



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of New Jersey  
Investigators Association, FOP Lodge  
No. 174, Department of Corrections

Discrimination Appeal

CSC Docket No. 2024-485

**ISSUED: July 24, 2024 (EG)**

The New Jersey Investigators Association (NJIA), FOP Lodge No. 174, represented by David Beckett, Esq., appeals the determination of the Director of the Equal Employment Division (EED), Department of Corrections, stating that it failed to present sufficient evidence to support a finding that its members had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The NJIA filed a complaint with the EED alleging that its members were subjected to discrimination/harassment based on race by Assistant Commissioner K.D., in violation of the State Policy. Specifically, the NJIA alleged that on March 24, 2023, its members attended a Special Investigations Division (SID) training in which the SID Analytical Unit presented a recorded call involving inmates and the racial slur n\*\*\*\*\* was used multiple times. The NJIA indicated that there was no educational value in allowing the word to go unmuted and maintained that if the offensive rap lyrics in the beginning of the video could be muted, so should the repeated use of the racial slur in the presentation. Additionally, the NJIA alleged that the video made everyone in the room highly uncomfortable.

In response to the appellant's complaints, the EED conducted an investigation that concluded that NJIA's allegations could not be substantiated that a violation of the State Policy had occurred. The investigation included interviews and the collection and review of documents and videos pertinent to the allegation. It found

that while the allegation did touch the State Policy, the evidence provided by the NJIA failed to support the allegation. In this regard, it noted that the NJIA failed to provide the names of specific members that were allegedly made highly uncomfortable by the video. Further, the investigation failed to find evidence that NJIA members were targeted for adverse treatment based on membership in a protected class. Rather, its investigation found that the training was relevant and had significant educational value as it showcased the real-life language, content, and scenarios SID investigators routinely face while performing their duties. The EED stated that the video used an actual inmate call intercepted by SID and muting the slur would have significantly interfered with the training objective. Moreover, the EED found that a disclaimer regarding the language was provided prior to the video being shown. It also found that the rap lyrics at the beginning of the video were muted for potential copyright issues. Furthermore, since there were no named complainants, the EED interviewed a number of random witnesses, and no one reported feeling uncomfortable with the video.

On appeal, the NJIA argues that EED's determination wrongly focused upon whether its members who viewed the video were made uncomfortable by the racial slurs. It contends that the EED should have focused on whether there was a good faith reason for the racist content to be included and not muted. In this regard, the NJIA claims that a good faith reason would require that the racist slurs be essential to the training itself. It asserts that this was a generic training session that had nothing to do with investigating racist statements or actions. The NJIA argues that there was no training reason why the racist slurs could not have been muted. Further, it contends that its failure to provide the names of members that were made uncomfortable is irrelevant as the proof of discriminatory action was the video itself. Moreover, it maintains that there was no proof provided to support the claim that the racist slurs were integral to the training. Finally, the NJIA requests that the Civil Service Commission (Commission) review the video to determine if there was any educational value including the racial slurs multiple times in the training video.

The appointing authority, although provided the opportunity to submit further arguments or evidence, chose to rely on the findings and conclusions made in the determination letter.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *N.J.A.C.* 4A:7-

3.1(c) provides that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. Further, *N.J.A.C. 4A:7-3.2(m)*<sup>4</sup> state that the appellant shall have the burden of proof in all discrimination appeals brought before the Commission.

In the instant matter, the EED determined that the NJIA's complaint of discrimination in showing a training video that used racial slurs multiple times could not be substantiated as having violated the State Policy. The EED's investigation interviewed the relevant parties, reviewed the appropriate documentation and video. It found that the training video was relevant and had significant educational value as it showcased the real-life language, content, and scenarios SID investigators routinely face while performing their duties. The EED stated that the video used an actual inmate call intercepted by SID and muting the slur would have significantly interfered with the training objective. The Commission finds that the determinations made by the EED were well reasoned.

On appeal, the NJIA argues that the EED investigation did not prove that the use of the racial slurs was necessary and that the video provided educational value. The NJIA request that the Commission review the video itself to make the determination if the use of racial slurs was necessary. Based on the information provided in the determination, it is unnecessary for the Commission to review the video in question. The EED has acknowledged that the video contained racial slurs. It has also provided a reasoned response as to why presenting the racial slurs in a training video was appropriate in this context and the educational value of leaving the slurs in and not muting them out. Moreover, the NJIA has not provided any dispositive evidence in support of its contention that the use of the training video was a violation of the State Policy. Accordingly, based on the foregoing, no basis exists to find a violation of the State Policy and the NJIA has not sustained its burden of proof in this matter.

## **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 24<sup>TH</sup> DAY OF JULY, 2024

*Allison Chris Myers*

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