

D.U.P. NO. 2022-14

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 Nos. CO-2021-149
CO-2021-150
CO-2021-151
CO-2021-152
CO-2021-153
CO-2021-154

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

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by the Union of Rutgers Administrators, American Federation of Teachers, Local #1766 (Union) against Rutgers, The State University of New Jersey (Rutgers). The charges alleges Rutgers violated section 5.4a (1), (2) and (5) when it announced changes to several policies that modified mandatorily negotiable subjects. The Director found that the Union did not alleged with sufficient specificity what modifications were made to the policies, nor what impacts the alleged policy changes have had on unit employees' terms and conditions of employment.

D.U.P. NO. 2022-14

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 Nos. CO-2021-149
CO-2021-150
CO-2021-151
CO-2021-152
CO-2021-153
CO-2021-154

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

Charging Party.

Appearances:

For the Respondent,
Timothy D. Cedrone, Association General Counsel

For the Charging Party,
Greg Rusciano, Director

REFUSAL TO ISSUE COMPLAINT

On January 21, 2021, Union of Rutgers Administrators, American Federation of Teachers, Local #1766 (Union), filed several unfair practice charges against Rutgers, the State University of Jersey (Rutgers). The charges allege that on specified dates on and between August 14, 2020 and December 21, 2020, Rutgers violated section 5.4a(1), (2) and (5)^{1/} of the New

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)"

Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it announced changes to several policies that "modifi[ed] mandatorily negotiable subjects." Dkt No. CO-2021-149 alleges that on October 22, 2020, Rutgers announced a change to the alcohol and other drugs policy that included, ". . . modifications to mandatorily negotiable subjects." CO-2021-150 alleges that on August 14, 2020, Rutgers announced a change to the conscientious employee protection policy that included, ". . . modifications to mandatorily negotiable subjects." CO-2021-151 alleges that on September 21, 2020, Rutgers announced a change to the influenza immunization policy for covered individuals that included, ". . . modifications to mandatorily negotiable subjects." CO-2021-152 alleges that on December 1, 2020, Rutgers announced a change to the communications and relations with the news media policy that included, ". . . modifications to mandatorily negotiable subjects." CO-2021-153 alleges that on August 14, 2020, Rutgers announced a change to the policy prohibiting workplace violence that included, ". . . modifications to mandatorily negotiable

1/ (...continued)
rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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.

subjects." CO-2021-154 alleges that on August 17, 2020, Rutgers announced a change to the preservation of access to University data and property policy that included, ". . . modifications to mandatorily negotiable subjects." The charges also allege that Rutgers failed to respond to the Union's demand to negotiate over the alleged changes and/or the impacts of the changes.

The charges were processed together and an exploratory conference was scheduled for March 26, 2021. The conference was adjourned because the parties wished to confer in an attempt to narrow the contested issues and/or try to resolve the matter. In or about December, 2021, it became apparent to the parties that an informal disposition wasn't viable. On December 20, 2021, the assigned Commission staff agent asked the Union representative to amend the charges to identify what alleged "mandatorily negotiable subjects" in the identified policies were modified. The Union declined to amend the charges. On December 29, 2021, the Commission staff agent scheduled an exploratory telephone conference to discuss what "mandatorily negotiable subjects" had been modified by the alleged changes to the policies. On the same date, the Union emailed a reply to the staff agent, advising, "[I]t is not necessary for you to understand which mandatory subjects were involved in order for a complaint to issue at this preliminary stage." On December 30, 2021, in light of the Union's refusal to identify what alleged "mandatorily

negotiable subjects" were modified, the staff agent canceled the exploratory conference and set deadlines for the parties to file position statements.

On January 28, 2022, Rutgers filed its position statement, arguing that the allegations in the charges do not provide a clear and concise statements of facts required by N.J.A.C. 19:14-1.3, and that the charges should be dismissed. Rutgers also avers that the charge ". . . fails to identify any affected employees in the URA negotiations unit, the names of the persons alleged to have committed the purported unfair practices and alleged 'impacts' at issue."

On February 11, 2022, the Union filed its response. It argues that it needs only to show that the allegations if true, would constitute an unfair practice, which it purportedly has done.

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 Union and Rutgers are parties to a collective negotiations agreement extending from July 1, 2018 through June 30, 2022 (CNA).

Under Article 1 of the CNA, the Union is the exclusive majority representative of this unit:

all regularly employed administrative employees employed by Rutgers at its New Brunswick, Piscataway, Newark and Camden campuses and all off-campus and other locations, all term contract employees who perform the unit work of URA-AFT Local #1766, all temporary employees who perform the unit work of at least four hours per week over a period of 90 calendar days (the 90 calendar day period defined by the Workplace Democracy Enhancement Act) who perform the unit work of URA-AFT Local #1766.

