

D.U.P. NO. 85-11

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

In the Matter of

MT. OLIVE TOWNSHIP,

Respondent,

-and-

DOCKET NO. CO-84-102

MT. OLIVE TOWNSHIP POLICE
EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to a majority representative's charge on behalf of two employees. With respect to the first employee, it was alleged that the employee was discharged for filing a workers compensation claim. The Administrator concludes that such activity is not activity protected under the Act. With respect to the second employee, it was alleged that the employee was not compensated upon his promotion in accordance with the terms of the negotiated agreement. The Administrator, noting that this issue was successfully grieved by the majority representative, finds that the claim is moot.

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Appearances:

For the Respondent
Vogel & Chait, attorneys
(Aron M. Schwartz of counsel)

For the Charging Party
Schwartz, Pisano & Simon, attorneys
(Nathanya Simon of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on October 12, 1983, by the Mt. Olive Township Police Employees Association ("Association") against Mt. Olive Township ("Township") alleging that the Township 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. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3), (4) 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 to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. The 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

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits 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. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (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."

^{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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

meaning of the Act and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below, a complaint shall not issue.

The Association's charge has reference to two employees represented by the Association: Richard Rich and Rich Wahl.

The matter involving Richard Rich concerns his discharge for filing a workers compensation claim. It does not appear to the undersigned that the Act contemplates the filing of a workers compensation claim as a protected activity. Since there appears to be no allegation that Mr. Rich has engaged in protected activities described under the Act, particularly § 5.3, at a time relative to either his discharge or the denial of accumulated vacation pay, the undersigned declines to issue a complaint under §§ 5.4(a) (1), (3) and (4).

As to Rich Wahl, it is alleged that the employer violated §§ 5.4(a) (5) of the Act when, upon promoting Wahl to Mechanic I, it did not establish his salary in accordance with the parties' contractual agreement. Accordingly, Charging Party states that the Respondent, "refused to negotiate payment [sic] in violation of the Negotiated Agreement and in the absence of negotiations to the contrary." In the processing of the unfair practice charge, the Commission was advised that the Association has successfully

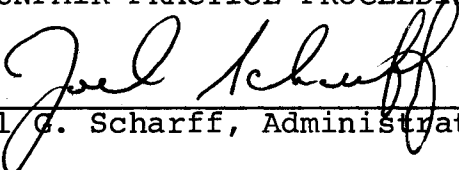
^{3/} N.J.A.C. 19:14-2.1

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

grieved Wahl's salary placement with the employer. Accordingly, this aspect of the unfair practice charge is moot.

Accordingly, for the above stated reasons, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS



Joel G. Scharff, Administrator

DATED: October 10, 1984
Trenton, New Jersey