

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

In the Matter of

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT, AFT, AFL-CIO,

Respondent,

-and-

DOCKET NO. CO-80-324

NEW JERSEY STATE COLLEGE
FACULTY ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by a minority representative, alleging that the majority representative of employees has improperly refused to execute a collective negotiations agreement. The Director states that the Act's prohibitions under N.J.S.A. 34:13A-5.4(b)(3) and (4) are designed to protect rights which flow to a public employer and may not be the basis for a charge by a minority representative. The Director further observes that the majority representative's improper refusal to execute an agreement, if true, would affect all unit members equally and would thus not have constituted a violation of its responsibility to provide fair representation. The Director notes that a violation of a representative's duty to represent unit members fairly involves indiscriminate representation of individual unit members or classes of unit members.

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Appearances:

For the Respondent
Sauer, Boyle, Dwyer, Canellis & Cambria, P.C.
(William A. Cambria of counsel)

For the Charging Party
Sterns, Herbert & Weinroth, P.C.
(John M. Donnelly of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 29, 1980 by the New Jersey State College Faculty Association (the "Association") against the Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO (the "Council") alleging that the Council 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 (b) (1), (3) and (4). ^{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 to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated authority to the undersigned with respect to the pre-complaint processing of unfair practice charges and has delegated authority to the undersigned to issue complaints. ^{3/} The Commission rules provide that the undersigned may decline to issue a complaint. ^{4/}

^{1/} These subsections prohibit 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

^{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 ... "

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

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

On July 31, 1980, the undersigned advised the parties that he was not inclined to issue a complaint under the §(b)(3) and §(b)(4) allegations for reasons stated infra. The undersigned also stated an intention not to take further action with regard to the issuance of a complaint under the §(b)(1) allegations until certain other proceedings currently in litigation before the Commission were resolved. ^{5/}

Subsequent to the undersigned's determination to hold the processing of the Charge in abeyance, the Association and the Council requested that the Commission review the undersigned's processing determination. The Association requests that a complaint issue; the Council requested that the Charge be dismissed. On September 30, 1980, the Commission referred these requests to the undersigned for determination. In re New Jersey State College Faculty Assn., P.E.R.C. No. 81-54, 6 NJPER ____ (¶ ____ 1980).

In consideration of the parties' requests, the undersigned has determined to issue a formal determination herein. For the reasons stated below, the undersigned declines to issue a complaint.

N.J.S.A. 34:13A-5.4(b)(3) prohibits a majority representative from refusing to negotiate in good faith with

^{5/} Consolidated Complaints and Notices of Hearing have been issued involving charges filed by the Council and the State of New Jersey against each other. The charge by the State alleges that the Council refused to execute a collective negotiations agreement in violation of §5.4 (b) (b)(4). The Council charges the State with unilateral changes in terms and conditions of employment upon which there had been no agreement during the negotiations process.

a public employer, and §5.4(b)(4) prohibits the majority representative from refusing to reduce a negotiated agreement to writing and to sign such agreement. These are obligations which a majority representative owes to the public employer. It is not conducive to the public policy of labor stability to permit a minority representative to insert itself into the negotiations process. Accordingly, the undersigned determines that the Association, which is concededly a minority organization, has no standing to allege a violation of §(b)(3) or §(b)(4), that its claims are not appropriate for litigation in an unfair practice forum, and that a complaint shall not issue thereunder.

Similarly, N.J.S.A. 34:13A-5.4(b)(1) prohibits employee organizations from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act. There are no factual allegations herein indicating that the Association, as an employee organization, has been interfered with by the Council's alleged refusal to execute an agreement. Accordingly, the Association is not an injured party and a complaint predicated on this basis may not issue.

The undersigned, however, notes the Association's argument that as a minority organization, it claims negotiations unit members among its membership. The Association has alleged that "the terms and conditions of the members of the State College faculty bargaining unit are uncertain since no

currently effective negotiated and executed agreement exists." Assuming for the moment that the Association has the standing to assert this charge on behalf of its membership, it certainly does not have standing to allege the charge on behalf of the entire unit membership which is represented by the Council. Further, if an unfair practice claim on the basis of these facts is to be made out under §(b)(1), since the Association has not cited any alleged interference with protected activities it must be alleged that the Council has unfairly represented employees through "arbitrary, discriminatory or bad faith" activities. In re New Jersey Turnpike Authority, P.E.R.C. No. 80-38, 5 NJPER 412 (¶ 10215 1979). The established standard for fair representation protects individual employees and classes of employees from indiscriminate treatment by the majority representative. Where a majority representative's activities affects all unit employees equally, the "quality" of representation, not its "fairness", is placed in issue and this conduct may not constitute an unfair practice. Thus, assuming the Association has standing to bring these charges, and assuming their truth, the allegations would not establish a claim of unfair representation by the Council constituting a violation of the Act.

Accordingly, for the above reasons, the undersigned

declines to issue a complaint with respect to the instant
Unfair Practice Charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Carl Kurtzman, Director

DATED: October 15, 1980
Trenton, New Jersey