

D.U.P. NO. 2005-4

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

In the Matter of

TOWNSHIP OF NORTH BRUNSWICK,

Respondent,

-and-

Docket No. CO-2004-259

IUPCPE LOCAL 911,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses in part an unfair practice charge filed by IUPCPE Local 911 against the Township of North Brunswick. The Director found that the alleged facts, even if proven true, do not support either the alleged Weingarten violation or the allegation that the Township discriminated against an employee to discourage activity protected by the Act. The Director issues a Complaint as to the allegation that the Township unilaterally changed a term or condition of employment.

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Appearances:

For the Respondent,
Ruderman & Glickman, attorneys
(Steven Glickman, of counsel)

For the Charging Party,
Thomas M Egan, attorney
(Alan R. Seijas, of counsel)

DECISION

On February 23, 2004, Local 911 International Union of Production, Clerical & Public Employees, (Local 911) filed an unfair practice charge with the Public Employment Relations Commission against the Township of North Brunswick (Township), alleging that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(3) and (5) (Act)^{1/}.

^{1/} These sections prohibit public employers, their agents and representatives 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
(continued...)

Local 911 alleges that: on January 30, 2004, a supervisor notified Dispatcher Marie Gulotta that she was going to be terminated; no advance notice of the meeting was provided to Local 911, and that Gulotta was not afforded union representation at the meeting. The charge states: "Union employees are entitled to union representation both by practice and as required by labor law for any meeting with the potential of disciplinary action."

The Township denies it refused to allow union representation for Gulotta, or that it otherwise 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. Based on the allegations in the charge, I find that the complaint issuance standard has not been met with respect to a 5.4a(1) allegation or to the allegation that section 5.4a(3) was violated. No complaint shall issue on those allegations. The complaint standard has been satisfied, however,

1/ (...continued)
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.

regarding the 5.4a(5) allegation as described below. A complaint shall issue under separate cover for that allegation.

ANALYSIS

An employee has a right to request a union representative's assistance during an investigatory interview that the employee reasonably believes may lead to discipline. This principle was established in the private sector by NLRB v. Weingarten, 420 U.S. 251 (1975), and is known as a Weingarten right. It applies in the New Jersey public sector as well. UMDNJ and CIR, 144 N.J. 511 (1996); State of New Jersey (Dept. of Treasury), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001). If an employee requests and is entitled to a Weingarten representative, the employer must allow representation, discontinue the interview, or offer the employee the choice of continuing the interview unrepresented or having no interview. Dover Municipal Utilities Auth., P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984). State of New Jersey (Dept. of Public Safety), P.E.R.C. No. 2002-8, 27 NJPER 332, 335 (¶32119 2001). The charging party bears the burden of proving that an employee is entitled to a Weingarten representative. Weingarten claims usually fall under 5.4a(1)^{2/} of the Act.

2/ This provision prohibits 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."

Here, there is no claim that the meeting was investigatory in nature. Rather, it appears that the meeting's purpose was only to give notice to an employee that she was going to be terminated. Further, there is no allegation that at any time during the meeting Gulotta requested and was denied union representation. I find that Gulotta's meeting with her supervisor did not trigger a Weingarten right. Accordingly, the charge is dismissed to the extent that it asserts a violation of the Act based upon a Weingarten right.^{3/}

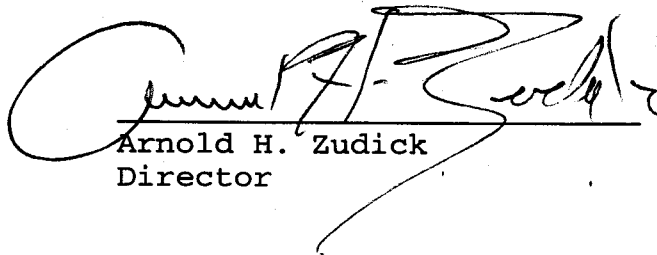
The Charging Party also alleged that the Township violated 5.4a(3) of the Act. This section prohibits discrimination in any term or condition of employment to discourage rights protected by the Act. The standards for proving a 5.4(a)(3) violation are set forth in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). No violation will be found unless the charging party proves that protected conduct was a substantial or motivating factor in the adverse action. Here, there is no allegation that Gulotta was engaged in protected activity. Thus, even if all the alleged facts were proven true, there would be no violation of 5.4a(3). That allegation is also dismissed.

^{3/} Additionally, here the Charging Party did not procedurally allege a violation of 5.4a(1).

The remaining allegation, that the Township violated 5.4a(5) of the Act by changing a practice of providing employees with union representation for "any meeting with the potential of disciplinary action," meets the complaint standard, and a complaint shall issue on that allegation under separate cover.

Based upon the foregoing, the 5.4(a)(3) allegation as well as the Weingarten allegation, are dismissed.

BY ORDER OF THE
DIRECTOR OF UNFAIR PRACTICES



Arnold H. Zudick
Director

DATED: September 8, 2004
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any such appeal is due by September 21, 2004.