

P.E.R.C. NO. 2018-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CO-2017-218

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, LOCAL 1040,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Acting Director of Unfair Practices refusing to issue a complaint based upon the unfair practice charge filed by the CWA against the Hunterdon Developmental Center (HDC). The charge alleges that the HDC violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., subsections 5.4a(2), (3), and (5), by unilaterally issuing an internal memorandum/policy mandating that Cottage Training Supervisors (CTS) represented by CWA be assigned "direct care" work and subsequently refusing to negotiate over the issue. The Commission agrees with the Acting Director's determination that the dispute alleged does not trigger the Commission's unfair practice jurisdiction and affirms the decision to dismiss CWA's charge.

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

STATE OF NEW JERSEY,
DEPARTMENT OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CO-2017-218

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, LOCAL 1040,

Charging Party.

Appearances:

For the Respondent, Gurbir Grewal, Attorney General of
New Jersey (Andy Jong, Deputy Attorney General)

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

DECISION

On April 30, 2018, the Communications Workers of America,
AFL-CIO, Local 1040 (CWA) appealed a decision issued by the
Acting Director of Unfair Practices (Acting Director) in which he
dismissed an unfair practice charge filed by CWA against the
State of New Jersey, Department of Human Services (State).

D.U.P. No. 2018-8, 44 NJPER 366 (¶103 2018). The charge alleges
that the State violated N.J.S.A. 34:13A-5.4a(2), (3), and (5)^{1/}

^{1/} These provisions prohibit employee organizations, their
representatives or agents from: "(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
(continued...)

of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), by unilaterally issuing an internal memorandum/policy mandating that Cottage Training Supervisors (CTS) represented by CWA be assigned "direct care" work and subsequently refusing to negotiate over the issue. CWA alleges that "direct care" work is performed by employees in a different negotiations unit represented by the American Federation of State, County and Municipal Employees (AFSCME).

PROCEDURAL HISTORY

On October 4, 2017, the previous Acting Director advised the parties that based upon their collective negotiations agreement (CNA) and relevant law, the underlying issue appeared to be contractually-based and that she was inclined to defer the matter to arbitration. However, she provided the parties until October 16 to submit written position statements before issuing a final determination. In response, the State advised that it would not waive procedural defenses to arbitration and CWA advised that it wished to move forward with processing the unfair practice charge.

1/ (...continued)
employment to encourage or discourage employees in the exercise of the rights guaranteed them by 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."

On April 20, 2018, the current Acting Director issued a decision in which he refused to issue a complaint. He determined that the State has a managerial prerogative to unilaterally assign new duties if they are incidental to or comprehended within an employee's job description and that employees in different negotiations units may perform similar work without running afoul of the Act. The Acting Director found that CWA's allegations did not justify the issuance of a complaint because there was no claim that "direct care" work fell outside the job description for a CTS. The Acting Director also found that even assuming "direct care" work was not incidental to a CTS's normal duties, CWA's unfair practice charge must be dismissed because the Public Employment Relations Commission (PERC) does not have jurisdiction over a dispute covered by a contractually-negotiated dispute resolution procedure. Specifically, he noted that Articles 4(E)(6) and 11 of the CNA require CWA unit members to file an appeal with the Civil Service Commission (CSC) in order to challenge the assignment of "direct care" work as out-of-title work.

The instant appeal ensued.

LEGAL ARGUMENTS

On appeal, CWA argues that PERC has jurisdiction to issue a complaint based upon The State's failure to provide prior notice to, and refusal to negotiate with, CWA regarding a unilateral

change in terms and conditions of employment. CWA maintains that the State's internal memorandum/policy mandated that CTS employees perform various "direct care" responsibilities normally performed by AFSCME unit members and violated AFSCME's contractually-negotiated overtime provisions. While conceding that Article 11 of the parties' CNA requires employees to file an appeal with the CSC regarding alleged out-of-title violations, CWA asserts that there is no contractual language granting the CSC authority to issue a remedy pertaining to an unfair practice.

In response, the State argues that the Acting Director was correct in refusing to issue a complaint and that CWA's appeal merely reiterates the same arguments made below.

STANDARD OF REVIEW

N.J.A.C. 19:14-2.1(a) provides that the Director of Unfair Practices shall issue a complaint "if it appears . . . that the allegations of the charge, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues."

N.J.A.C. 19:14-2.3(b) provides that "[w]here no complaint is issued, the charging party may appeal that action by filing . . . an appeal with the Commission . . . [and] [t]he Commission may sustain the refusal to issue a complaint . . . or may direct that further action be taken."

ANALYSIS

Based upon a close examination of the nature of the unfair practice charge, the facts asserted, and the attendant circumstances, we agree with the Acting Director's determination that this dispute does not trigger our unfair practice jurisdiction and affirm his decision to dismiss CWA's complaint.

First, CWA does not allege that direct care work is not contained within or not incidental to CTS's job classification. Rather, its allegation is that the State failed to negotiate before assigning CTS employees work that is also performed by employees in another negotiations unit. Performance of duties that may overlap between job titles, standing alone, does not necessarily constitute an unfair practice. However, to the extent that CWA's charge alleges that the State failed to negotiate before assigning work (i.e. direct care work) to CTS employees that was out-of-title, that amounts to a job classification dispute. It is uncontested that the parties negotiated a specific review process for resolving job classification disputes. Articles 4(E)(6) and 11 of the CNA require employees to file job classification disputes with the CSC.^{2/} Cf N.J.S.A. 34:13A-5.3 (mandating that "[g]rievance and

2/ N.J.S.A. 34:13A-5.3 states that "[n]othing herein shall be construed to deny any individual employee his rights under the Civil Service laws or regulations." Employees affected by this dispute are free to pursue a job classification appeal with the CSC. It appears that at least one employee, and possibly more, have initiated such an appeal. The disposition of these appeals is unknown. The State has
(continued...)

disciplinary review procedures established by agreement between the public employer and representative organization shall be utilized for any dispute covered by the terms of such agreement)."

Finally, this case does not present a breach of contract claim that "predominately relates" to an employer's duty to negotiate in good faith which would cause us to entertain the unfair practice charge despite the fact that the parties have negotiated a dispute resolution procedure specific to the substance of the claim presented. See State of New Jersey (Dep't of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) (outlining a non-exhaustive list of examples wherein an unfair practice charge alleging a contractual dispute would be processed despite the parties negotiated grievance procedure).

ORDER

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

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: June 28, 2018

Trenton, New Jersey

2/ (...continued)
asserted that it will not waive procedural defenses (i.e. a timeliness defense) to any appeals filed with the CSC.