

P.E.R.C. NO. 2013-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PALISADES INTERSTATE PARK
COMMISSION,

Respondent,

-and-

Docket No. CO-2011-374

PBA STATE LAW ENFORCEMENT UNIT,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by the PBA State Law Enforcement Unit against the Palisades interstate Park Commission. The charge alleges that the Park Commission violated 5.4a(1), (2), (3), (4) and (5) of the New Jersey Employer-Employee Relations Act when the police chief issued a memorandum regarding sick leave procedures which allegedly violated the sick leave provision of the parties' collective negotiations agreement. The Commission holds that the parties' dispute centers around the parties interpretation of the Chief's memorandum and whether such interpretation is consistent with the parties' interpretation of the sick leave provision in the Agreement and defers the matter to grievance arbitration.

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. 2013-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PALISADES INTERSTATE PARK
COMMISSION,

Respondent,

-and-

Docket No. CO-2011-374

PBA STATE LAW ENFORCEMENT UNIT,

Charging Party.

Appearances:

For the Respondent, Jeffrey F. Chiesa, Attorney General
(Geri Benedetto, Deputy Attorney General)

For the Charging Party, Alterman & Associates, LLC
(Stuart J. Alterman, of counsel)

DECISION

On August 29, 2011, the PBA State Law Enforcement Unit
appealed a decision of the Director of Unfair Practices in which
she dismissed an unfair practice charge it filed on March 22,
2011 against the Palisades Interstate Park Commission. D.U.P.
No. 2012-3, 38 NJPER 171 (¶52 2011). The charge alleges that the
Park Commission violated 5.4a(1), (2), (3), (4) and (5)^{1/} of the

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. (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
(continued...)

New Jersey Employer-Employee Relations Act when the police chief issued a memorandum regarding sick leave procedures which allegedly violated the sick leave provision of the parties' collective negotiations agreement. We affirm the Director's refusal to issue a complaint.

The unfair practice charge states that on December 22, 2010, the Police Chief issued a memorandum to all officers advising that any sick leave taken on December 31, 2010, January 1 or January 2, 2011 would require sufficient medical documentation, otherwise any sick leave absences will not be approved, and that any sick leave includes the use of any sick hours such as going off sick or reporting late for duty sick.^{2/}

1/ (...continued)
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. (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. . . ."

2/ A copy of the memo was not included with the charge, however, the PBA subsequently submitted a copy of another memorandum issued by the Chief on June 15, 2011. The June 15th memo addressed the use of sick leave over the July 4th holiday weekend and contains language identical to the language alleged to be contained in the December 22, 2010 memo.

Article XXI is the sick leave provision of the parties collective negotiations agreement, and it provides in pertinent part:

If the duration of the absence exceeds two (2) consecutive days, it will be necessary to report on every third day. Failure to report absences or abuse of sick leave privileges on the part of any employee may be cause for disciplinary action. A personal physician's certificate may be required to substantiate the request of sick leave but this requirement shall not be imposed on a basis inconsistent with Merit System Rules and Regulations.

The Director found that the parties have a good faith dispute concerning the proper interpretation of the Chief's memorandum and whether it runs afoul of the sick leave provision in the Agreement. Relying on State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), she found that the Commission will not substitute its unfair practice jurisdiction for the parties' agreed-upon grievance procedure to resolve contract disputes and refused to issue a complaint.

The PBA argues that the Chief's memorandum should be interpreted to require an officer to advise the Park Commission of the intended use of sick time prior to the need, and that the contract terms have been unilaterally altered without the benefit of negotiations. The Park Commission responds that this matter is not subject to this agency's unfair practice jurisdiction.

The Director properly declined to invoke this agency's unfair practice jurisdiction. This dispute centers around the parties interpretation of the Chief's memorandum and whether such interpretation is consistent with the parties' interpretation of the sick leave provision in the Agreement. The charge does not set forth a clear basis for a claim that the Park Commission set out to alter the sick leave provision in the agreement. Accordingly, this dispute should not be litigated through unfair practice proceedings but should instead be resolved through the parties' negotiated grievance procedure. State of New Jersey (Department of Human Services).

ORDER

The Director's refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Wall recused himself.

ISSUED: September 6, 2012

Trenton, New Jersey