

D.U.P. NO. 92-15

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

In the Matter of

ATLANTIC COUNTY JUDICIARY,

Respondent,

-and-

Docket Nos. CI-90-14
CI-90-23

DEREK L. HALL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed against the Atlantic County Judiciary. The charge alleged that the Judiciary failed to properly process his grievances and retaliated against him for filing those grievances.

The Director determined that the charging party had not asserted facts showing that the Judiciary had discriminated against him for either filing grievances or in the processing of them.

Accordingly, the charge was dismissed.

D.U.P. NO. 92-15

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

In the Matter of

ATLANTIC COUNTY JUDICIARY,

Respondent,

-and-

Docket Nos. CI-90-14
CI-90-23

DEREK L. HALL,

Charging Party.

Appearances:

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

For the Charging Party,
Derek L. Hall, pro se

REFUSAL TO ISSUE COMPLAINT

On July 28 and August 4, 1989, Derek Hall filed unfair practice charges alleging that the Atlantic County Judiciary ("Judiciary") violated subsections 5.4(a)(1) and (4) and (a)(1), (3) and (4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

^{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. (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, petition or complaint or given any information or testimony under this act."

In the first charge, Hall alleges that the Judiciary acted unlawfully in its handling of a grievance at step 3 of the grievance procedure in the 1987-89 collective agreement signed by the "Assignment Judge for the Superior Court Judges of Atlantic County" and the Atlantic County Probation Officer's Association ("Association").

Hall asserts that two grievances he filed in June 1989 were dismissed by the Chief Probation Officer, pursuant to step 2 of the grievance procedure. The step 3 "designated representative", the Court Administrator, was allegedly "in a conflict of interest" and "could never be impartial" and was "the employer's man, not qualified to officiate." Hall essentially refused to participate in the step 3 hearing before the designated representative and urged the designee to withdraw from the proceeding.

Hall contends that the grievance procedure "could not settle any of the disputes in an impartial manner and was found to be so when the Trial Court Administrator issued his report as part of management." Finally, Hall asserts that the Court Administrator made a determination on "alleged evidence" and not a recommendation to the Assignment Judge (pursuant to step 3). Hall contends that "the interpretation of the contract's grievance procedure was faulty on management's part...."

The three-step grievance procedure (Article XIX) does not end in binding arbitration. The "aggrieved officer" may instead, appeal to the Assignment Judge, who may "designate any Court

employee or other representative..." to hear and make recommendations to him for disposition. The decision of the Judge is final.

The August 4 charge alleges that the Judiciary violated subsections 5.4(a)(1), (3) and (4) of the Act by denying Hall the "opportunity for reassignment" on or about June 16, 1989. Hall asserts that the Chief Probation Officer retaliated against him because he filed "complaints" in January and February 1989. Hall asserts that the grievances concerned the Officer's "ignoring judicial and county personnel policy." Hall alleges that the Chief Probation Officer excluded him from reassignment "while offering up opportunities to other probation officers."

Hall contends that the vacancy he seeks to fill in Atlantic City was created by his "forced reassignment" from that position to one in Mays Landing in November 1988. The notice for the vacancy was limited to "Atlantic City Adult Probation Officers" and was posted for only two working days and not the allegedly required ten working days.

The Judiciary has not responded to the charges.

On March 5, 1992, I issued a letter tentatively refusing to issue a Complaint and Notice of Hearing.^{2/}

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

^{2/} The letter was mailed again on March 18, 1992, to the Charging Party's current address.

in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{3/} 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 constitute an unfair practice within the meaning of the Act.^{4/} The Commission's rules provide that I may decline to issue a complaint.^{5/}

Hall has not alleged facts warranting the issuance of a complaint. Apart from disputing the "fairness" of the decision rendered in the grievance procedure, Hall asserts no arguments suggesting that the Judiciary denied his June 1989 grievance because he engaged in protected activity or because he filed a grievance. See Tp. of Pine Hill, P.E.R.C. No. 86-126, 12 NJPER 434 (¶17161 1986).

^{3/} 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...."

^{4/} N.J.A.C. 19:14-2.1.

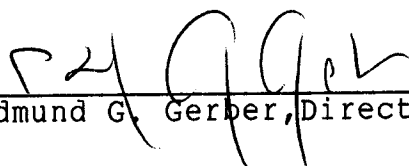
^{5/} N.J.A.C. 19:14-2.3.

Furthermore, the grievance procedure does not guarantee the "impartiality" Hall asserts was denied him. That procedure ends with a final decision by the Assignment Judge or the Judge's designee. Finally, if the grievance procedure was not followed, Hall could have filed a grievance protesting the "application" of "policies" and "decisions" affecting him.

Nor has Hall alleged any facts in the second charge suggesting that he suffered retaliation for filing grievances. Although the filing of grievances is protected activity, Hall simply does not establish a nexus between his January and February 1989 grievances and the Judiciary's "refusal" to reassign him. See Pine Hill. Nor does he assert facts suggesting that the employer's decision to limit applicants for the vacancy to those officers already assigned to Atlantic City is for discriminatory rather than legitimate business reasons. Hall does not contend that he was somehow entitled to fill the vacancy based upon his experience in it (an allegation which may fall outside the six month statutory period) or even that the allegedly truncated posting period was a violation of his rights under the Act.

The Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of these charges. They are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 1, 1992
Trenton, New Jersey