

D.U.P. NO. 82-15

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STATE OF NEW JERSEY
(NEW LISBON STATE SCHOOL),

Respondent,

-and-

DOCKET NOS. CI-81-60
CI-81-62

TRENT ANDRE DAVIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue complaints with respect to unfair practice charges brought by an individual alleging violations of Civil Service law. The allegations are matters for presentation before the Civil Service Commission.

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REFUSAL TO ISSUE COMPLAINT

Unfair Practice Charges were filed with the Public Employment Relations Commission (the "Commission") on February 5, 1981, and amended on February 18, 1981, by Trent A. Davis (the "Charging Party") against the State of New Jersey (New Lisbon State School) (the "State"), alleging that the State was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically, N.J.S.A. 34:13A-5.4(a)(1), (3) and (7). ^{1/}

In Docket No. CI-81-60, the Charging Party alleges that a violation of the Act occurred when an individual other than himself was hired for a patrol officer position contrary to Civil Service

^{1/} These subsections prohibit public employers, the representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (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; and (7) Violating any of the rules and regulations established by the commission."

law. In Docket No. CI-81-61, the Charging Party alleges that he was denied a Civil Service appointment because of remarks made by an official of the school concerning his union affiliation. Finally, in Docket No. CI-81-62, the Charging Party alleges that he was competing for a Civil Service appointment, but was passed over in favor of an individual who had not taken a Civil Service examination.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice and that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission rules provide that the undersigned may decline to issue a complaint. ^{4/}

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

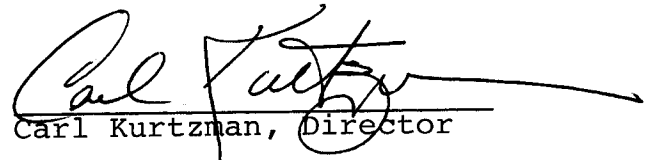
For the reasons below, it appears to the undersigned that the Commission's complaint issuance standard has not been met with respect to two of the instant Charges.

In order for a complaint to issue with respect to § 5.4(a)(3) of the Act, a charging party must allege facts indicating that the employer discriminated against him in regard to a term or condition of employment in order to encourage or discourage him in the exercise of rights which the Act guarantees. In Docket Nos. CI-81-60 and 62, the Charging Party has not alleged facts indicating discriminatory treatment against him as a result of his exercise of activities protected by the Act. See, In re Tp. of Springfield, D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1978). Rather these charges are limited to allegations that Civil Service Regulations or Statutes have been violated. These allegations are matters for presentation before the Civil Service Commission. ^{5/} Accordingly, the undersigned declines to issue complaints with respect to Docket Nos. CO-81-60 and CO-81-62.

^{5/} In addition, there are no allegations in these Charges that independent violations of § 5.4(a)(1) of the Act have occurred which would justify the issuance of a complaint under that subsection. Finally, regarding the § (a)(7) allegations, the Charging Party has not identified which rules and regulations established by the Commission the State is in alleged violation. Accordingly, the facts alleged by the Charging Party, if true, do not support a claim of a § (a)(7) violation. See In re Madison Tp. Bd. of Ed., E.D. No. 76-8 (1975).

Simultaneously herewith, under separate cover, the undersigned has issued a complaint with respect to Docket No. CO-81-61. The Commission has not been advised of the filing of any actions before other administrative agencies; therefore, the undersigned has not considered this matter in light of Hackensack v. Winner, 82 N.J. 1 (1980).

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: November 16, 1981
Trenton, New Jersey