

D.U.P. No. 2006-9

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

In the Matter of

UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-2006-033

TYRONE BODISON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge for failure to meet the complaint issuance standard. The Charging Party failed to allege any facts in support of his claims of violations of subsections 5.4a(3) and 5.4a(7) of the Act. The Director further finds that the Charging Party's claim of a contract violation cannot be litigated through an unfair practice proceeding. Moreover, the remedy sought, compliance with the federal Fair Labor Standards Act is not within the jurisdiction of the Commission.

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Appearances:

For the Respondent,
Abdel Kanan, Esq., Labor Relations Director

For the Charging Party,
Tyrone Bodison, pro se

REFUSAL TO ISSUE COMPLAINT

On January 31 and February 15, 2006, Tyrone Bodison, an employee of the University of Medicine and Dentistry of New Jersey (UMDNJ), filed an unfair practice charge and amended charge, respectively, with the Public Employment Relations Commission. The charge alleges that UMDNJ violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a), subsections (3) and (7)^{1/}, when on October 6, 2005 it failed to

^{1/} These provisions 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

(continued...)

give overtime hours to Bodison and instead gave overtime to two new employees.

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. Based upon the following, I am inclined to find that the complaint issuance standard has not been met.

FACTS

Charging Party Bodison is a service worker employed by the Department of Physical Plant at UMDNJ, and is member of a collective negotiations unit represented by Teamsters Local 71. On January 31, 2006, Bodison filed this unfair practice charge against UMDNJ which failed to list the subsections of the Act which were allegedly violated.

Bodison's charge alleges that on October 6, 2005, he was "ignored overtime" by his supervisor, while two new employees in the Department were given overtime on that day. Bodison alleges that this failure to give him overtime on that day was a violation of the parties' collective bargaining agreement,

1/ (...continued)
act; and (7) Violating any of the rules and regulations established by the commission."

specifically "Article VIII (A.) Hours of Work and (B.) Overtime." Bodison did not supply a copy of these clauses or any other portion of the collective negotiations agreement. The amended charge lists subsections 5.4a(3) and (7) as being violated by UMDNJ, and Bodison seeks as a remedy that the Commission "order the UMDNJ to conform to the Fair Labor Standards Act."

By letter dated February 21, 2006, the Commission's assigned staff agent advised Bodison that the appropriate process through which to pursue his claim was the parties' negotiated grievance procedure, rather than through the Commission, and solicited the withdrawal of the charge. By the March 17, 2006 withdrawal deadline set forth in the aforementioned correspondence, the Charging Party had not withdrawn the charge. UMDNJ has not responded to the charge.

ANALYSIS

An employer violates subsection 5.4a(3) of the Act when it discriminates with regard to any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. The standard for proving a 5.4a(3) violation is set forth in Bridgewater Tp., 95 N.J. 235 (1984). No violation will be found unless the charging party proves that protected conduct was a substantial or motivating factor in the adverse action. Here, Bodison cites no facts alleging that he was engaged in activity related to the

collective negotiations process, the filing or processing of grievances, or any other activity on behalf of his majority representative. Thus, even if he proved he was wrongly denied overtime, it appears not to have been due to retaliation for protected activity. Accordingly, I find there are insufficient facts to support the (a)(3) allegation, consequently, that allegation does not meet the Commission's complaint issuance standard.

Bodison's allegations that UMDNJ failed to follow the terms of the parties' collective negotiations agreement's hours and overtime provisions raise, at best, a dispute concerning whether he was contractually entitled to the assignment of overtime. Atlantic City Housing Authority, D.U.P. No. 2004-6, 30 NJPER 191 at 193 (¶71 2004); See State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). In Human Services, the Commission held:

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. [10 NJPER at 421].

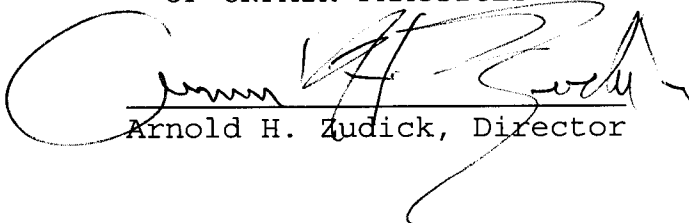
Bodison's contractual dispute should be addressed by the filing of a grievance, not an unfair practice charge. The Commission will not substitute its unfair practice jurisdiction for the parties' agreed-upon grievance procedure to resolve contract disputes. Human Services.

The Charging Party also failed to allege any facts in support of his subsection 5.4a(7) allegation, and, therefore, I cannot issue a complaint on that allegation.

Finally, the remedy of conformance with the federal Fair Labor Standards Act sought by Bodison is not within the jurisdiction of the Commission, whose powers and duties are circumscribed by the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-5.2.

Based upon the above facts and analysis, I find the Commission's complaint issuance standard has not been met. Consequently, I refuse to issue a complaint. The charge is, therefore, dismissed. N.J.S.A. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: May 2, 2006
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by May 15, 2006.