

D.U.P. NO. 97-7

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

In the Matter of

RUTGERS UNIVERSITY,

Respondent,

-and-

Docket No. CO-96-285

AFSCME COUNCIL 52, LOCAL 1761,  
AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint where it was alleged that union witnesses to a physical altercation were treated differently than management witnesses by Rutgers University Police during an investigation. The Director did not find evidence of anti-union animus or a breach of Commission rules in the way Rutgers University conducted the police investigation of the altercation.

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Appearances:

For the Respondent,  
Christine B. Mowry, Assistant Vice-President  
for Staff Affairs and Director, Office of Employee  
Relations

For the Charging Party,  
Richard Gollin, Executive Director

REFUSAL TO ISSUE COMPLAINT

On March 28, 1996, AFSCME Council 52, Local 1761, AFL-CIO (AFSCME) filed an unfair practice charge against Rutgers University (Rutgers) alleging that Rutgers University Police (Police) treated union member witnesses differently than management witnesses during a police investigation in violation of N.J.S.A. 34:13A-5.4(a) (3) and (7).<sup>1/</sup>

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<sup>1/</sup> These subsections 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. (7) Violating any of the rules and regulations established by the commission."

A physical altercation took place between the Vice President of AFSCME and a representative of Rutgers during a grievance hearing held on October 18, 1995. In investigating the altercation, AFSCME alleges that the Police took written statements from management witnesses immediately following the incident while taking a week to obtain written statements from union witnesses. Administration witnesses were allegedly interviewed separately while union witnesses were allegedly interviewed as a group. Finally, the Police allegedly drove management witnesses to the Newark Police Department but did not provide transportation to union representatives. This disparate treatment, AFSCME asserts, shows anti-union bias.

In response to AFSCME's allegations, Rutgers has submitted four police reports dated October 18, 19 and 23, 1995, and November 14, 1995; which taken collectively indicate that the Vice President of AFSCME and the representative of Rutgers involved in the altercation were interviewed by the Police at or about the same time. The AFSCME witnesses were initially interviewed as a group because they refused to leave the Vice President who appeared to be injured. Written statements from union witnesses were solicited beginning on October 20, 1995 and continued through October 25, 1995. Moreover, Rutgers argues that the facts as asserted by AFSCME do not support finding a violation of subsections (a)(3) and (7).

An exploratory conference was held by the Commission on May 21, 1996 to clarify the issues and gather facts in this case. At

the conference, it was adduced that the management person involved in the altercation was disciplined by Rutgers for her role in the incident. Rutgers took no disciplinary action against the Vice President of AFSCME for her involvement in the physical altercation.

N.J.S.A. 34:13A-5.4(a)(3) and (7) provide:

Public employers, their representatives or agents are prohibited 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.

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

The Act does not require that all employees be treated identically in every situation.


Here, AFSCME has averred that the police investigation was conducted in a discriminatory manner because union witnesses were not treated the same as management witnesses. Assuming the facts as alleged by AFSCME, the union witnesses were not threatened, harassed or otherwise treated hostilely by the Police during the investigation. They were, at worst, not treated as well as management witnesses in that they were not attended to as quickly nor extended the same courtesies. There was no adverse impact on AFSCME, or its members, however. The only adverse result of the entire police investigation was the disciplining of the management participant in the altercation, not the disciplining of the union participant.

Arguably, the two sets of witnesses were treated differently. Subsection (a)(3) of the Act, however, does not require that they be treated the same so long as the union and its members are not harmed by the differential treatment. Under the facts alleged, I do not find anti-union animus on the part of Rutgers, and hence, find no violation of subsection (a)(3).

AFSCME has not alleged facts which establish that Rutgers violated any rules or regulations of the Commission. Thus, I also conclude that there was no violation of subsection (a)(7).

Based upon the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.<sup>2/</sup> Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: July 23, 1996  
Trenton, New Jersey

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<sup>2/</sup> N.J.A.C. 19:14-2.3.