

D.U.P. NO. 99-1

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

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket No. CO-98-350

C.W.A., AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the CWA against the State of New Jersey, Department of Human Services. The Director finds that the Charging Party fails to set forth a viable Weingarten violation with respect to an interview involving employee Betty Jones. Specifically, the Employer made it clear that the interview at issue was not a disciplinary investigation and at no time during the interview did the character of the meeting change. Further, no discipline was meted out to Jones as a result of the interview.

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Appearances:

For the Respondent,  
Peter Verniero, Attorney General  
(Mary L. Cupo-Cruz, Sr. Deputy Attorney General)

For the Charging Party,  
Weissman & Mintz, attorneys  
(Steven P. Weissman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 25, 1998, the Communications Workers of America, AFL-CIO, ("CWA") filed an unfair practice charge against the State of New Jersey with the New Jersey Public Employment Relations Commission. The charge alleges that the State Department of Human Services violated subsection 5.4a(1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq., by unlawfully refusing CWA member Betty Jones' request for union

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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."

representation in violation of N.L.R.B. v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975).

The Respondent alleges that the CWA fails to present a Weingarten violation. It asks that the charge be dismissed.

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. Based on the following, I find that the Complaint issuance standard has not been met.

\* \* \* \*

On or about October 9, 1997, Betty Jones, an employee at the Howell Division of Developmental Disabilities, State Department of Human Services, sent an electronic mail message to Division Director Robert Nichols. In it she alleged that various Division personnel, including regional administrator Flis Larkin, had engaged in improper conduct and/or work procedures.

Approximately one week later, Larkin ordered Jones to appear before her and another management person on October 24 in Larkin's Trenton office, to answer questions about her complaint to Nichols.

Following receipt of the order, Jones called CWA representative Mike Finley and asked him to appear with her at the Larkin meeting. Jones was fearful since she had named Larkin in her complaint. A few days before the meeting, Finley asked the Respondent to be present at the meeting, but the Respondent refused. The Respondent explained to Finley that the meeting was not a disciplinary investigation of Jones.

Before the start of the meeting, Jones again requested Finley's presence and showed a copy of the Weingarten ruling to Larkin and Jones' supervisor, who was also present. Larkin denied Jones' request for union representation. Larkin stressed to Jones that the purpose of the meeting was not to discuss discipline for Jones; rather, it was to discuss the complaints she raised in her electronic mail.

The meeting took place; at no time during the meeting did the Respondent inform Jones that disciplinary charges may be preferred against her. Jones did not receive discipline as a result of the meeting.

#### ANALYSIS

An employee has a right to union representation at any investigatory interview that the employee reasonably believes could lead to discipline. NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975), adopted East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in part NJPER Supp.2d 78 (¶61 App. Div. 1980). The Supreme Court in Weingarten stated that:

The union representative...is safeguarding not only the particular employee's interest, but also the interests of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly. [88 LRRM at 2692.]

To establish a violation of an employee's Weingarten rights, the charging party must show that the interview was investigatory, the employee reasonably believed that discipline might result, the employee requested representation, and the employer denied the request and proceeded with the interview. State of New Jersey (Division of State Police), P.E.R.C. No. 93-20, 18 NJPER 471 (¶23212 1992). The reasonableness of the employee's belief that discipline may result from the interview is measured by objective standards under the circumstances of each case. State of New Jersey/Kupersmit, D.U.P. No. 91-2, 16 NJPER 421 (¶21177 1990); Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984).

Here, the CWA has not alleged facts which set forth a Weingarten violation. As the charge asserts, the stated purpose of the meeting was to discuss the complaints Jones raised to Division Director Nichols in her electronic mail, regarding alleged improprieties by fellow employees. When CWA representative Finley requested to be at the meeting, the Respondent made it clear then that the meeting was not a disciplinary investigation of Jones, but was a meeting to discuss the complaints she raised to Nichols. Further, this was reiterated to Jones when the meeting commenced.

Moreover, at no time during the course of the interview did the Respondent inform Jones that charges would be preferred against her. Thus, it does not appear that, under objective standards, a reasonable person could believe that the meeting constituted an investigatory interview which could result in discipline.

Kupersmit. Nor is this a situation where the character of the interview changed and Weingarten rights attached "mid-stream." See Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988). Indeed, Jones did not receive any discipline as a result of the meeting.

Accordingly, based on the above, I find that the Charging Party fails to set forth a viable Weingarten violation. Thus, I do not believe the Commission's complaint issuance standard has been met and I decline to issue a complaint on the allegations in the charge. N.J.A.C. 19:14-2.3.

ORDER

I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

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Stuart Reichman, Director

DATED: July 22, 1998  
Trenton, New Jersey