

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

In the Matter of

STATE OF NEW JERSEY,  
MONTCLAIR STATE COLLEGE,

Respondent,

-and-

Docket No. CI-89-40

CARL GOTTSCHALL,

Charging Party.

SYNOPSIS

Carl Gottschall, a faculty member at Montclair State College, filed an unfair practice charge alleging that the College violated the New Jersey Employer-Employee Relations Act when it retaliated against him for filing a grievance; engaged in coercive negotiating tactics; engaged in unlawful employment practices within the meaning of the New Jersey Laws Against Discrimination (N.J.S.A. 10:5-1 et seq.); engaged in programatic bias against the Gifted and Talented Program directed by the charging party and academic discipline bias in favor of the mathematics and computer science department; failed to provide a fair and reasonable process for promotion; and failed to process grievances in accordance with the collective agreement. With respect to the allegations relating to retaliation for filing a grievance, the Director found that the charging party suffered no adverse consequences as the result of the alleged threat. Moreover, the Director found that the retaliation allegation was untimely. With respect to the allegation concerning coercive negotiating tactics, the Director found that such negotiations did not pertain to terms and conditions of employment. Regarding the allegations that the employer engaged in unlawful employment practices within the meaning of the New Jersey Laws Against Discrimination, the Director found that such claims are outside of the Commission's jurisdiction. With respect to the allegations pertaining to programatic and academic discipline bias, the Director found that such matters related to the internal relationship between the University administration and the charging party. With regard to the claims that the employer failed to provide a fair and reasonable process for promotion and failed to process grievances, the Director found that such matters were the subject of ongoing grievance proceedings and are appropriately resolved in that forum rather than in an unfair practice context.

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Appearances:

For the Respondent  
Attorney General's Office  
(Melvin E. Mounts, D.A.G.)

For the Charging Party  
Carl Gottschall, pro se

DECISION

On October 31, 1988, Carl Gottschall ("Charging Party") filed an unfair practice charge alleging that the State of New Jersey, Montclair State College ("College") violated subsections 5.4(a)(1), (3), (4), (6) and (7)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by retaliating against the charging party for filing a grievance in accordance with the collective negotiations agreement between the State of New Jersey (Montclair State College) and the Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO; engaging in coercive negotiating tactics; engaging in unlawful employment practices within the meaning of the New Jersey Laws Against Discrimination (N.J.S.A. 10:5-1 et seq.) by refusing to promote the charging party because of creed;<sup>2/</sup> engaging in programmatic bias against the Gifted and Talented Program directed by the charging party and academic discipline bias in favor of the Mathematics and Computer Science Department; failing to provide a fair and reasonable process for promotion; and failure to process grievances in accordance with the collective agreement between the State of New Jersey and the Council of New Jersey State College Locals.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.<sup>3/</sup> The Commission

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<sup>2/</sup> On October 13, 1988, Gottschall filed a complaint with the Division on Civil Rights regarding this allegation. The matter is currently pending before the Division.

<sup>3/</sup> N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged

has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.<sup>4/</sup> The Commission's rules provide that I may decline to issue a complaint.<sup>5/</sup>

On March 1, 1989, we sent the parties a letter indicating that we were inclined to dismiss the unfair practice charge since, as a matter of law, the allegations set forth in the charge did not meet the Commission's complaint issuance standards. We provided the parties with an opportunity to respond. The charging party filed a timely response.

We find the following facts. Since October 8, 1982, Carl Gottschall has served as the director of the Gifted and Talented Youth Programs Center at Montclair State College. Gottschall's home department is the Department of Mathematics and Computer Science.

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3/ Footnote Continued From Previous Page

that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

4/ N.J.A.C. 19:14-2.1.

5/ N.J.A.C. 19:14-2.3.

The Gifted and Talented Program operates outside of the Department of Mathematics and Computer Science.

On November 2, 1987, Gottschall applied for promotion to the rank of professor. By November 30, 1987, Gottschall discovered that the department chairperson rated him last among those in his department who applied for promotion. On November 30, 1987, Gottschall filed a Notice of Violations and Intent to Grieve with the College.

