

D.U.P. NO. 92-14

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

In the Matter of

CITY OF BRIGANTINE,

Respondent,

-and-

Docket No. CI-91-40

JAMES CUSACK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by James Cusack alleging that the City of Brigantine violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it failed to promote him and failed to meet with him to explain his promotional exam rank, all in violation of the negotiated agreement between the City and Cusack's majority representative. The Director finds that only the majority representative has standing to raise contract violations as the basis for unfair practice charges, absent special circumstances not present here. Accordingly, the Director dismisses the charge.

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Appearances:

For the Respondent,
Wilson, Subin & Maguire, attorneys
(Martin S. Wilson, Jr., of counsel)

For the Charging Party,
Valore Law Firm
(Hubert U. Barbour, Jr., of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 28, 1991, James Cusack filed an unfair practice charge alleging that the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") was violated when the City of Brigantine failed to promote Cusack to the position of fire lieutenant. Cusack sought to have a meeting to review his placement on the promotional list. Cusack alleges he never had a meeting and, accordingly, alleges the City failed to process his grievance.

On the basis of our investigation I find the following:

1. Cusack placed ninth on a promotional exam. Those candidates who finished one, two and three were identified as the

successful candidates.

The charging party concedes that promotional criteria is a non-negotiable managerial prerogative and therefore non-negotiable. State of N.J. and State Troopers, NCO Ass'n of N.J., Inc., P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979), aff'd sub nom., Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981) [App. Div. Dkt. No. A-1686-79; PERC was invited to appear as amicus].

2. The contract between the City and Local 2657, IAFF provides that an unsuccessful candidate may have a meeting to review a promotional exam. There is a factual dispute between Cusack and the City as to whether there was a meeting between them which satisfied this contract provision. However, absent special circumstances not present here, an individual has no standing to contest the application or interpretation of a contract provision; only the majority representative which negotiated and administers the contract has standing to allege a contract procedure was not followed. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt. No. A-1213-80T2.

3. Although Cusack alleges that the grievance procedure was violated, there is no allegation (or evidence) that an actual grievance was ever filed. See N.J.A.C. 19:14-1.3(a)(3).

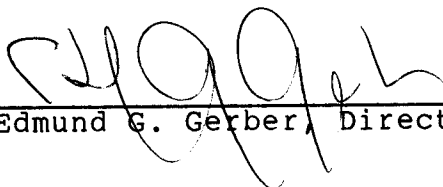
On February 21, 1992, I wrote to Cusack indicating that I intended to dismiss his charge, but gave him an opportunity to amend his charge. Cusack, through his attorney, responded on March 16,

stating that this action "remain(s) an action by the majority representative." However, the charge, as written, is in the name of Cusack. If this assertion is an attempt to bring a charge on behalf of the majority representative, such an action is untimely. The results of the promotional examination were posted in July 1990. The Act requires that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge. See North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

None of the allegations of the charge, even if true, constitute an unfair practice within the meaning of the Act.

Accordingly, I find the Commission's complaint issuance standards have not been met and dismiss this charge in its entirety.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 31, 1992
Trenton, New Jersey