D.U.P. NO. 2023-21

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

In the Matter of

RUTGERS UNIVERSITY, THE
STATE UNIVERSITY OF NEW JERSEY,

Respondent,

-and- Docket No. CO-2020-128

UNION OF RUTGERS ADMINISTRATORS,
AMERICAN FEDERATION OF TEACHERS
LOCAL # 1766, AFL-CIO,

Charging Party.

SYNOPSIS

The Union of Rutgers Administrators, American Federation of Teachers, Local 1766, AFL-CIO (the Charging Party or Local) filed an unfair practice charge against Rutgers, the State University of New Jersey (Respondent or University) alleging that the University committed numerous unfair practices that violated subsections 5.4a(1), (2), (3) and (5) of the Act as well as the WDEA. The Director of Unfair Practices dismisses all the Local's claims, except for the Local's claim that a management representative advised that union representatives could not speak during pre-termination meetings, in violation of 5.4a(1) of the Act.

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Appearances:

For the Respondent,
(Timothy D. Cedrone, Esq.)

For the Charging Party,
(Gregory Rusciano)

PARTIAL REFUSAL TO ISSUE COMPLAINT

On November 6, 2019, the Union of Rutgers Administrators, American Federation of Teachers, Local 1766, AFL-CIO (the Charging Party or Local) filed an unfair practice charge against Rutgers University, the State of New Jersey (Respondent or University). First the charge alleges that the University "unilaterally defin[ed] and impos[ed] its own definition of progressive discipline that deviates from the successor agreement (which does not define it) and refus[ed] to negotiate over the change when demanded by the Union on October 25, 2019 . . ." Second, the charge alleges that the University "unilaterally

enact[ed] a policy that mandates its employees to take an unpaid meal break every workday and refus[ed] to negotiate over the change when demanded by the Union on October 25, 2019 . . ." Third, the Local alleges that the University violated the Act by including a certain statement in written notices for pre-termination conferences that advises, *inter alia*, that a union representative "may not act as an advocate during the conference . . ." The Local alleges that these actions violate the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1), (2), (3) and (5) of the Act[1/] as well as the New Jersey Workplace Democracy Enhancement Act (WDEA)[2/] N.J.S.A. 34:13A-5.11 through 5.15.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may

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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 of any employee organization; (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 ... (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."

2/ Alleged violations of the WDEA do not necessarily implicate this agency's unfair practice jurisdiction, as the statute clearly identifies only certain conduct as an unfair practice under the Act. See N.J.S.A. 34:13A-5.14(c)

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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

I find the following facts.

The University is a public employer within the meaning of the Act. The University and the Local are parties to a collective negotiations agreement (CNA) that extended from July 1, 2018 through June 30, 2022. The Local ratified the CNA on June 13, 2019. The Local represents a negotiations unit comprised of administrative employees employed by the University at its many campuses. About 2,500 employees are in the unit.

By email on September 28, 2020, the University submitted a position statement with supporting documentation and copied the Charging Party's representative on that communication.

Unilaterally Defining Progressive Discipline Allegations

Article 19 of the CNA addresses discipline. It provides in pertinent part:

> The parties to this Agreement affirm the concept of progressive discipline. If prior discipline is considered in subsequent disciplinary actions, such prior discipline must be referenced in the new notice of discipline. Prior discipline that has been

> deemed to be removed from an employee’s record may not be used in determining the level of discipline issued in subsequent disciplinary actions.

The University explained in its position statement that when the parties negotiated the CNA, the parties agreed to modify this article by requiring the University to send a copy of all disciplinary notices to the Local via email. (PST Ex. 1 & 55) The CNA does not otherwise define it, and the above-referenced language appears to be the only reference to progressive discipline. (PST Ex. 1)

According to the charge, “the union became aware of the Office of Labor Relations [sic] methods for defining and imposing criteria for progressive discipline . . .” through a response to an information request that it received on October 7, 2019. The University provided a copy of that response as an exhibit to its position statement, which shows Power Point slides pertaining to discipline. (PST Ex. 54) Then, during a grievance arbitration hearing on September 13, 2019, the charge alleges that Harry Agnostak (Agnostak) testified that he “oversaw training of university departments about implementing his office’s definition of progressive discipline.” The University, in its position statement, produced the transcripts from that arbitration. (PST Ex. 52) As the University explained, Agnostak testified on October 11, 2019 and not September 13, 2019 as alleged in the charge. Also, the University notes that Agnostak did not testify

that he oversaw "his office's definition of progressive discipline." Instead, the transcript shows that when asked on cross-examination whether he or members from his office provide "general training" regarding discipline, Agnostak explained that his "staff will provide training when requested from departments as well as in the supervisory training program which is conducted on an ad hoc basis for supervisors on disciplinary processes at the University." (PST. Ex. 52)

