

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY,  
HENRY DAVIS, ROSE KAPLAN, BRUCE  
WHITEHEAD, SUSAN RUSHING,

Respondents,

-and-

DOCKET NO CI-84-82

AIDA K. AWAD,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge alleging that the Charging Party has been disciplined and has had her working conditions altered by the employer in retaliation for her filing an assault charge against her foreman who was allegedly sexually harassing her. The Administrator determines that the Charging Party's allegations did not arise in the context of her exercise of any union organizational activity or grievance activity which would find protection under the Act.

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Appearances:

For the Respondent  
Christine B. Mowry, Assistant Vice President

For the Charging Party  
Aida K. Awad, pro se

REFUSAL TO ISSUE COMPLAINT

On May 24, 1984, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Aida K. Awad ("Charging Party"), alleging that Rutgers, The State University ("Respondent") and certain of its agents had engaged in unfair practices within the meaning of 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), (2), (3), and (4). <sup>1/</sup>

<sup>1/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

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. <sup>2/</sup> 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. 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 and that formal proceeding and respect thereto should be initiated in order to afford the parties an opportunity to litigate relevant legal and factual issues. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standard has not been met.

The Charging Party alleges that beginning in Fall 1983, upon her return to work at Rutgers from a medical leave of absence, she was the subject of constant sexual harassment by her foreman. In late October, she filed a simple assault complaint through the Rutgers

<sup>2/</sup> N.J.S.A. 34:13A-5.4(c) provides:

"The Commission shall have exclusive powers hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever a charge 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 complaint stating the specific unfair practice including the notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

<sup>3/</sup> N.J.A.C. 19:14-2.1.

<sup>4/</sup> N.J.A.C. 19:14-2.3.

Police. Subsequently, she asserts, several agents of the Respondent unsuccessfully sought to convince her to withdraw her complaint. Thereafter, in November, 1983, her cleaning assignments were increased and she received a reprimand for unsatisfactory job performance. In January and in March, 1984, Charging Party filed grievances with Rutgers alleging that she was the subject of reprisal for having initiated the discrimination and harassment claims. Additionally, Charging Party, in April and May, 1984 has since been the subject of a 3 day suspension, has been denied a sick day, and was advised that she would not be paid for a pre-approved vacation day.

Although Charging Party has alleged discrimination under the Employer-Employee Relations Act, it does not appear to the undersigned that the above factual allegations arise in the context of Charging Party's exercise of any union organizational activity or grievance filing activity which would find protection under the Act. Rather, Charging Party's allegations are based upon a claim that Respondent's actions were in retaliation for her resistance to acts of "sexual harassment" and "physical assault."

Accordingly, for the foregoing reasons, the undersigned determines that the Commission's jurisdiction is not implicated in the present matter. The undersigned declines to issue a complaint with respect to the instant charge.

BY ORDER OF THE ADMINISTRATOR  
OF UNFAIR PRACTICES

  
Joel G. Scharff, Administrator

DATED: August 20, 1984  
Trenton, New Jersey