On December 3, 1987, Dr. Kenneth C. Wolff, Chairman of the Department of Mathematics and Computer Science, ordered Dr. Andrew Demetropoulos, Associate Chairman of the Department of Mathematics and Computer Science, not to schedule any release time for Dr. Gottschall for the fall 1988 semester. Gottschall was later informed that his teaching schedule, effective September 1, 1988, would be revised in a manner so as to remove the six credits of release time he had received since October 1982 in order to direct the Gifted and Talented Program.

Between December 3, 1987 and March 15, 1988, a series of meetings took place between Gottschall and College representatives for the purpose of (1) negotiating the amount of release time provided to Gottschall and others associated with the Gifted and Talented Program, (2) obtaining permission to hire an administrative assistant for the Program, and (3) discussing the level of payment to be made by the Gifted and Talented Program to the Department of Mathematics and Computer Science in order to compensate the

department for release time provided to departmental faculty working in the Program. On March 15, 1988, Dr. Richard A. Lynde, Acting President of the College, told Gottschall that he would continue to receive release time during the academic year 1988-89. On July 26, 1988, Gottschall received official written notification that the release time would not be eliminated.<sup>6/</sup>

On August 3, 1988, Gottschall signed an agreement providing for release time for him and other departmental faculty working in the Gifted and Talented Program. However, Gottschall contends that the College used coercive negotiating tactics such as the elimination of all of his release time in order to force him to acquiesce to the terms of that agreement. The agreement also provides for the Gifted and Talented Program to pay \$25,000 to the School of Mathematical and Natural Sciences, Department of Mathematics and Computer Science. Gottschall contends that the \$25,000 payment to the department in compensation for his and other

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<sup>6/</sup> Gottschall states in his March 9, 1989 letter, that on March 17, 1988, he informed Dr. Sobel, Acting Dean of the School of Mathematical and Natural Sciences, that in accordance with the March 15, 1988 meeting, his fall 1988 schedule should include release time. On April 19, 1988, Sobel responded to Gottschall and indicated that, while he had not yet received "official word" from the Administration regarding his release time, it was his "unofficial understanding" that Gottschall's fall semester release time would not be eliminated. On April 21, 1988, in response to an inquiry regarding release time by a union representative, Sobel indicated that the schedules for academic year 1988-89 were being prepared and release time projections were not yet available. On May 9, 1988, Sobel forwarded the union representative a revised list of faculty members receiving release time. That listing showed Gottschall receiving release time for the fall 1988 semester.

departmental faculty members' release time is coercive because such sum represents almost double the amount of money paid by any other program at the College for release time. Gottschall further claims that unless he agreed to pay the \$25,000 to the department, the College administration would not permit him to hire an administrative assistant, a position for which the program had sufficient funding and, in Gottschall's view, was necessary in order to properly operate the Gifted and Talented Program.

On December 30, 1987, Gottschall formally filed a grievance with the College alleging procedural and substantive errors on the part of departmental and College representatives in consideration of his candidacy for promotion. Hearings on the grievance were conducted on February 16, April 5, 27, 28, June 15, 21 and 28, 1988. On August 17, 1988, a step one grievance decision, dated July 9, 1988, was released. While most of the claims set forth in Gottschall's grievance were rejected by the College, the step one decision found that an out-of-department promotion procedure should be established in order to accommodate inter-disciplinary cases such as that found to apply in Gottschall's situation. Accordingly, the decision called for Gottschall's promotion application to be remanded for an ad hoc review of his candidacy with experts outside the Department of Mathematics and Computer Science to evaluate his work in the Gifted and Talented Program and his other out-of-department activities.

