

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

In the Matter of

CAMDEN COUNTY VOCATIONAL BOARD OF
EDUCATION
and
CAMDEN VOCATIONAL TEACHERS ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-82-59

MARY ALICE O'HARA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to Charging Party's allegations that the Board and her majority representative agreed to discriminatory salary categories that favor male over female employees. Although Charging Party alleges that the categories present an issue of "academic discrimination," the allegations are integrally related to claims of sexual discrimination. The Director determines that the issue presented by the Charging Party should more appropriately be addressed to administrative forums whose expertise includes sex discrimination claims.

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Appearances:

For the Respondents
Davis & Reberkenny
(Robert F. Blomquist of counsel)

Greenberg, Kelley & Prior
(James F. Schwerin of counsel)

For the Charging Party
Mary Alice O'Hara, pro se

REFUSAL TO ISSUE COMPLAINT

On June 7, 1982, Mary Alice O'Hara ("Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Board of Education of the Vocational School of the County of Camden ("Respondent Board") and the Camden Vocational Teachers Association ("Respondent Association"), alleging that the Respondents were engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") specifically, with regard to the Respondent

Board, subsections 5.4(a)(1) and (3) ^{1/} and with regard to the Respondent Association, subsection 5.4(b)(1), ^{2/} when the Respondents negotiated a salary schedule which allegedly discriminated against women employees of the Respondent Board.

On July 20, 1982, the undersigned wrote the Charging Party and requested that she advise within seven days whether she had filed charges with any other administrative agency concerning the alleged sexual discrimination.

On August 2, 1982, the Charging Party acknowledged filings before other administrative agencies but further clarified her charge by changing her allegations from sex discrimination to academic discrimination. In her clarification the Charging Party alleges that beginning in 1975 and continuing through the end of the 1983 academic year the Respondent Board and Association were parties to collective negotiations agreements which established different salary classifications which varied according to the teachers' education background and functional classification (i.e. whether the teacher was deemed "shop and related" or "academic"). The Charging Party proffers examples of male teachers denominated "Shop & Related", with comparable or even inferior academic

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives and 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."

^{2/} N.J.S.A. 34:13A-5.4(b) prohibits public 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."

credentials, being paid at the same or a higher salary than female academic teachers and assigned to teach the same subject. ^{3/}

The Charging Party also advised the undersigned that she had filed a Motion for Reconsideration with the Commission in a previously filed unfair practice charge against the Respondent Board and Association, Docket Number CI-81-1. Since the Charging Party's Motion requested that Docket No. CI-81-1 and the instant charge be consolidated and since it appeared that the Motion raised issues that were substantively embodied in the instant charge, the undersigned held the processing of the instant charge in abeyance pending the outcome of the Charging Party's Motion. ^{4/} The Charging Party's motion having been denied, the instant matter is properly before the undersigned for consideration as to complaint issuance.

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

^{3/} It is not clear from the allegations whether the classification "Shop and Related" relates to the teacher's predominant functional assignment at the school or whether this classification merely relates to a teacher's experiential/educational background in those areas.

^{4/} On May 10, 1982, Commission Hearing Examiner Edmund G. Gerber ruling on the motion of the Camden County Vocational Board of Education in Docket No. CI-81-1, dismissed the Complaint against the Board. H.E. No. 82-50, 8 NJPER 329 (¶ 13149 1982) affmd P.E.R.C. No. 83-5, 8 NJPER 432 (¶ 13202 1982). During the processing of Docket No. CI-81-1, the Hearing Examiner denied Charging Party's motion to amend her charge to include the allegations contained in the instant charge. On September 15, 1982, the Commission, after granting the Charging Party's Motion for Reconsideration, again affirmed the Hearing Examiner's decision to dismiss the Complaint, and, in addition denied the Charging Party's request to consolidate Docket No. CI-81-1 with the instant charge. P.E.R.C. No. 83-28, 8 NJPER 558 (¶ 13256 1982).

any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{5/} The Commission has delegated its authority to issue complaint 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. ^{6/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{7/}

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

Initially, the undersigned notes that the issuance of a complaint with respect to events occurring prior to the six month period immediately preceding the filing of a charge is statutorily prohibited. ^{8/} Inasmuch as the instant charge, which was filed on July 7, 1982, alleges that the practices which purportedly violate the Act became known to Charging Party in January, 1980, the undersigned

^{5/} 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..."

^{6/} N.J.A.C. 19:14-2.1

^{7/} N.J.A.C. 19:14-2.3

^{8/} N.J.S.A. 34:13A-6.4(c) provides: "That no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented."

would ordinarily refuse to issue a complaint based upon untimeliness. However, the Charging Party alleges that the practices constitute a continuing violation. The undersigned need not address this assertion at this juncture, however, inasmuch as the issuance of a complaint is foreclosed for other reasons.

The Charging Party does not assert facts alleging that she was discriminated against in relation to her pay in retaliation for any activities on behalf of an employee organization or because she filed a grievance, or for the exercise of other activity protected by the Act. Rather, her allegations are based upon the claim that the Board and the Association have wrongfully conspired to disparately compensate teaching staff employees in violation of §5.4(a)(1) and (b)(1). Whether the alleged discrimination relates to the Respondents' negotiated categories that control salary remuneration ^{9/} or whether discrimination has arisen as the result of improper teacher placement in accordance with the established categories, there is no basis for the issuance of a complaint.

The premise for the claim that the salary categories for the placement of personnel listed below represent "academic discrimination" must rest upon the assumption that teaching staff employees can only

9/ _____
Shop & related - No Degree Category A Academic - Bachelor Degree

Shop & related - Bachelor Category B Degree Academic - Master's Degree

Shop & related - Master's Category C Degree Academic - Doctor's Degree

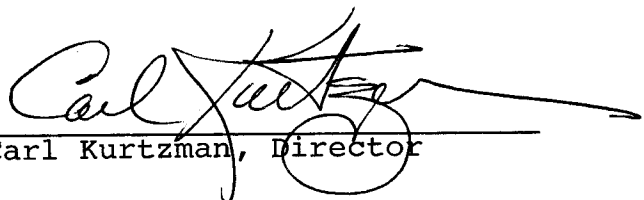
Thus, for example, employees on the "shop and related" track without a degree are in the same category of compensation as those employees on the "academic" track who possess a bachelor degree.

be compensated in strict accordance with academic attainment. The Charging Party has not presented any statutory authority to support this claim. In the absence of any statutory mandate requiring the equal compensation of employees of the same academic credentials it would appear that the Respondents are free to establish compensation categories that consider other factors so long as the determination has not been reached for arbitrary, discriminatory, or bad faith reasons. The categories established by the Respondents cannot be attacked herein simply because they are not entirely based upon academic achievement.

If the Respondents have engaged in a pattern of misplacing employees in compensation categories to the disadvantage of some unit members, the issue of improper representation may be brought into question if accompanied by facts which would establish arbitrary, discriminatory or bad faith actions on the part of the Respondents. It appears from the Charge that the alleged misplacements were implemented to favor men over women. Thus, the undersigned notes that in the present circumstance the Charging Party's assertions of "academic discrimination" are inextricably intertwined with her accusations of sex discrimination. In the judgment of the undersigned, the Charging Party's allegations, if based upon this argument, should be addressed to other administrative agencies whose expertise primarily involves sex discrimination claims.

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: September 20, 1983
Trenton, New Jersey