

D.U.P. NO. 2001-9

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

In the Matter of

NEW JERSEY STATE JUDICIARY,

Respondent,

-and-

Docket No. CO-95-89

PANJ, PROFESSIONAL SUPERVISORY UNIT,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed by the Probation Association of New Jersey (PANJ) alleging that the Judiciary violated sections 5.4a(1), (3) and (5) of the New Jersey Employer-Employee Relations Act when it refused to give one of PANJ's unit members a full evidentiary hearing, including cross-examination of witnesses, during the processing of a grievance appealing discipline. The Director finds that no alleged fact supported the a(1) or a(3) allegations. He also finds that the duty of good faith negotiations is not implicated. The issue raised by the charge is either a dispute over the correct application of a regulatory scheme within the exclusive jurisdiction of the State Department of Personnel or, a dispute about the correct interpretation of a term of the parties' agreement which does not rise to the level of an unfair practice under State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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Appearances:

For the Respondent,  
John Farmer, Attorney General  
(George N. Cohen, Deputy Attorney General)

For the Charging Party,  
John J. Marinan, attorney

REFUSAL TO ISSUE COMPLAINT

On September 28, 1994 and October 24, 1994, the Middlesex County Superior Officers Association, Probation Association of New Jersey Local 250 (PANJ Local 250), filed an unfair practice charge and amended charge against the Superior Court of New Jersey, Middlesex County, with the Public Employment Relations Commission. Since the charges were filed, the State Judicial Unification Act, N.J.S.A. 2B:10-1 et seq., was enacted, which unified the operations of the Judiciary, and created the New Jersey State Judiciary as successor employer of employees at issue in the above-captioned matter. Following unification, a representation election was held resulting in the change of majority representative from PANJ Local

250 to PANJ, Professional Supervisory Unit (PANJ), a statewide negotiations unit. By letter dated October 18, 1995, the statewide PANJ formally assumed the processing of this charge. The charge alleges that the Judiciary violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1), (3) and (5)<sup>1/</sup> when it refused to give one of PANJ's unit members a full evidentiary hearing, including cross examination of witnesses, during the course of processing a grievance appealing disciplinary action taken against him. The Judiciary denies having violated the Act.

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 standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. In correspondence dated October 5, 2000, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that

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<sup>1/</sup> These provisions prohibit public employers, their representatives and agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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; and (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.

conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the Complaint issuance standard has not been met.

On January 28, 1994, the Judiciary imposed a three-day suspension on Principal Probation Officer II Robert Putro for making bias statements in the workplace. Between January and April 1994, Putro filed a grievance appealing the discipline, which was apparently referred to Superior Court Judge Yolanda Ciccone.

By letter dated April 27, 1994, Judge Ciccone wrote to Putro's attorney to inform him that she was denying the request to hold a grievance hearing. She stated:

This is a matter that emanates from a discrimination complaint filed by an employee of the Middlesex County Probation Department against Robert Putro, Principal Probation Officer II. It is my understanding that this matter was investigated on two occasions; first, by Lyman O'Neill, Vicinage Chief Probation Officer, and then by Gregory Edwards, Trial Court Administrator, and Kay Hanlon Cruz, Assistant Trial Court Administrator, as the Assignment Judge's EEO/AA designees. Mr. Putro was present during both investigations and had full opportunity to confront and cross-examine those who participated in the investigation.

Additionally, this is a matter of minor discipline and under the New Jersey Administrative Code is not mandatorily subject to the grievance procedure. Since there is no past practice in the Vicinage of allowing matters involving minor discipline that emanate from discrimination complaints being subject to the grievance procedures, I feel it is not necessary to have another hearing in this matter.

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It would be inappropriate for the complainant to have to go through a third grueling and emotional investigation involving cross examination. The process that has been utilized in this case complies with the Vicinage's EEO/AA complaint procedures of which all employees had been informed.

By letter on May 20, 1994, Judge Ciccone formally upheld the disciplinary actions taken against Mr. Putro.

The Judiciary and PANJ had a collective negotiations agreement in effect from 1992 through 1994. That agreement provides, at Article XXIV, that New Jersey Department of Personnel (DOP) rules control the administration of the agreement except where the agreement and the rules are in conflict. Article XXVI is the parties' grievance procedure which appears to broadly control the resolution of complaints relating to the interpretation or application of policies and administrative decisions affecting unit members. Step one of the procedure is informal, step two provides appeals to either the DOP for matters under its jurisdiction, or to the Assignment Judge or the Judge's designee. No entitlement for an evidentiary hearing, including examination and cross examination of witnesses is specified in the contractual procedure. The decision at step two is final.

The DOP rules at N.J.A.C. 4A:2-3 et seq. provide for a grievance procedure for minor discipline. Step two of that procedure entitles the grievant to a hearing, including cross examination of witnesses. N.J.A.C. 4A:2-3.6.

ANALYSIS

N.J.S.A. 34:13A-5.4a(5) provides:

Public employers, their representatives or agents are prohibited from 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.

This charge raises the issue of whether the Judiciary violated the above provision when, in April 1994, it declined to give Putro a full evidentiary hearing on his grievance. PANJ argues that the collective agreement and DOP rules entitle Putro to an evidentiary hearing, including the cross examination of witnesses. The Judiciary argues there was no entitlement to a full hearing. The gravamen of this dispute is whether the Judiciary properly interpreted the agreement and/or the DOP rules.

To the extent that PANJ asserts that the Judiciary violated DOP rules by not affording Putro a hearing, this Commission is not empowered to enforce DOP rules. A dispute over whether DOP rules were violated is a matter within that agency's jurisdiction.

Alternatively, PANJ appears to argue that the Judiciary violated the parties' contractual grievance procedure by refusing Putro a hearing. A dispute over whether the contractual grievance procedure was violated is itself a potential grievance. In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶15191 1984), the Commission held that:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which

may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

The dispute here is over whether a sole grievant was entitled to a formal hearing at step two. The alleged facts, even if proven true, do not support a finding of repudiation of an established term or condition, nor is the contract clause so clear as to be subject to only one interpretation. Based upon the allegations set forth in the charge, the charge asserts at most a breach of contract claim.

I find that this dispute concerns either the interpretation of a term of the parties' contract which does not rise to a violation of the Act, or it concerns an issue exclusively within DOP's jurisdiction. Accordingly, this allegation is dismissed.

PANJ also alleges that the Judiciary violated section 5.4a(3) which prohibits employers from discriminating against employees to discourage their exercise of activity protected by the Act. The standards to be applied in these cases are found in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). Under Bridgewater, no violation will be found unless conduct protected by our Act is a substantial or motivating factor in an adverse personnel action. Id. at 246. In this matter, no facts supporting a violation of 5.4a(3) have been alleged. PANJ has not alleged that Putro engaged in protected activities under our Act, nor do the facts establish that the employer's conduct was motivated by union animus. Therefore, the alleged facts, even if


proven true, do not support the allegation that the Judiciary violated section 5.4a(3). Accordingly, this allegation is also dismissed.

Finally, although a violation of section 5.4a(1) is alleged, no facts support that allegation and it is also dismissed. Based upon all the above, Commission's complaint issuance standard has not been met and no complaint will issue on the allegations of this charge.<sup>2/</sup>

ORDER

The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: October 26, 2000  
Trenton, New Jersey