D.U.P. NO. 95-5

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

In the Matter of

STATE OF NEW JERSEY
(ANCORA PSYCHIATRIC HOSPITAL),

Respondent,

-and-

Docket No. CI-94-63

BRENDA HYNSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a portion of an unfair practice and amended charge filed by Brenda Hynson against her employer, State of New Jersey (Ancora Psychiatric Hospital). The Director refuses to issue a Complaint on Hynson's allegations that the Hospital's hearing officer had a personal vendetta against her and that he improperly conducted a second step grievance hearing at which a five-day suspension was imposed upon her. The Director finds that Hynson did not base her claim of harassment by the hearing officer on her involvement in protected activity. The Director also dismissed Hynson's allegation that her grievance was improperly processed. The grievance procedure in the collective agreement between Hynson's majority representative and the State is self-executing and ends in binding arbitration; therefore, Hynson may simply proceed to the next step of the grievance procedure for redress of the procedural impropriety.

The Director issues a Complaint and Notice of Hearing on Hynson's allegation that she was given a minor discipline because she filed an earlier unfair practice charge with the Commission.

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Appearances:

For the Respondent,
Deborah T. Poritz, Attorney General
(John Franzini, Deputy Attorney General)

For the Charging Party,
AFSCME, Council 1
(Robert C. Little, Assistant to the Director)

DECISION

On April 6 and April 21, 1994, Brendon Hynson filed an unfair practice charge and amended charge alleging that her employer, State of New Jersey (Ancora Psychiatric Hospital) violated subsections 5.4(a)(1), (2), (3), (4) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.[1/]

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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to

Footnote Continued on Next Page

Hynson alleges that (1) the State imposed a minor discipline upon her of five days suspension in retaliation for her having filed an unfair practice charge against the State with the Commission in April 1994; (2) Ancora's hearing officer had a "personal vendetta" against her; and (3) that hearing officer improperly conducted the second step grievance hearing at which the minor discipline was imposed. Specifically, Hynson alleges that the hearing officer had summarily upheld the five-day suspension without affording her the opportunity to question witnesses or provide a defense.

The State denies that it engaged in any unfair practice. It asserts that Hynson was properly disciplined for not adhering to Ancora's policy requiring all direct-care personnel to maintain a nail length of 1/4 inch. The State also asserts that Hynson's allegation concerning the impropriety of her second step grievance hearing concerns a breach of the collective negotiations agreement between the State and AFSCME, Hynson's majority representative, and therefore, does not constitute an unfair practice under the Act.

1/ Footnote Continued From Previous Page

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. (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.

The Commission has repeatedly held that assertions of an employer's refusal to respond to a grievance, or its improper treatment of a grievance at an intermediate step of the grievance procedure, in and of itself, is not a violation of subsection 5.4(a)(5) when the contract provides for a self-executing grievance procedure which culminates in binding arbitration. See New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); Wayne Bd. of Ed., D.U.P. No. 92-9, 18 NJPER 105 (¶23050 1992); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982).

Here, the collective agreement between Hynson's majority representative, AFSCME, and the State is self-executing and ends in binding arbitration. The parties' agreement permits the grievant, if not satisfied with the result (or non-result) of any step of the grievance procedure, to simply proceed to the next step. Accordingly, I find that the Commission's complaint issuance standard has not been met and I dismiss this allegation.

Hynson further alleges that the hearing officer had a "personal vendetta" against her. Assuming that this allegation is true, I must nevertheless dismiss this portion of the charge. Hynson does not support this allegation with any facts to show that the claimed harassment is based upon her involvment in activity protected under the Act; therefore, this allegation does not meet the Commission's compliant issuance standard.

Finally, Hynson alleges that she was disciplined for filing an earlier unfair practice charge with the Commission. N.J.S.A. 34:13A-5.4(a)(4) prohibits public employers from discriminating against any employee who had filed a complaint under the Act. Accordingly, I issue a Complaint and Notice of Hearing on this allegation only and dismiss the reminder of the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: September 14, 1994
Trenton, New Jersey