

P.E.R.C. NO. 2012-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-2009-412

NUHHCE DISTRICT 1199J,
AFSCME,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Deputy Director of Unfair Practices refusing to issue a complaint in an unfair practice charge filed by NUHHCE District 1199J, AFSCME against the County of Hudson. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4a(1), (3), (4) and (5), when it transferred and changed the work hours of an employee in retaliation for protected activity and attempted to oust him as a union delegate. The Commission holds that the allegations in the charge related to the particular employee are moot as he has forfeited his employment due to a criminal conviction.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2012-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-2009-412

NUHHCE DISTRICT 1199J,
AFSCME,

Charging Party.

Appearances:

For the Respondent, Scarinci Hollenbeck, attorneys
(Christina Michelson, of counsel)

For the Charging Party, Oxfeld Cohen, P.C. (Arnold Shep
Cohen, of counsel)

DECISION

On April 26, 2011, the Deputy Director of Unfair Practices dismissed, in part, an unfair practice charge filed by NUHHCE District 1199J, AFSCME, ("District 1199J") against the County of Hudson ("County"). D.U.P 2011-8, 37 NJPER 160 (¶50 2011).

District 1199J has appealed the partial dismissal of the charge. We sustain the Deputy Director's refusal to issue a complaint.

The charge and amendments filed on May 7, 27 and June 28, 2010 allege that the County violated the New Jersey Employer-Employee Relations Act, specifically, N.J.S.A. 34:13A-5.4a(1),

(3), (4) and (5)^{1/}, when it transferred and changed the work hours of Anthony Lopez and Patrick Desmond in retaliation for protected activity. The amended charge also alleges that Desmond's supervisor repeatedly interfered with union business by trying to oust Desmond as a union delegate within six months of filing of this charge. The charge seeks a return of Desmond and Lopez to their former work location and hours.

The Deputy Director refused to issue a complaint on Desmond's allegations based on the undisputed fact that he plead guilty on October 28, 2009 in Superior Court to a charge of Selling or Making Home Improvements Without Registration from the New Jersey Division of Consumer Affairs in violation of N.J.S.A. 56:8-136. As a result of his plea, the County suspended Desmond on November 9 and he was ordered to forfeit his employment with the County as of October 28 resulting in his termination as of

^{1/} These provisions 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. . . . (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. [and] (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."

that date. The Deputy Director held Desmond's allegations to be moot since Desmond is forever barred from employment with the County and he therefore cannot be transferred back or have his work hours changed. He also refused to issue a complaint on the allegations that Desmond's supervisor repeatedly interfered with union business by trying to oust Desmond as a delegate finding that District 1199J had not alleged facts specifying the date, place or conduct which gave rise to the allegation. See N.J.A.C. 19:14-1.3(a)(3).^{2/3/}

District 1199 appeals the dismissal of the allegations related to Desmond contending that the Deputy Director erred in finding the charge to be moot because even though Desmond cannot be reinstated to his position by operation of his forfeiture of employment, he can still obtain a posting that there was a violation of the Act. It further asserts that the Deputy Director erred in finding that the charging party did not assert sufficient facts related to the attempted ousting of Desmond as a union delegate.

2/ The Deputy Director did issue a Complaint and Notice of Hearing on the 5.4a(1) and (3) allegations that the County transferred and changed the work hours of Anthony Lopez.

3/ On March 25, 2011, the Deputy Director wrote the parties advising that he was inclined to dismiss the allegations related to Desmond and gave the parties an opportunity to respond. 1199J did not file a response.

A case will be found moot where "continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future." Ramapo Indian Hills Bd. of Ed., P.E.R.C. No. 91-38, 16 NJPER 581, 582 (¶21255 1990). Other considerations are whether there remain open issues which have practical significance; whether there is a continuing chilling effect from the earlier conduct which has not been erased; whether, after a respondent's corrective action, a cease and desist order is necessary to prevent other adverse action against the same or other employees; and, whether the offending conduct is likely to recur. See, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secys., 78 N.J. 1 (1978) and Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978); Neptune Tp. Bd. of Ed. and Neptune Tp. Ed. Ass'n, P.E.R.C. No. 94-79, 20 NJPER 76 (¶25033 1994), aff'd 21 NJPER 24 (¶26014 App. Div. 1994); Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 82-56, 8 NJPER 31 (¶13013 1981); Manalapan-Englishtown Reg. Bd. of Ed., P.E.R.C. No. 78-91, 4 NJPER 262 (¶4134 1978).

We affirm the dismissal of the allegations. While we agree that a posting can be an important remedy to a violation of the Act, it would not promote the Act's purpose to decide this past dispute. We have previously dismissed unfair practice cases or transfer cases as moot even if a posting would have been

appropriate if a violation of the Act had occurred. See Egg Harbor Tp. Bd. of Ed., 16 NJPER 582 (¶21256 1990); Bayonne Bd. of Ed. and Bayonne Teachers Ass'n, P.E.R.C. No. 89-118, 15 NJPER 287 (¶20127 1989) aff'd NJPER Supp. 2d 238 (¶197 App. Div. 1990). District 1199J has not pointed to any facts it alleged related to alleged interference by Desmond's supervisor. The facts raised in its appeal relate to the allegations raised regarding his transfer and change of work hours.

ORDER

The refusal to issue a complaint as to the allegations relating to Patrick Desmond is sustained.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Krengel, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: March 29, 2012

Trenton, New Jersey