

D.U.P. NO. 89-2

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

In the Matter of

MONMOUTH COUNTY JUDICIARY,

Respondents,

-and-

Docket No. CO-89-3

O.P.E.I.U., LOCAL 32-A,

Charging Party.

SYNOPSIS

Relying on Passaic Cty Probation Officers v. Cty of Passaic, 73 N.J. 247 (1977), the Director refuses to issue a complaint on a charge alleging that the Monmouth County Judiciary announced that it would increase its probation officers' work week during negotiations with O.P.E.I.U., Local 32-A.

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Appearances:

For the Respondent
Administrative Office of the Courts
(Joan Kane Josephson, Chief, Labor Relations)

For the Charging Party
Hansbury, Martin & Knapp, Esqs.
(Frederic Knapp, of counsel)

REFUSAL TO ISSUE COMPLAINT

On July 1, 1988, Local 32-A, Office and Professional Employees International Union ("Local 32-A") filed an Unfair Practice Charge alleging that the Monmouth County Judiciary ("Judiciary") violated subsections 5.4(a)(1) and (5)^{1/} of the New

^{1/} These subsections 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; (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."

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when, during negotiations for a successor agreement, it announced an increase in probation officers' work week from 32.5 to 40 hours. Local 32-A alleges that the Judiciary made this announcement after the parties had agreed not to make new proposals during negotiations. As a remedy, Local 32-A seeks an order directing the Judiciary to withdraw its announced workweek increase and to negotiate hours of work. The Judiciary asserts that hours of work for judiciary employees (here probation officers) are not negotiable.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.^{2/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may

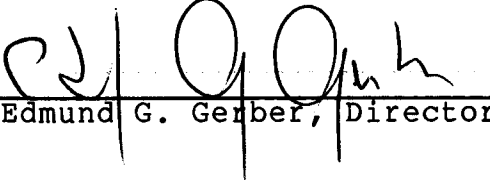
^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

constitute an unfair practice within the meaning of the Act.^{3/}
 The Commission's rules provide that I may decline to issue a
 complaint.^{4/}

On July 29, 1988, we advised the parties that it appeared that the Commission's complaint issuance standards have not been met. There can be no violation of subsection 5.4(a)(5) where the subject matter sought to be negotiated is not mandatorily negotiable. Mainland Reg. Bd. of Ed., D.U.P. No. 85-20, 11 NJPER 162 (¶16070 1985). In Passaic Cty. Probation Officers v. Cty. of Passaic, 73 N.J. 247 (1977), the New Jersey Supreme Court held that work hours for probation officers are not negotiable as a matter of Supreme Court policy. Thus, because the employer's refusal to negotiate concerned a subject which is non-negotiable for judiciary employees -- work hours -- it appears that there is no violation of the Act stated in the charge.

We invited the parties to submit additional factual allegations and position statements. We advised them that, absent additional assertions and argument which would warrant an evidentiary hearing, we would issue a decision declining to issue a complaint. We have not received additional submissions. Accordingly, we decline to issue a complaint.

BY ORDER OF THE DIRECTOR
 OF UNFAIR PRACTICES


 Edmund G. Gerber, Director

DATED: August 19, 1988
 Trenton, New Jersey

3/ N.J.A.C. 19:14-2.1.

4/ N.J.A.C. 19:14-2.3.