

D.U.P. NO. 97-8

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

In the Matter of

COUNTY OF ATLANTIC  
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CI-97-2

EDITH WHITEHEAD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Edith Whitehead against the County of Atlantic. The Director finds no Weingarten violation, as Whitehead's hearing was not an investigatory interview and Weingarten does not require her to have an attorney.

Further, the Director finds that her allegations of a contract violation do not warrant the exercise of the Commission's jurisdiction and that normally only the majority representative has standing to assert such a claim.

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Appearances:

For the Respondent,  
Paul J. Gallagher, County Counsel  
(Carl A. Bergmann, of counsel)

For the Charging Party,  
A.J. Fusco, Jr., attorney

**REFUSAL TO ISSUE COMPLAINT**

On July 12, 1996, Edith Whitehead filed an unfair practice charge with the Public Employment Relations Commission against the Atlantic County Department of Public Safety, particularly Deputy Warden C. Frederick Zimmerman. The charge alleges Zimmerman violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (4), (5) and (7) by requiring her to have her disciplinary hearing without an attorney, in violation of the collective bargaining agreement, and by suspending her for two days without pay. The charge further alleges that Zimmerman violated the Act by having a non-elected officer attend the hearing and by designating him as Whitehead's union representative.

It was specifically alleged that Whitehead was served with a Notice of Disciplinary Action with a two (2) day suspension. Officer Whitehead requested a hearing pursuant to the "labor agreement".<sup>1/</sup> When Whitehead's attorney requested a hearing, Officer Whitehead was informed by deputy Warden Zimmerman that "she was having her disciplinary hearing without benefit of an attorney and would be suspended for two days without pay."

**ANALYSIS**

Whitehead appears to allege that her rights, established in N.L.R.B. v. Weingarten, 420 U.S. 251 (1975), were violated with respect to her hearing. In University of Medicine and Dentistry v. Committee of Interns & Residents, \_\_\_ N.J. \_\_\_ (1996), the New Jersey Supreme Court approved the Commission's adoption of the holding in Weingarten. Under Weingarten, an employee is entitled to have a union representative present at an investigatory interview which the employee reasonably believes might result in discipline.

Here, however, Whitehead's Weingarten rights were never triggered, since her hearing was not an investigatory interview.<sup>2/</sup> Rather, Whitehead had already received her discipline prior to her hearing. If the decision to discipline the employee has already been made, then there is no right to union

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<sup>1/</sup> The charge does not state who is the majority representative.

<sup>2/</sup> That is, an investigation designed to gather facts before discipline is invoked.

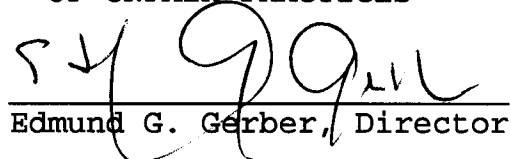
representation. UMDNJ slip op. 21, 22. Further, while she complains that she was not allowed an attorney at her hearing, she is not required to have one under Weingarten.

She also alleges her rights under N.J.S.A. 40A:14-147 were violated. This Agency has no jurisdiction to hear this allegation. Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985). Finally, her allegations that the contract was violated with respect to her hearing do not warrant the exercise of the Commission's unfair practice jurisdiction. State of New Jersey (Dept. of Human Services). P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Normally, only the majority representative, not an individual employee, has standing to assert that an employer breached the collective bargaining agreement. County of Essex, D.U.P. No. 96-4, 21 NJPER 308 (¶26195 1995); Camden Cty. Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984).

Finally, although the charging party argues that "the Deputy Warden's actions are in violation of the Act by refusing to process grievances presented by the majority representative," no facts were alleged to support this legal conclusion.

Based on the foregoing, I find the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3. The charge is hereby dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: August 15, 1996  
Trenton, New Jersey