

D.U.P. NO. 95-10

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket Nos. CO-94-235
CO-94-292

I.F.P.T.E. LOCAL 195,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that the State continuously assigned a unit member out-of-title work in violation of the contract.

The Director finds that there is no genuine contract repudiation issue, and that the alleged contract violation is not appropriate to litigate through unfair practice proceedings. State Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Additionally, since the affected employee has since been promoted out of the unit, the matter is moot.

D.U.P. NO. 95-10

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket Nos. CO-94-235
CO-94-292

I.F.P.T.E. LOCAL 195,

Charging Party.

Appearances:

For the Respondent,
Deborah Poritz, Attorney General
(Michael Diller, Senior Deputy Attorney General)

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

DECISION

IFPTE Local 195 filed unfair practice charges and an amendment thereto on February 2, March 29, and April 11, 1994, respectively, alleging that the State of New Jersey, Department of Human Services, violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5)^{1/} by

^{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 interfering with the formation, existence or administration of

"continuously refusing to follow a contract provision" and has continually allowed bargaining unit member Marion Anllo to work out of title as a head bus driver at the Mercer Day Training Center. Local 195 asserts that this action amounts to a contract repudiation and failure to negotiate in good faith.

The State denies that it committed an unfair practice. It asserts that the allegations are, at most, contract violations. It also contends that, since the employee alleged to be working out of title has since been promoted to the head bus driver position, those charges are moot.

The parties' 1993-95 collective negotiation agreement provides at Article XL, that:

Out-of-title Work:

The State and the Union agree that employees shall be assigned work appropriate to and within their job classification. The assignment of out-of-title work on other than an incidental basis shall be avoided. Instances of such out-of-title work identified by the Union and formally brought to the attention of the State shall be corrected immediately or by phasing out such

1/ Footnote Continued From Previous Page

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."

assignments at the earliest possible time which shall in any case be no later than three (3) months from the time of notification by the Union. The entire three month phaseout period will only be used where the operational needs are such that the work cannot be phased out sooner. The three month phase-out period will not be abused.

This portion of the charge involves an interpretation of Article XL in the parties' collective bargaining agreement. In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that where there is a claim of a contract violation, the Commission will not entertain an alleged violation of subsection (a)(5) if the employer reasonably relies upon contract language for its actions and does not repudiate the contract.

In N.J. Transit Bus Operations, P.E.R.C. No. 89-29, 14 NJPER 638 (¶19267 1988), the Commission found the employer repudiated the contract by its persistent denial of contractual grievances despite contrary arbitrators' opinions. However, in Bergen Pines Hospital, P.E.R.C. No. 92-31, 17 NJPER 469 (¶22224 1991), the Commission found no contract repudiation where the employer repeatedly admitted contract violations by sustaining the union's grievances over its decision to float senior nurses. In Bergen Pines, the employer claimed no right to breach the contract. In fact, higher levels of management consistently found that contract breaches had occurred and ordered affected employees made

whole. The Commission stated,

We believe that at this point negotiated grievance procedures provide an adequate remedy for any alleged contract breaches.

Bergen Pines at 469.

Here, Local 195 has not asserted any facts that might suggest a repeated violation of a clear contract provision nor that the State claims any right to violate the contract. Cf., N.J. Transit; Bergen Pines. Facts have not been plead in the charge which amount to a violation of the employer's obligation to negotiate in good faith.^{2/} Rather, it appears that this dispute -- over whether the contract was violated -- should have been resolved through the parties' grievance procedure. Human Services. Therefore, I find that these charges fail to allege a violation of the Act.

Finally, it also appears that since the affected employee was promoted out of the Local 195 unit, it would not effectuate the purposes of the Act to permit the parties to litigate this issue, which is now moot. Accordingly, I decline to issue a complaint and dismiss the charges. N.J.A.C. 19:14-2.1, 2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 25, 1994
Trenton, New Jersey

^{2/} There are also no facts to suggest a violation of subsections 5.4(a)(1), (2) or (3).