

D.U.P. NO. 93-25

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

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CI-92-42

CHARLES E. KING,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed by Charles E. King against Middlesex County alleging that (1) it removed him from the bargaining unit without his consent, and (2) refused to process his grievances. King asserts that N.J.S.A. 34:13A-5.3 guarantees him, as an unrepresented public employee, the right to individually negotiate a grievance procedure with the County. The Director finds that King's allegation concerning his improper exclusion from the bargaining unit was untimely filed. The Director also finds that section 5.3 does not grant an individual public employee the right to negotiate his own terms and conditions of employment.

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Appearances:

For the Respondent
Rafano & Wood, attorneys
(Robert C. Rafano, of counsel)

For the Charging Party
Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, attorneys
(James F. Clarkin, III, of counsel)

REFUSAL TO ISSUE COMPLAINT

On December 18, 1991, Charles E. King filed an unfair practice charge with the Public Employment Relations Commission against the County of Middlesex. King alleges that the County violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey

^{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. (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."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when (1) it removed King in 1989 from the bargaining unit represented by AFSCME, Local 3440, and (2) refused to process grievances presented by King in July, 1991. On April 2, 1992, King filed an amendment to his charge to additionally allege that the County violated 5.4(a)(1) and (5) by not negotiating a grievance procedure for him as an individual employee.

King is an assistant manager of the County's Tamarack golf course. Effective May 23, 1988, the County, with the agreement of AFSCME, Local 3440, removed King and two other employees from the bargaining unit because they were managerial executives. King was informed of his exclusion from the unit on March 15, 1990, when the County denied his request for a wage increase based upon the salary guide negotiated by the County and AFSCME.

On or before July 18, 1991, King presented a written grievance to the County's personnel director, alleging that he was denied the use of a County vehicle and that he was inappropriately removed from the bargaining unit. On July 18, 1991, the personnel director responded in writing and advised King to discuss his complaints with his immediate supervisor, the park superintendent. Thereafter, King filed this unfair practice charge.

King first contends that he was improperly excluded from the bargaining unit represented by AFSCME, Local 3440. The Act requires that an unfair practice charge be filed within six months after the alleged unfair practice occurred. N.J.S.A.

34:13A-5.4(c). King has known about his removal from the unit since March 15, 1990. Accordingly, I find this allegation is untimely filed.

In addition, King contends that the County's response on July 18, 1992 was tantamount to dismissing his grievance. Therefore, he argues that the only way that he, as an unrepresented employee, may ensure that his grievance is processed beyond the initial invocation of the complaint is to individually negotiate a grievance procedure for unrepresented employees that culminates in binding arbitration pursuant to N.J.S.A. 34:13A-5.3^{2/} and Article I, paragraph 19 of the New Jersey Constitution.^{3/}

2/ N.J.S.A. 34:13A-5.3, in pertinent part, states:

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

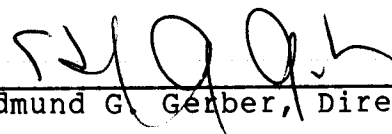
3/ "Persons in public employment shall have the right to organize, present to and make known to the State their grievances and proposals through a representative of their own choosing.

King, as an unrepresented employee, does not possess any rights under N.J.S.A. 34:13A-5.3 to negotiate a grievance procedure. The Act protects the right of employees to collectively negotiate. This is not an individual right. Moreover, the general language of Article I, paragraph 19 of the State Constitution is "oriented toward collectivity," and does not contemplate that each employee may negotiate his own terms and conditions of employment. Red Bank Reg. Ed. Assn'n v. Red Bank Reg. H.S. Bd. of Ed., 151 N.J. Super. 435 (App. Div. 1977), aff'd 78 N.J. 122 (1978); Lullo v. IAFF, 55 N.J. 409 (1970).

Until such time as King is represented by a majority representative, he has no right under the Act to a negotiated grievance procedure with the County.^{4/}

Accordingly, I find that the Commission's complaint issuance standard has not been met and I decline to issue a compliant on the allegations of this charge. N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 28, 1993
Trenton, New Jersey

^{4/} Presently, there is no collective negotiations unit for supervisory employees.