

D.U.P. NO. 2023-7

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY OF
NEW JERSEY,

Respondent,

-and-

Docket No. CO-2020-020

UNION OF RUTGERS ADMINISTRATORS,
AMERICAN FEDERATION OF TEACHERS
LOCAL # 1766, AFL-CIO

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue complaint in part for an unfair practice charge filed by the Union of Rutgers Administrators, American Federation of Teachers, Local 1766, AFL-CIO (the Charging Party or Local) against Rutgers, the State University of New Jersey (Respondent or University). The Director dismisses the allegation that the Respondent refused to accept offered arbitration hearing dates without explanation because the allegation fails to meet the basic pleading requirements of the Act, and the unexplained rejection of proposed dates for an arbitration proceeding, without more, does not violate any provision of the Act. The remaining information request claim meets the complaint-issuance standard, although the Charging Party's representative mistakenly omitted facts that would meet the Act's pleading requirements when he made subsequent amendments.

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Appearances:

For the Respondent,
(Timothy D. Cedrone, In House Counsel)

For the Charging Party,
(Gregory Rusciano, Staff Representative)

PARTIAL REFUSAL TO ISSUE COMPLAINT

On July 30, 2019, August 22, 2019, and November 7, 2019, the Union of Rutgers Administrators, American Federation of Teachers, Local 1766, AFL-CIO (the Charging Party or Local) filed an unfair practice charge and amended charges, respectively, against Rutgers University, the State of New Jersey (Respondent or University). The charge, as amended, alleges that [on or about July 30, 2019]^{1/} the University “. . . refus[ed] or

^{1/} The University contends in its position statement that the information request claim also fails to meet the pleading requirements. It is true that the charge, as amended, does
(continued...)

fail[ed] to respond to information requests, respond[ed] untimely to information requests and/or respond[ed] incompletely or unreasonably to information requests pertaining to the grievance involving IPO staff reclassification." The charge, as amended,^{2/} also alleges that the University ". . . refus[ed] to accept offered arbitration hearing dates without explanation for [sic] to respond to offered dates by arbitrators for the following matter: PERC Docket #AR-2019-431 (Multiple Jobs/Class Action)." The Charging Party alleges that these "examples of the employer's unlawful conduct" violated subsections 5.4a(1), (2), (3) and (5)^{3/} of the New Jersey Employer-Employee Relations Act (Act),

1/ (...continued)

not identify the date of the alleged unfair practice or the persons who allegedly committed the unfair practice, the charge as originally filed alleged that an unnamed agent of the Respondent failed to provide a complete response in its July 30, 2019 email. It appears that in filing its final amendment, the Charging Party inadvertently omitted those facts from the charge. The University also argues that the dispute is moot since it provided a supplemental response with appropriate objections on October 7, 2019, and the Charging Party did not respond, despite a stated intention to do so. However, the relevancy of the requests and the appropriateness of any responses are generally fact-intensive inquiries that are not suitable for determination before a Complaint issues.

2/ The original charge included several other allegations that were subsequently withdrawn.

3/ 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; (2) Dominating or interfering with the formation, existence or administration
(continued...)

N.J.S.A. 34:13A-1 et seq. It further alleges that such conduct also violates the Workplace Democracy Enhancement Act (WDEA)^{4/} N.J.S.A. 34:13A-5.11 through 5.15.

The Commission has authority to issue a complaint where it appears that a 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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

I find the following facts.

The University is a public employer within the meaning of the Act. The University and the Local are parties to a collective negotiations agreement extending from July 1, 2018

(...continued)

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."

^{4/} Alleged violations of the WDEA do not necessarily implicate this agency's unfair practice jurisdiction, as the statute expressly identifies only certain limited conduct as an unfair practice under the Act. See N.J.S.A. 34:13A-5.14(c)

through June 30, 2022. The Local represents a large negotiations unit comprised of administrative employees employed by the University at its many campuses.

On February 15, 2019, the Commission received a Request for Submission of a Panel of Arbitrators that was docketed as AR-2019-431. It identified the issue as whether the University violated the CNA, its own policies, binding past practices and/or relevant laws when it unilaterally changed the pay and/or refused "multiple jobs" to Cameron Whitley and all others similarly situated. An arbitrator was assigned on or around March 26, 2019. The University, in its position statement,^{5/} attached an exhibit showing email correspondence between the arbitrator, the Local's representatives and the University's representatives. This correspondence shows that on or around October 17, 2019, the arbitrator identified dates in January and February, 2020 for two arbitration hearing matters, one of which was AR-2019-431.^{6/} In

^{5/} The University shared its position statement addressing this matter and three other unfair practice charges (CO-2020-021, CO-2020-022, CO-2020-128) concerning the same negotiations unit with the Charging Party by email on September 28, 2020.

^{6/} More specifically, in the October 17, 2019, email, the arbitrator advised that ". . . [p]reviously the parties had identified February 3 as a control date for AR-2019-43.[sic]" It appears that the arbitrator was referencing AR-2019-431. She asked whether the parties wish to continue with the February 3 date or if they need new dates. For another arbitration matter, AR-2019-645, the arbitrator proposed January 21 or 23, and indicated that both dates were acceptable to the union. It is not readily apparent
(continued...)

an email dated October 18, the University's representative advised that he was available on January 23, 2020. The University claims in its position statement that its representative was unavailable on the other proposed date, and that the parties on or around January 8, 2020, agreed to adjourn the hearing indefinitely while they explored the possibility of settlement.

ANALYSIS

The allegations pertaining to the University's unexplained failure to accept arbitration hearing dates do not meet the pleading requirements and must be dismissed. Under N.J.A.C. 19:14-1.3a(3), a charge "shall contain . . . [a] clear and concise statement of facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts" Thus, the Local's claims fail to provide the requisite information. The charge, as amended, does not identify who refused to accept the dates, or crucially, when such refusal occurred. Although the Respondent's position statement provides complementary factual details about allegations in the charge, I have found no case law that relieves

6/ (...continued)
from this correspondence whether the acceptance of the January 23 date pertains to AR-2019-431 or AR-2019-645. However, this ambiguity is inconsequential to the disposition of the Charging Party's claim.

the Local of its obligation to satisfy the fundamental pleading requirements that are specified in our regulations.

I also find that insufficient facts are alleged to conclude that the unexplained rejection of dates proposed by an arbitrator, without more, violates any subsection of the Act. No provision of the Act has been recognized to create a statutory obligation to provide an explanation for the rejection of dates proposed by an arbitrator. Accordingly, this portion of the charge pertaining to the rejection of an arbitrator's proposed dates is dismissed.

No facts are alleged that would support a claim under subsections 5.4a(2) or (3) of the Act. Accordingly, those claims are dismissed.

Generally, under subsection 5.4a(5) of the Act, a public employer's refusal to timely provide relevant information to a majority representative constitutes a refusal to negotiate in good faith. UMDNJ and CIR, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995, aff'd 144 N.J. 511 (1996) (citing State of New Jersey (Office of Employee Relations)), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987) aff'd NJPER Supp. 2d 198 (¶177 App. Div. 1988). Therefore, the remaining information request claim under subsection 5.4a(5) and a(1) derivatively of the Act meets the complaint-issuance

standard. A Complaint shall issue on that allegation.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: September 14, 2022
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 September 26, 2022.