

P.E.R.C. NO. 2020-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF TREASURY),

Respondent,

-and-

Docket No. CI-2019-020

COMMUNICATIONS WORKERS OF AMERICA
LOCAL 1033,

Respondent,

-and-

SARAH FREEMAN,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Director of Unfair Practices to issue a complaint. D.U.P. 2020-1, 46 NJPER 25(¶8_2019). Freeman claims that the State improperly refused to promote her, failed to properly compensate her for working out of title, and retaliated against her for engaging in protected activity. In view of the extensive record of the representational efforts of Communications Workers of America Local 1033 (CWA) on Freeman's behalf, the Commission agrees with the Director's findings that CWA did not: (1) breach its duty of fair representation to Freeman; or (2) interpret the collective negotiations agreement in a bad faith, discriminatory or arbitrary manner; and that (3) Freeman's factual allegations, even if true, at best support a finding of mere negligence, which does not establish a viable claim of a breach of the duty of fair representation. The Commission finds that Freeman, on her appeal repeating allegations and contentions from her amended charges, has not stated a factual or legal basis for not sustaining the Director's decision, and that Freeman's claim that the Director did not address certain allegations is without merit.

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, State of New Jersey (Department of Treasury), Gurbir S. Grewal, Attorney General of New Jersey (Alexis F. Fedorchak, Deputy Attorney General)

For the Respondent, Communications Workers of America Local 1033, Weissman & Mintz, LLC, attorneys (Charlette Matts-Brown, of counsel)

For the Charging Party, Sarah Freeman, pro se

DECISION

On December 5, 6, 17, and 31, 2018, January 2, 2019, and June 27, 2019, Sarah Freeman (Freeman) filed an unfair practice charge and amended charges against her employer, the State of New Jersey (Dep't of Treasury) (State), and her majority representative, Communications Workers of America Local 1033 (CWA). As amended, the charge alleges that from approximately

2007-present, the State violated section 5.4a(1), (2), (3), (4), (5), (6), and (7)^{1/} of the New Jersey Public Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., and that CWA violated section 5.4b(1), (2), (3), (4), and (5)^{2/} of the Act. Freeman asserts that the State violated the Act by improperly refusing to promote her; failing to properly compensate her for

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 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

2/ These provisions prohibit employee organizations, 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) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

working out-of-title; and subjecting her to retaliation for engaging in protected activity. Freeman contends that CWA violated the Act by disregarding and failing to respond to her complaints and requests for assistance.

On July 10, 2019, the Director refused to issue a complaint. D.U.P. No. 2020-1, 46 NJPER 25 (¶8 2019).

On July 22, 2019, Freeman appealed. The State filed a response on July 29, and CWA filed its response on July 30.

We sustain the Director's refusal to issue a complaint for the reasons set forth in his comprehensive, well-reasoned decision. We add the following.

On appeal, Freeman reasserts allegations and contentions from her amended charges, focusing on events in and after September 2018 as occurring within the statute of limitations. More specifically, Freeman contends that CWA "outright provided false information regarding the conversation that occurred" at a meeting with CWA representatives on November 1, 2018. Freeman disputes that the representatives, at that meeting, "agreed to contact the Civil Service Commission once [she] provided him with the names of who [she] spoke to at the Civil Service Commission."^{3/} Freeman further disputes that a CWA

^{3/} On appeal, Freeman offers to share a recording she did not present to the Director, which she claims will provide "proof of what was said" at the November 1 meeting. However, we cannot consider that recording unless the facts
(continued...)

representative subsequently contacted her "twice to obtain additional information," contending emphatically that "he did NOT" do that. The Director noted these exact same allegations in his Decision discussing Freeman's amended charge, and he addressed them as follows:

The facts indicate that CWA did not breach its duty of fair representation to Freeman. From 2008-2018, CWA representatives met and communicated with Freeman on multiple occasions; filed grievances and communicated with the State on Freeman's behalf on multiple occasions; assisted Freeman with Civil Service appeals on multiple occasions; retained an attorney to meet with and assist Freeman related to EEOC and Civil Service matters; and engaged both national and area directors to assess and respond to Freeman's complaints/concerns on multiple occasions. Moreover, CWA does not believe it has any contractual obligation to file/pursue Civil Service appeals on Freeman's behalf or to respond to Freeman's complaints/concerns within a specified period. See 2011-2015 CNA, Arts. 3-5, 7, 12.

