

D.U.P. NO. 2015-14

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

In the Matter of

PASSAIC VALLEY SEWERAGE COMMISSION,

Respondent,

-and-

Docket No. CO-2015-111

LOCAL 1158, IBEW,

Charging Party.

SYNOPSIS

The Director of Unfair Practice dismisses an unfair practice charge filed by Local 1158, IBEW. The union alleged that a member was denied union representation under Weingarten. The Director found there was no investigatory interview, and that the member did not request union representation; therefor Weingarten rights were not implicated.

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Appearances:

For the Respondent  
Gregory A. Tramontozzi, General Counsel

For the Charging Party  
Kroll Heineman Carton  
(Curtiss T. Jameson, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On November 7, 2014, Local 1158 IBEW (IBEW) filed an unfair practice charge against the Passaic Valley Sewerage Commission (PVSC). The charge alleges that on August 29, 2014, agents of the PVSC investigated an improper use of paid time off by unit employee Nelson Osorio, without notifying IBEW or permitting Osorio union representation. The charge alleges that the PVSC threatened Osorio with discipline if he did not forfeit sick days and use certain vacation days off. The charge alleges that PVSC caused the forfeitures. PVSC's conduct allegedly violates

section 5.4a(1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

PVSC denies that unit employee Osorio requested union representation and denies that it refused to allow union representation of him in violation of his rights under NLRB v. Weingarten, 420 U.S. 251 (1975). It denies violating the Act.

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.

On May 21, 2015, I issued a letter to the parties tentatively dismissing the charge and inviting responses. No responses were filed.

I find the following facts.

In July, 2014, Executive Director Michael DeFrancisci directed PVSC Chief Financial Officer Joseph Kelly to conduct a routine audit of sick time used by PVSC employees during the first half of 2014. In response to DeFrancisci's directive,

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<sup>1/</sup> This provision prohibits 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."

Kelly ran a report including detailed information regarding all use of sick time by PVSC employees during the first six months of the year. The audit revealed that Osorio used more than thirty days of sick time during the first half of 2014 after not using any sick time during the preceding eight years.

Soon after the audit was completed, DeFrancisci, Kelly and General Counsel Gregory Tramontozzi discussed the results of the audit in DeFrancisci's office in PVSC's Training Center. Upon learning that Osorio was working in the Training Center at that time, they asked Osorio to come to DeFrancisci's office. Osorio arrived at DeFrancisci's office within a minute or two.

DeFrancisci mentioned to Osorio that he was surprised to learn that he had used so much sick time during the first half of the year and inquired: "Is everything okay?" Osorio responded that everything was "great," stating that he'd been using his sick time because he knew he was going to "lose it" when he retired, as he planned to do in October 2014. DeFrancisci reminded Osorio that PVSC's Personnel Policies and Procedures Manual provides that sick time may be used when an employee is unable to attend work because of illness and the like. Osorio volunteered that he hadn't been sick during any of his absences from work in 2014 and stated that he wasn't aware that PVSC's use of sick time policy required that an employee be unable to attend work in order to use sick time. Osorio apologized for violating PVSC's use of

sick time policy. DeFrancisci responded by informing Osorio that there was nothing for Osorio to apologize for given his mistaken understanding of PVSC's use of sick time policy. Kelly and Tramontozzi then informed Osorio that adjustments would likely have to be made to his sick time and vacation time accruals; specifically, an increase to his available sick time and a decrease to his available vacation time. Osorio said that he understood and again apologized for violating PVSC's sick time policy.

#### 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 principal was established in the private sector by NLRB v. Weingarten, 420 U.S. 251 (1975), and is known as a Weingarten right. It applies in the New Jersey public sector as well. 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 Weingarten representative, the employer must allow representation, 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 "meeting" in this case was not investigatory. Rather, the PVSC was inquiring into the well-being of Osorio, based upon his sudden and abundant use of sick time. However, even if the meeting was investigatory, the IBEW has not alleged that Osorio requested or was denied union representation at any time, a necessary component of an employee's Weingarten rights. Accordingly, I am dismiss the charge.

Accordingly, I find that the Association's 5.4a(1) allegation does not satisfy the complaint issuance standard.

ORDER

The unfair practice charge is dismissed.

/s/Gay. R. Mazuco  
Gayl R. Mazuco  
Director of Unfair Practices

DATED: June 5, 2015  
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 June 15, 2015.**