

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

In the Matter of

RALPH P. SHAW/DEPARTMENT OF
CIVIL SERVICE,

Respondent,

-and-

DOCKET NO. CI-77-16

PAUL JOSEPH KONRAD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the Charging Party, an individual, was interfered with in the exercise of rights guaranteed by the Employer-Employee Relations Act by the Department of Civil Service. The claimed interference involves the application of procedures and the administrative determination of Civil Service regarding the individual's Civil Service appeal. The Director of Unfair Practices determines that when an individual elects to file an appeal before Civil Service, the procedures and administrative determination of Civil Service are not reviewable by the Public Employment Relations Commission.

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Appearances:

For the Respondent
William F. Hyland, Attorney General
(Guy Michael, Of Counsel)

For the Charging Party
Reverend James Brown

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 6, 1977, and amended on April 22, 1977 and May 13, 1977 by Paul Joseph Konrad (the "Charging Party") against Ralph P. Shaw, Chief Examiner and Secretary, Department of Civil Service (the "Respondent") alleging that the Respondent is in violation of several 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)(1), (3) and (7). ^{1/}

^{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...(7) Violating any of the rules and regulations established by the commission."

The Charging Party generally alleges that a "final administrative determination" received from the Respondent concerning a grievance was in violation of the subsections set forth above in that the determination issued by the Respondent was made without an "independent review" of "testimony of actual facts", and therefore "restrained, intimidated and coerced" the Charging Party in his attempt to have a grievance adjusted. The Charging Party's amended charge states that the alleged actions of the Respondent arise from a "Step V Civil Service Review".

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.^{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 also provide that the undersigned may decline to issue a complaint.^{4/}

For the reasons hereinafter enumerated, the undersigned finds that the alleged violations of the Act as asserted by the Charging Party, even if

^{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.

true, do not constitute unfair practices within the meaning of the Act. A complaint based upon §(a)(7) allegations may not be issued inasmuch as the Charging Party has not alleged the specific rule of the Commission claimed to have been violated. ^{5/} Secondly, the undersigned concludes that the §(a)(3) allegations of the Charge cannot constitute the basis of a complaint inasmuch as the Charging Party has not asserted in the Charge any facts supporting his general claim that the Respondent has discriminated in his terms and conditions of employment because of an intent to encourage or discourage his exercise of protected activities granted by the Act. ^{6/}

The Charging Party refers to a proceeding initiated before the Civil Service Commission, and the Charging Party apparently seeks the Public Employment Relations Commission review of the procedures and the administrative determination of the Civil Service. The application of these procedures and the administrative determination are claimed to interfere with the Charging Party's protected rights under the Act, and are said to constitute unfair practices which P.E.R.C. is empowered to remedy. The undersigned does not agree. N.J.S.A. 34:13A-5.3 protects an individual's right to present appeals to Civil Service. The Commission has interpreted this provision as relating to procedural rights, and not relating to substantive rights. See In re Local 195, IFPTE, et al., P.E.R.C. No. 77-57, 3 NJPER 118, 122 (1977). Accordingly, the Act is read to preserve a "choice of forum." Once a grievant has availed himself or herself of an opportunity to present a grievance before the Civil Service Commission the appropriate procedures to be utilized before the Civil Service Commission are set forth

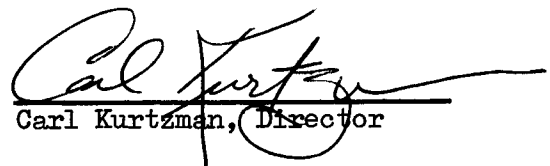
^{5/} See In re Madison Township Board of Education, E.D. No. 76-8 (1975).

^{6/} See In re Borough of Palisades Park, D.U.P. No. 78-1, 3 NJPER 238 (1977).

in its rules and regulations. Jurisdiction to review these procedures and determinations is vested in the judiciary. It therefore would seem that the appropriate forum for such review would be in the Superior Court of New Jersey, Appellate Division. See R.2:2-3(a)(2).

Accordingly, for the reasons stated above, the undersigned declines to issue a Complaint with respect to the allegations of the Charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: December 8, 1977
Trenton, New Jersey