

D.U.P. NO. 94-25

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 No. CO-93-387

IFPTE, LOCAL 195,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint on a charge alleging that a non-unit supervisory employee received less severe discipline than a unit employee received for a substantially similar offense. The alleged disparate treatment violated subsection 5.4(a) (1), (2), (3) and (5) of the Act.

The Director determined that an employer's discipline of a non-unit employee is not a negotiable subject and could not be the subject of an unfair practice charge.

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Appearances:

For the Respondent,
Deborah T. Poritz, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

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

REFUSAL TO ISSUE COMPLAINT

On May 3 and July 29, 1993, IFPTE Local 195 filed an unfair practice charge and amendment alleging that the State of New Jersey (Department of Human Services) engaged in unfair practices. It alleges that on or about January 30, 1993, a supervisor (Bowens) "attacked" a shop steward (Lassiter) for which the supervisor was suspended 20 days. IFPTE alleges that the discipline meted out is less than that issued to a unit employee who was terminated for a similar altercation with a supervisor. The State's actions

allegedly violate subsections 5.4(a)(1), (2), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

The State filed a response, denying it engaged in any unfair practice. It asserts that any allegation about discipline not concerning Bowens and Lassiter is untimely and that the matter is res judicata, pursuant to State of New Jersey (Dept. of Human Services) and Samuel Johnson, P.E.R.C. No. 93-111, 19 NJPER 277 (¶24141 1993). It also asserts that the alleged disparate discipline in this matter is a non-negotiable managerial prerogative.

I dismiss allegations of disparate treatment of shop steward Lassiter. IFPTE claims that the 20-day suspension of Lassiter's supervisor (presumably a non-unit employee) is evidence of such hostility.

In Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 87-132, 13 NJPER 352 (¶18143 1987), the Commission determined that an employer's

^{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 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."

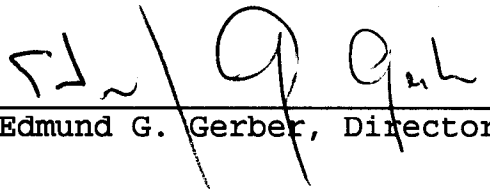
discipline of a non-unit employee is not a negotiable subject. The Commission wrote:

...the Association may not negotiate or use a disciplinary review procedure to challenge discipline imposed on a non-unit employee. Provisions setting terms and conditions of employment for non-unit employees are not mandatorily negotiable.
[13 NJPER 353].

IFPTE is contesting the suspension imposed upon a non-unit supervisory employee, alleging it is "disparate" to that meted out to a unit employee.

I see no reason why the charge should not be dismissed in accordance with Old Bridge. No facts suggest violations of any subsections of the Act enumerated in the charge. Accordingly, the allegations of the charge do not meet the Commission's complaint issuance standard. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: February 1, 1994
Trenton, New Jersey