D.U.P. No. 2008-1

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

In the Matter of

STATE OF NEW JERSEY
(JUVENILE JUSTICE),

Respondent,

-and-

Docket No. CO-2007-168

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1040,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refused to issue a complaint in a charge filed by CWA, Local 1040 alleging that a unit employee was denied union representation at a meeting with her supervisor. The Director refused to issue a complaint because the meeting was not intended to be an investigatory interview that could lead to discipline as required under "Weingarten" standards. The meeting was intended to discuss work duties and responsibilities.

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Appearances:

For the Respondent,
Stuart Rabner, Attorney General
(Sally Ann Fields, Sr. Deputy Attorney General)

For the Charging Party,
Donald Klein, Executive Vice President

REFUSAL TO ISSUE COMPLAINT

On December 4, 2006, Communication Workers of America, AFL/CIO, Local 1040 (CWA) filed an unfair practice charge against the State of New Jersey, Juvenile Justice Commission (JJC), alleging that it violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., specifically section 5.4a(1), (2) and (7)^{1/} (Act).

^{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; (2) Dominating or interfering with the formation, existence or administration
(continued...)

CWA alleges that the JJC denied a unit employee union representation at a meeting with her supervisor in violation of her Weingarten rights. NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975). The JJC denies violating the Act. It contends that the meeting was not an investigatory 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. If the complaint issuance standard has not been met, I will decline to issue a complaint. N.J.A.C. 19:14-2.3. On July 18, 2007, I wrote to the parties, advising 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.

On May 9, 2006, Howard Brown, Healthcare Administrator at the Juvenile Medium Security Facility in Bordentown, issued an e-mail to Judy Thorpe, Supervisor of Nursing Services, ordering her to attend a "plan of action" meeting the next day in his office.

1/ (...continued)
of any employee organization; (7) Violating any of the rules and regulations established by the commission."

The purpose of the meeting was to discuss needed improvements in the medical department. Thorpe replied to him that she was concerned about being singled out for possible discipline and would feel more secure with union representation. Brown denied Thorpe's request.

Thorpe failed to attend the May 10, 2006 meeting. Thorpe failed to attend the May 11, 2006 rescheduled meeting. Thorpe arrived 20 minutes late to the second rescheduled meeting on May 16, 2006. On May 31, Thorpe was served a preliminary notice of disciplinary action, charging her with insubordination and a sanction of "official written reprimand." Thorpe was charged with failing to attend and arriving late for the scheduled May meetings with Brown.

Analysis

An employee has a right to request a union representative's assistance during an investigatory interview that the employee reasonably believes may lead to discipline. This principle was established in the private sector case of NLRB v. Weingarten. It also applies in the New Jersey public sector. UMDNJ and CIR, 144 N.J. 511 (1996); State of New Jersey (Dept. of Treasury), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001). If an employee requests and is entitled to a union representative, the employer must allow representation, or discontinue the interview, or offer the employee the choice of continuing the interview unrepresented

or having no interview. Dover Municipal Utilities Auth., P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984). State of New Jersey (Dept. of Public Safety), P.E.R.C. No. 2002-8, 27 NJPER 332, 335 (¶32119 2001). The charging party bears the burden of proving that an employee is entitled to a Weingarten representative.

The CWA has not alleged that the meeting was investigatory or that any pending investigation might reasonably indicate that the meeting could result in Thorpe's discipline. The meeting's purpose was to discuss work duties and responsibilities. A Weingarten right does not attach to run-of-the-mill shop-floor conversations--for example, giving instructions, training employees or correcting techniques. General Electric Co., 240 NLRB No. 66, 100 LRRM 1248 (1979). Similarly, the employee's belief that discipline may result must be reasonable; i.e., it is not subjectively focused on the employee's or employer's state of mind. The charge does not allege facts indicating that Thorpe's concern for "possible discipline" was rooted in any circumstance preceding the May 10, 11, and 16th scheduled meetings.

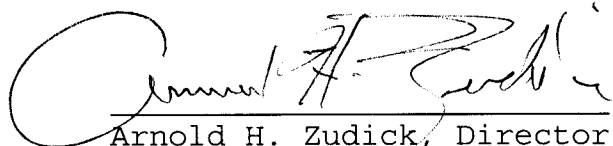
I must conclude that Thorpe's scheduled meeting on May 10, 2007 with her supervisor did not trigger a Weingarten right and accordingly, the 5.4a(1) allegation should be dismissed. I also find that no facts indicate that the JJC violated 5.4a(2) and (7) of the Act.

The Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge.^{2/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: August 15, 2007
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 August 27, 2007.

^{2/} N.J.A.C. 19:14-2.3.