

D.U.P. NO. 82-4

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

In the Matter of

NEW JERSEY JOB CORPS CENTER,

Respondent,

-and-

DOCKET NO. CI-81-70

GARRY JOHNSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed against the Charging Party's public employer. The Charging Party has not alleged within his charge that he was discriminated against in regard to his tenure of employment for the purpose of encouraging or discouraging him in the exercise of the rights guaranteed to him by the Act.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on March 11, 1981, by Garry Johnson (the "Charging Party") against the New Jersey Job Corps Center (the "Respondent") alleging that the Respondent 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) and (5). 1/

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

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1/ These subsections prohibit 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. (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."

to issue a complaint stating the unfair practice charge. 2/ The Commission had 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's rules provide that the undersigned may decline to issue a complaint. 4/

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

The Charging Party seeks review of a disciplinary action by the Center which has led to his suspension and eventual discharge. He claims that this action is, pursuant to N.J.S.A. 34:13A-5.4 (a)(3), discrimination in regard to his tenure of employment. However, under subsection (a)(3) a violation arises only where such conduct is for the purpose of encouraging or discouraging employees in the exercise of rights guaranteed to them by the Act. The

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

Charging Party does not claim that he was engaged in activities on behalf of a union and was discriminated against for this reason. Accordingly, neither §a(3), or §a(1) derivatively, is implicated in this charge.

Accordingly, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: July 13, 1981  
Trenton, New Jersey