

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

In the Matter of

P.B.A. LOCAL 113,

Respondent,

-and-

Docket No. CI-77-13

BASIL CASTELLUCCI,

Charging Party.

SYNOPSIS

The Director of Unfair Practice Proceedings declines to issue a Complaint with respect to an unfair practice charge alleging that an employee organization is in violation of N.J.S.A. 34:13A-5.4(b)(5). This statutory provision provides that it is an unfair practice on the part of an employee organization and its representatives to violate any of the Rules and Regulations of the Commission. The Charging Party did not specifically refer to the Commission Rule claimed to be violated and the Director is not able to determine the Rule which may be involved. Thus, the Director, in light of the reasoning of a previous determination of the Commission's Executive Director in a matter involving a substantially similar case, declines to issue a Complaint.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission on February 18, 1977, by Basil Castellucci, stating: "I am filing a complaint against Police Benevolent Association, Local No. 113 regarding their failure to accept my application for membership into the PBA, Local No. 113...." On February 18, 1977, Mr. Castellucci amended his charge to specify that Respondent P.B.A. Local No. 113 was in violation of N.J.S.A. 34:13A-5.4(b)(5). Subsection (b)(5) provides that employee organizations, their representatives or agents are prohibited from "Violating any of the rules and regulations established by the commission."

The Unfair Practice Charge describes events surrounding Mr. Castellucci's claimed request for P.B.A. membership. However, the Charging Party has not specified the Commission rule or rules alleged to be violated by the Respondent. In view of such failure the undersigned cannot issue a Complaint herein.

In a previous unfair practice matter placed before the Commission, the Commission's Executive Director, then the Commission's designee for the purpose of issuing complaints, dismissed that part of an unfair practice

charge alleging an (a)(7) ^{1/} charge due to the failure of the charging party to specify the Commission rules claimed to be violated. The Executive Director stated:

"Nowhere in the initial charge filed on August 21, 1975 or the two supplemental charges which amend the original charge does the Charging Party indicate any rule and regulation which allegedly has been violated. It is the opinion of the undersigned that a party alleging a violation of either N.J.S.A. 34:13A-5.4(a)(7) or (b)(5) (analogous section applicable to employee organizations) must specifically state the rule and regulation which it claims has been violated in addition to the alleged facts which constitute the violation of that rule.

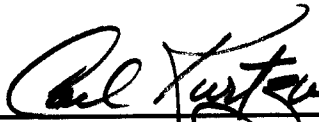
N.J.A.C. 19:14-1.3 establishes the requirements for the contents and form of an unfair practice charge. Subsection (c) of that rule requires '(a) clear and concise statement of facts constituting the alleged unfair practice.' In alleging a violation of one of the Commission's rules and regulations, this rule must be read to require that the Charging Party state specifically which rule and regulation is alleged to be violated. Minimum requirements of fairness demand that the charged party be put on notice as to the rule which it is alleged to have violated. Additionally, the expeditious and efficient processing of the charge and a determination as to whether a Complaint should issue requires that the staff member assigned and the Commission's named designee be able to analyze the factual allegations in light of the rule and regulation alleged to be violated. The burden of attempting to determine which of the Commission's rules and regulations might be violated by an alleged set of facts should not fall on the Respondent or the Commission but more properly belongs with the Charging Party. In the within case, no rule has been set forth nor has the undersigned been able to determine from his reading of the allegations in the charge, as amended, which rule might be involved. If these alleged facts might constitute an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(7), the undersigned is unable to determine which it might be." ^{2/}

^{1/} N.J.S.A. 34:13A-5.4(a)(7) is the identical provision as contained in N.J.S.A. 34:13A-5.4(b)(5), and refers to Public Employer respondents.

^{2/} See In re Madison Twp. Bd. of Ed., E.D. No. 76-8 (1975). The undersigned cannot identify which rule may be involved in the instant matter.

Therefore, the undersigned, pursuant to N.J.A.C. 19:14-2.3, hereby declines to issue a Complaint with regard to the instant Unfair Practice Charge.

BY ORDER OF THE DIRECTOR OF
UNFAIR PRACTICE PROCEEDINGS



Carl Kurtzman, Director
Unfair Practice Proceedings

DATED: May 18, 1977
Trenton, New Jersey