

D.U.P. NO. 2023-14

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-2021-147

UNION OF RUTGERS ADMINISTRATORS,
AMERICAN FEDERATION OF TEACHERS,
LOCAL 1766, AFL-CIO

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by Union of Rutgers Administrators, American Federation of Teachers, Local #1766 (Union) against Rutgers, the State University of New Jersey (Rutgers) alleging a failure to negotiate the impact of a change to when employees are considered enrolled and disenrolled into and out of insurance plans offered through the State Health Benefits Program. The Director found that the Union had not met the Commission's specificity requirements because the Union did not allege in the statement of charge itself what changes were made, what impacts the changes had on terms and conditions of employment, nor what facts were relevant from extraneous emails provided by the Union.

D.U.P. NO. 2023-14

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-2021-147

UNION OF RUTGERS ADMINISTRATORS,
AMERICAN FEDERATION OF TEACHERS,
LOCAL 1766, AFL-CIO

Charging Party.

Appearances:

For the Respondent,
Timothy D. Cedrone, Associate General Counsel

For the Charging Party,
Gregory Rusciano Marti, Director

REFUSAL TO ISSUE COMPLAINT

On January 21, 2021, Union of Rutgers Administrators,
American Federation of Teachers, Local #1766 (Union), filed the
instant unfair practice charge against Rutgers, the State
University of New Jersey (Rutgers). The charge alleges that
Rutgers violated section 5.4a(1), (2) and (5)^{1/} of the New Jersey

^{1/} These provisions 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
(continued...)

Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it failed to provide a response to and failed to agree to meet to discuss the Union's proposal following the Union's demand to meet and discuss the impacts of changes to the policy, practices, and procedures for how unit employees are enrolled and disenrolled into and out of insurance plans offered through the State Health Benefits Program (SHBP).^{2/}

On October 19, 2022, the Commission staff agent emailed the parties inquiring as to whether the parties ever met to negotiate the alleged impacts. The representative of Rutgers replied that although the parties had not met, Rutgers had requested clarification regarding the Union's July 1, 2020 demand to negotiate impact and that the Union refused to clarify. Rutgers provided an attached email thread between Gregory Rusciano,

^{1/} (...continued)
of any employee organization. (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."

^{2/} The charge was initially processed together with other charges filed by the Union against Rutgers (Dkt. Nos. CO-2021-149, CO-2021-150, CO-2021-151, CO-2021-152, CO-2021-153, and CO-2021-154), which were dismissed in Rutgers, D.U.P. No. 2022-14 _ NJPER _ (¶ 2022) for failing to satisfy the Commission's pleading standards. The instant charge (Dkt. No. CO-2021-147) was not dismissed in Rutgers, and the Union was provided an opportunity to amend it to conform to our pleading standards. The Union did not amend its charge.

representative for the Union, and Harry Agnostak, Associate Vice President for Labor Relations for Rutgers. The Union's representative replied that Rutgers had agreed to negotiate on the impacts and argued that, therefore, Rutgers acquiesced on its demand for clarification and that the issue of whether clarification of the impacts from the Union could be a factor in dismissal of the charge is moot. The Union provided attachments of email threads showing communications involving Agnostak; John Teubner with University Human Resources; Christine O'Connell, President of the Union; and Rusciano. The Union did not, however, amend its charge.^{3/}

ANALYSIS

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

^{3/} The emails would seem to show that the Union relayed to Rutgers concerns that the change in when SHBP coverage is terminated following separation may cause members to experience delays from the benefits department in getting their COBRA paperwork and other notifications upon separation, which might impact their or their family members' health, and that members separating near the end of the month and having doctor's visits at the beginning of the next month (when it still appeared to providers there was coverage) may incur out-of-pocket costs when their coverage termination is eventually backdated to the prior month's end. The Union proposed that future effective dates of layoff pursuant to article 42 ("Layoff and Seniority") and effective dates of termination pursuant to article 19 ("Just Cause/Discipline") of the collective negotiations agreement be on the first of the month (resulting in coverage to the end of the month). The parties did not meet to discuss.

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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012). A charging party, in order to justify our issuance of a complaint, must set forth in its charge a "clear and concise statement of the facts" in support of its claims. N.J.A.C. 19:14-1.3(a); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269 (¶92 2012), aff'd P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 2013); Warren Cty. College, P.E.R.C. No. 2018-25, 44 NJPER 287 (¶80 2017). This standard encompasses the "who, what, when and where" information about the commission of an unfair practice. New Jersey State Judiciary, D.U.P. No. 2022-8, 48 NJPER 344 (¶77 2022), citing Warren Cty. College.

A charge based on a severable impact claim must allege with sufficient specificity the impact a policy change had on unit employees' terms and conditions of employment. New Jersey State Judiciary (finding that although "impact issues" were alleged, including safety and costs of replacing badges, the charge did not explain *how* safety was impacted by not carrying badges nor the economic impact on officers who no longer carried badges). See also Bayonne Board of Education, D.U.P. No. 2022-007, 48 NJPER 342 (¶76 2022) (dismissing charge for lack of specificity where

allegation that respondent released information about its negotiations proposal in advance of a negotiations session violated the duty to negotiate in good faith; the charge did not specify the name(s) of any person(s), senders or recipients involved in the alleged improper conduct; the information that was allegedly released; when it was released; who received it; whether the Board or its negotiations committee authorized its release; nor whether the information accurately reflected the particulars of the Board's proposal).

Here, the Union has not alleged in the charge itself with sufficient specificity what modifications were made to the policies, nor what impacts the alleged policy changes have had on unit employees' terms and conditions of employment. Warren Cty. College. No allegations in the charge itself identify what mandatorily-negotiable subjects the Union demanded to negotiate. It is not enough that Union's charge alleges a demand to negotiate an impact, that a proposal was sent to Rutgers, that Rutgers agreed to provide a response to the proposal, and that Rutgers never met to discuss the proposal or impacts. Nor is it enough that the Union has provided extraneous emails, since the Union has refused to amend its charge to identify the relevant specific details from these emails, despite being provided an opportunity to do so. See Newark Library, D.U.P. No. 2005-6, 30 NJPER 494 (¶168 2004) ("[F]acts must be stated in the charge

itself; a charging party may not simply attach a packet of documents to its charge as a substitute for a concise statement of facts."); Newark City Housing Auth., D.U.P. No. 2006-10, 32 NJPER 157 (¶68 2006) (charging party was told original charge was defective and that he could not rely on attachments to the charge instead of describing facts in the charge); Teamsters Local 331, P.E.R.C. No. 2001-30, 27 NJPER 25 n.3 (¶32014 2000) ("[A]ttaching exhibits to a charge or generally incorporating exhibits does not satisfy our specificity requirement.")^{4/}

Under these circumstances, I dismiss the Union's 5.4a(5) and derivative a(1) allegations.^{5/}

^{4/} Our unfair practice charge form also has this instruction before the box for the statement of charge: "Under 'Statement of Charge,' provide a CLEAR AND CONCISE statement of the facts constituting the alleged unfair practice. If you need more space for your statement, then attach it to the charge. You may not rely on other documents (such as letters or memoranda) submitted with the charge to constitute your statement."

^{5/} The Union hasn't alleged any facts supporting a violation of section 5.4a(2) of the Act. Those allegations are also dismissed.

ORDER

The unfair practice charge is dismissed.



Ryan M. Ottavio
Director of Unfair Practices

DATED: December 14, 2022
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 December 27, 2022.