

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-95-96

C.W.A., LOCAL 1040,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging the State refused to pay certain employees in cash for overtime. The parties' contract contains an overtime clause which permits the employer to compensate for overtime in cash or in compensatory time at its discretion. The Director finds that the allegations involve a contract dispute which, under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), cannot be litigated as an unfair practice charge.

The Director also notes that only the CWA International, as the majority representative, has standing to file an (a)(5) charge.

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Appearances:

For the Respondent,
Governor's Office of Employee Relations
(David Collins, Coordinator)

For the Charging Party,
Robert O. Yeager, Staff Representative

REFUSAL TO ISSUE COMPLAINT

On September 30, 1994, CWA Local 1040 filed an unfair practice charge alleging that the State of New Jersey violated subsections 5.4(a)(2)(3) and (5)^{1/} of the New Jersey

^{1/} These subsections prohibit public employers, their representatives or agents from: "(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; (and (7) violating any of the Rules and Regulations established by the Commission."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when Department of Human Services representatives advised certain Supervising Cottage Training Officers at Greenbrook Regional Center that they would not be paid in cash for overtime.

The current contract, in effect from July 1, 1992 through June 30, 1995, provides at Article VIII, "Hours and Overtime,"

C. Employees covered by this Agreement will be compensated at the rate of time and one-half for the overtime hours accrued in excess of the normal hours of the established workweek. These compensation credits shall be taken in compensatory time or in cash at the discretion of management. Employees may request compensation credits in compensatory time or in cash.

CWA contends that the State unilaterally changed a term and condition of employment when it told the employees they would not be paid for their overtime hours in cash. The State responds that it has a contractual right to decide the method of overtime compensation. In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶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.

Based upon the allegations set forth in the charge, the underlying facts of the charge merely involve a contract dispute and must therefore be dismissed.

Further, no facts were presented in the charge which would support a violation of subsections (2), (3) or (7) of the Act. Although CWA asserts that employees in other bargaining units were given cash payments for overtime, there is no factual basis for a 5.4(a) (3) claim here. The employer is not necessarily obligated to treat employees in one unit the same as employees in another unit. Thus, the (a)(3) discrimination claim must also be dismissed.

Finally, this charge was filed by CWA Local 1040. The right to initiate a charge over a refusal to negotiate in good faith rests only with the exclusive representative. In matters involving the State, the CWA International, not any local, is the designated exclusive representative pursuant to the Commission's certification and the parties' collective negotiations agreements. Accordingly, Local 1040 lacks standing to allege a refusal to negotiate in good faith in violation of subsection 5.4(a)(5) of the Act. Only the CWA International may bring such a charge. See State of New Jersey, (D.E.P.E.), D.U.P. No. 93-43, 19 NJPER 389 (¶24171 1993).

Accordingly, I decline to issue a complaint and dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 30, 1994
Trenton, New Jersey