

D.U.P. NO. 2001-7

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

In the Matter of

GLEN RIDGE BOROUGH,

Respondent,

-and-

Docket No. CO-99-355

CWA LOCAL 1040,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by CWA on allegations that the Borough of Glen Ridge reduced unit member Elaine Bertram's salary without negotiations when it transferred her and ceased paying her a stipend for extra typing duties. The Director finds that Bertram's salary was reduced as a consequence of the employer's prerogative to transfer and reassign employees to meet operational needs. Moreover, the allegations of the charge were untimely filed.

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Appearances:

For the Respondent,
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Mark Zitomer, of counsel)

For the Charging Party,
Ben Spivack, Representative

REFUSAL TO ISSUE COMPLAINT

On May 6, 1999, Communications Workers of America, Local 1040 (CWA) filed an unfair practice charge alleging that the Borough of Glen Ridge (Borough) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), and specifically, 5.4a(5)^{1/} by reducing unit member Elaine Bertram's annual salary

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

by \$1800 without negotiating with CWA.

On July 15, 1999, an exploratory conference was conducted by a staff agent of the Commission. The conference did not result in a resolution of the charge. The parties set forth their positions verbally and in supplemental submissions.

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. In correspondence dated September 29, 2000, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

Elaine Bertram was a clerk/typist in the Borough's finance/administration office. Prior to January 16, 1999, Bertram's compensation included her annual salary, a stipend in the amount of \$1200 for performing the duties of deputy registrar (a negotiations unit title) and an additional stipend of \$600 for acting as a clerical assistant, performing typing duties for the mayor and the Borough administrator. Bertram had performed the deputy registrar duties for seven to eight years, and the typing duties since 1995.

On or about February 13, 1998, the Borough transferred Bertram to the engineering and public works office and she ceased performing the deputy registrar duties and the extra typing. The Borough decided not to fill Bertram's regular position. In or about November 1998, the Borough registrar appointed the Borough cashier, also a unit position, as the new deputy registrar and the Borough administrator began typing the Council meeting minutes himself. However, Bertram continued to receive both stipends for the calendar year 1998. In or about January 1999, the Borough administrator informed Bertram that she would no longer receive the stipends for the deputy registrar and clerical assistant positions.

CWA asserts that the Borough failed to notify it that Bertram's added compensation was being eliminated or to discuss the matter with CWA during negotiations for a successor agreement. CWA asserts that Bertram was willing to continue to perform the deputy registrar duties. CWA asserts that the Borough acted in bad faith by falsely stating that Bertram refused the duties, and by rescinding the additional salary payments.

The Borough contends that Bertram refused to perform the deputy registrar and typing duties after her February 1998 transfer to public works. The Borough asserts that Bertram's salary has not been reduced; that the extra services were unnecessary and the positions were not filled; that, by statute, the registrar of vital statistics, not the Borough, is the appointing authority for the deputy registrar position; and that the Borough has a managerial prerogative not to fill an unnecessary position.

For the reasons set forth below, I decline to issue a complaint on this charge.

A public employer has a prerogative to transfer or reassign an employee to meet the governmental policy goal of matching the best qualified employee to a particular job. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of E. Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985). This is usually so even if a reassigned employee loses a shift differential or premium pay. City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985).

Whether Bertram was or was not willing to continue to perform the extra duties after her transfer is not the issue. The Borough's actions in removing the extra work were direct consequences of its right to exercise its managerial prerogative to transfer and reassign employees to meet operational needs. See Hudson Cty., P.E.R.C. No. 86-147, 12 NJPER 531 (¶17199 1986); Warren Cty.; Pennsville Tp. Bd. of Ed., P.E.R.C. No. 82-77, 8 NJPER 127 (¶13055 1982); Deptford Tp. Bd. of Ed., P.E.R.C. No. 80-82, 6 NJPER 29 (¶11014 1980). The amount of money paid to Bertram annually by the Borough was reduced as a consequence of the Borough's prerogative to reassign the extra duties. Therefore, none of the facts alleged, even if true, would appear to support a finding that

the Borough violated 5.4a(5), and I decline to issue a complaint on that allegation of the charge.

Moreover, the CWA's claim that the additional duties were unlawfully taken away from Bertram and given to someone else after Bertram's transfer is untimely. N.J.S.A. 34:13A-5.4(c) establishes a six-month statute of limitations period for the filing of unfair practice charges. The statute provides in pertinent part:

...that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such a charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

There is no dispute that Bertram was transferred from the finance administration office, and discontinued the duties of deputy registrar and the additional typing duties in February 1998. This charge was filed on May 6, 1999, well beyond the six-month limitations period. In the absence of timely allegations, I decline to issue a complaint. N.J.S.A. 34:13A-5.4(c). No. Warren Reg. Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977); Kaczmarek v. N.J. Turnpike Auth. 77 N.J. 329 (1978).

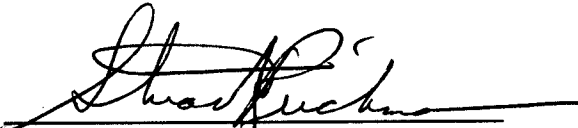
Therefore, I find that the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge.^{2/}

^{2/} N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: October 20, 2000
Trenton, New Jersey