As further explained in its position statement, the University has conducted training on the topic of progressive discipline for supervisors and managers. It notes that members of the Charging Party's negotiations unit attended such sessions, including Denise Heeter on March 21, 2017 and Eric Himsel on March 22, 2019. (PST Ex. 53 & 54) In support, it provided a copy of the PowerPoint presentations from those sessions, the latter of which was provided to the Local in its October 7 information request response. (PST Ex. 53 & 54). The PowerPoints will be described in further detail below, but they provide a general informational overview of the fundamentals of the discipline.

On October 24, 2019, Local Representative Greg Rusciano (Rusciano) sent an email to Agnostak demanding to negotiate. The University provided a copy of that email. (PST Ex. 51) It provides in pertinent part:

> The University has created its own definition of progressive discipline and has directed its supervisors to rely on such a definition when making disciplinary decisions against URA-AFT represented employees. As you know the collective agreement does not specifically define the various steps of progressive discipline. The union previously proposed definitions of progressive discipline during collective bargaining meetings which the university rejected. We dispute your authority to enact the following specific unilateral actions that originated from your office:
>
> > i. The lowest level of discipline is a verbal warning.
> > ii. Exempt employees must be suspended for five days minimum while non-exempt employees may be suspended for one-five days
> > iii. Lower steps of progressive discipline may be bypassed for termination in cases of "extremely egregious/impactful behavior"
> > iv. Any other protocols and criteria regarding progressive discipline, just cause and level of punishment not otherwise negotiated or listed in the collective agreement.

Rusciano demanded that negotiations occur within five business days and that "the university cease immediately from any/all disciplinary actions if/until an agreement is reached with the union."

Agnostak responded by email on October 29, 2019. He explained that the University did not view the issues Rusciano identified to be mandatorily negotiable. Agnostak noted that "the University has not changed its direction to departments

regarding progressive discipline and has been providing said guidance for many years." He also explained that the decision to impose discipline is not a mandatory subject of negotiations and that the grievance procedure "provides the methodology for grieving disciplinary matters and for processes that the union believes has not been followed." Rusciano provided the following response in pertinent part later that same day:

> Regarding progressive discipline my email below was prompted on learning of the information around this time. Your argument of your progressive discipline direction being a practice for many years is new information that we intend to independently verify, but we do not withdraw our demand to negotiate.

The instant charge was filed a week later.

The PowerPoint slides that were provided to the Local are informational and set forth basic information regarding discipline. (PST Ex. 54) The slides identify the "focus" of the training as two-fold: 1) "understanding the University's disciplinary guidelines which encourage a progressive approach to addressing inappropriate employee conduct" and 2) "understanding considerations contained in the staff collective negotiations agreements." They cover concepts such as the goals of discipline and discuss general guidelines for discipline, including the importance of communication and consistency. The slides outline the steps of progressive discipline as counseling, written warning/reprimand, suspension, termination. The slides explain

what those steps mean and what information should be conveyed by supervisors at various disciplinary steps, such as identifying the problem and clarifying expectations for an employee. They set forth the procedures supervisors should follow when contemplating discipline, such as investigating and retaining documentation. The slides also address unionized employees' statutory and contractual rights in the disciplinary context.

Meal Break Allegations

The charge next alleges that the University "[u]nilaterally enact[ed] a policy that mandates its employees to take an unpaid meal break every workday and refus[ed] to negotiate over the change when demanded by the union on October 25, 2019, through an email sent to Mr. Agnostak." The charge does not identify what the status quo was before the alleged unilateral change or when the change occurred.

