

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(ANCORA PSYCHIATRIC HOSPITAL),

Respondent,

-and-

Docket No. CI-94-63

BRENDA HYNSON,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Director of Unfair Practices refusing to issue Complaint on certain allegations in an unfair practice charge filed by Brenda Hynson against the State of New Jersey (Ancora Psychiatric Hospital). The Commission finds that the Director properly limited the Complaint to allegations of retaliation for engaging in protected activity. Any claims of discrimination in the disciplinary process arising from her protected activity are subsumed in the allegation on which a Complaint has issued.

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, Deborah T. Poritz, Attorney General  
(Mary L. Cupo-Cruz, Senior Deputy Attorney General)

For the Charging Party, Brenda Hynson, pro se

DECISION AND ORDER

On April 6 and 21, 1994, Brenda Hynson filed an unfair practice charge and amended charge against the State of New Jersey (Ancora Psychiatric Hospital).<sup>1/</sup> The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (4) and (5),<sup>2/</sup> by suspending her in retaliation for her

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<sup>1/</sup> The charge was filed by Hynson in her capacity as president of AFSCME Local 2218, but was amended to delete the reference to AFSCME.

<sup>2/</sup> 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of

having filed an unfair practice charge and for disciplining her in violation of her due process rights. In particular, Hynson alleges that she was suspended without a departmental hearing and that the hearing officer had a personal vendetta against her.

On September 14, 1994, the Director of Unfair Practices issued a Complaint on the retaliation claim, but refused to issue a Complaint on the remaining allegations. D.U.P. No. 95-5, 20 NJPER 377 (¶25189 1994). He found that improper treatment of a grievance at an intermediate step of the grievance procedure is not a violation of subsection 5.4(a)(5) when the contract has a self-executing grievance procedure ending in binding arbitration. He also found that the allegation that the departmental hearing officer had a personal vendetta against Hynson was not factually linked to any protected activity.

On October 18, 1993, Hynson appealed the refusal to issue a Complaint on the non-retaliation claims. She claims that noncontractual grievances cannot be submitted to binding arbitration. She also claims that the allegation concerning the alleged personal vendetta should not have been dismissed.

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2/ 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."

On October 19, 1993, we informed Hynson that her appeal could not be processed absent proof of service on the employer. On November 19, we informed Hynson that her appeal had been deemed withdrawn since no proof of service had been filed.

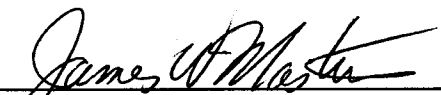
On November 21, 1994, Hynson filed proof of service. On November 22, we informed the parties that the appeal had been reactivated. On December 5, the employer filed a statement in opposition to the appeal.

The Director properly limited the Complaint to the allegations of retaliation for engaging in protected activity. We sustain the refusal to issue a Complaint on the other allegations. Any allegations that a departmental hearing officer denied Hynson due process or had a personal vendetta against her, even if true, would not constitute violations of the Act. Any claims of discrimination in the disciplinary process arising from Hynson's protected activity are subsumed in the allegation on which a Complaint has issued.

ORDER

D.U.P No. 95-5 is sustained.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: February 28, 1995  
Trenton, New Jersey  
ISSUED: March 1, 1995