

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

BOROUGH OF UNION BEACH (DEPARTMENT
OF PUBLIC WORKS) and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, LOCAL 641,

Respondents,

-and-

DOCKET NO. CI-84-74

SALVATORE DeFRANZA,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge. Charging Party alleged that the Borough arbitrarily discharged him and that Local 641 breached its duty of fair representation when it failed to file a timely appeal of Charging Party's discharge. Charging Party individually filed an untimely appeal with the Civil Service Commission, and subsequently filed a civil action in Superior Court against both respondents. Granting a Cross-Motion for Summary Judgment filed by Local 641, the Court found, on the merits, that Charging Party failed to present a prima facie case that Local 641 breached its duty of fair representation. The Administrator, noting that an individual must first establish that the majority representative has breached its duty of fair representation before he may proceed to assert a claim against an employer, finds that the Court's dismissal of Charging Party's fair representation claim forecloses the litigation of the charge before PERC.

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Appearances:

For the Respondent Public Employer
Hurley & Thaler, attorneys
(Robert B. Thaler of counsel)

For the Respondent Employee Organization
Schneider, Cohen & Solomon, attorneys
(J. Sheldon Cohen of counsel)

For the Charging Party
Healy, Falk & Maloney, attorneys
(David J. Hango of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 23, 1984, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Salvatore DeFranza ("Charging Party") against the Borough of Union Beach, Department of Public Works ("Borough") and Local 641, IBT ("Local 641"). The charge alleges that Respondents were engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically,

Charging Party alleges that the Borough violated §§ 5.4(a)(1), (4) and (5) ^{1/} by arbitrarily discharging him on August 20, 1983; he also alleges that Local 641 violated § 5.4(b)(1) when it failed to file a timely "appeal" ^{2/} of the discharge on behalf of the Charging Party. The Charging Party alleges that the Borough did not timely notify Local 641 of Charging Party's termination, but that Charging Party individually provided Local 641 with a copy of his notice of termination.

In his charge, the Charging Party also alleges that he individually appealed his termination on September 19, 1983 with the Civil Service Commission. This appeal was denied, as well as a request for reconsideration.

During the processing of the charge, the Commission was advised that subsequent to the above determinations, the Charging Party filed an action in Superior Court, Law Division, against the Borough, for its alleged arbitrary, unreasonable, and capricious activity in discharging Charging Party, as well as against Local

1/ N.J.S.A. 34:13A-5.4(a) prohibits 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. (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."

2/ Without so stating in his Charge, it appears that Charging Party's reference is to the filing of an appeal with the Civil Service Commission.

641, for its alleged breach of the duty of fair representation in not promptly acting upon the "appeal".

On June 1, 1984, the Defendants Motions for Summary Judgment were granted, "The Court finding that Plaintiff has failed to present a prima facie case that Local 641 has breached its duty of fair representation to Plaintiff on the basis of the uncontested facts and applicable precedent," and, as to the Borough, on the basis of the New Jersey Tort Claims Act.

N.J.S.A. 34:13A5.4(a) 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. ^{3/} 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, and that formal proceeding in respect thereto should be instituted in order to afford the parties an opportunity

^{3/} 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..."

to litigate relevant legal and factual issues. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below, it appears to the undersigned that the Commission's complaint issuance standards have not been met.

The Respondents assert that a complaint should not be issued due to the application of either collateral estoppel, or res judicata arising from the litigation of the Superior Court action.

The Commission adheres to the Supreme Court's promulgation of a single or entire controversy rule, which is applied under circumstances where two or more administrative agencies are called upon to review the same subject matter over which concurrent jurisdiction is possessed. City of Hackensack v. Winner, P.E.R.C. No. 77-49, 82 N.J. 1 (1980). The single controversy rule precludes litigation of the same issues before two administrative forums. Under the principles of Hackensack, the Commission should also not proceed where the unfair practice issue has already been aired before a Court asserting jurisdiction over the issues.

Under In re N.J. Turnpike Authority (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶ 11284 1980), aff'd App. Div. No. A-1263-80T3 (10/30/81) an individual Charging Party must first establish that the majority representative has breached its duty of fair


^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

representation before it can proceed to assert a claim against employer under §5.4 (a)(5) alleging that the employer unilaterally altered terms and conditions of employment by discharging the grievant in derogation of contractual rights. In this matter, the Court granted Local 641's Motion for Summary Judgment on the breach of the duty of fair representation claim after reviewing the merits. Salvatore DeFranza v. Mayor and Borough Council of the Borough of Union Beach and International Brotherhood of Teamsters Local 641, (slip opinion, Docket No. L-002926-84 (1/27/84)).

Upon review of the above, the undersigned is convinced that Hackensack considerations prevent further litigation of Charging Party's allegations against the Borough and Local 641. Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: October 9, 1984
Trenton, New Jersey