

D.U.P. NO. 97-23

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

In the Matter of

BOROUGH OF EAST NEWARK

Respondent,

-and-

Docket No. CI-96-53

MICHAEL PADOVANO

Charging Party.

SYNOPSIS

The Director of Unfair Practices issues a decision partially dismissing an unfair practice charge and clarifying the remaining issues on which a Complaint will issue.

A police captain alleged his employer reassigned him to a walking post and brought disciplinary charges against him in retaliation for his political activities and for his activities protected by our Act. The Director issues a complaint on this portion of the charge to the extent that it alleges the employer retaliated against the captain because of his court testimony in support of another union member.

The Director dismisses that portion of the charge which alleges the employer's disciplinary procedures violated the Attorney General's guidelines.

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Appearances:

For the Respondent,
Liberio Marotta, attorney

For the Charging Party,
A.J. Fusco, Jr., attorney
(Richard Robinson, of counsel)

DECISION

On February 29 and March 18, 1996 Captain Michael Padovano filed an unfair practice charge and amended charges with the Public Employment Relations Commission, alleging that the Borough of East Newark 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) and (7).^{1/}

^{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; (2) Dominating or

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Michael Padovano, a captain employed by the Borough's Police Department, alleges that on February 19, 1996, he was reassigned to the Borough's only walking post. Padovano claims this assignment was made in retaliation for (a) his political activities with the local school board, (b) his testimony in superior court, upon the request of the Fraternal Order of Police attorney, in support of Borough Police Officer Juan Cosme concerning his termination; (c) Padovano's cooperation with an investigation of Police Chief Kenneth Lindsay. On May 29, 1996 Padovano filed an amendment to the charge, further alleging that in May, 1996, Chief Lindsay pressed disciplinary charges against him, which were in violation of Attorney's General's guidelines for internal affairs investigations. Padovano alleges that these actions were "discriminatory."

ANALYSIS

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that

1/ Footnote Continued From Previous Page

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; (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; (7) Violating any of the rules and regulations established by the commission."

formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission has delegated the authority to issue Complaints to me. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

With regard to the first part of the charge, Padovano has alleged, in essence, that the employer has mixed motives for assigning him the walking post. One of the employer's motives, Padovano alleges, was his court testimony in support of another union member, Juan Cosme. An employee's decision to testify on behalf of another union member is protected by section 5.3 of the Act which guarantees public employees the right to assist any employee organization without fear of penalty or reprisal. Borough of Stone Harbor, P.E.R.C. No. 93-19, 18 NJPER 467 (¶23211 1992). Accordingly, I will issue a Complaint on this allegation.^{2/}

With regard to the May 29, 1996 amendment, Padovano alleges that the Chief's actions were discriminatory in bringing disciplinary charges against him. To the extent that this

^{2/} Under Bridgewater Tp., 95 N.J. 235 (1984), the charging party must prove that conduct protected by our Act was a substantial or motivating factor for the adverse personnel action. In situations where more than one motive contributes to a personnel action, the employer will not have violated the Act if it proves, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need only be considered if the charging party proves, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action.

allegation of discrimination refers to the protected activity described in the original charge, I will issue a Complaint concerning that allegation. However, whether the Borough's action concerning the disciplinary charges violated any procedural guidelines set forth by the attorney general is not a matter over which this Commission has jurisdiction. That allegation is dismissed.

A Complaint and Notice of Hearing is enclosed concerning the allegations as discussed above.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: November 19, 1996
Trenton, New Jersey