

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

In the Matter of  
ROXBURY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-80-21

THOMAS DUFFY SHEARY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the Board refused to consider a teaching application of a former staff member because that individual filed a petition with the Department of Education concerning the Board's previous denial of reemployment. Consistent with Supreme Court decision, City of Hackensack v. Winner, et al., \_\_\_ N.J. \_\_\_ (January 22, 1980), the Director determines that the matter is predominantly related to a proceeding before the Department of Education. The Director notes that the petition before the Department of Education is still pending.

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Appearances:

For the Respondent  
Schenck, Price, Smith & King, attorneys  
(David B. Rand of counsel)

For the Charging Party  
John W. Davis, UniServ Field Representative

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 16, 1980 and amended on February 11, 1980 by Thomas Duffy Sheary (the "Charging Party") against the Roxbury Township Board of Education (the "Board") alleging that the Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"),

specifically, N.J.S.A. 34:13A-5.4(a)(3) and (4). <sup>1/</sup>

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>2/</sup> 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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

<sup>1/</sup> These subsections prohibit employers, their representatives and agents from: "(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. (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."

<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 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

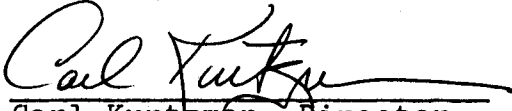
<sup>4/</sup> N.J.A.C. 19:14-2.3

The Charging Party states that he was fired as a mathematics teaching staff member of the Board in April 1979, due to improper certification. After obtaining full certification in summer 1979, the Charging Party requested reemployment. After the Board declined his request, he filed a petition before the Commissioner of Education through his majority representative. In December 1979, the Board advertised two job openings for mathematics teachers. Charging Party applied for a position but, allegedly, was advised that because he had filed a petition, his application was not going to be considered.

Charging Party claims that the Board discriminated against him because he filed the petition before the Commissioner of Education. He asserts that this alleged discrimination violates N.J.S.A. 34:13A-5.4(a)(3) and (4).

Having reviewed the Charge, the undersigned concludes that it has not been raised before the appropriate forum. This matter is predominantly related to a proceeding before the Department of Education and should be addressed to that agency. <sup>5/</sup> See City of Hackensack v. Winner, et al., \_\_\_ N.J. \_\_\_ (January 22, 1980). Therefore, under these circumstances the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: March 18, 1980  
Trenton, New Jersey

<sup>5/</sup> Charging Party advises that his petition before the Commissioner of Education is still pending.