D.U.P. NO. 92-25

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

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and- Docket No. CO-92-190

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed by the Communications Workers of America alleging that the State of New Jersey violated subsections 5.4(a)(1) and (2) of the Act when an office manager made statements to shop stewards in a meeting. The Director determined that the statements were not coercive within the meaning of Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-19, 7 NJPER 502 (¶12223 1981) and did not interfere with employee rights as stated in N.J. Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979).

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Appearances:

For the Respondent,
Office of Employee Relations
(Melvin L. Gelade, Director)

For the Charging Party,
Alan Kauffman, Representative

REFUSAL TO ISSUE COMPLAINT

On December 17, 1991, the Communications Workers of America, AFL-CIO filed an unfair practice charge against the State of New Jersey, Department of Law and Public Safety, Division of Motor Vehicles. The charge alleges that statements made by an office manager to CWA shop stewards unlawfully "circumvented the certified collective bargaining representatives" by "negotiating directly with the membership", thereby violating subsections

5.4(a)(1) and (2) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").[1/]

The charge states that an incident occurred between the office manager and a CWA member. Following the incident, a grievance was filed. The next day, the office manager and three shop stewards met to discuss the incident. However, one shop steward "stated she felt it was not a good idea to keep discussing the incident as the grievance had been filed." According to the charge, the office manager responded by saying "it was 'healthier' to solve problems through discussion than through grievances where there are union representatives and hearing officers present." The CWA alleges that this statement was violative of the Act.

Based upon the record in this matter, the Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1.

The Act does not limit a public employer's right to express opinions about labor relations if the statements are not coercive. In Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-19, 7 NJPER 502 (¶12223 1981), the Commission stated:

> A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just

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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; and (2) Dominating or interfering with the formation, existence or administration of any employee organization."

> as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. [Id. at 503]

A balance must be struck between conflicting rights: the employer's right of free speech against the employees' right to be free from coercion, restraint or interference when exercising protected rights. See generally, Cty. of Mercer, P.E.R.C. No. 86-33, 11 NJPER 589 (¶16207 1985).2/

2/ The standard adopted by the Commission in these cases mirrors that developed in the private sector under the Labor Management Relations Act, 29 U.S.C. §141 et seq. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n. of Ed. Secys., 78 N.J. 1, 9 (1978); and NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481 (1969). In Gissel, the Supreme Court set forth the balance required:

> Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely...and any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear. Stating these obvious principles is but another way of recognizing that what is basically at stake is the establishment of a non-permanent, limited relationship between the employer, his economically dependent employee and his union agent...Thus, an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit."...If there is any implication that an employer may or may not take

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The office manager's statements do not indicate a violation of subsection 5.4(a)(1) or (2). The Commission must evaluate asserted violations of subsections 5.4(a)(1) and (2) by an objective standard. N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). The CWA has not alleged that any delay occurred in the processing of the grievance or that the manager refused to process the grievance. The office manager's statements, in response to those of the shop steward, did not interfere with the grievance process. The statements are not disrespectful to the majority representative; they are not an invitation to unit employees to disavow their majority representative; nor do they appear to be an attempt to improperly deal directly with employees or to avoid union representatives. Nothing about the statements appear to be inherently threatening or critical of the union or the parties' grievance procedure. Rather, the office manager attempted

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2/ Footnote Continued From Previous Page

> action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such, without the protection of the First Amendment. [71 LRRM at 2497-98; citations omitted]
>
> In determining whether a statement is coercive, the NLRB considers the "total context" of the situation and determines the question from the standpoint of employees over whom the employer has a measure of economic power. See NLRB v. E.I. DuPont de Nemours, ___ F.2d ___, 118 LRRM 2014, 2016 (6th Cir. 1984).

to resolve a problem informally. The office manager's statements are not prohibited under Black Horse Pike.[3/]

Accordingly, I decline to issue a complaint and dismiss the charge in its entirety. N.J.A.C. 19:14-2.1 and 2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: June 11, 1992
Trenton, New Jersey

3/ See N.J.A.C. 19:14-2.3.