

D.U.P. NO. 93-32

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CI-92-45

JOHN M. SHAW,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by John M. Shaw against the State of New Jersey, Department of Corrections, alleging that the State violated subsections 5.4(a)(3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Although Shaw alleges that the State discriminated against him when it reassigned him after he had an insulin reaction while driving a State vehicle, he does not allege that the State's actions were linked to any protected activity.

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Appearances:

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

For the Charging Party,
John M. Shaw, pro se

REFUSAL TO ISSUE COMPLAINT

On December 26, 1991, John M. Shaw filed an unfair practice against his employer, the State of New Jersey, Department of Corrections, alleging that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically, subsection 5.4(a)(3),^{1/} when it transferred him on January 14, 1991 to the Central Medical Unit after he had an insulin reaction while driving a State vehicle and changed his days off by

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

assigning him a new shift on April 14, 1991. Shaw asserts that the Department accommodated the medical problems of two other officers by giving them only brief reassignments to the Central Medical Unit and allowing them to keep their same days off. Shaw also alleges that, on unspecified times since his transfer, he was harassed by his supervisors.

The State responds that the charge is untimely filed. It also argues that Shaw has failed to allege facts sufficient to establish a prima facie violation of the Act.

After his shift was changed on April 14, 1991, Shaw asked his supervisors several times to switch him back to his former schedule so that he would have more time to spend with his daughter. On July 12, 1991, the Department told Shaw that he would have to bid for the shift he wanted. On August 19, 1991, Shaw was notified that his request to be transferred out of the Central Medical Unit was denied based upon a decision from the State Division of Motor Vehicles.^{2/}

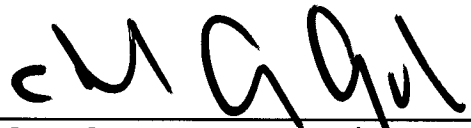
An employer violates subsection (a)(3) when it discriminates in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act. For there to be a violation of this subsection, there must be a nexus between

^{2/} Taking the July 12 and August 19, 1991 dates as the operative events in the facts alleged in this charge, it appears that the charge is timely filed.

the Respondent's discriminatory conduct and the Charging Party's protected activity. Here, Shaw alleges that the Department has discriminated against him by indefinitely reassigning him to the Central Medical Unit; changing his shift and, therefore, his days off; and harrassing him while he was on duty. However, Shaw does not allege that this differential treatment was in any way tied to his having engaged in protected activity, such as filing grievances or actively participating in employee organization or negotiations.

The Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations in the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: February 26, 1993
Trenton, New Jersey