

D.U.P. NO. 84-21

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

In the Matter of

CITY OF ELIZABETH
(ELIZABETH POLICE DEPARTMENT),

Respondent,

-and-

DOCKET NO. CI-84-32

PATRICK J. MALONEY,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to the allegation of an individual Charging Party that the employer did not properly compute certain severance benefits. Charging Party alleged that this action interfered with his rights under the Act and constituted discriminatory treatment. The Administrator notes that severance pay entitlements do not arise as statutory rights under the Act and that Charging Party did not allege that the employer acted because of any activity exercised by the Charging Party on behalf of the union.

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REFUSAL TO ISSUE COMPLAINT

On October 21, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Patrick J. Maloney ("Charging Party") alleging that the City of Elizabeth ("City") had engaged 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, §§ 5.4(a)(1) and (3). ^{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

^{1/} These subsections prohibit 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 term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

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. 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 it appears to the undersigned that the allegations described herein do not constitute unfair practices which are within the jurisdiction of the Commission to review.

Charging Party has alleged that the City declined to compute his entitlement to certain vacation pay and holiday pay benefits upon severance in the same manner that benefits have been computed for other police officers who have severed their employment with the City.

^{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

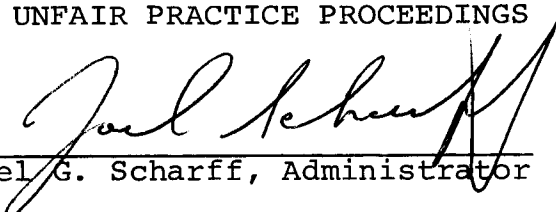
Charging Party has not proffered any specific facts which would establish a nexus between a past or current union activity and the City's actions. Moreover, there is no direct statutory entitlement under N.J.S.A. 34:13A-5.3 to the receipt of severance pay as a "right" arising out of the Act.

Accordingly, with respect to the allegations of a violation of §§ 5.4 (a)(1) and (3), the undersigned notes that Charging Party has not alleged that the City discriminated against him due to his exercise of any activity that is protected by the Act or that it has interfered with protected rights.

On December 20, 1983, Charging Party was advised that in the absence of allegations which would meet the Commission's complaint issuance standard pursuant to N.J.A.C. 19:14-1.5, the undersigned would issue a decision declining to issue a complaint. Charging Party has not sought to amend the charge.

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

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: March 8, 1984
Trenton, New Jersey