Gottschall contends that the College retaliated against him for filing a grievance in violation of subsection 5.4(a)(3) of the Act. "Filing a grievance is a fundamental example of protected activity." Pine Hill Bd. of Ed., P.E.R.C. No. 86-126, 12 NJPER 434, 437 (¶17161 1986). See also Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984); and Lakewood Bd. of Ed., P.E.R.C. No. 79-17, 4 NJPER 459 (1978). However, the College's decision to deny Gottschall a promotion could not have constituted retaliation, since the denial preceded the filing of his Notice of Violation and Intent to Grieve and the grievance itself. The specific act of retaliation of which Gottschall complains is the alleged threat by the College to eliminate the release time provided to him for the purpose of overseeing the operation of the Gifted and Talented Program since 1982.

On December 3, 1987, Gottschall was told his release time would be eliminated, effective September 1, 1988. However, it is undisputed that by March 15, 1988, Gottschall was told by the College's Acting President that his release time would not be eliminated. On May 9, 1988, the Acting Dean sent a memorandum to a union representative evidencing that the agreement reached on March 15, 1988, was being implemented. Gottschall received written confirmation that his release time would not be eliminated on July 26, 1988. Gottschall's schedule for the fall 1988 semester included his release time. Consequently, the alleged threat was rescinded and never implemented. Even assuming for the sake of argument that



the College threatened Gottschall with the elimination of release time in retaliation for his intention to file a grievance, we find that no violation of subsection 5.4(a)(3) occurred since Gottschall never suffered the adverse consequences allegedly threatened. See Township of Mine Hill, P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); City of Newark, H.E. No. 88-3, 13 NJPER 621 (¶18233 1987), adopted P.E.R.C. No. 88-24, 13 NJPER 727 (¶18274 1987).

We further decline to issue a Complaint on the grounds that the College's alleged threat to eliminate the charging party's release time violates subsection 5.4(a)(1). N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a Complaint where an unfair practice charge has not been filed within six (6) months of the occurrence of any unfair practice, unless the aggrieved party was prevented from filing the charge. See North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977). In this case, the unfair practice charge was filed on October 31, 1988. Gottschall formally filed his grievance on December 30, 1987, and his notice of violations and intent to grieve on November 30, 1987. By March 15, 1988, the charging party was advised that his release time for the fall semester, 1988, would not be eliminated. Thus, using March 15, 1988 as the operative date for the alleged violation of subsection (a)(1), charging party is well beyond the six month statute of limitations on this issue.<sup>7/</sup>

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<sup>7/</sup> Nothing set forth in Gottschall's March 9, 1989 letter, persuades us that the operative date applicable to the alleged subsection (a)(1) violation is other than March 15, 1988.

Charging party also alleges that the employer used coercive negotiating tactics resulting in his agreement to pay the Department of Mathematics and Computer Science \$25,000 as compensation for release time granted to the charging party and other faculty members working in the Gifted and Talented Program. N.J.S.A. 34:13A-5.3 states in relevant part: "Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit." The negotiations to which Gottschall refers in his charge pertain to the operational and academic relationship between the College and the Gifted and Talented Program, not to employees' terms and conditions of employment covered by the Act. Moreover, even if the negotiations related to terms and conditions of employment, charging party is not the majority representative and, therefore, on the basis of the facts set forth in the charge, has no standing to raise allegations concerning an employer's breach of its negotiations obligations pursuant to subsection 5.4(a)(5) of the Act. City of Jersey City, D.U.P. No. 87-5, 12 NJPER 670 (¶17253 1986).<sup>8/</sup>

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<sup>8/</sup> While charging party did not specifically state that subsection 5.4(a)(5) was violated, we have, nonetheless, addressed the issue since it is raised by the charging party's statement of facts set forth in the charge.

Accordingly, we find no stated violation of subsection (a)(5) and no basis for the issuance of a Complaint.

