

D.U.P. NO. 82-17

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

LOCAL 3, HOTEL, RESTAURANT AND
CAFETERIA EMPLOYEES UNION,

DOCKET NO. CI-81-75

Respondent,

-and-

JESSIE M. BRASWELL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge filed by an individual alleging that she had been improperly transferred. The Charging Party failed to allege conduct which occurred within six months of the filing of her charge. Further, the Director concludes that the Charging Party failed to assert that she was discriminated against in retaliation for protected activity.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 6, 1981 and amended on May 1, 1981, by Jessie Mae Braswell (the "Charging Party") against the Newark Board of Education (the "Board") and Local 3, Hotel, Restaurant and Cafeteria Employees Union (the "Local") 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), (5) and (7), ^{1/} and that the Local was in violation

1/ These subsections prohibit public employers, their representatives or 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; (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; and (7) Violating any of the rules and regulations established by the Commission."

of subsection (b)(3). ^{2/} The Charging Party alleges that these violations occurred when she was transferred from her job at one school cafeteria to another within the Newark school system.

N.J.S.A. 34:13A-5.4(3) 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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

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

^{2/} This subsection prohibits public employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

^{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 is 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..."

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

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

Pursuant to N.J.S.A. 34:13A-5.4(c) the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides: "...provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented."

Accordingly, the undersigned has determined that it is incumbent upon the Charging Party to allege the occurrence of unfair practices, within the six month limitation requirement, and that in the absence of such allegations, the undersigned would decline to issue a complaint. See In re North Warren Regional Board of Education, D.U.P. No. 78-7, 4 NJPER 55 (Para. 4026 1977).

Subsequent to the filing of the instant Unfair Practice Charge, by letter dated April 21, 1981, the undersigned informed the Charging Party that the Charge could not be processed further unless it was amended, pursuant to N.J.A.C. 19:14-1.5, to include the time and place of occurrence of the particular acts alleged to constitute the unfair practice. The undersigned directed the Charging Party's attention to the relevant six month limitation provision of N.J.S.A. 34:13A-5.4(c) and advised that a complaint would not issue if the Charging Party failed to allege the occurrence of an unfair practice within the prescribed six month limitation

period. The Charge, and the amendment filed on May 1, 1981, refer to events which occurred in early to mid-September 1980.

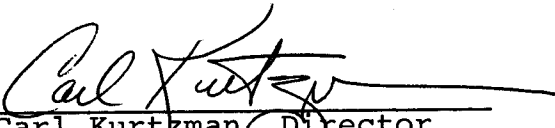
Although the charge does not appear to be timely filed, it also appears that the allegations do not set forth facts which may constitute unfair practices. The undersigned notes that the discrimination prohibited by N.J.S.A. 34:13A-5.4(a)(3) and (b)(1) ^{6/} generally has reference to actions taken against an employee because he/she has exercised the protected right of assisting or refraining from assisting an employee representative. The Charging Party herein does not assert that she was discriminated against by the Board or by the Local in retaliation for her activities or lack thereof on behalf of an employee organization or for the exercise of any other protected activity. Accordingly, the discrimination alleged in this charge is not a violation of either § (a)(3) or (b)(1).

Accordingly, as the Charging Party has not included in her Charge the time of occurrence of the conduct alleged to constitute the unfair practice within the six month statutory limitation period

^{6/} The undersigned notes that the Charging Party's allegations under § (b)(3) against the Local are misplaced. If, in fact, the Local is not responding to grievances presented by the Charging Party, this purported violation of a majority representative's responsibilities is in the nature of an unfair representation claim subsumed under § (b)(1). See In re Springfield Twp., D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1979). Unfair practice claims brought under § (a)(5) and (b)(3) by parties other than the public employer and the majority representative are not actionable since these subsections refer to obligations which the employer and the majority representative mutually and exclusively owe to one another. See, In re Council of N.J. State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶ 11271 1980). Accordingly, the undersigned has considered the § (b)(3) allegations as § (b)(1) claims and finds that the allegations of the charge do not support a claimed violation of this nature.

and has not asserted that she was discriminated against in retaliation for protected activity, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Carl Kurtzman, Director

DATED: December 16, 1981
Trenton, New Jersey