The University provided a copy of the October 25 email referenced in the charge. (PST Ex. 51) Like the charge, it does not identify a date when the alleged unilateral change occurred. Representative Rusciano's email to Agnostak provides:

Meal Breaks

> 1. The SAS Dean's Office, University Libraries and various other university departments have enacted a policy about unpaid meal breaks as follows: employees must take a minimum 30 minute unpaid meal break. As you know, the collective agreement has no provision for breaks that were negotiated. Any directive to an employee that he/she <u>must</u>

> take a 30 minute unpaid meal break is a unilateral change and deviates from the binding past practice (status quo) which is: employees are permitted to take an unpaid uninterrupted meal break of at least 30 minutes each work day unless otherwise mutually arranged between the employee and the supervisor or unless the employee (on an individual basis) is notified of a schedule change pursuant to article 9. (Emphasis in the original).

By email on October 29, 2019, Agnostak provided the following response regarding the meal breaks demand:

> With regard to the second issue you identify, changes to hours of work and work schedules are provided for in the collective negotiations agreement along with a correlative notice requirement. You have not identified which employees have had their work schedules or hours of work changed without prior notification or a list of all the departments you believe have enacted a policy. Absent such identification a labor management meeting could not be productive. If you provide a complete list of departments and employees, the University may reconsider your request.

Later the same day, Rusciano responded by email in pertinent part: "Regarding breaks and schedules, we acknowledge what is provided for by the collective agreement for setting individual employee hours and schedules without proper notice. We seek to negotiate over unilateral terms enacted by the university about breaks for staff broadly . . . ." Agnostak did not respond.

According to the University's position statement, the Local also filed a grievance and request for arbitration that addresses meal breaks. The University provided a copy of that request in

AR-2020-303. (PST Ex. 56). The Local claims in the grievance that the University violated the contract "when it modified the job descriptions and work assignments of Dana Library employees and modified the work hours, schedules and meal breaks and related procedures of Dana Library employees and others at Rutgers University affected who are similarly situated."

Article 9 of the parties' CNA is entitled "Changes to Hours of Work and Work Schedules." It provides in pertinent part:

> Prior to effectuating a permanent change in an employee's regular work schedule, Rutgers shall give a minimum of fourteen (14) days notice to the affected employee, or employees, unless circumstances, such as an emergency situation make such notice impracticable.
>
> A permanent change shall be defined as a change lasting more than thirty (30) days. However an articulated temporary change may be for a period in excess of thirty (30) days.

Allegations Relating to Pre-Termination Notices

The third main allegation of the charge asserts that the University "includ[es] the following statements in written notices of pre-termination conferences . . . ." to unit employees:

> Your attendance at the conference is voluntary but this will be your only opportunity to be heard before disciplinary action is taken against you. If you decided not to attend the conference, then you will have waived your right to a pre-termination conference. You may choose to bring a union representative to this conference; however,

> the representative may not act as an advocate during the conference, and the inability of a representative to attend will not be cause to postpone it.

However, the charge does not identify what specific language in the notice violates the Act, or specifically how the notice violated the Act or even when the Local first became aware of the inclusion of such language in the pre-termination conference notices. There are also no facts alleging that Weingarten rights have been violated or that the conferences are actually investigatory interviews where union representation is implicitly discouraged.

The charge then identifies the names of seven (7) employees who received such notices and when they received them. First, Stephanie Cammarano received a copy of the notice by email at 4:06 p.m. on October 21, 2019 for a pre-termination conference scheduled for 10:00 a.m. on October 22, 2019, and the University copied Local President Christine O'Connell on that notice. Second Marilyn Moya received a pre-termination conference notice on October 10, 2019 that was scheduled for 10:00 a.m. on October 11, 2019. Third, Jeffery Stewart received a notice via overnight mail on October 3, 2019 that a pre-termination conference was scheduled for 3:00 p.m. on October 4, 2019, and the University sent a copy to the Local by email on October 2, 2019 at 5:02 p.m. When Rusciano inquired if Stewart wanted a union representative to attend, he allegedly told him that "there is no point because

the letter states that there cannot be any union representation during the meeting." Fourth, Jacquelyn Gross received a hand-delivered notice around 12:00 p.m. on September 20, 2019 that a pre-termination conference was scheduled for September 21, 2019 at 10:00 a.m. During that September 21, 2019 meeting, Director of Administration Stacey Pacheco allegedly stated that Jeffrey Maschi from the University's Office of Labor Relations informed her that the union representatives could not speak during the meeting. Fifth, Kurtis Wallin allegedly received a notice via email around 4:47 p.m. on August 22, 2019 that a pre-termination conference was scheduled for 10:00 a.m. on August 23, 2019. Sixth, Robin Taylor received a notice via email around 4:06 p.m. on July 25, 2019 that a pre-termination conference was scheduled for 8:30 a.m. on July 26, 2019. And seventh, Christopher Countryman received a notice on July 10, 2019 that a pre-termination conference was scheduled for 10:00 a.m. on July 17, 2019.

