

D.U.P. NO. 98-34

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

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

Respondent,

-and-

Docket No. CO-98-231

PBA LOCAL 205,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses one count of an unfair practice charge filed by PBA Local 205 against the Township of Hillsborough, alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The charge sought a finding that an officer's rights were violated when the Town only gave him 3 hours' advance notice of a disciplinary interview. The Director found that under N.L.R.B. v. Weingarten, Inc., 420 U.S. 251 (1975), the right to adequate advance notice is not articulated, and we would not broaden Weingarten's principles in these circumstances. The employer's offer to delay the interview so that representation could be obtained remedied any arguable violation. Accordingly, the Director dismissed count one of the charge.

The remaining allegations, if true, could be violations of the Act, and the Director ordered that a Complaint be issued as to those allegations.

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Appearances:

For the Respondent,  
Frank N. Yurasko, attorney

For the Charging Party,  
Dr. Simon M. Bosco, consultant

DECISION

On December 23, 1997, and January 21, 1998, PBA Local 205 filed unfair practice charges against the Township of Hillsborough with the New Jersey Public Employment Relations Commission, alleging that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1), (2), (3) and (5) ("Act").<sup>1/</sup>

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<sup>1/</sup> These violations 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 employment to encourage or discourage employees in the

The charge contains several counts. Count one alleges that the Township refused to provide Police Officer Trevor Oldenburg with adequate advance notice of an investigatory interview. The second count alleges that the Township's conduct of an internal investigation of a matter which is strictly union business violates the Act. Also, the Township's interview of Oldenburg and other unit members, and its requirement that PBA members submit written statements about a PBA business matter allegedly coerced and interfered with protected activity. The third count alleges that the Township discriminated against Oldenburg because of his activities as president of Local 205. The fourth count alleges that the Township interfered with and coerced employees engaged in protected activity. Specifically, it is alleged that the Township had ordered or coerced members into refusing to speak to PBA members conducting their own investigation. The first amended count alleges that on December 23, 1997, the Township violated the Act by bringing disciplinary charges against Oldenburg because of his PBA activities. The second amended count alleges that the Township discriminated against Oldenburg by including references to the instant unfair practice charge in Oldenburg's files, in violation of

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1/ Footnote Continued From Previous Page

exercise of the rights guaranteed to them by this Act; and (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.

section 5.4(a)4 of the Act. The third amended count alleges that the Township violated section 5.4(a)1 of the Act by its rules restricting unit members' choice of representative to only "active PBA 205 members employed by Hillsborough Township."

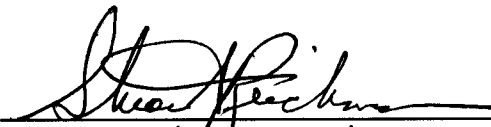
The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. For the reasons expressed below I find that the allegations in count one of the charge filed on December 23, 1997 do not meet the Commission's complaint issuance standard.

Oldenburg is president of PBA Local 205, a negotiations unit of non-supervisory police officers employed by the Township. On the basis of information obtained during the exploratory conference conducted in this case, it is clear that on November 18, 1997, at 8:00 a.m., Oldenburg was ordered to report at 11:00 a.m. the same day for an investigatory interview with Captain Robert F. Roscoe. Oldenburg and Roscoe discussed postponing the interview so that Oldenburg could obtain a representative, but Oldenburg voluntarily went ahead with the interview without delay. Under these circumstances, we do not believe that the allegations in count one would constitute an unfair practice. Charging Party alleges that: "the Township has violated President Oldenburg's rights under

the statute when it refused to provide him with adequate notice and sufficient time to have the representative of his choice present during the disciplinary interview." Under N.L.R.B. v. Weingarten, Inc., 420 U.S. 251 (1975) an employee is entitled to have a union representative present at an investigatory interview which the employee reasonably believes might result in discipline.<sup>2/</sup> The right to adequate advance notice is not articulated in Weingarten and under these circumstances, we will not broaden Weingarten's principles. The captain gave Oldenburg three hours advance notice and even if that constituted insufficient advance notice of the interview, the captain's offer to delay the interview so that representation could be obtained remedied any arguable violation. There is no allegation that the captain refused to permit Oldenburg to have a representative present at the interview. Accordingly, I dismiss count one of the charge.

The remaining counts, if true, might be violations of the Act. Accordingly, a Complaint will issue as to these allegations.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: April 23, 1998  
Trenton, New Jersey

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<sup>2/</sup> Weingarten was adopted by the New Jersey Supreme Court in 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)