

D.U.P. NO. 90-2

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

In the Matter of

BOROUGH OF CARTERET,

Respondent,

-and-

Docket No. CO-90-22

INTERNATIONAL SOCIETY OF  
SKILLED TRADES,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging the Borough violated the New Jersey Employer-Employee Relations Act when it held an open Council meeting to discuss the purchasing agent's discipline.

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Appearances:

For the Respondent  
Peter Sica, Mayor

For the Charging Party  
Henry F. Schickling, President

REFUSAL TO ISSUE COMPLAINT

On July 17, 1989, the International Society of Skilled Trades (ISST) filed an unfair practice charge against the Borough of Carteret ("Borough") alleging that it violated subsections 5.4(a)(1) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").<sup>1/</sup> The charge alleged that the Borough harassed unit member Carol Hmieleski when it discussed problems in the purchasing agent's office that might lead to discipline in an open Council meeting.

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<sup>1/</sup> 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; (7) Violating any of the rules and regulations established by the Commission."

On July 10, 1989, Mayor Peter Sica and the Borough Council held a meeting to discuss problems in the purchasing agent's office. Carol Hmieleski is the purchasing agent. The meeting was advertised as a closed session because it concerned disciplinary matters. The meeting, which did concern Hmieleski's discipline, was open to the public.

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 charged.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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 provide that I may decline to issue a complaint.<sup>4/</sup>

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<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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

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

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

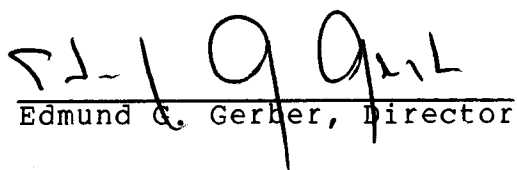
Based on the ISST's allegations, I do not find that the Commission's complaint issuance standards have been met.<sup>5/</sup>

The ISST alleges that the Borough violated subsection 5.4(a)(1) of the Act, or more specifically, that the public employer interfered with, restrained or coerced employees in the exercise of their rights guaranteed to them by the Act. The ISST fails to allege facts which demonstrate that the Borough's conduct interfered with the exercise of rights the Act guarantees to it or Hmieleski.

Subsection 5.4(a)(7) prohibits public employers from violating any of the rules or regulations established by the Commission. The ISST does not cite Commission rules which it alleges have been violated, nor does it allege facts in support of this allegation. Thus, it has failed to state a claim which, if true, would constitute a violation of subsection 5.4(a)(7).

Accordingly, I refuse to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: September 5, 1989  
Trenton, New Jersey

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<sup>5/</sup> The Charge alleges that by discussing Hmieleski's discipline in an open meeting, the Borough violated the New Jersey Administrative Code and "standard operating procedures on progressive discipline." I do not rule on either of these issues. I determine only that the charge, if true, would not constitute an unfair practice within the meaning of the Act. See N.J.A.C. 19:14-2.1.