The University provided copies of the pre-termination notices provided to the seven employees identified in the charge. (PST Ex. 59) The University explains that it has provided Loudermill notices to employees for years, and has copied the Local on all such notices to unit members. It then provides examples of four notices provided to unit members on May 4, 2009, March 7, 2014, January 17, 2017, and July 6, 2017, which include

the language challenged in the charge. The documents appear to show that agents of the Local were copied on each notice. The 2014 notice was emailed to Darlene Smith, the then-Executive Vice President. The 2017 notices were emailed to Lucy Millerand, the then-President. It is unclear from the exhibits which union representative was copied on the 2009 notice.

ANALYSIS

Unilaterally Defining Progressive Discipline Allegations

The University contends in its position statement that this claim must be dismissed. It submits that the University has not changed its conduct, the Local waived any right to negotiate, and that the allegations are untimely.

The allegation must be dismissed because it fails to state a claim for relief. The charge alleges the University deviated from the CNA yet also concedes in the same sentence that the CNA is silent on the definition of progressive discipline. The charge does not attempt to explain with any specificity what the past practice, policy, or existing term and condition of employment was before the alleged deviation, which also violates the minimum pleading requirements under the Act. N.J.A.C. 19:14-1.3a(3) (requiring that a charge "shall contain . . . [a] clear and concise statement of facts constituting the alleged unfair practice."); Edison Tp., P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 2013). Moreover, there is necessarily no viable unilateral

change claim where there the Charging Party fails to allege facts indicating that the status quo has actually been changed, and thus triggered a potential negotiations obligation. See e.g. City of Union City, P.E.R.C. No. 2006-77, 32 NJPER 116 (¶55 2006)(no mid-contract negotiations obligation where the terms and conditions of employment did not actually change).

The Local also waived any right to negotiate over progressive discipline. A waiver can occur several ways, including when an employee representative acquiesced to similar actions in the past. See South River Bd. of Ed. and South River Ed. Ass'n, P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd NJPER Supp. 2d 170 (¶149 App. Div. 1987); Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 116 N.J. 112 (2000).

As noted above, the parties ratified the applicable CNA on or around June 13, 2019. Months later, Local Representative Rusciano sought negotiations over progressive discipline. As Rusciano expressly acknowledges in his October 25 email to demand negotiations, the Local "previously proposed definitions of progressive discipline during collective bargaining meetings which the university rejected." Moreover, it proposed and obtained a change to Article 19 regarding discipline in the latest round of negotiations. It chose to ratify the CNA without

specific steps of progressive discipline identified. The charge fails to identify any facts that establish the University implemented a different definition of progressive discipline than had previously been implemented. And based on the PowerPoint provided in the position statement, the University's guidance on progressive discipline remained the same for years. Given these circumstances, the Local acquiesced to the alleged unilateral conduct, thereby waiving its right to negotiate mid-contract. See e.g. Upper Saddle River Bd. of Ed., D.U.P. No. 2004-7, 30 NJPER 263 (¶91 2004) (dismissing unfair practice charge where union waived its right to negotiate mid-contract over preexisting leave policy that had not changed). Accordingly, to the extent there was any negotiations obligation, the Local waived it for the duration of this contract.

The charge must also be dismissed because it is untimely. Pursuant to N.J.S.A. 34:13A-5.4c:

> [N]o complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 month period shall be computed from the day he was no longer so prevented.

In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), our Supreme Court explained that the statute of limitations was intended to prevent the litigation of stale claims. Id. at 337-38. Even if I set aside the University's representation that the

