

D.U.P. NO. 99-12

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

In the Matter of

ATLANTIC CITY MUNICIPAL UTILITIES AUTHORITY,

Respondent,

-and-

Docket No. CI-98-81

TYRONE LONG,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed against a public employer. The charge alleged that the employer unilaterally transferred a unit title out of the negotiations unit, violating 5.4a(5) of the Act. The charge also alleged that the disputed title was "re-created" outside the unit in order to retaliate against the charging party because he refused to work "stand-by" without compensation, violating 5.4a(3) of the Act.

The Director determined that individual employees generally have no standing to assert 5.4a(5) violations and that the 5.4a(3) allegation is untimely filed. Accordingly, the charge was dismissed.

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Appearances:

For the Respondent,
John C. Matthews, Esq.

For the Charging Party,
Tyrone Long, pro se.

REFUSAL TO ISSUE COMPLAINT

On May 11 and August 25, 1998, Tyrone R. Long filed an unfair practice charge and amendment, respectively, against the Atlantic City Municipal Utilities Authority. The May 11, 1998 charge alleges that the authority violated 5.4a(4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by unilaterally removing the assistant supervisor title from the collective negotiations unit and designating the incumbent in the

^{1/} This provision prohibits public employers, their representatives or agents from: "(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."

title a managerial executive. The amended charge alleges that the Authority violated provisions 5.4a(3) and (5)^{2/} of the Act when it retaliated against Long because he refused to forego contractually mandated "standby" or "on-call" payments while performing the duties of assistant supervisor, a unit position.

The Authority denies it violated the Act. It claims it had a managerial right to change the assistant supervisor title to a non-unit title; it asserts that the duties of the new title are "managerial." It further contends that all managers and assistant managers are required to be on-call on rotating weekends, and that in any event, the contract does not require any payments to employees for on-call time. It also claims that Long was paid appropriately for the time he served in the assistant supervisor title.

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

^{2/} These provisions prohibit public employers, their representatives or agents from: "(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."

standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. On October 22, 1998, I summarized the apparent facts identified as the result of our investigation of this charge and advised the parties that I was inclined to issue a complaint on one portion of the allegations raised in the charge. Subsequently, both Mr. Long and the Authority submitted timely responses. After considering the parties' positions and reviewing the facts ascertained through further investigation, I was inclined to dismiss the entire charge. On March 17, 1999, I issued a second letter to provide the parties with a final opportunity to respond. No responses were filed. Based upon the following facts, I find that the Complaint issuance standard has not been met.

Tyrone Long is an Authority employee and is represented for purposes of collective negotiations by the Atlantic City Municipal Utilities Authority Supervisors' Association/Professional Employees Guild ("Association"). The Association and the Authority are parties to a collective negotiations agreement covering the Authority's supervisors for the period January 1, 1996 through December 31, 2000.

Long contends that he worked provisionally in the unit title of assistant supervisor, water distribution system, for a period of at least 20 months starting in 1996. Long was informed by the Authority's Deputy Director, William McLees, that the title was going to become a permanent position. Long subsequently

applied for and received certification to the assistant supervisor title and was ranked number one on the New Jersey State Department of Personnel eligibility list for the position.

While performing duties in the title, Long was asked to work "standby time." He refused to do so without being paid overtime, as Long alleged was required by the parties' collective agreement. A grievance was initiated over the standby time issue. However, Local 29, the collective negotiations unit's majority representative at that time, withdrew from representing the unit and his grievance was never processed to arbitration.

On January 14, 1997, Long, in his capacity as the assistant supervisor, drafted a memo to McLees confirming the duties for the proposed permanent position of assistant manager-water distribution system. Long believed he would get the new title and that it would be included in the unit.

On January 15, 1997, the Authority passed a resolution eliminating the assistant supervisor position previously held by Long. On January 17, 1997, the Authority sent a memorandum to all employees indicating it would be accepting applications for the position of assistant manager-water distribution system, a new, non-unit position. The Authority's memorandum identified the duties of the new title as the same duties as listed in Long's January 14, 1997, memorandum.

On or shortly after January 15, 1997, the Authority offered Long the new title; however, he declined it since it was

no longer a unit title. The Authority finally filled the non-unit position in January 1998, when it hired Michael Meyela. In or about January 1998, just before the Authority filled the position with Meyela, Long advised the Authority that he would accept the job. Long alleges that the January 1998 filling of the position is the operative event which triggered the alleged unfair practice. This is the only alleged action within six months of the filing of this charge. N.J.S.A. 34:13A-5.4(c).

ANALYSIS

Long claims that the Authority changed his prior assistant supervisor position into the non-unit position of assistant manager because of his prior complaints about not receiving overtime for standby time. Long also asserts that the Authority removed the title and the unit work from the supervisors' negotiations unit without first negotiating with the Association.

In part, 5.4a(5) of the Act prohibits public employers from refusing to negotiate in good faith with a majority representative of employees. The Commission has previously found that only the majority representative has standing to assert claimed violations of subsection 5.4a(5). State of New Jersey (DEPE) and CWA Local 1037 & 1038, D.U.P. No. 93-43, 19 NJPER 388 (¶24170 1993). This is so because an employer's statutory obligation to negotiate in good faith runs to the majority representative, not to any individual(s).

Here, only the majority representative--the Atlantic City Municipal Utilities Authority Supervisors' Association/ Professional Employees Guild--has standing to assert a violation of provision 5.4a(5) of the Act. Thus, Long has no standing to charge that the Authority violated its negotiations obligation by unilaterally transferring a unit title and unit work out of the unit in violation of 5.4a(5) of the Act.^{3/} Accordingly, this alleged violation of 5.4a(5) of the Act does not meet the Commission's Complaint issuance standard and is dismissed.^{4/}

State of New Jersey (DEPE), D.U.P. No. 98-18, 23 NJPER 534 (¶28260 1997); State of New Jersey, Department of Human Services, D.U.P. No. 96-5, 21 NJPER 309 (¶26196 1995).

I also decline to issue a Complaint on the allegation that the Authority re-created the assistant supervisor position outside the negotiations unit to retaliate against Long because he refused to work "stand-by" or "on-call" time without compensation. The title was re-created as a non-unit position in January 1997, about 16 months before Long filed the charge. The facts demonstrating whether the Authority acted unlawfully were concurrent with the promulgation of the new title. The hiring of someone in January 1998, is not probative of the employer's motive one year earlier, especially considering that Long declined the

^{3/} The Supervisors' Association has not filed a charge of its own and is not a charging party in this matter.

^{4/} N.J.A.C. 19:14-2.3.


new title in the interim. Consequently, I find that the operative date for purposes of applying the statute of limitations is January 1997, when the Authority established the non-unit title. For these reasons, I find that Long's 5.4a(3) allegation is beyond the six month statutory period and is dismissed. N.J.S.A. 34:13A-5.4(c).

Accordingly, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations contained in this charge.^{5/}

ORDER

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

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: April 6, 1999
Trenton, New Jersey