

D.U.P. NO. 97-28

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

In the Matter of

TOWNSHIP OF WESTAMPTON,

Respondent,

-and-

Docket No. CO-97-15

WESTAMPTON TOWNSHIP POLICE ASSOCIATION,
FOP LODGE 147,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a union's unfair practice charge where N.J.S.A. 40A:14-137 preempted the union's claim for disability pay in excess of one year. Further, the Director dismisses the union's breach of contract claim pursuant to N.J. Dept. of Human Services.

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Appearances:

For the Respondent,
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Charging Party,
Costa & Vetra, attorneys
(Robert D. Vetra, of counsel)

REFUSAL TO ISSUE COMPLAINT

On July 16, 1996, Westampton Township Police Association, Lodge 147, Fraternal Order of Police, filed an unfair practice charge^{1/} against Westampton Township alleging that the Township violated the New Jersey Employer-Employee Relations Act, specifically subsections 34:13A-5.4(a)(1) and (5),^{2/} when it

^{1/} The Association amended its unfair practice charge on July 17, 1996.

^{2/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

unilaterally changed and refused to negotiate over a term and condition of employment contained in the parties' collective negotiations agreement.^{3/}

The parties' collective negotiations agreement at Article 11, Paragraph A provides:

Employees disabled with job related injuries and unable to work shall receive full pay from the Township and shall endorse any Compensation checks received from the Township's insurance carrier as a result of said injury over to the Township. During the period of disability, management reserves the right, at such times and under such circumstances as are reasonable, to require the person covered under the provisions set forth herein to undergo a physical examination by the physician of the Township's choosing. When said physician determines that an employee may return to work, the township's checks will cease unless the employee returns to work.

Sergeant Marilyn Phifer Corn was injured in the line of duty on or about November 12, 1994.^{4/} Commencing with the date of her injury, Corn received the equivalent of full salary. She

2/ Footnote Continued From Previous Page

rights guaranteed to them by 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."

3/ By letter dated November 13, 1996, I advised the parties that the unfair practice charge lacked specificity and I was not inclined to issue a complaint. By letter dated November 22, 1996, Lodge 147 amended its unfair practice charge.

4/ As of the filing of the charge, Corn was still disabled and had not returned to work.

received worker's compensation and the Township paid the balance. Corn's injury leave continued past December 10, 1995. At that time, the Township ceased paying the balance of Corn's salary.

On February 6, 1995, Corn demanded that the Township comply with Article 11, Paragraph A of the contract. The Township ignored this demand.

Effective March 5, 1996, Corn took an unpaid leave of absence.^{5/}

On June 18, 1996, Lodge 147 demanded that the Township negotiate the unilateral change in contract terms and pay Corn. Lodge 147 notes that Corn has lost medical insurance coverage as well.

At the time this charge was filed, the parties were negotiating a new agreement. Lodge 147 alleges in its unfair practice charge that the Township has refused to negotiate and has refused to abide by the contract regarding its actions towards Corn. Lodge 147 asserts that supplemental payments to employees injured on the job are mandatorily negotiable.

^{5/} Lodge 147 alleges that Corn was forced, under threat of termination, to request the unpaid leave of absence; however, it has not alleged a violation of subsection 5.4(a)(3), which provides:

These subsections prohibit 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."

Lodge 147 further alleges that the Township has only made supplemental payments equal to the differences between Corn's regular salary and workman's compensation payments during the time in which Corn was out of work due to her injury.

The Commission has the authority to issue a complaint if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

For the reasons below, I will not issue a complaint.

N.J.S.A. 40A:14-137 provides:

The governing body of any municipality, by ordinance, may provide for granting leaves of absence with pay not exceeding one year, to members and officers of its police department and force who shall be injured, ill or disabled from any cause, provided that the examining physician appointed by said governing body, shall certify to such injury, illness or disability.

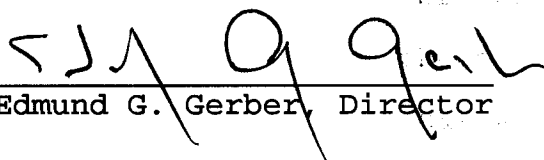
Corn received at least one year's salary, the maximum compensation allowed by N.J.S.A. 40A:14-137. This statute preempts negotiations for disability pay in excess of one year. See City of Hoboken, P.E.R.C. No. 95-10, 20 NJPER 328 (¶25170 1994); City of Camden, P.E.R.C. No. 93-3, 18 NJPER 392 (¶23177 1992); Ocean Tp., P.E.R.C. No. 86-37, 11 NJPER 594 (¶16211 1985); Dover Tp., P.E.R.C. No. 85-44, 10 NJPER 629 (¶15302 1984).

The contract clause which Lodge 147 claims was repudiated must be read in conjunction with N.J.S.A. 40A:14-137. Accordingly, Article 11 is not enforceable as to Corn's claim for compensation beyond the one year limit.

To the extent Lodge 147 alleges the Township failed to comply with the contract while Corn collected disability pay, such allegations do not make out an unfair practice. A mere breach of contract does not constitute an unfair practice within the meaning of the Act. N.J. Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Accordingly, the unfair practice charge does not make out an unfair practice charge within the meaning of the Act.

Therefore, I find the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge.^{6/} The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 24, 1996
Trenton, New Jersey