Local's representatives attended years earlier the progressive discipline trainings that set forth the University's understanding of progressive discipline, no facts are offered in the charge to explain why the Local was not previously aware of the various disciplinary steps before it filed this charge. There are also no facts that suggest the Local was prevented from timely filing. I take administrative notice that this agency has disposed of other charges involving the discharge of employees from this particular union, which predate the instant charge by more than six months. See e.g. Rutgers University, D.U.P. No. 2023-8, 49 NJPER 162 (¶37 2022) (dismissing a retaliatory discharge claim of a shop steward who was terminated in December 4, 2018 because the Local failed to timely file a charge). See also Rutgers University, P.E.R.C. No. 2013-22, 39 NJPER 187 (¶59 2012) (denying restraint of binding arbitration of a grievance filed by the Charging Party contesting the 2011 layoff/termination of a unit member). I also take administrative notice that the Local has been the majority representative for many years, and the agency's website has collective negotiations agreements dating back to September 1, 2014. There are no facts alleged that explain why the Local, in all its years as the majority representative, failed to learn about the University's definition or understanding of progressive discipline until the Fall of 2019, as Rusciano claimed in his October 29, 2019 email

to Agnostak. Under such circumstances, the Local's claim must be dismissed as untimely.

Meal Break Allegation

The University contends that this claim must be dismissed because it fails to satisfy our minimum pleading requirements. N.J.A.C. 19:14-1.3a(3) (requiring that a charge contain "[a] clear and concise statement of 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 . . ."). I agree. The Local fails to identify in the charge when the alleged unilateral change occurred, where it occurred, who instituted the change, and fails to set forth with any specificity what the break policy "status quo" was that would enable an assessment of whether there was a negotiable change made to a term and condition of employment.

The University also argues that the Local waived the right to negotiate mid-contract. As noted above, Article 9 of the parties' CNA governs changes to work hours and work schedules. The CNA expressly grants the University the right to make permanent work schedule changes so long as the contractually required notice is provided in advance. There is no allegation that the University failed to provide the contractually-required notice. And when Agnostak sought more information regarding which unit employees had their schedules changed without the

required notice, Rusciano did not identify any in his response. The only restriction on this negotiated contractual right appears to be the notice requirement. We have dismissed charges alleging mid-contract unilateral changes regarding work schedules or hours where the contract clearly afforded a general right to make such modifications upon proper notice. See State of New Jersey (Dept. of Corrections), D.U.P. NO. 2007-1, 32 NJPER 291 (¶120 2006) (finding the contract authorized changes to work schedules notice with proper notice).

The Director's dismissal in State of New Jersey (Judiciary), D.U.P. No. 97-6, 22 NJPER 285 (¶27155 1995) is particularly instructive. Although the applicable agreement did not expressly mention changes to the workweek, staff trainings, or weekend work, the negotiated language expressly granted the employer the right to modify work hours and work schedules with proper notice. Therefore, the Director concluded that the employer was authorized to require employees to attend staff training on a Saturday with proper notice. Similarly in the instant matter, although breaks are not expressly mentioned, the University is authorized to make permanent changes to work schedules and hours so long as the contractually-required notice was provided.

Moreover, I have found no cases that would support the proposition that a public employer must negotiate over the option for individual employees to determine in their discretion whether

they should take an afforded break. We have cases addressing the negotiability of whether breaks must be taken in a particular manner, and have recognized that the subject is not always mandatorily negotiable. Compare Salem City Bd. of Ed., P.E.R.C. No. 82-115, 8 NJPER 355 (¶13163 1982), aff'd, NJPER Supp.2d 133 (¶114 App. Div. 1983) (school nurses' leaving their respective buildings during their lunch periods was not mandatorily negotiable) with Freehold Regional H.S. Bd. of Ed., P.E.R.C. No. 81-58, 6 NJPER 548 (¶11278 1980), aff'd, NJPER Supp.2d 113 (¶93 App. Div. 1982) (a clause permitting teachers to leave their building during the lunch period upon notice to the principal was mandatorily negotiable).

Here however, the negotiability question posed by this charge is not whether employees have a right to a break, or how long the break should be or where the break can be taken, but instead whether employees can choose in their own discretion to take a thirty minute break. The clear import of both the emphasized language in Rusciano's email and in the instant charge is that the Local sought negotiations over whether the University could mandate employees to take a break. If employees can choose on any given day to take or skip a thirty minute break that the University had to offer, there are two possible results: the employees effectively increased the length of the workday by thirty minutes or they must leave thirty minutes early to avoid

increasing their overall work hours. Such individual choices not only impact existing work schedules and hours but also negotiated wages, as the decision to work through a thirty minute break could also make the employer vulnerable to new compensation claims for the additional time spent working.[3/] Thus, the facts as articulated in the charge and in Rusciano's email are not sufficient to raise any mandatorily negotiable issues.

