

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

In the Matter of

BERGEN COUNTY COMMUNITY  
ACTION PROGRAM, INC.,

Respondent,

-and-

DOCKET NO. CI-78-9

DONALD J. STANKOWSKI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint with respect to an Unfair Practice Charge filed by an employee alleging that the Respondent failed to satisfactorily resolve complaints which the Charging Party had filed with Respondent and that Charging Party was subsequently transferred from one work crew to another notwithstanding his unwillingness to accept a transfer until his complaints were resolved. As there were no facts alleged by Charging Party which establish a nexus between his filing of complaints and his transfer, the Director determines that the allegations of the Charge could not constitute a violation of N.J.S.A. 34:13A-5.4(a)(1) and (a)(3). Additionally, the Director finds that because N.J.S.A. 34:13A-5.4(a)(5) declares as an unfair practice a refusal to negotiate in good faith with or process the grievances of a majority representative of employees, the instant Charge could not constitute an unfair practice within this subsection. Finally, the Director notes that no Complaint may issue based upon the N.J.S.A. 34:13A-5.4(a)(7) allegation because Charging Party has failed to allege the specific Commission rule claimed to be violated.

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Appearances:

For the Respondent  
Walter M. Slomienski, Jr., Esq.

For the Charging Party  
Donald J. Stankowski

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 30, 1977, by Donald J. Stankowski (the "Charging Party") against the Bergen County Community Action Program, Inc. (the "Respondent") alleging that the Respondent was in violation of several of the Unfair Practice provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended,

(the "Act"), specifically, N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) and (7). 1/

The Charging Party states that he submitted 22 complaints to the Bergen County Community Action Program regarding job conditions and supervision on the job sites. The Charging Party alleges that he has been referred from one supervisor to another concerning these complaints and that they have never been satisfactorily resolved. Charging Party further contends that after he filed the complaints with the Respondent, he was subsequently relieved of his duties as a carpenter and was told to paint the offices of the Respondent. The Charging Party claims he was told that if he refused to do this he would be removed from the payroll. Charging Party also states that he was subsequently transferred from the original work crew to which he had been assigned to another crew at a different location.

After the decision to transfer the Charging Party was made, the Charging Party requested an "Appeals Hearing" from the Respondent concerning this action and further requested that his crew chief and two co-workers be present at the hearing to affirm or

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1/ These subsections prohibit 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. (7) Violating any of the rules and regulations established by the Commission."

dispute his complaints. Charging Party states that none of these individuals attended that hearing. Charging Party disputed his work site transfer and stated that he would not accept it until his complaints were resolved. Charging Party also contended that he should not have been removed from the job for which he had originally been hired.

From the papers attached to and made part of the Charge, it would further appear that the Charging Party had been evaluated by several supervisors who had found generally that the Charging Party "...has done a fairly good job..." However, because of the personality conflicts between the Charging Party and his crew chief, it was recommended that "...he be transferred to another crew doing similar work." The Charging Party disputed the reasons for and appealed the determination of his supervisors to transfer him, but the decision to transfer Charging Party to another crew was upheld.

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

<sup>2/</sup> N.J.S.A. 34:13A-5.4(c) provides in pertinent part: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practices...Whenever it is charged that anyone had engaged in or is engaging in any such unfair practice, the commission, or its 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..."

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. <sup>3/</sup> The Commission's rules also provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

For the reasons hereinafter enumerated, the allegations of the Charging Party claiming violations of the Act, even if true, do not constitute unfair practices within the meaning of the Act. <sup>5/</sup>

Initially, the undersigned observes that there are no allegations herein (a) that there exists an employee representative which has been either recognized or certified as the majority representative of a unit of employees which includes the Charging Party or (b) that there is an employee organization which is seeking to represent a unit of employees of this employer or (c) that the Charging Party belongs to any employee organization or has participated in any organization activities.

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

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

<sup>5/</sup> The undersigned notes that there is a question as to whether the Bergen County Community Action Program, Inc. is a public employer within the meaning of the Act. However, for the reasons stated above, the allegations do not, even if true, constitute unfair practices and the undersigned need not determine whether or not the Bergen County Community Action Program, Inc. is a public employer within the meaning of the Act.

The Charging Party essentially alleges that he filed complaints with the Respondent, that the Respondent did not satisfactorily resolve these complaints, and that, subsequently, he was transferred from one work crew to another at a different location notwithstanding his stated unwillingness to accept a transfer until his complaints were resolved. The undersigned has carefully reviewed the factual allegations contained in the Charge. An analysis of the Charge reveals that it does not factually allege that the Respondent's action in transferring Charging Party was motivated by a desire to interfere, restrain, coerce or discriminate against the Charging Party for having pursued his complaints. Nor is it alleged that the transfer was ordered because of the filing of the complaints. Accordingly, the Charging Party's allegations do not establish a nexus between his filing of complaints and his transfer. Absent such a nexus, a transfer, by itself, cannot be said to either (1) interfere, restrain, or coerce the Charging Party in the exercise of rights guaranteed to him by the Act; (2) discriminate against Charging Party in any term or condition of employment to encourage or discourage him in the exercise of the rights guaranteed to him by the Act, or (3) discriminate against Charging Party because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under the Act. Therefore, the Charging Party's allegations under subsections (a)(1), (a)(3) and (a)(4) cannot

stand. <sup>6/</sup>

Section (a)(5) of the Act, supra, n.1, prohibits an employer from "refusing to negotiate in good faith with... or refusing to process grievances presented by the majority representative." This subsection is designed to require an employer to negotiate with the majority representative designated by the employees in an appropriate collective negotiations unit concerning the employees' terms and conditions of employment and to process grievances filed by the majority representative. It is not designed to require an employer to negotiate with individuals. <sup>7/</sup> Thus, to find herein an unfair practice within the meaning of section (a)(5), there must be an assertion of facts which, if true, would indicate that the Respondent has refused to negotiate with or process grievances of the majority representative of employees. As there is no allegation of the existence herein of a majority representative of an appropriate unit of employees, the charge of refusal to negotiate with or process grievances of a majority representative must fall.

No complaint may issue based upon the (a)(7) allegations inasmuch as the Charging Party has not alleged the

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<sup>6/</sup> The undersigned observes that even if such a nexus had been established by the factual allegations, a complaint under any or all of these subsections would not necessarily follow.

<sup>7/</sup> See, Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970). See also, In re Borough of Palisades Park, D.U.P. No. 78-1, 3 NJPER 238 (1977); In re Plumsted Township Board of Education, D.U.P. No. 78-4, 3 NJPER 355 (1977).

specific rule of the Commission claimed to be violated. <sup>8/</sup>

Accordingly, for the reasons stated above, the undersigned declines to issue a Complaint in the instant matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: March 6, 1978  
Trenton, New Jersey

<sup>8/</sup> See, In re Madison Township Board of Education, E.D. No. 76-8 (1975), and In re Borough of Palisades Park, supra, n.7.