

D.U.P. No. 2012-3

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

In the Matter of

PALISADES INTERSTATE PARK
COMMISSION,

Respondent,

-and-

Docket No. CO-2011-374

PBA STATE LAW ENFORCEMENT UNIT,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the PBA State Law Enforcement Unit against the Palisades Interstate Park Commission. The charge alleges that the Park Commission violated 5.4a(1), (2), (3), (4), and (5) of the Act when the police chief issued a memorandum regarding sick leave procedures which allegedly violated the sick leave provision of the parties' collective negotiations agreement.

The Director finds that the parties have a good faith dispute concerning the proper interpretation of the memorandum and whether it runs afoul of the sick leave provision in the parties' agreement. The Director dismissed the charge pursuant to State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), where the Commission held that it will not substitute its unfair practice jurisdiction for the parties' agreed-upon grievance procedure to resolve contract disputes.

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Appearances:

For the Respondent,
Paula T. Dow, Attorney General
(Geri Benedetto, Deputy Attorney General)

For the Charging Party,
Alterman & Associates, LLC, attorneys
(Stuart J. Alterman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 22, 2011 the PBA State Law Enforcement Unit (PBA SLEU) filed an unfair practice charge against the Palisades Interstate Park Commission (Park Commission). The charge alleges that on December 22, 2010, the Park Commission violated 5.4a(1), (2), (3), (4), and (5)^{1/} of the New Jersey Employer-Employee

^{1/} These provisions 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 (continued...)"

Relations Act (Act) when the police chief issued a memorandum regarding sick leave procedures which allegedly violated the sick leave provision of the parties' collective negotiations agreement. The Park Commission asserts that an alleged contract violation is not an unfair practice and that the charge should be dismissed.

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 upon the following, I find that the complaint issuance standard has not been met.

On December 22, 2010 Chief Parr issued a memorandum to all officers advising that any sick leave taken on December 31, 2010, January 1 or January 2, 2011 "shall require sufficient medical documentation, otherwise any sick leave will not be approved."

1/ (...continued)
employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act; and, (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and condition of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

The sick leave provision of the parties' agreement, Article XXI, provides in pertinent part:

If the duration of the absence exceeds two (2) consecutive days, it will be necessary to report on every third day. Failure to report absences or abuse of sick leave privileges on the part of any employee may be cause for disciplinary action. A personal physician's certificate may be required to substantiate the request of sick leave but this requirement shall not be imposed on a basis inconsistent with Merit System Rules and Regulations.

ANALYSIS

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 5.4a(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures. [10 NJPER at 421.]

It appears that the parties have a good faith dispute concerning the proper interpretation of the chief's memorandum and whether it runs afoul of the sick leave provision in the parties' agreement. The PBA SLEU argues that the memorandum, "**should be interpreted** to require an officer to advise the appointing authority of the intended use of sick time prior to the need [emphasis added]." By concession, the memorandum is subject to interpretation. The


Commission will not substitute its unfair practice jurisdiction for the parties' agreed-upon grievance procedure to resolve contract disputes. Human Services. Furthermore, the PBA SLEU has not alleged that any officer was disciplined or denied sick leave for failing to provide medical documentation in advance of taking leave. I dismiss the a(5) allegation.

The charge contains no facts which, if true, would constitute an independent violation of 5.4a(1), or violations of 5.4a(2), (3), or (4). I also dismiss those allegations.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gayl R. Mazuco
Director of Unfair Practices

DATED: August 19, 2011
Trenton, New Jersey

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

Any appeal is due by August 29, 2011.