Pre-Termination Notices Allegations

The allegations pertaining to the inclusion of the quoted language in the pre-termination notices must be dismissed because they fail to meet the pleading requirements of the Act. N.J.A.C. 19:14-1.3a(3). Specifically, the charge fails to identify when the challenged statement was first included in the pre-termination notices. The charge does not allege that the inclusion of the challenged statement was new or different from the language used in prior pre-termination notices. The Local also fails to allege any facts that establish that the Local was somehow prevented from timely filing. Moreover, as the University points out in its position statement, the charge does not explain what specifically about the challenged language is a

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3/ There is no allegation that the Local was seeking to negotiate a flexible work schedule. But again, the University has the contractual authority to modify work schedules with proper notice.

violation of the Act. Therefore, the charge is deficient and must be dismissed.

Additionally, as the University asserts, the allegations pertaining to the inclusion of the challenged language in the pre-termination notices are time-barred. The University provided documentation showing that the challenged language has been included in notices issued as early as 2009. The University also showed that agents of the Local received copies of the notices including the challenged language as early as 2014. (PST Ex. 60) Thus, given the Local's failure to offer any facts regarding why it did not timely contest the challenged language, these allegations must be dismissed. See Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978); Middlesex County Sheriff's Office and Philip S. Mandato, P.E.R.C. No. 2017-8, 43 NJPER 90 (¶26 2016), aff'd 44 NJPER 333 (¶95 App. Div. 2018).

To the extent the Local is claiming that the challenged language in the pre-termination notices somehow chills the exercise of protected rights, this allegation must also be dismissed. While unit employee Jeffrey Stewart may have subjectively felt that a union representative's attendance at the pre-termination conference was futile, the subjective beliefs of a unit employee are not sufficient to constitute a violation of the Act. See Tp. of South Orange Village, D.U.P. No. 92-6, 17 NJPER 466 (¶22222 1991) (explaining for a(1) violations that the

"focus of the inquiry is on the offending communication rather than the subjective beliefs of those receiving it.") Thus, the facts as alleged in the charge do not have a tendency to chill the exercise of protected rights.

The allegations regarding the issuance of the pre-termination notices to seven employees must also be dismissed. This set of allegations fails to meet the pleading standards required under our Act. N.J.A.C. 19:14-1.3a(3). The charge fails to articulate specifically how the issuance of the notices to these employees violated the Act. There is no indication that the manner in which the notices were issued to this group of employees violated clear contract language or otherwise represented a departure from past practice. Given these deficiencies, these allegations must be dismissed.

The only claim that meets the complaint-issuance standard is the claim that during a September 21, 2019 pre-termination meeting, Director of Administration Stacey Pacheco allegedly stated that Jeffrey Maschi from the University's Office of Labor Relations informed her that the union representatives could not speak during the meeting. Depending on the specific factual circumstances, such a blanket statement may be a violation of 5.4a(1) of the Act.

Remaining Allegations

No facts are alleged that support a violation of subsections 5.4a(2) or (3) of the Act. Accordingly, they are dismissed.

Additionally, no facts are alleged that support an unfair practice claim arising under the WDEA. The WDEA does not expressly confer upon the Commission a general jurisdiction to enforce all of the statutorily-created obligations imposed upon public employers. See Classical Academy Charter School, D.U.P. 2022-1, 48 NJPER 113 (¶29 2021). Furthermore, the instant charge makes only a generalized claim of a WDEA violation, and fails to articulate any specific facts that implicate conduct expressly identified by the WDEA as an unfair practice under subsection a(1) of the Act. N.J.S.A. 34:13A-5.14. Such statements clearly are insufficient to meet the pleading requirements, and the Local's claim is also dismissed on that basis. N.J.A.C. 19:14-1.3a(3).

ORDER

Accordingly, I will issue a complaint under separate cover for 5.4a(1) only regarding the statement made during the September 21, 2019 pre-termination meeting only. I decline to issue a complaint on all of the remaining allegations in this charge. N.J.A.C. 19:14-2.1.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Director of Unfair Practices

DATED: March 27, 2023
Trenton, New Jersey

This decision may not be appealed pre-hearing except by special permission to appeal from the Chair pursuant to N.J.A.C. 19:14-4.6. See N.J.A.C. 19:14-2.3(c); N.J.A.C. 19:14-4.6(b).

Any appeal is due by April 3, 2023.