

P.E.R.C. NO. 2015-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF CORRECTIONS,

Respondent,

-and-

Docket No. CO-2013-250

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 71,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the refusal of the Director of Unfair Practices to issue a Complaint based on an unfair practice charge filed by the American Federation of State, County and Municipal Employees, Council 71, against the State of New Jersey, Department of Corrections. The Director found that none of the allegations, if true, would violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Commission finds that the Director properly applied Human Services in declining to issue a complaint on an alleged violation of the parties' collective negotiations agreement.

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.

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Appearances:

For the Respondent, John J. Hoffman, Acting Attorney
General (Ernest Bongiovanni, Deputy Attorney General)

For the Charging Party, Joseph Waite, Staff
Representative

DECISION

On May 6, 2014, the Director of Unfair Practices refused to issue a complaint on an unfair practice charge filed by the American Federation of State, County and Municipal Employees, Council 71, (AFSCME) against the State of New Jersey, Department of Corrections (DOC). D.U.P. No. 2014-14, 40 NJPER 545 (¶176 2014). AFSCME appeals the Director's action pursuant to N.J.A.C. 19:14-2.3.^{1/} We affirm.

The charge alleges that on or about January 14, 2013, the DOC violated the New Jersey Employer-Employee Relations Act,

^{1/} The DOC did not file a response to AFSCME's appeal.

N.J.S.A. 34:13A-5.4a(1), (2), (3), (4) and (7)^{2/} by refusing to conduct a hearing on collective negotiations unit employee Craig Ward's grievance contesting a "counseling document" placed in his personnel file. DOC ruled at Step 2, that counseling notices were not appealable through the grievance procedure. AFSCME did not continue to prosecute the grievance through the remaining steps of the parties' negotiated procedure.

The Director determined that none of the allegations if true, would constitute a violation of the subsections of N.J.S.A. 34:13A-5.4a that were identified in the charge. She further noted that, even if the charge had included an alleged violation of subsection 5.4a(5),^{3/} the issuance of a complaint was not appropriate because the charge alleged a violation of the

2/ 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 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. (7) Violating any of the rules and regulations established by the commission."

3/ (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."

parties' collective negotiations agreement and did not state a viable claim that DOC had unilaterally changed mandatorily negotiable terms and conditions of employment. In addition, she noted that AFSCME could have continued to appeal the challenged action through the remaining steps of the grievance procedure. The Director relied upon State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), which holds that a complaint should not issue on an unfair practice charge alleging that an employer has not complied with a provision of the parties' negotiated agreement.

We find that the Director properly applied Human Services. See also Rutgers, the State University, P.E.R.C. No. 89-38, 14 NJPER 655 (¶19276 1988); Roselle Board of Education, P.E.R.C. No. 86-138, 12 NJPER 456 (¶17173 1986).

ORDER

The refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioners Jones and Wall voted against this decision. Commissioner Eskilson was not present.

ISSUED: September 18, 2014

Trenton, New Jersey