Freeman's charge only establishes that she disagrees with CWA's view of its contractual obligations and role within a Civil Service

3/ (...continued)
alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented. N.J.A.C. 19:14-2.3(b). Freeman fails to explain why the recording was not, or could not with reasonable diligence have been, introduced with her amended charge, which makes the same allegations. As such, Freeman does not meet the standard for supplementing the record on appeal. See, Communications Workers of America, P.E.R.C. No. 2017-28, 43 NJPER 209 (¶62 2016) (declining to consider on appeal the charging party's audio recordings of her conversations with union representatives, where such information was not provided to the Director).

jurisdiction. No facts suggest that CWA interpreted the CNA in a bad faith, discriminatory, or arbitrary manner. Even assuming that the facts Freeman alleges are true, I find that they do not establish a breach of the duty of fair representation. At best, Freeman's charge could support a finding that CWA and/or its representatives were negligent; as discussed above, mere negligence is insufficient to establish a viable claim.

[46 NJPER at 29.]

In reaching the above-quoted conclusion, the Director correctly noted that the CWA "must be afforded a wide range of reasonableness in serving the unit it represents," and that "the duty of fair representation does not require it to file every grievance a unit member asks it to submit." Id. at 19. We consider these principles in view of the extensive record of CWA's representational efforts on Freeman's behalf. We agree with the Director that, even if Freeman's disputed account of what was said in the November 1 meeting is accurate, the CWA's alleged inaction after November 1 does not amount to a breach of its duty of fair representation.

We also do not agree with Freeman's further claim that the Director "never addressed" her allegation (first detailed in her December 5, 2018 charge and repeated in her amended charges of December 17, 31, and January 2, 2019) that on November 29, 2018,

she "was retaliated against by Yvette Debronzo."^{4/} The Director noted this specific allegation at page 8 of his Decision. A claim that a public employer or its representative retaliated against an employee for protected activity states a violation of sections 5.4a(1) and (3) of the Act. The Director addressed the legal and factual insufficiency of Freeman's claims against the State at pages 14 through 18 of his Decision. Specifically with regard to Freeman's 5.4a(1) and (3) allegations, the Director found:

Freeman has not alleged facts indicating that the State has engaged in conduct that violates our Act or would have a tendency to interfere with protected rights. Further, **there is no evidence that she was ever subject to disciplinary action.** Freeman claims that she was passed over for promotion and/or denied the opportunity to apply for a promotional position. Even assuming the facts she alleges are true, I find that they do not reveal a nexus between the State's conduct and Freeman's exercise of any protected activity. **Moreover, if the alleged retaliation, harassment, and/or hostile work environment is based upon Freeman's race, creed, color, etc., her allegations may constitute unlawful employment practices within the meaning of the New Jersey Law Against Discrimination but do not warrant the issuance of a complaint.** See N.J.S.A. 10:5-

^{4/} Freeman alleges that Debronzo said, "in front of other employees to embarrass, harass and humiliate" Freeman, that she "was facing disciplinary charges that would be placed in [her] personnel file" because Freeman "refused to sign a document." But Freeman had "submitted a waiver not to sign" it, and thus "was not in violation of any work directive given." Freeman alleges that Debronzo also said to another co-worker, "something smells fruity over here," in reference to Freeman's work area, thus encouraging the co-worker to "whisper and laugh, to belittle" Freeman.

1, et seq.; State of New Jersey (Dep't of Human Services), D.U.P. No. 97-12, 22 NJPER 333 (¶27173 1996); Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20112 1989). The Commission lacks jurisdiction to hear this charge where it is not otherwise interrelated with an allegation of an unfair practice. Accordingly, I dismiss Freeman's 5.4a(1) and (3) allegations.

[46 NJPER at 28 (emphases added, footnote omitted).]

We agree with this analysis and, based on this record, find Freeman's claim that the Director did not address her allegation about Debronzio's retaliation to be without merit.

Finally, we address Freeman's additional asserted reason for appeal: that the Director incorrectly noted the year of her promotion as 2005, when in fact she was promoted on May 1, 2004. Even if true, we fail to see, and Freeman does not explain, how this provides cause for us to disturb the Director's Decision.

In sum, we find that Freeman has not stated a factual or legal basis for not sustaining the Director's Decision. N.J.A.C. 19:14-2.3(b).

ORDER

The refusal to issue a complaint is sustained.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Papero voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: September 26, 2019

Trenton, New Jersey