P.E.R.C. NO. 2015-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(JUVENILE JUSTICE COMMISSION),

Respondent,

-and- Docket No. CO-2014-129

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1040,

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 Communications Workers of America, Local 1040, against the State of New Jersey (Juvenile Justice Commission). The Director found that the CWA did not plead with specificity any facts to support its allegation of anti-union animus other than the individual was a shop steward. Applying the Bridgewater standard, the Commission finds 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.

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 Jay Hoffman, Acting Attorney General (Peter H. Jenkins, Deputy Attorney General)

For the Charging Party, Robert O. Yaeger, Principal Staff Representative

DECISION

Communications Workers of America, Local 1040 (CWA) appeals the decision of the Director of Unfair Practices dismissing its unfair practice charge against the State of New Jersey (Juvenile Justice Commission) (JJC).

The charge was filed on December 16, 2013 and alleges that on December 5, the JJC violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1), (2), and (3)[1/], when it

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
(continued...)

reassigned a CWA shop steward to a different unit of a juvenile detention facility. The charge also alleges that the JJC's Assistant Superintendent "harassed and intimidated" the shop steward.

On July 22, 2014, the Director of Unfair Practices issued a letter to the parties advising that she was inclined to dismiss the charge and inviting responses. The CWA did not respond to the letter with further evidence or argument. On August 21, the Director issued her decision refusing to issue a complaint finding that the shop steward was required, by law, to be reassigned because an allegation was made that he sexually harassed a juvenile resident in violation of the Prison Rape Elimination Act (PREA); the allegation was investigated and unsubstantiated; the shop steward was returned to his prior work location upon exoneration; and the CWA did not plead with specificity any facts to support its allegation of union animus other than the fact the individual was a shop steward.

CWA appeals asserting that the Director erred because no charge of an alleged violation of the FPREA was ever made against the shop steward. Complaints are issued based on the allegations

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1/ (...continued)
of any employee organization [and] (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."

in an unfair practice charge. Here, CWA specifically refers to the FPREA investigation in its charge. The charge also asserts that the shop steward expressed concern about returning to a unit where his accuser had associates. These allegations contradict CWA's argument now that no charge or investigation existed. Further, the JJC produced to the CWA the investigation findings which identify the inmate who made the accusation.

Next, CWA asserts the Director failed to address its allegations of union animus. Under In re Tp. of Bridgewater, 95 N.J. 235 (1984), no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246. If the employer did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of

the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for us to resolve.

Here, the JJC provided to the CWA and the Director the FPREA policy requiring a transfer when an allegation has been made. CWA has not provided any factual allegation in its charge beyond stating the accused was a shop steward who previously was involved in union activity to support that the transfer was anything more than a necessary corrective action under the JJC policy. Thus, we find that the allegations, if true, would not constitute an unfair practice within the meaning of the Act and affirm the Director's decision.

ORDER

The refusal to issue a complaint is sustained. The unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: November 20, 2014

Trenton, New Jersey