

P.E.R.C. NO. 2016-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SCOTCH PLAINS,

Respondent,

-and-

Docket No. CO-2014-282

SCOTCH PLAINS PUBLIC WORKS
RECREATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms a decision of the Director of Unfair Practices declining to issue a Complaint based on an unfair practice charge filed by the Association against the Township. The charge alleged that the Township violated the N.J.S.A. 34:13A-5.4a(1), (2), and (5) by providing an untimely response to a grievance contesting the suspension of a unit member. The Commission agrees with the Director that the delay in the Township's response to the grievance did not amount to a repudiation of the grievance procedure.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SCOTCH PLAINS,

Respondent,

-and-

Docket No. CO-2014-282

SCOTCH PLAINS PUBLIC WORKS
RECREATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, DiFrancesco Bateman, attorneys
(Richard P. Flaum, of counsel)

For the Charging Party, James Scott, Representative

DECISION

On October 29, 2015, the Scotch Plains Public Works Recreation Association appealed a decision of the Director of Unfair Practices in which she dismissed an unfair practice charge it filed against the Township of Scotch Plains. D.U.P. No. 2016-2, 42 NJPER 374 (¶106 2015). The charge alleges that the Township violated subsections 5.4(a)1, 2, and 5^{1/} of the New

1/ 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. (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 (continued...)"

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the Act), when it provided an untimely response to a grievance contesting the suspension of a grounds maintenance worker on charges of insubordination and conduct unbecoming an employee. We affirm the Director's refusal to issue a complaint.

After an investigatory conference, it was determined that an evidentiary hearing was not required. An administrative investigation was conducted to determine the facts.

On September 29, 2016, the Director advised the parties of the facts uncovered by the investigation. She defined the Association's claim as whether the Township breached the collective negotiations agreement with its allegedly late response to the grievance. She advised the parties of the relevant law and that a complaint will issue where it appears that the charging party's allegation, if true, may constitute an unfair practice on the part of the respondent. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. She further advised the parties that she was inclined to find that the Commission's complaint issuance standard had not been met and that she was not inclined to issue a complaint on the allegations asserted in the charge. However, she provided the parties until October 8 to file any documentary materials, affidavits, or other evidentiary materials that they

1/ (...continued)
grievances presented by the majority representative.

thought to be relevant before she issued her final determination. There were no further submissions.

On October 21, 2016, the Director issued her decision in which she refused to issue a complaint. She determined that while there was a delay in the Township's response to the grievance, the delay did not amount to a colorable repudiation of the grievance procedure. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). She also dismissed the rest of the allegations, noting that there were no facts supporting those claims.

On appeal, it appears that the Association is no longer pursuing the alleged procedural violation, but rather is alleging that the charges brought against the grievant were unsubstantiated. Even if the Association's claim is true, it fails to explain how it constitutes a violation of the Act. The Association had an opportunity to submit any additional relevant information to its unfair practice charge in response to the Director's September 29, 2016 letter outlining her preliminary findings and view of its claim. However, it did not make any further submissions. We affirm the Director's refusal to issue a complaint.

ORDER

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

BY ORDER OF THIS COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: March 31, 2016

Trenton, New Jersey