

D.U.P. NO. 94-42

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

In the Matter of

MIDDLESEX COUNTY JUDICIARY,

Respondent,

-and-

Docket No. CO-94-135

MIDDLESEX COUNTY PROBATION
OFFICERS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Middlesex County Probation Officer's Association against the Middlesex County Judiciary. The charge alleged that the Judiciary violated (a)(1) and (2) of the Act by prohibiting two union representatives from representing a bargaining unit member at a disciplinary hearing.

The Director rejects the (a)(1) allegation, finding that it fails to set forth a Weingarten violation, as the Association chose to proceed with the hearing, rather than ask that it be terminated.

The Director further rejects the (a)(2) allegation, as there is no evidence that the Judiciary interfered with the Association's right to represent the unit member at the disciplinary proceeding, as the Association's attorney was permitted to represent her.

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Appearances:

For the Respondent,
Gregory Edwards, Trial Court Administrator

For the Charging Party,
David Hayden, President

REFUSAL TO ISSUE COMPLAINT

On November 1, 1993, the Middlesex County Probation Officers Association filed an unfair practice charge against the Middlesex County Judiciary. The charge alleges that the Judiciary violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically, subsections 5.4(a)(1) and (2)^{1/} by prohibiting two union representatives from representing a bargaining unit member, Catherine Viggiano, at a disciplinary proceeding.

^{1/} 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization."

The Judiciary claims it prohibited the two union representatives from appearing at the proceeding because Viggiano was already being represented by the Association's attorney.

I find that the Commission's complaint issuance standard has not been met and refuse to issue a complaint in the instant matter.

The Association's (a) (1) allegation appears to assert a violation of Viggiano's Weingarten rights. Under Weingarten, an employee is provided the right to union representation at any investigatory interview which the employee reasonably believes might result in discipline. See NLRB v. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689 (1975); adopted by the Commission in East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in pertinent part, App. Div. Dkt. No. A-280-79 (6/18/80). See also, State of New Jersey (DYFS), P.E.R.C. No. 90-47, 16 NJPER 4 (¶21003 1989); Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 33 (¶15157 1984).

Based upon the facts alleged in the charge, there is not a Weingarten violation here. Pursuant to Weingarten, if an employer denies a request for representation, the employee may properly refuse to participate in the interview. Here, however, although the Association requested that the two union representatives be allowed to represent Viggiano, it did not seek to terminate the proceeding because of the Judiciary's refusal. Rather, it decided to proceed with the interview, with the Association's attorney representing

her. Under these circumstances, I reject the Association's Weingarten allegation. See State of New Jersey (DYFS).

Moreover, I reject the Association's (a)(2) allegation. There is no evidence that the Judiciary interfered with the Association's right to represent Viggiano at the disciplinary proceeding, inasmuch as the Association's attorney was permitted to represent Viggiano. The Association could have requested that the proceeding be postponed, but did not do so; instead, it opted to proceed. New Jersey Transit, P.E.R.C. No. 94-32, 19 NJPER 546 (¶24258 1993). Further, the Association could have appealed Viggiano's discipline to the next step, but chose not to. Therefore, I also dismiss the Association's (a)(2) allegation.^{2/}

Therefore, I do not believe that the Commission's complaint issuance standard has been met and refuse to issue a complaint on the allegations of this charge.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 13, 1994
Trenton, New Jersey

^{2/} It does not appear that the disciplinary proceeding was conducted pursuant to the parties' contractual grievance procedure. The grievance procedure provides that at each step in the procedure, an employee is entitled to be represented by an attorney or by a bona fide member of the Association. Therefore, Viggiano apparently would have been entitled to only one representative. In any event, this would be a matter of contract interpretation and would not be an unfair practice. State of New Jersey (Human Services), P.E.R.C. No. 89-16, 14 NJPER 563 (¶19236 1988).

^{3/} N.J.A.C. 19:14-2.3.