

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

In the Matter of

PLUMSTED TOWNSHIP BOARD OF  
EDUCATION,

Respondent,

-and-

Docket No. CI-77-25

BASIL M. CASTNER,

Charging Party.

Appearances:

For the Plumsted Township Board of Education,  
Kessler, Tutek & Gottlieb, Esqs.  
(Henry G. Tutek, of Counsel)

For Basil M. Castner, pro se

REFUSAL TO ISSUE COMPLAINT

The Director of Unfair Practices declines to issue a Complaint with respect to an unfair practice charge filed by an employee alleging that the employer has changed his employment duties without prior negotiations with him. The employee stated that he was not a member of a collective negotiations unit. The Director determines that since the New Jersey Employer-Employee Relations Act at N.J.S.A. 34:13A-5.4(a)(5) declares as an unfair practice a refusal to negotiate in good faith with a majority representative of employees, the instant Charge alleging refusal to negotiate with an individual could not constitute an unfair practice under this subsection. Additionally, the Director finds that the charging party's assertion of a section (a)(3) violation was not supported in the charge insofar as the charging party did not state facts in support of an allegation that the Board discriminated against him in regard to hire, tenure, or as to a term or condition of employment with an intent to encourage or discourage him in the exercise of protected rights under the Act.

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

In the Matter of

PLUMSTED TOWNSHIP BOARD OF  
EDUCATION,

Respondent,

-and-

Docket No. CI-77-25

BASIL M. CASTNER,

Charging Party.

Appearances:

For the Plumsted Township Board of Education,  
Kessler, Tutek & Gottlieb, Esqs.  
(Henry G. Tutek, of Counsel)

For Basil M. Castner, pro se

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 28, 1977, by Basil M. Castner (the "Charging Party") against the Plumsted Township Board of Education (the "Board"). The Charge was amended on July 29, 1977. The allegations in the original Charge and the amended Charge are that the Board is in violation of two of the unfair practice provisions of the New Jersey Employer-Employee Relations Act (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(3) & (5) (hereinafter referred to as section (a)(3) and (a)(5) of the Act) <sup>1/</sup> by refusing to negotiate with the Charging Party and by changing various terms and conditions of his employment.

1/ These subsections prohibit public employers from:

"(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.

(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."

More specifically, Mr. Castner's original filing sets forth in his Statement of Charge allegations that the Board has refused to negotiate with him in good faith several claimed changes in his new employment contract as a principal. These changes, he alleges, relate to the creation of new duties involving supervision of student transportation and to changes in the procedure for evaluating non-tenured teachers. Mr. Castner states, as well,

"I wish for PERC to determine if the above is an unfair labor practice and, also, being I am the only 'middle management' employee in the school district and not a member of a lawful negotiating unit, am I legally within my rights, as an individual, and as a public employee to seek a disposition of the above charge."

Due to the failure of the Charging Party on the original filing to specify a subsection of N.J.S.A. 34:13A-5.4(a) claimed to be in violation, the Charging Party has amended his Charge to allege a violation of subsection (a)(3). This amendment did not change the statement of facts contained in the original statement of the charge.

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 issue. 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

---

<sup>2/</sup> 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...."

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 stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

As to the alleged (a)(3) violation, the Charging Party does not state that the Board has discriminated against him in regard to hire, tenure, or as to a term or condition of employment with an intent to encourage or discourage him in the exercise of protected rights under the Act.<sup>5/</sup> The assertion of facts alleging such a claim is necessary to support an (a)(3) allegation. See In re Borough of Palisades Park, D.U.P. No. 78-1 (1977). Secondly, the alleged (a)(5) violation can only be supported by a claim that the employer is "refusing to negotiate in good faith with a majority representative of employees."<sup>6/</sup> This subsection is designed to require an employer to negotiate with the collectively chosen exclusive representative of the employees in a negotiations unit concerning terms and conditions of employment, and not with individual members of the bargaining unit.<sup>7/</sup> By his own admission in the original Unfair Practice Charge and unchanged in the amended Charge, the Charging Party acknowledges that he is not a "member of any lawful negotiating unit." Therefore, a charge alleging refusal to negotiate with an individual cannot constitute an unfair practice under (a)(5).

<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> N.J.S.A. 34:13A-5.3 provides: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, free and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity...."

<sup>6/</sup> See footnote 1.

<sup>7/</sup> Cf. Lullo v. International Assn. of Fire Fighters, 55 N.J. 409 (1970).

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

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

A handwritten signature in cursive script, appearing to read "Carl Kurtzman", written over a horizontal line.

Carl Kurtzman, Director  
of Unfair Practices

DATED: October 21, 1977  
Trenton, New Jersey