On or about August 14, 2020, Rutgers announced changes to the conscientious employee protection policy and the policy prohibiting violence in the workplace without negotiations with the Union. On or about August 17, 2020, Rutgers announced a change to the preservation of access to University data and property policy without negotiations with the Union. On or about September 21, 2020, Rutgers announced a change to the influenza immunization policy for covered individuals without negotiations with the Union. On or about October 22, 2020, Rutgers announced a change to the alcohol and other drugs policy without negotiations with the Union. On or about December 1, 2020, Rutgers announced a change to the communications and relations

with the news media policy [the policies will be referenced collectively as "the policies"] without negotiations with the Union. On or about December 3, 2020, the Union demanded to negotiate over the change to the policies or the impacts of the changes. Rutgers failed to respond to the Union's demand.

ANALYSIS

A charging party, in order to justify our issuance of a complaint, must set forth in its charge a "clear and concise statement of the facts" in support of its claims. N.J.A.C. 19:14-1.3(a); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269 (¶92 2012), aff'd P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 2013); Warren Cty. College, P.E.R.C. No. 2018-25, 44 NJPER 287 (¶80 2017). This standard encompasses the "who, what, when and where" information about the commission of an unfair practice. Id. Simply, any severable impact claims arising from the exercise of a managerial prerogative must be plead, with specificity, i.e., identifying terms and conditions of employment that were impacted and that a specific demand to negotiate those impact issues was made to the employer. Warren Cty. College.

In Bayonne Board of Education, D.U.P No. 2022-007, 48 NJPER 342 (¶76 2022), the Bayonne Teachers Association maintained that the Board's alleged action, releasing "information" about its negotiations proposal in advance of a negotiations session, violated the Board's duty to negotiate in good faith and

interfered with the Association's ability to administer its responsibilities to unit members. We found that the Association's allegation didn't meet specificity requirements. N.J.A.C. 19:14-1.3a(3). Specifically, the charge did not identify the name(s) of any person(s), senders or recipients, involved in the alleged improper conduct. Also, the charge did not specify what "information" was allegedly released to a unit member or members, whether the Board or its negotiations committee authorized its release, and whether the "information" accurately, or in any way, reflected the particulars of the Board's proposal to the Association on April 16, 2018. Nor did the charge specify what "information" was shared on social media, when it was shared, and who received it. The charge was dismissed.

Here, the Union has not alleged with sufficient specificity what modifications were made to the policies, nor what impacts the alleged policy changes have had on unit employees' terms and conditions of employment. Warren Cty. College. The Union alleges that the policies were changed to include "modifications to mandatorily-negotiable subjects." No allegations in the charges identify *what* those "mandatorily-negotiable subjects" are and the Union has refused to identify them. Workplace changes that do not "intimately and directly affect the work and welfare" of employees are not terms and conditions of employment and are

not mandatorily negotiable. Also, not every change to a term and condition of employment is mandatorily negotiable. The Union's refusal to identify any changes to the policies prohibits an analysis of whether those policy changes implicate any term or condition of employment, and if they do, whether the alleged changes were mandatorily negotiable under the test set forth in Local 195, IFPTE v. State of New Jersey, 88 N.J. 393 (1982).^{2/} The Union's evident conscious refusal to amend its charges merely to allege what specific "mandatorily negotiable subjects" were modified justifies dismissal.

^{2/} In Local 195, IFPTE v. State of New Jersey, 88 N.J. 393 (1982), the New Jersey Supreme Court established this standard for determining whether a change in a term and condition of employment is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulations; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[88 N.J. at 404-405].

In the same vein, the Union's serial allegations that it demanded to negotiate "the impacts of the change(s)", omit any specificity. See Warren Cty. College (Commission found that the Union's charge was deficient because it did not "spell out" the specific impacts over which the Union sought negotiations); New Jersey State Judiciary, D.U.P. No. 2022-8, 48 NJPER 344 (¶77 2022) (Director determines that the lack of specificity as to the "nature and extent" of the policy's impact on terms and conditions of employment justified dismissal of the charge). The lack of specificity about the "nature and extent" of the policies' impact on terms and conditions of employment justifies dismissal. Under these circumstances, I dismiss the Union's 5.4a(5) and derivative a(1) allegations set forth in unfair practice charge docket nos. CO-2021-149, CO-2021-150, CO-2021-151, CO-2021-152, CO-2021-153 and CO-2021-154.^{3/}

^{3/} The Union hasn't alleged any facts supporting a violation of section 5.4a(2) of the Act. Those allegations are also dismissed.

ORDER

The unfair practice charges are dismissed.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: June 08, 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 June 20, 2022.