

D.U.P. NO. 93-48

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-93-343

AFSCME, COUNCIL 73, LOCAL 2222,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by AFSCME which sought, as a remedy, the imposition of discipline against two supervisors who allegedly made threatening remarks to the union president. An employer's decision to impose discipline is a managerial prerogative. Therefore, the remedy sought by the union cannot be granted. Additionally, the State provided a letter of assurance to the union that this type of circumstance would not occur again; in essence, the union received the cease and desist order it could have achieved from the Commission.

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Appearances:

For the Respondent
Robert J. DelTufo, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party
Sherryl Gordon, Executive Director

REFUSAL TO ISSUE COMPLAINT

On April 1, 1993, AFSCME filed an unfair practice charge alleging that the State of New Jersey, Department of Human Services, Forensic Psychiatric Hospital violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically, subsections 5.4(a)(1), (2) and (7).^{1/} Allegedly, two hospital supervisors, F. Heighter and E. Phelps, made remarks to

^{1/} These subsections 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. (7) Violating any of the rules and regulations established by the commission."

AFSCME Local 2222 President John McKee on February 17, 1993 threatening the possible dismissal of certain officers if AFSCME continued to press charges against another assistant supervisor, S. Perry. Perry had, allegedly, handled a violent patient incident improperly on February 13, 1993 resulting in the injury of nine medical security officers. AFSCME insists that all three supervisors should be formally disciplined by the Hospital chief executive officer J. Main, and not to do so violates the Act.

The State asserts that the charge should be dismissed pursuant to State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The events alleged in the charge involve contract violations so the parties grievance procedure should be used to address such violations. AFSCME has grieved the incidents and the State is responding accordingly.

Main responded to two letters written by McKee regarding both incidents and conducted an investigation into the charges raised in the letters. He determined, however, not to invoke formal discipline against the three supervisors. Main sent a March 2, 1993 letter to McKee in which he states:

I regret the subject incident of February 17, 1993 occurred and caused you to feel as though you were not treated appropriately as an individual and as President of Local 2222. The matter has been carefully reviewed and discussed with the appropriate individuals and I believe your perspective of the incident is appreciated and understood. As a result of the review process, it is fully anticipated a similar incident will not occur.

ANALYSIS

The employer did not impose formal discipline on the three non-AFSCME unit supervisors. However, Main wrote to McKee advising him that both incidents were carefully investigated; Main assured Local 2222 that the involved individuals were spoken to; and assured McKee that a similar incident would not happen again. AFSCME still feels that the Perry incident was inappropriately handled by Main and is pursuing a grievance over this issue which the State is willing to process.

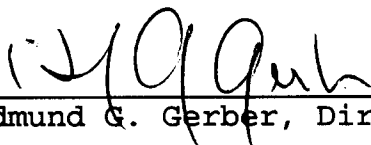
Here, the union is not seeking a cease and desist order from the Commission. Rather, the union is demanding that the employer impose discipline on the involved supervisors. An employer's decision to impose discipline is a managerial prerogative. See S. Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); City of Jersey City, P.E.R.C. No. 88-149, 14 NJPER 473 (¶19200 1988); Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 87-132, 13 NJPER 352 (¶18143 1987), aff'd in pt., rev'd in pt. App. Div. Dkt. No. A-4556-86T7 (3/11/88); N.J.S.A. 34:13A-5.3. Furthermore, a union may not negotiate or use a disciplinary review procedure to challenge discipline imposed, or not imposed, on a non-unit employee. Old Bridge Tp. Bd. of Ed. In any event, the employer assured the union that the problematic conduct will cease. See Matawan-Aberdeen Reg. School District, P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd App. Div. Dkt. Nos. A-46-87T1, A-2433-87T1, A-2536-87T1 (1/24/90); Rutgers Univ., P.E.R.C. No. 88-1, 13 NJPER 631 (¶18235 1987), aff'd App. Div. Dkt No. A-174-87T7 (11/23/88).

Because the union has received the effective relief which a cease and desist order would provide, in the form of the employer's investigation and letter of assurance, and cannot get the relief it seeks, the imposition of discipline on the supervisors, there is no reason to further process this charge.

Based on the above, I find the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of the charge.

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 30, 1993
Trenton, New Jersey