Charging party alleges that the College is engaging in unlawful employment practices within the meaning of the New Jersey Laws Against Discrimination, N.J.S.A. 10:5-1 et seq. In pursuit of this claim, charging party has filed with the Division on Civil Rights claiming that his promotion to the rank of professor was denied because of discrimination on the basis of creed. Absent unusual circumstances, we lack jurisdiction to address claims of discrimination on the basis of creed. See Town of Dover, P.E.R.C. No. 89-104, 15 NJPER \_\_\_, fn. 2 (¶ \_\_\_ 1989). Cf. Hunterdon Central H.S. Board of Education and Hunterdon Central H.S. Teachers Association, P.E.R.C. No. 80-4, 5 NJPER 289 (¶10158 1979), aff'd 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981); Teaneck Bd. of Ed. v. Teaneck Teachers' Assn., 94 N.J. 9, 17-18 (1983). See also Szekely and Southern Westchester BOCES and Local 456, IBT, 22 PERB ¶4504 (1989).

Gottschall asserts that the College is engaging in programmatic bias against the Gifted and Talented Program and academic discipline bias in favor of the Mathematics and Computer Science Department. Charging party serves as the director of the Gifted and Talented Program. The Act protects public employees' right "...to form, join and assist any employee organization or to refrain from any such activity...." N.J.S.A. 34:13A-5.3. Even though an academic program's success or failure in obtaining the

College administration's support may ultimately have some impact on the terms and conditions of employment of individual faculty members associated with that program, the Act was not designed to protect disfavored academic programs from an unsupportive administration.<sup>9/</sup> Nor is it the purpose of the Act to oversee the relationship between College officials and program personnel. This is an internal matter between the College administration and the personnel directing the program. Accordingly, we do not find the Act implicated by this allegation and decline to issue a complaint.

Gottschall alleges that the College has failed to provide a fair and reasonable process for promotion. The applicable collective negotiations agreement contains various provisions concerning the promotion process. We also note that this claim is specifically raised in the grievance filed by the charging party on December 30, 1987, and addressed in the first step grievance decision issued on August 17, 1988. Thus, since it is evident that the parties are attempting to resolve the dispute and the issue is being handled through the negotiated grievance mechanism, there are no grounds, on these facts, for the issuance of a complaint on this issue. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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<sup>9/</sup> We make no finding that the Gifted and Talented Program is, in fact, a disfavored academic program or that the College administration is not supportive of it.

Gottschall contends that the College has failed to process grievances in accordance with the collective negotiations agreement between the State of New Jersey and the Council of New Jersey State College Locals. The factual allegations set forth by the charging party in this case do not support this contention. On December 30, 1987, charging party formally filed a grievance contesting the denial of his promotion. Seven days of hearings were conducted on Gottschall's grievance and a decision was issued on August 17, 1988. On the basis of correspondence which we have received from the charging party, we are aware that the grievance has been appealed to the second step of the grievance procedure. It appears that the College and the charging party are proceeding with the processing of the grievance through the intermediate steps of the grievance procedure.<sup>10/</sup> No facts have been alleged which indicate that the College has refused to process Gottschall's grievance. On the contrary, the charging party's grievance is proceeding through the negotiated grievance mechanism. Accordingly, we find no basis for the issuance of a complaint on this issue. See State of New Jersey, P.E.R.C. No. 89-39, 14 NJPER 656 (¶19277 1988).

Charging party has alleged no facts which implicate sections 5.4(a)(4), (6) and (7).

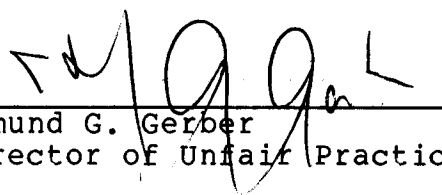
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<sup>10/</sup> While there is an indication that Gottschall appears to be dissatisfied with rulings made by the College representatives designated to hear the grievance, we find these types of disagreements normal in grievance proceedings. Rulings made by the hearing officer adverse to the charging party's position may ultimately be resolved at higher steps of the grievance procedure.

Based upon the foregoing facts and discussion, we find that there is not a sufficient basis upon which to issue a complaint in this matter. We find that the allegations of the charging party do not meet the Commission's issuance standard.

Accordingly, we decline to issue a complaint. The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Edmund G. Gerber  
Director of Unfair Practices

DATED: March 28, 1989  
Trenton, New Jersey