

D.U.P. NO. 88-18

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF PERSONNEL,

Respondent,

-and-

Docket No. CO-87-137

C.W.A., AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on charges alleging that the State, Department of Personnel, reallocated job titles represented by CWA from the competitive division of the career service to the non-competitive division without prior negotiations. CWA also alleged that the Commission of Personnel took or announced plans to take certain other actions affecting terms and conditions of employment of employees representing CWA. The Director finds that these issues are subsumed by issues to be litigated by the parties in another unfair practice case, and that a complaint is not necessary "to afford the parties an appointment to litigate relevant legal and factual issues..." N.J.A.C. 19:14-2.1. Further, allegations that the State violated subsections 5.4(a)(1), (2) and (3) of the Act did not include sufficiently specific statements of improper conduct to warrant complaint issuance.

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Appearances:

For the Respondent
Attorney General's Office
(Michael L. Diller, DAG)

For the Charging Party
Steven P. Weissman, Esq.

REFUSAL TO ISSUE COMPLAINT

On December 1, 1986, and as amended on December 3, 1986, the Communications Workers of America, AFL-CIO ("CWA") filed an unfair practice charge alleging that the State of New Jersey, Department of Personnel ("State" or "DOP") violated subsections 5.4(a)(1), (2), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} CWA alleged

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

that DOP "reallocated job titles represented by the CWA from the Competitive Division of the career service to the Non-Competitive Division..." without prior negotiations with CWA. The charge also alleged that the Commissioner of Personnel "placed an eleven month moratorium on creation of new job titles and reevaluation of existing titles....," as well as announced the Department's "intention to reduce the number of job titles, generalize testing methodologies, and increase the use of generic job titles." The charge alleged that the changes were motivated by anti-union animus, specifically that "retaliatory actions were taken against the CWA because of our Union's vocal criticism of the inordinate number of provisional employees on the State's payroll and the inaction of the Department of Personnel in performing their Constitutional and Statutory responsibility to test and certify applicants for appointment and promotion."

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

1/ Footnote Continued From Previous Page

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."

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 unfair practice complaints shall be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

On November 5, 7, 17 and 20, 1986, DOP's Director of Classification and Compensation notified "All Appointing Authorities" that the Commissioner of DOP tentatively approved reallocation of over thirty titles from the Competitive Division to the Non-Competitive Division. On December 2, 1986, CWA New Jersey

2/ N.J.S.A. 34:13A-5.4(c) states: 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; provided that no 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 months period shall be computed from the day he was no longer so prevented.

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

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

Area Director Robert W. Pursell wrote to Frank Mason, Director of the State Office of Employee Relations, seeking negotiations over alleged reallocation of "approximately 8,000 workers represented by CWA to the Non-Competitive Division of the Career Service..." as well as a "unilaterally implemented...moratorium on changes to the State Classification Plan." Later correspondence between Pursell and both the Office of Employee Relations and DOP in December 1986 and January, 1987 establish that the parties did not agree to negotiate any topics raised by Pursell.

On January 7, 1987, the parties attended a conference conducted by a Commission staff agent. The parties did not resolve the matter. On February 2, 1987, to be effective February 28, 1987 DOP Commissioner Eugene J. McCaffrey, Sr. issued a Final Administrative Action reallocating certain titles from the Competitive Division of the career service to the Non-Competitive Division. On February 27, 1987, CWA filed an emergent application with the Superior Court, Appellate Division for a stay of McCaffrey's February 2, 1987 determination. The stay was granted on March 4, 1987. On May 13, 1987, the Court vacated the stay because of a Stipulation of Settlement reached by the parties.

Under the Stipulation of Settlement, certain titles which were reallocated to the Non-Competitive Division of the career service in February, 1987 by order of the Commissioner of DOP were returned to the Competitive Division effective June 20, 1987. In addition, the parties agreed that DOP would inform "the appropriate

negotiating unit representative" of future proposed reallocations of titles, and the representative would have the right to participate in the development of an administrative record upon which future reallocation decisions would be based. The final paragraph of the agreement provides: "Nothing in this agreement shall be deemed to be an admission of liability...and this agreement shall not be deemed to be a precedent in any other matters."

