

D.U.P. No. 2011-8

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

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-2009-412

NUHHCE DISTRICT 1199J  
AFSCME,

Charging Party.

SYNOPSIS

The Deputy Director of Unfair Practices dismisses, in part, an unfair practice charge filed by NUHHCE District 1199J AFSCME against the County of Hudson. The charge alleges that the County violated 5.4a(1), (3), (4) and (5) of the Act when the County transferred and changed the work hours of Anthony Lopez and Patrick Desmond in retaliation for their protected activity, and a supervisor interfered with union business by trying to oust Desmond as a union delegate. The Deputy Director finds that the portions of the charge pertaining to Desmond do not meet the complaint issuance standard. As part of a plea agreement for criminal charges, Desmond forfeited his public employment with the County and was "forever disqualified" from holding public employment. The Deputy Director finds that Desmond's court-ordered forfeiture of employment with the County and disqualification from future employment with the State or any of its subdivisions, renders the continued processing of those portions of the charge unwarranted. Regarding the alleged interference by Desmond's supervisor, the Deputy Director finds that this portion of the charge fails to meet the clear and concise statement requirement under N.J.A.C. 19:14-1.3(a)(3), and, therefore, is dismissed.

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Appearances:

For the Respondent,  
Scarinci Hollenbeck, attorneys  
(Christina Michelson, of counsel)

For the Charging Party,  
Oxford Cohen, P.C.  
(Arnold Shep Cohen, of counsel)

DECISION

On May 7, 27, and June 18, 2010, NUHHCE District 1199J  
AFSCME (District 1199J) filed an unfair practice charge and  
amendments to the charge against the County of Hudson (County).  
The charge, as amended, alleges that the County violated 5.4a(1),  
(3), (4) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations

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<sup>1/</sup> 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  
condition of employment to encourage or discourage employees  
in the exercise of the rights guaranteed to them by this  
Act; (4) Discharging or otherwise discriminating against any  
employee because he has signed or filed an affidavit,

(continued...)

Act (Act) when it transferred and changed the work hours of Anthony Lopez and Patrick Desmond in retaliation for their protected activity. The amended charge also alleges that Desmond's supervisor repeatedly interfered with union business by trying to oust Desmond as a union delegate within six months of filing. District 1199J seeks the return of Desmond and Lopez to their former work location and the reinstatement of their former work hours.

The County denies violating the Act, contending that its decisions to transfer Desmond and Lopez and change their work hours were unrelated to their protected activity. The County asserts that Lopez is not an elected union delegate and has not engaged in protected activity. The County also asserts that further processing of the charge regarding Desmond is not warranted because he forfeited his public employment during recent criminal proceedings.

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

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1/ (...continued)  
petition or complaint or given any information or testimony under 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."

standard has not been met, I may decline to issue a complaint.

N.J.A.C. 19:14-2.3. On March 25, 2011, I wrote to the parties, advising that I was inclined to find that the complaint issuance standard has not been met regarding employee Desmond, but that portions of the charge related to Lopez are complaintable. I provided the parties with an opportunity to respond. Neither party filed a response. I find the following facts:

The County employed Desmond as a roads inspector in the engineering department. He reported to work at the Duncan Avenue garage. Desmond was an elected union delegate of District 1199J.

On or about April 23, 2009, Desmond appeared at an Office of Administrative Law Hearing on behalf of a unit member. The next day, the County transferred Desmond from the Duncan Avenue garage to a garage in Secaucus. On or about June 11, 2009, Desmond appeared at a County freeholders' meeting to protest the County's actions against unit employees. The next business day, on or about June 12, the County changed Desmond's work hours.

On October 28, 2009, Desmond pleaded guilty in Superior Court<sup>2/</sup> to a charge of Selling or Making Home Improvements Without Registration from the New Jersey Division of Consumer Affairs in violation of N.J.S.A. 56:8-136. On November 4, 2009, and in reaction to his plea, the County indefinitely suspended Desmond. On June 23, 2010, the Honorable Kevin G. Callahan, J.S.C., ordered that Desmond forfeit his employment with the

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<sup>2/</sup> Complaint No. S-0906-2009-004680

County as of October 28, 2009<sup>3/</sup> and ". . . be forever disqualified from holding any office or position of honor, trust, or profit under this State or any of its administrative or political subdivisions."<sup>4/</sup> On July 22, 2010, Desmond received a Final Notice of Disciplinary Action from the County, terminating his employment retroactively to October 28, 2009.

#### ANALYSIS

A case will be found moot where "continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future." Ramapo Indian Hills Bd. of Ed., P.E.R.C. No. 91-38, 16 NJPER 581, 582 (¶21255 1990). Other considerations are whether there remain open issues which have practical significance; whether there is a continuing chilling effect from the earlier conduct which has not been erased; whether, after a respondent's corrective action, a cease and desist order is necessary to prevent other adverse action against the same or other employees; and, whether the offending conduct is likely to recur. See, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secys., 78 N.J. 1 (1978) and Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978); Neptune Tp. Bd. of Ed. and Neptune Tp. Ed. Ass'n, P.E.R.C. No. 94-79, 20 NJPER 76 (¶25033 1994), aff'd 21 NJPER 24 (¶26014 App. Div. 1994);

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<sup>3/</sup> Ordered pursuant to N.J.S. 2C:51-2a(1).

<sup>4/</sup> Ordered pursuant to N.J.S. 2C:51-2d.

Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 82-56, 8 NJPER 31 (¶13013 1981); Manalapan-Englishtown Reg. Bd. of Ed., P.E.R.C. No. 78-91, 4 NJPER 262 (¶4134 1978).

Applying that rationale to this case, I find that Desmond's court-ordered forfeiture of employment with the County and disqualification from future employment with the State or any of its subdivisions, renders the continued processing of that portion of the charge (which concerns Desmond) unwarranted. Even if 1199J could prove that the County violated the Act, the court order precludes a Commission Hearing Examiner from awarding 1199J its requested remedy, specifically, the reinstatement of Desmond and his assignment back to the Duncan Avenue garage. No facts suggest a continuing chilling effect from the employer's allegedly unlawful conduct. Under these circumstances, litigation over the County's motivation for transferring Desmond and changing his work hours does not effectuate the purposes of the Act.

1199J also alleges that Desmond's supervisor repeatedly interfered with union business by trying to oust Desmond as a delegate.

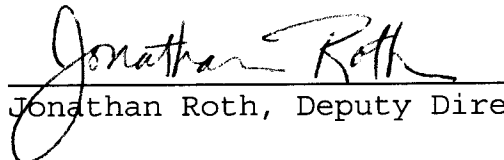
N.J.A.C. 19:14-1.3(a)(3) requires that a charge contain:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

1199J has not met this administrative requirement. No facts have been alleged specifying the date, place or conduct which gave rise to the allegation. Accordingly, I dismiss this portion of the charge. Also, 1199J did not allege any facts to support its 5.4a(4) or (5) allegations.

However, I will issue a Complaint and Notice of Hearing on the 5.4a(1) and (3) allegations that the County transferred and changed the work hours of Anthony Lopez in retaliation for protected union activity. 1199J proffered grievances that Lopez filed or assisted other unit members in filing. The County disputes Lopez's protected activity. This material factual dispute must be addressed in a plenary hearing.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Jonathan Roth, Deputy Director

DATED: April 26, 2011  
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 May 6, 2011.**