

D.U.P. NO. 2002-10

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CO-2001-12

PBA LOCAL NO. 105

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by PBA Local No. 105 against the State of New Jersey, Department of Corrections, alleging that the State unilaterally changed the sick injury leave (SLI) benefits due to its members. The Director finds that only the majority representative, the State PBA, not any of its individual locals, has standing to allege the employer failed to negotiate or administer the contract in violation of subsection 5.4(a)(5) of the Act.

The Director further finds that the Commission lacks jurisdiction over the alleged arbitrary denial of SLI, because these benefits are covered under a regulatory scheme administered exclusively by the New Jersey Department of Personnel (DOP). Alternatively, the Director finds that these issues should be resolved through the negotiated grievance procedure or DOP appeal process, rather than litigated as unfair practice charges. The issues raised in the charge amount to alleged contract violations rather than unfair practices.

Finally, the Director finds that no alleged facts support the assertion that activity protected by the Act was a substantial motivating factor in the State's actions. Accordingly, the Director dismisses the allegation that the State discriminated against the unit to discourage protected activity.

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Charging Party.

Appearances:

For the Respondent,
David Samson, Attorney General
(George N. Cohen, Deputy Attorney General)

For the Charging Party,
Balk & Geddes, attorneys
(Mark D. Kurdyla, of counsel)

REFUSAL TO ISSUE COMPLAINT

On July 26 and August 16, 2000, PBA Local 105 filed an unfair practice charge and amendment, respectively, against the State of New Jersey, Department of Corrections, alleging that the State violated provisions 5.4a(1), (3) and (5)^{1/} of the New

^{1/} These provisions 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; and (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). Specifically, Local 105 alleges that the State violated 5.4a(1) by arbitrarily and improperly denying employees represented by Local 105 sick leave injury benefits (SLI) provided under N.J.A.C. 4A:6-1.6, and incorporated by reference into the parties' collective negotiations agreement.

Local 105 further alleges that the State, by unilaterally altering the administration of SLI - a term and condition of employment - discriminated against and discouraged unit employees from exercising their protected rights in violation of 5.4a(3) of the Act. Finally, the charge alleges that the State unilaterally deprived unit employees of a term and condition of employment through its arbitrary administration of the SLI benefits in violation of 5.4a(5) of the Act.

The State claims that Local 105's amended charge fails to set forth a violation of the Act. Specifically, the State asserts that the approval of SLI benefits under N.J.A.C. 4A:6-1.6 is subject to the regulations of the Department of Personnel (DOP) and that these regulations provide an appeal process for any employee who is denied SLI benefits. Further, the State notes that Article XXII of the parties' agreement specifies that the SLI program "shall be administered in accordance with Rules and Regulations promulgated by DOP." The State asserts that the DOP has exclusive jurisdiction over appeals of SLI benefits and, thus, the Commission lacks jurisdiction to hear Local 105's unfair

practice allegations regarding claims of improper denials of SLI benefits. The State further argues that Local 105 has failed to present evidence of any protected activity to support its allegation that there was a violation of section 5.4a(3). Finally, the State argues that at most, Local 105 is claiming a breach of contract for an alleged violation of DOP regulations, which does not amount to an unfair practice, and which should be deferred to the contractual grievance procedure. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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

Local 105 lacks standing to assert a violation of 5.4a(5) of the Act. The Charging Party's negotiations unit is represented by the New Jersey State PBA; Local 105 is one of the sub-groups within the entire unit. The parties' agreement does not identify any individual locals, including Local 105. Further, the recognition clause of the agreement, Article 1, specifies: "The State recognizes the PBA as the sole and exclusive representative

of those employees in the Law Enforcement Unit for the purposes of collective negotiations concerning salaries, wages, hours of work and other terms and conditions of employment." The Commission has held that only the majority representative has standing to assert claimed violations of 5.4a(5). See State of New Jersey (SLEC), P.E.R.C. No. 90-100, 16 NJPER 303 (¶21125 1990). This is so because an employer's obligation to negotiate in good faith runs to the majority representative, not to any individuals or groups. We have previously found that the exclusive representative of this employee unit is the New Jersey State PBA, not any of its individual locals or components. State of New Jersey (SLEC); State of New Jersey (DEPE) and PBA Local 222, D.U.P. No. 98-18, 23 NJPER 534 (¶28260 1997) (Director finds that only the majority representative - the State PBA, not any of its individual locals - has standing to allege the employer failed to negotiate or administer the contract in violation of subsection 5.4a(5) of the Act). See also State of New Jersey (DEPE) and CWA Local 1037 & 1038, D.U.P. No. 93-43, 19 NJPER 388 (¶24170 1993). Therefore, only the State PBA, which is the certified majority representative and not any of the locals comprising the members of the SLEC unit, may bring a charge alleging a refusal to negotiate or administer the PBA's collective negotiations agreement. Local 105's claim that its president is also the chair of the State Law Enforcement Conference is immaterial since the Charging Party is not the New Jersey State PBA. Accordingly, Local 105 lacks standing to allege

that the State violated 5.4a(5) of the Act when it unilaterally deprived unit employees of a term and condition of employment through its arbitrary administration of the SLI benefit.

Moreover, the Commission lacks jurisdiction over Local 105's allegations. The approval of SLI benefits is governed by the regulations of the State Department of Personnel. See N.J.A.C. 4A:6-1.6. Further, these regulations provide an appeal process to the Merit System Board for any employee who is denied SLI benefits. See N.J.A.C. 4A:6-1.7. In addition, Article XXII of the parties' agreement provides that the SLI program "shall be administered in accordance with Rules and Regulations promulgated by the Department of Personnel." Thus, Local 105's allegations that the State arbitrarily and improperly denied SLI benefits in violation of N.J.A.C. 4A:6-1.6 do not fall within the Commission's jurisdiction. See New Jersey Dept. of Community Affairs (Dyott), D.U.P. No. 2001-11, 26 NJPER 111 (131046 2000).

Local 105's claim that the State unlawfully, unilaterally deprived employees of a term and condition of employment specified in Article XXII - SLI benefits - through its arbitrary administration of the SLI benefit does not set forth an unfair practice. Rather, this claim merely amounts to an alleged breach of contract which does not amount to a cause of action under the Act. State of New Jersey (Dept. of Human Services). The Commission stated in Human Services that the parties must attempt to resolve such contract disputes through their negotiated

grievance procedure, rather than litigate them through unfair practice proceedings.

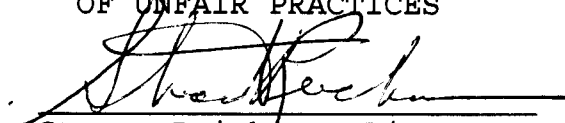
As to the allegation that the State has violated section 5.4a(3) of the Act, Bridgewater Tp., 95 N.J. 235 (1984), articulates the standards for evaluating whether 5.4a(3) has been violated. A charging party must allege that protected conduct - such as collective negotiations, contract administration or the filing of grievances - was a substantial or motivating factor in the employer's adverse action. Here, Charging Party has articulated no union activity on the part of these unit members. There are no alleged facts which indicate any adversely affected member was engaged in activity protected by the Act. Accordingly, no complaint can issue on this allegation.

Therefore, I find that the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations asserted in this charge. I refuse to issue a complaint on the unfair practice charge and amended charge.^{2/}

ORDER

The unfair practice charge and amended charge are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: March 28, 2002
Trenton, New Jersey

