

P.E.R.C. NO. 95-112

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-94-292

IFPTE, LOCAL 195,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by IFPTE, Local 195 against the State of New Jersey (Dept. of Human Services), D.U.P. No. 95-10, 20 NJPER 453 (¶25231 1994). The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act by continually refusing to follow a contractual provision entitled "Out-of-Title Work." The Commission agrees with the Director that this dispute must be resolved through the parties' grievance procedures rather than an unfair practice hearing.

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
(Michael L. Diller, Senior Deputy Attorney General)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On March 29 and April 11, 1994, IFPTE, Local 195 filed an unfair practice charge against the State of New Jersey (Department of Human Services). 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) and (5),^{1/} by

^{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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the

continually refusing to follow a contractual provision entitled "Out-of-Title Work." In particular, Local 195 alleges that the Mercer Day Training Center has repudiated the parties' collective negotiations agreement by continually allowing a unit member to work out of title as a head bus driver.

On October 25, 1994, the Director of Unfair Practices refused to issue a Complaint on this and a related charge (CO-94-235). D.U.P. No. 95-10, 20 NJPER 453 (¶25231 1994). Local 195 appealed. Upon review of the appeal and response, it appeared that D.U.P. No. 95-10 addressed the allegations in CO-94-292 but not the allegations in CO-94-235. The matter was sent back to the Director for consideration of the allegations in CO-94-235. The appeal was held in abeyance.

On May 10, 1995, the Director issued a Complaint and Notice of Hearing on CO-95-235. We now consider the appeal of the decision not to issue a Complaint on CO-94-292.

The charge alleges that since October 1993, the Department of Human Services, Mercer Day Training Center has continually refused to follow a contract provision entitled "Out-of-Title

1/ Footnote Continued From Previous Page

exercise of the rights guaranteed to them by 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."

Work." It alleges that by continually allowing one unit employee to work out of title, the employer has repudiated the agreement and thus negotiated in bad faith.

The Director found that Local 195 had not asserted any facts that might suggest a repeated violation of a clear contract provision or that the employer claims a right to violate the contract. He concluded, in accordance with established Commission policy, that the dispute involves an alleged breach of contract that must be resolved through the negotiated grievance procedure.

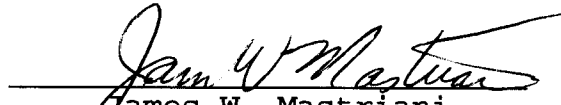
We agree with the Director that this dispute must be resolved through the parties' grievance procedures rather than an unfair practice hearing. The charging party's allegation that the employer violated a contractual provision with respect to this one employee does not suggest that the employer repudiated the parties' agreement or would be unwilling to comply with any resolution through the grievance procedure. Contrast N.J. Transit Bus Operations, P.E.R.C. No. 89-29, 14 NJPER 638 (¶19267 1988) (employer's persistent assertion of right despite contrary arbitration awards). Accordingly, we sustain the Director's refusal to issue a Complaint.^{2/}

^{2/} Local 195 has not appealed the Director's determination that there are no facts to suggest a violation of subsections 5.4(a)(1), (2) or (3). In light of our decision, we need not reach the Director's additional conclusion that the matter is moot.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: June 12, 1995
Trenton, New Jersey
ISSUED: June 13, 1995