

D.U.P. NO. 90-15

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

In the Matter of

TOWN OF MORRISTOWN,

Respondent,

-and-

Docket No. CI-90-31

DONALD G. LIDDLE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by an individual employee asserting that the employer violated subsections 5.4(a)(1), (2), (5) and (6) of N.J.S.A. 34:13A-1 et seq. The Director determined that the charging party failed to allege sufficient facts upon which a complaint could issue and did not have standing to assert violations of 5.4(a)(5) and (6).

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Appearances:

For the Respondent

Vogel, Chait, Schwartz & Collins, attorneys
(Laura J. Lande, of counsel)

For the Charging Party

Donald G. Liddle, pro se

REFUSAL TO ISSUE COMPLAINT

On October 4, 1989 and October 17, 1989, Donald Liddle ("Liddle" or "Charging Party") filed an unfair practice charge and amended charge against the Town of Morristown ("Town"). Liddle's charge alleged that in 1986 he completed a road test to become motor broom operator and applied to his supervisor for the opportunity to "acquaint" himself with one of the two Town sweepers. When the Town refused the request, Liddle filed a grievance which was orally resolved at step one of the grievance procedure contained in a collective negotiations agreement signed by the Municipal Employees Association and the Town. It is claimed that the Town's refusal to adhere to the grievance resolution violates subsections (a)(5) and (a)(6) of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. ("Act").^{1/} On November 16, 1989 and January 22, 1990, the Township filed a response asserting that Liddle failed to follow the grievance procedure in the collective negotiations agreement; his charge does not involve an unfair practice within the meaning of the Act; Mr. Liddle is currently in the title of laborer and has not been assigned to drive a truck; and on March 16, 1988, Liddle grieved his "non-assignment" as a sweeper and at a meeting to resolve the grievance, Liddle was unable to produce any evidence that he had been classified as a "sweeper."

On February 27, 1990, a staff agent conducted an exploratory conference in the above-captioned matter. The following facts appear.

In about June, 1986, Liddle asked permission from the Morristown Public Works Department foreman to practice driving one of the two Town sweepers. Liddle contends that he was not given time in which to practice operating the vehicle. Liddle claims that as many as four other employees were given an opportunity to train on the sweeper. Liddle does not assert that his classification was ever changed from laborer to sweeper.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

Liddle apparently completed the road test for motor broom operator. On or about March 16, 1988, Liddle filed a grievance concerning the lack of opportunity to drive either trucks or other equipment, e.g., sanitation trucks, salt spreaders, back hoes, dump trucks, etc. Liddle maintains that the DPW foreman agreed to give him equal opportunity to practice on those vehicles. Liddle maintains that he was never provided that opportunity. His charge also asserts that on or about September 15, 1989, other "non-tested, non-classified" employees were allowed to practice on the sweeper.

The Town maintains that Liddle did not have the proper classification to qualify him to drive any of the Town's vehicles. In addition, the Town maintains that Liddle's driving record showed involvement in four accidents over a three-year period and accordingly, Liddle would not have been given any driving assignments. The Town further maintains that at a meeting concerning Liddle's March 16, 1988 grievance attended by Liddle, the director and foreman of the Department of Public Works, the Town business administrator and an Association representative, Liddle failed to produce any evidence of his alleged civil service classification as a sweeper. Finally, the Town asserts that Liddle, although dissatisfied with the first step grievance result, never pursued the grievance to the next step.

Some of the charge is untimely filed. Our Act requires that an unfair practice charge be filed within six months of the occurrence of the alleged unfair practice unless the charging party

was prevented from filing a charge. N.J.S.A. 34:13A-5.4(c). See also Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978).

Allegations dating to 1986 are beyond the six-month period and must therefore be dismissed.

Further, the Commission's complaint issuance standard has not been met. N.J.S.A. 34:13A-5.4(a)(5) provides in pertinent part, that an unfair practice charge arises only where the employer fails to negotiate with the majority representative. Such a charge can be filed only by the party to whom these rights and obligations flow, i.e., the majority representative. Accordingly, as an individual employee, the Charging Party in this matter lacks standing to maintain a claim that the Town has violated subsection 5.4(a)(5) of the Act. New Jersey Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd. App. Div. Dkt. No. A-1263-80T2; Rutgers Univ., P.E.R.C. No. 88-130, 14 NJPER 414 (¶19166 1988); City of Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); City of Atlantic City, D.U.P. No. 88-6, 13 NJPER 805 (¶18308 1987) and Camden Cty. Hwy. Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). Since the Charging Party is an individual employee, as a matter of law, he does not have standing to allege that the Town violated subsection 5.4(a)(5) of the Act. Accordingly, this portion of Liddle's unfair practice charge is dismissed. New Jersey Turnpike Auth.

No facts have been alleged which suggest that the Town violated subsection 5.4(a)(6) of the Act (failure to reduce

negotiated agreement to writing and to sign same). Thus, it appears that no complaint should issue concerning the subsection (a)(6) portion of the charging party's unfair practice charge. See Long Branch Bd. of Ed., P.E.R.C. No. 86-97, 12 NJPER 204 (¶17080 1986).

On April 2, 1990, Liddle filed an amended charge asserting that the Town violated 5.4(a)(1) and (2)^{2/} of the Act "by coercing employees who are working out of Town vehicles from hand delivering grievances, documents and such information necessary to administrative union activity." He also asserted that he cannot "deliver union documents by hand if I use the town truck I'm working with to do so."

The parties' collective negotiations agreement has a grievance procedure specifying among other procedures, how an employee or the majority representative can process a grievance. The "delivery" of the grievance is therefore subject to the procedure and is enforceable through the terms of the agreement. Furthermore, Liddle has not specified whether the attempted deliveries from "town vehicles" occurred during work time or free time. The Town may legitimately seek to have grievances filed during non-duty time. Finally, Liddle has not asserted that delivery cannot be made on his own time or through the regular


^{2/} 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."

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mail. Liddle has alleged insufficient facts upon which to base the issuance of a complaint concerning violations of subsections (a)(1) and (5). Accordingly, I decline to issue a complaint on the charge and dismiss the charge in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: May 18, 1990
Trenton, New Jersey