

D.U.P. NO. 97-12

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket No. CO-96-133

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses part of a charge filed against the State of New Jersey and orders that a Complaint and Notice of Hearing be issued on another part of the charge.

The CWA alleged that the State was hostile to female workers. Finding these allegations to be possible violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Director dismissed them.

The CWA also alleged that unit employees were denied their right to be represented at investigatory interviews and were subject to certain comments which allegedly interfered with statutory rights. He ordered that a Complaint and Notice of Hearing be issued on these allegations.

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Appearances:

For the Respondent,
Peter Verniero, Attorney General
(Michael L. Diller, Senior Deputy Attorney General)

For the Charging Party,
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

DECISION

On November 8, 1995 and May 7, 1996, CWA filed an unfair practice charge and amended charge against the State of New Jersey. The original charge, a twelve-page recitation of facts, concerns employer conduct at the Bayonne office of the Division of Youth and Family Services. It substantially alleges that the public employer was hostile to female employees from August 11 to November 3, 1995. It further alleges acts of "oppressive supervision" and "intense surveillance" by employer representatives Alex Seidler and Stephen Jung, who also allegedly engaged in sexual harassment. It further alleges that on October 20, 1995, discrimination charges were filed

against Seidler, Jung and others with the Equal Employment Opportunity Commission. On October 23, 1995, Jung allegedly "attempted to force" a unit employee to meet with Seidler alone and denied the employee union representation. The charge further alleges that on October 23 and 26, and November 2, 1995, unit employees were arbitrarily denied union representation and that CWA was "unreasonably denied access" to Bayonne DYFS employees. Finally, the charge alleges that on November 3, 1995, an employer representative informed the staff that she wanted to meet with employees individually and that she "did not see the need" for union representation, but would accede to it if the employees "did not trust her." These actions are alleged to violate subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act.

The amended charge alleges violations of 5.4(a)(1), (3), (4) and (5) of the Act. It alleges specifically that on November 13, 1995, a meeting among employee representatives and employees was conducted "....to listen and respond to employee grievances and complaints [about] the ongoing harassment of female employees by Stephen Jung and Alex Seidler." CWA further alleges that unit employees were advised that a CWA representative "could be present, but would not be permitted to speak." Employer representatives also allegedly stated to employees that if they desired union representation, it was because "they didn't trust management."

The amended charge further alleges that on or about November 28, 1995, printed copies of a limerick with "threatening

language" concerning named employees and union shop stewards were distributed at the Bayonne site. CWA contends that the limerick was written by Seidler. Management allegedly refused to investigate the incident. Later in December 1995, an employer representative advised the CWA of interest in addressing the "Bayonne situation" but did not do so because of the pending charge.

On December 6, 1995, and May 20, 1996, the State filed responses to the charge and to the amended charge. The State asserts that the only colorable allegation in the original charge concerns the alleged denial(s) of union representation, and an alleged denial of union access to employees.

The State denies that the meetings "could reasonably be regarded as investigatory interviews which could result in disciplinary action..." It also asserts that the "denial of access" claim is merely an alleged breach of the collective agreement, (Article XXV, Section A of 1992-95 Administrative and Clerical unit agreement) and the Commission should defer the matter to the parties' self-executing grievance procedure.

The State also denies the allegations of the amended charge. It denies that the alleged employer statements were threatening or coercive or implicated a right to union representation. It also asserts that it has initiated investigations concerning the "limerick", but efforts were obstructed by the charging party.

The original charge substantially alleges that the public employer is hostile to female workers (pages 3, 5, 6, 8, 9, 10). These allegations concern unlawful employment practices within the meaning of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Generally, the Commission lacks jurisdiction to address these claims. Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264, 265 (¶20112 1989); Cf. Teaneck Bd. of Ed. v. Teaneck Teachers Assn., 94 N.J. 9, 17-18 (1983). Accordingly, I dismiss all allegations of sexual discrimination and/or harassment.

Not until page 7 of the original charge does any alleged fact appear concerning CWA's participation in events at the Bayonne DYFS office. At page 10 of the charge, CWA alleges that "throughout this entire period" employees Smith, Felton, Woods, etc. were subjected to "oppressive supervision" - described as "onerous and burdensome memoranda, repetitive case conferences," etc. This allegation refers, in part, to a time before the CWA sought to represent employees at the Bayonne site. Accordingly, the motive for the alleged "oppressive" supervision, etc. could not be in violation of the Act. There is no allegation that employer representatives engaged in these oppressive acts for reasons other than sexual discrimination or harassment. Accordingly, I dismiss these allegations.

Employees are entitled to have a union representative present at an investigatory interview which the employee reasonably believes might result in discipline. UMDNJ and CIR, P.E.R.C. No.

93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd. 21 NJPER 319 (¶26203 App. 1995), aff'd ____ N.J. ____ (1996); NLRB v. Weingarten, Inc., 88 LRRM 2689, 420 U.S. 251 (1975). Under some circumstances, an employer's refusal to permit a non-employee union representative to confer with an employee during worktime in order to adjust a grievance violates 5.4(a)(5) and (1) of the Act. Passaic Cty. Park Comm., P.E.R.C. No. 85-56, 11 NJPER 16 (¶16007 1984).

On page 11 of the original charge, CWA alleges that on October 23, 1995 "Mr. Jung attempted to force [employee] Smith to again meet with Mr. Seidler alone and Mr. Jung denied Ms. Smith union representation." Other alleged denials of representation occurred on October 23, 1995, October 26 and November 2, 1995. Given the intense circumstances described in the charge (which affect a determination of an employee's reasonable belief), I find that the employer's conduct may constitute a violation of 5.4(a)(1) of the Act and Order a Complaint and Notice of Hearing to be issued on these specific allegations. I also order that a Complaint be issued on the denial of access allegation.

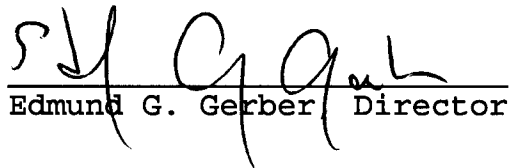
A public employer may also violate subsection 5.4(a)(1) if its actions tend to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification for taking the action. N.J. Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). The tendency of the conduct and not the result or motivation is the threshold issue. Commercial

Tr. Bd. of Ed., P.E.R.C. No. 83-26, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (1983). CWA's final allegation in the original charge, about employer representative Jones' alleged comments on November 3, 1995 may violate the Act. I order a Complaint and Notice of Hearing issue on that allegation.

I now address allegations in the amended charge. On November 13, 1995, a meeting among employer representatives and employees was held to air complaints about harassment. CWA alleges that the State allowed union representatives to attend but not to speak and again advised that representation was necessary only if employees "did not trust management." The charge also alleges that on November 28, 1995, Seidler distributed "threatening" printed materials and that in December, the employer refused to address the "Bayonne situation" because an unfair practice charge was pending.

These actions may violate 5.4(a)(1), (4) and (5) of the Act and I direct that a Complaint and Notice of Hearing be issued on these charges. All other allegations are dismissed. N.J.A.C. 19:14-2.1, 2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 19, 1996
Trenton, New Jersey