

P.E.R.C. NO. 94-94

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket No. CO-93-387

IFPTE, LOCAL 195,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands an unfair practice charge filed by IFPTE, Local 195 against the State of New Jersey (Department of Human Services) to the Director of Unfair Practices to issue a Complaint on an allegation concerning an assault on a shop steward intended to interfere with the steward's ability to function. If the allegation is true, the employer's conduct may constitute a violation of the New Jersey Employer-Employee Relations Act. The charge also alleges that the supervisor who allegedly assaulted the steward received less severe discipline than another unit member who had an altercation with a supervisor. This second allegation, even if true, would not constitute an unfair practice. Unless disparate disciplinary treatment is motivated by protected activity, it does not violate the Act. Accordingly, the Commission sustains the decision not to issue a Complaint on this allegation.

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Appearances:

For the Respondent, Deborah T. Poritz, Attorney General  
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,  
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On May 3 and July 29, 1993, IFPTE, Local 195 filed an unfair practice charge and amended charge against the State of New Jersey (Department of Human Services). The charge, as amended, alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3) and (5),<sup>1/</sup> when a supervisor physically and

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<sup>1/</sup> 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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."

verbally attacked a Local 195 shop steward in an attempt to prohibit the steward from asserting her rights as a shop steward and an employee; and when it suspended the supervisor for twenty days even though another shop steward who had had an altercation with a supervisor was terminated rather than suspended for his action.

On February 1, 1994, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 94-25, 20 NJPER \_\_\_\_ (¶\_\_\_\_ 1994). He found that because a union cannot negotiate or use a disciplinary review procedure to challenge discipline imposed on non-unit employees, see Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 87-132, 13 NJPER 352 (¶18143 1987), aff'd in part App. Div. Dkt. No. A-4556-86T7 (3/11/88), Local 195 cannot contest the disparate treatment meted out to a unit employee.

On February 9, 1994, Local 195 appealed. It claims that there are two aspects to its charge. First, it alleges that its shop steward was assaulted to interfere with her ability to function as a steward. Second, it seeks a determination that the employer is discriminating by disciplining its unit members more severely than supervisors because of its unit members' union status.

On February 16, 1994, the employer filed a statement in opposition to the appeal. It argues that Local 195 never alleged any facts establishing that the steward was engaged in protected activity at the time of the attack or that the employer condoned the attack. The employer further argues that the allegation concerning the discipline meted out to another shop steward is untimely and res

judicata. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 93-111, 19 NJPER 277 (¶24141 1993).

We have held that a union cannot negotiate or arbitrate over the discipline to be imposed on a non-unit employee. Old Bridge. That caselaw is distinguishable, however, because of the nature of Local 195's statutory, not contractual, claims.

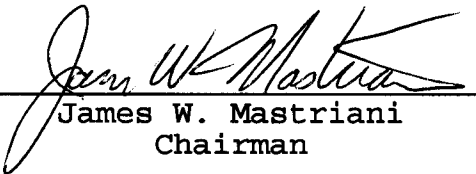
The amended charge alleges an assault by a supervisor intended to interfere with a shop steward's ability to function. We express no opinion on the merits of that allegation. But if the allegation is true, the employer's conduct may constitute a violation of the Act. N.J.A.C. 19:14-2.1. Accordingly, we remand this matter to the Director of Unfair Practices to issue a Complaint on this allegation.

The amended charge also alleges that the supervisor who allegedly assaulted the steward received less severe discipline than another unit member who had an altercation with a supervisor. This second allegation, even if true, would not constitute an unfair practice. Unless disparate disciplinary treatment is motivated by protected activity, it does not violate the Act. Absent such an allegation in the charge, we sustain the decision not to issue a Complaint on this allegation.

ORDER

This matter is remanded to the Director of Unfair Practices to issue a Complaint on the allegation concerning the alleged assault on a shop steward.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino was not present.

DATED: March 29, 1994  
Trenton, New Jersey  
ISSUED: March 30, 1994