

D.U.P. NO. 88-3

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

In the Matter of

JERSEY CITY MEDICAL CENTER  
and J.N.E.S.O.,

Respondents,

-and-

Docket Nos. CI-87-26  
CI-87-27

DOLORES CHISLOCK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Dolores Chislock against her employer, Jersey City Medical Center and her majority representative, Jersey Nurses Economic Security Organization ("JNESO"). Chislock alleged that the Medical Center unlawfully refused to promote or transfer her to the Supervisor of Employee Health title and that JNESO failed to reply to her inquiries concerning the matter in violation of N.J.S.A. 34:13A-1 et seq., subsections 5.4(a)(1), (3) and (5) and 5.4(b)(1) and (5), respectively.

The Director found that the promotional criteria established by the Medical Center were not mandatorily negotiable and that JNESO sufficiently investigated Chislock's concerns and accurately informed her that another candidate met all the job requirements. Finally, nothing prevented Chislock from filing her own grievance and the employee organization did not violate the duty of fair representation. Accordingly, the Director declined to issue a complaint.

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Appearances:

For the Respondent Jersey City Medical Center  
Grotta, Glassman and Hoffman, Esqs.  
(Mark E. Faber, of counsel)

For the Respondent J.N.E.S.O.  
Zazzali, Zazzali & Kroll, Esqs.  
(Kenneth I. Nowak, of counsel)

For the Charging Party  
Oxford, Cohen, Blunda, Friedman, Levine & Brooks, Esqs.  
(Sanford R. Oxford, of counsel)

REFUSAL TO ISSUE COMPLAINT

On December 1, 1986, Dolores Chislock filed unfair practice charges against the Jersey City Medical Center ("Center") and the New Jersey Nurses Economic Security Organization ("JNESO" or "Union") alleging violations of subsections 5.4(a)(1), (3) and (5)<sup>1/</sup> and subsections 5.4(b)(1) and (5)<sup>2/</sup> of the New Jersey

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). An exploratory conference was held January 6, 1987. Chislock alleged that the Center refused to promote or transfer her to the Supervisor of Employee Health position and that the Union has failed to reply to her inquiries concerning the matter.

N.J.S.A. 34:13A-5.4(c) provides that the Commission shall have the power to prevent anyone from engaging in any unfair practice and that it has the authority to issue a complaint stating the unfair practice charged.<sup>3/</sup> The Commission has delegated its

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1/ Footnote Continued From Previous Page

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; (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."

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Violating any of the rules and regulations established by the commission."

3/ N.J.S.A. 34:13A-5.4(c) provides, in part: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearings before the commission or any designated agent thereof...."

authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.<sup>4/</sup> The Commission's rules also provide that I may decline to issue a complaint.<sup>5/</sup>

Chislock charged that the Center refused to promote her to the Supervisor of Employee Health position in May 1986. In late April 1986, a notice of vacancy was posted for the position for the requisite ten days. Employee Dorothy Caldes was temporarily assigned to fill the vacancy pending a final hiring decision. Three employees, including Chislock and Caldes, were considered and interviewed for the position. The other candidate voluntarily removed her name from contention. Near the end of May 1986, the Center appointed Caldes to permanently fill the position.

The Center provided the parties a copy of the job description for the Supervisor of Employee Health position. Charging Party did not refute the fact that she had not fulfilled all the requirements of the position.

Chislock also discussed her application for the position with JNESO president Anna Wilson who informed her that Caldes fulfilled all the job requirements. Moreover, Charging Party did

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4/ N.J.A.C. 19:14-2.1.

5/ N.J.A.C. 19:14-2.3.

not seek to file a grievance in the matter until August 1986, a date which exceeded the contractual time limit for the processing of step 1 grievances.

Promotional criteria are not mandatorily negotiable although promotional procedures are negotiable. State of New Jersey v. State Employees Association, 78 N.J. 54 (1978); Township of Woodbridge, P.E.R.C. No. 86-46, 11 NJPER 679 (¶16235 1985). Public employee representatives cannot arbitrate grievances concerning non-negotiable terms and conditions of employment. Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

Chislock contests the Center's selection of Caldes for the position and not its compliance with selection or promotional procedures. The Center had the managerial prerogative to select the candidate it believed to be most qualified for the position and accordingly did not violate subsections 5.4(a)(5) and (1) of the Act.<sup>6/</sup> JNESO sufficiently investigated Chislock's concerns and accurately informed her that the other principal candidate met all the job specifications. See NLRB v. American Postal Workers Union, 618 F2d. 1249, 103 LRRM 3045 (8th Cir. 1980).<sup>7/</sup> Furthermore, nothing prohibited Chislock from filing the grievance directly. Trenton Ed.

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<sup>6/</sup> Chislock did not allege any instance of anti-union animus in the Center's decision to promote Caldes to the Supervisor position. Therefore, her (a)(3) allegation is also dismissed.

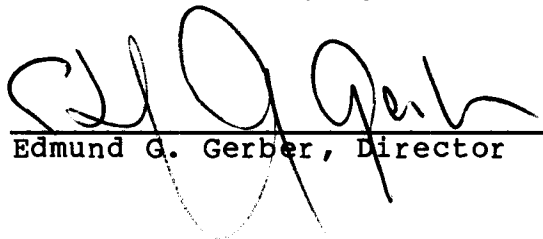
<sup>7/</sup> In Lullo v. Int'l Assn. of Firefighters, 55 N.J. 409 (1970), the New Jersey Supreme Court approved the Commission's use of federal sector precedent in unfair practice litigation.

Secy. Assn. and Ruby Salter, P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986). Under all the circumstances, JNESO did not violate its duty of fair representation. Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967); Saginario v. Attorney General, 87 N.J. 480 (1981).

Chislock failed to show that either her employer or majority representative infringed upon the rights guaranteed her by the Act. On July 22, 1987, we sent Charging Party a letter stating our intention not to issue a complaint on this matter and inviting her to submit additional factual allegations and argument which would warrant the issuance of a complaint. No additional allegations or argument were submitted.

Accordingly, for all the reasons set forth above, we have determined that the Commission's complaint issuance standard has not been met in this matter and decline to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: August 13, 1987  
Trenton, New Jersey