CWA seeks a Complaint and Notice of Hearing. It argues that while the Stipulation of Settlement before the Appellate Division resolved the reallocation of titles contested in the charge, it did not address changes in demotion and layoff procedures, nor were anti-union animus charges considered. The State argues that the Stipulation of Settlement resolved the issues raised in the unfair practice charge.

In a decision issued on May 24, 1988, a Commission Hearing Examiner has denied the State's Motion to Dismiss/Motion for Summary Judgment in State, Department of Personnel and CWA, Docket No. CO-H-88-106, Motion for Leave to Appeal pending. The hearing in that case would concern allegations that the State, through the Department of Personnel, "has in bad faith attempted to circumvent its negotiations obligation with respect to mandatory subjects of negotiations, including layoff procedures, salaries, job security and grievance procedures." Those issues subsume the issues presented in the instant matter, with the exception of anti-union animus allegations; additional proceedings are not necessary "to

afford the parties an opportunity to litigate relevant legal and factual issues..." on the subsection 5.4(a)(5) claims. N.J.A.C. 19:14-2.1.

The alleged violations of subsections 5.4(a)(1), (2) and (3) of the Act are stated as follows:

The above cited unilateral changes in working conditions are motivated by the Department of Personnel's anti-union animus. The actions cited in the paragraphs above are intended to interfere with[,] restrain and coerce employees in the exercise of their rights guaranteed to them by the Act. Furthermore, the Personnel Department is attempting to dominate and interfere with the existence and administration of the Union. Finally, the actions of the Personnel Department are designed to discriminate against CWA members in order to discourage employees in the exercise of the rights guaranteed to them by the Act. The Union charges that the above cited retaliatory actions were taken against the CWA because of our Union's vocal criticism of the inordinate number of provisional employees on the State's payroll and the inaction of the Department of Personnel in performing their Constitutional and Statutory responsibility to test and certify applicants for appointment and promotion. Over ninety percent (90%) of the workers affected by the reallocation to the Non-Competitive Division are CWA members. Virtually none of the management or exempt job titles are affected and relatively few other unionized job titles were reallocated to the Non-Competitive Division. The reallocation of CWA job titles is an attempt by the Personnel Department to punish the CWA membership for its exercise of concerted activity...."

The Commission's rules state that an unfair practice charge shall contain inter alia:

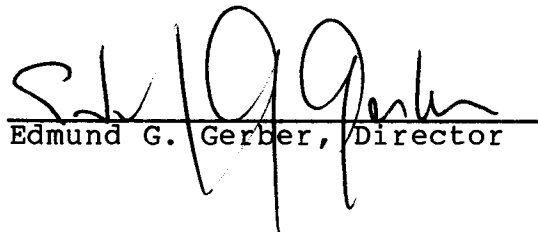
A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other

representative by whom committed and a statement of the portion or portions of the Act alleged to have been violated. (Emphasis added)^{5/}

The above statement by CWA fails to allege with sufficient specificity the person or persons who restrained, coerced or intimidated employees, or who attempted to dominate or interfere with the existence and administration of CWA, or who attempted to discourage which employees in the exercise of rights guaranteed by the Act. Instead, the charge states conclusions without supporting factual allegations; absent specific allegations of particular acts by specific individuals which might violate the Act, a complaint cannot issue. Jersey City Board of Education, D.U.P. No. 84-16, 10 NJPER 62 (¶15035 1983).

On May 26, 1988, we notified the Charging Party of our intent to dismiss the charge and afforded Charging Party seven (7) days to file additional position statements which might compel issuance of a complaint. No additional statements were received. Accordingly, the charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 8, 1988
Trenton, New Jersey