

D.U.P. NO. 94-35

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

In the Matter of

TOWN OF HARRISON,

Respondent,

-and-

Docket No. CI-93-84

DANIEL T. NANKIVELL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an allegation that the Town of Harrison discriminated against Daniel Nankivell because he is a member of a minority organization. The Director finds that the Town did not violate subsection 5.4(a)(3) because Nankivell was accorded the same treatment as a member of the majority organization, the PBA. The Director also finds Nankivell did not allege any facts to support a violation of subsection 5.4(a)(1). It appears that the charge concerns a mere breach of contract which, under Human Services, does not amount to an unfair practice.

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Appearances:

For the Respondent  
Murray, Murray & Corrigan, attorneys  
(David F. Corrigan, of counsel)

For the Charging Party  
Daniel T. Nankivell, pro se

REFUSAL TO ISSUE COMPLAINT

On May 19, 1993, Daniel Nankivell filed an unfair practice charge with the Public Employment Relations Commission alleging that the Town of Harrison violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (3), when it refused to include travel time in his overtime payment in retaliation for his membership in a minority organization.

On April 7, 1993, Nankivell and three other police officers submitted overtime pay slips for attending court on that day. Nankivell and two other officers claimed nine hours of overtime, whereas a fourth officer claimed eight hours of overtime. After

determining that all four officers were in court for the same number of hours, the Chief authorized eight hours of overtime for each.

The negotiated agreement between the Town and the majority representative, PBA, provides for a minimum of 4 hours of overtime for a court or agency appearance. The agreement is silent on the inclusion of travel time as part of court appearances.

Nankivell argues that the only reason that he was denied the additional hour of overtime is that he is not a member of the PBA. The Town denies that it discriminated against Nankivell. It asserts that it treated all four officers equally in accordance with its past practice to compensate officers with eight hours overtime for a full day in court.

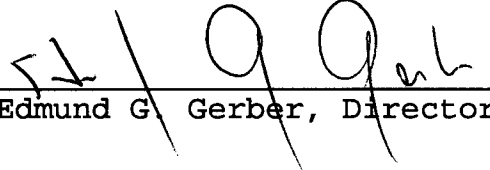
Nankivell asserts that the Town discriminated against him in violation of 5.4(a)(3) of the Act. Nankivell and the other two officers, who are also members of a minority organization, were paid the same amount of overtime as the officer who is a PBA member. These facts do not suggest that Nankivell received disparate treatment; in fact, he was treated the same as the PBA member. See In re Bridgewater Tp., P.E.R.C. No. 82-3, 7 NJPER 434 (¶12193 1981), recon. den. P.E.R.C. No. 82-36, 7 NJPER 600 (¶12267 1981), aff'd App. Div. Dkt. No. A-859-81T2 (6/21/82), aff'd 95 N.J. 235 (1984); Camden Cty. College, D.U.P. No. 91-7, 16 NJPER 523 (¶21229 1990); Essex Cty. Div. of Welfare, D.U.P. No. 85-25, 11 NJPER 439 (¶16150 1985); Edison Bd. of Ed., D.U.P. No. 85-18, 11 NJPER 103 (¶16044 1985).

A public employer independently violates subsection 5.4(a)(1) of the Act if its action tends to interfere with an employee's rights under the Act and lacks a legitimate and substantial business justification. Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988); UMDNJ -- Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1957); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). The charging party has not asserted conduct by the employer which would tend to interfere with his rights under the Act.

Nankivell does assert that the Town is not precluded from paying his overtime claim for travel because the agreement between it and the PBA is silent on this matter. It appears that the dispute between Nankivell and the Town involves a contractual interpretation. In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that allegations setting forth, at most, a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. Here, Nankivell is merely alleging a breach of the parties' collective agreement. Under Human Services, this circumstance does not amount to an unfair practice under the Act. See also City of Brigantine, P.E.R.C. No. 92-123, 18 NJPER 357 (¶23154 1992).

Therefore, based upon the foregoing, I find that the Commission's complaint issuance standard has not been met, N.J.A.C. 19:14-2.1, and refuse to issue a complaint on the allegations of this charge. Accordingly, the charge is dismissed. N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: March 24, 1994  
Trenton, New Jersey