

D.U.P. NO. 87-18

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-87-58

ERNESTINE M. SOUTHERLAND,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint on an allegation that the Newark Board of Education breached a condition of the collective negotiations agreement. The Charging Party failed to state a cause of action under N.J.S.A. 34:13A-5.4.

Pursuant to Human Services, the Charging Party has the responsibility of proffering facts sufficient to establish a connection between the duty to negotiate in good faith and the alleged contractual violation. Failing to provide a sufficient basis for a cause of action warrants the Director's decision not to issue a complaint.

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Appearances:

For the Respondent,  
Lynette Crombs, Employee Relations Coordinator

For the Charging Party,  
Ernestine M. Southerland, pro se

REFUSAL TO ISSUE COMPLAINT

On March 23, 1987, Ernestine Southerland filed an unfair practice charge alleging that the Newark Board of Education ("Board") committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Southerland alleges that the Board breached a term and condition of the collective negotiations agreement by failing to promote Southerland to permanent status as a bus attendant.

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>1/</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>2/</sup> The Commission's rules provide that I may decline to issue a complaint.<sup>3/</sup>

It appears that the charge does not state a cause of action under N.J.S.A. 34:13A-5.4. Rather the substance of the claim is that the Respondent employer, Newark Board of Education, breached a collective negotiations agreement. Therefore, it appears that the Commission's complaint issuance standards have not been met.

In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

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<sup>1/</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>2/</sup> N.J.A.C. 19:14-2.1.

<sup>3/</sup> N.J.A.C. 19:14-2.3.

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

In that case, the Commission set forth some examples of situations where a breach of contract claim bears a sufficient relationship to an alleged violation of the Act so as to warrant the processing of the charge and the possible issuance of a complaint: (1) The employer repudiates an established term or condition of employment. (2) The employer decides to abrogate a contract clause based on its belief that the clause is outside the scope of negotiations. (3) The contract clause is so clear that an inference of bad faith arises from a refusal to honor it. (4) Factual allegations indicate that the employer changed the parties' past and consistent practice in administering the disputes clause. (5) Specific allegations of bad faith over and above mere breach of the collective negotiations agreement are present. (6) Breach of the agreement places the policies of the Act at stake.

The allegations contained in the charge, set forth only a breach of contract and not a violation of the Act under Human Services. In the absence of allegations of a violation of the Act, no complaint shall issue.

Accordingly, I decline to issue a complaint and dismiss this matter in its entirety.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

A handwritten signature in black ink, appearing to read "Edmund G. Gerber", is written over a horizontal line.

Edmund G. Gerber, Director

DATED: May 20, 1987  
Trenton, New Jersey