

D.U.P. NO. 95-15

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CO-95-49

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1040,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that the State's denial of a paid day off for an employee to attend an OAL hearing constituted an unfair practice. The Director finds that N.J.A.C. 4A:6-1.20 governs time off for attendance at administrative hearings, and that this matter is therefore preempted. Although the Director also finds that the CWA's claim of a contractual violation is inapplicable, he reiterates that the proper forum for contract violation claims is the parties' negotiated grievance procedure.

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Appearances:

For the Respondent,
Michael L. Diller, Senior Deputy Attorney General

For the Charging Party,
Robert O. Yaeger, Principal Staff Representative

REFUSAL TO ISSUE COMPLAINT

On August 19, 1994, CWA Local 1040 filed an unfair practice charge alleging that the State of New Jersey violated subsections 5.4(a)(2), (3) (4) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by denying employee Paul

^{1/} These subsections prohibit public employers, their representatives or agents from: (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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; and (7) Violating any of the rules and regulations established by the commission."

Spinks a paid day off to appear before the Office of Administrative Law (OAL) as an appellant in a bad-faith layoff appeal.

CWA states that on June 9, 1994, Senior Operator of Refrigeration Services Paul Spinks appeared before the OAL as an appellant in an individual bad faith layoff appeal. On June 23, 1994, Spinks was informed by an employee relations officer at the Hunterdon Developmental Center that he would not be paid for the day he appeared at OAL. The refusal was based on a March, 1994 memorandum from the Department of Human Services Director of Labor Relations which states that petitioners before the OAL are not entitled to paid leave when attending OAL proceedings.

CWA contends that Article IV, Section G, Paragraph 1-a of the parties' collective negotiations agreement provides that employees who initiate complaints thorough the grievance procedure shall be given time off without loss of pay to attend the hearing and travel to and from the hearing site. However, this provision governs time off for grievance hearings, not OAL hearings.

Even if the cited contract provision is applicable to this charge, the allegations still fail to state a cause of action under N.J.S.A. 34:13A-5.4. The substance of CWA's claim is that the State Department of Human Services breached the collective negotiations agreement. In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which

may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

The State contends that N.J.A.C. 4A:6-1.20 addresses the circumstances under which State employees will be paid to attend administrative proceedings. The regulation provides in pertinent part that:

(b) When appearance before a judicial or administrative body is not part of the job function, a State employee in the career or senior executive service shall be granted time off with pay when summoned as a witness in a proceeding to which he or she is not a named party, and shall be granted time off without pay to appear at a proceeding to which he or she is a party.

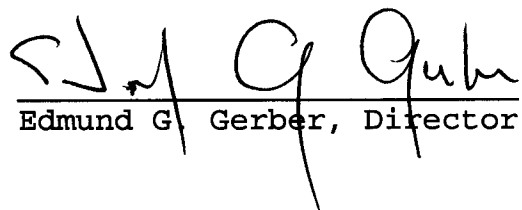
N.J.A.C. 4A:6-1.20 governs this matter and would preempt any applicable provisions in the parties' collective negotiations agreement. State Supervisory Employees' Association, 78 N.J. 54, 81-82 (1978).

CWA also alleges that denial of the paid day off violates subsections 5.4(a)(2), (3) (4) and (7) of the Act. However, it has alleged no facts to show that the State's actions constituted domination or interference with the administration of the union, were taken against Spinks in discrimination for protected activity, or that Spinks was denied the paid day off for signing or filing an affidavit, petition or complaint or giving any information or testimony under the Act. CWA has also not cited any Commission rule or regulation violated by the State.

The Commission's complaint standard has not been met.

N.J.A.C. 19:14-2.1. Accordingly, I decline to issue a complaint and the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: November 7, 1994
Trenton, New Jersey