

D.U.P. NO. 98-2

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

In the Matter of

ATLANTIC CITY CONVENTION AND
VISITORS AUTHORITY,

Respondent,

-and-

Docket Nos. CI-97-77 &
CI-97-81

MARIE SUZANNE QUILTER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses CI-97-77. The Director finds that the Charging Party does not have standing to assert an (a)(5) violation and that no facts were alleged in support of her (a)(1), (3) and (4) allegations.

The Director dismisses the allegations in CI-97-81 involving EEOC Executive Order 11246, a targeted position policy, and disparate treatment by the Employer. However, a Complaint and Notice of Hearing was issued on the allegations that the Charging Party was retaliated against for notifying the Union of an alleged targeted position policy and for insisting on union representation.

D.U.P. NO. 98-2

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

In the Matter of

ATLANTIC CITY CONVENTION AND
VISITORS AUTHORITY,

Respondent,

-and-

Docket Nos. CI-97-77 &
CI-97-81

MARIE SUZANNE QUILTER,

Charging Party.

Appearances:

For the Respondent,
Rosalind Kincaid, Director of Human Resources

For the Charging Party,
Marie Suzanne Quilter

DECISION

On May 14, 1997, Marie Suzanne Quilter filed two unfair practice charges against the Atlantic City Convention and Visitors Authority, alleging that the Authority violated subsections 5.4(a)(1), (3) and (4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

^{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. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

Specifically, in CI-97-77, Quilter alleges that the Authority unilaterally changed its overtime regulation without negotiating with the union. She also claims that due to a personality conflict with her supervisor, she was usually denied approved overtime.

In CI-97-81, Quilter alleges that EEOC Executive Order 11246 was violated when she applied for a transfer but was informed that the position which she was seeking was "targeted"; Quilter also claims she was disparately treated. She further asserts that she received improper discipline which disqualified her from a transfer, in retaliation for her notifying the union of the Authority's targeted position policy, and for requesting union representation.

ANALYSIS

CI-97-77

Although not alleged, CI-97-77 appears to assert an (a)(5) violation, in that the Authority unilaterally changed the overtime policy without negotiating with the union. However, an individual employee normally does not have standing to assert an (a)(5) violation, as the employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980). An individual employee/charging party may pursue a claim of an (a)(5) violation only where the charging party has also asserted a viable unfair practice claim of a breach of the duty of fair representation

against the majority representative. Jersey City State College, D.U.P. No. 97-18, 23 NJPER 1 (¶28001 1996), N.J. Turnpike, D.U.P. No. 80-10, 5 NJPER 18 (¶10268 1979).

Here, Quilter has not asserted a breach of the duty of fair representation against her majority representative. Hence, her potential claim of an (a)(5) violation must fall.

Further, no facts were alleged in support of her (a)(1), (3) and (4) allegations. Specifically, her claim that she was usually denied overtime due to a personality conflict with her supervisor does not set forth a violation of the Act.

Based on the foregoing, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of CI-97-77, N.J.A.C. 9:14-2.1, 2.2 and 2.3. This charge is dismissed.


CI-97-81

Quilter's allegation of a violation of EEOC Executive Order 11246 must be dismissed, as the Commission lacks jurisdiction to address this claim. State of New Jersey (Department of Human Services), D.U.P. No. 97-12, 22 NJPER 333 (¶27173 1996); Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264, 265 (¶20112 1989); Cf. Teaneck Bd. of Ed. v. Teaneck Teachers Assn., 94 N.J. 9, 17-18 (1983). Accordingly, all allegations regarding a targeted position policy and of disparate treatment by the Authority also must be dismissed because the Commission lacks jurisdiction over them. Ibid.

I direct that a Complaint and Notice of Hearing issue on the allegations that Quilter was retaliated against for notifying the union of an alleged targeted position policy, and for insisting on union representation. These actions, if true, may violate the Act.

All other allegations are dismissed. N.J.A.C. 19:14-2.1,
2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: July 7, 1997
Trenton, New Jersey