

D.U.P. NO. 91-3

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

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-90-88

ROBERT P. DALY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a State Department of Labor employee's charge alleging that the Department denied him an opportunity to apply for a State Career Service promotional examination by unreasonably limiting the unit scope. The Charging Party also alleged that the Department failed to respond to an appeal he filed contesting his exclusion from the examination.

The Director finds that Charging Party has not asserted facts which fall within the jurisdiction of the Commission. The Director holds that it is the State Department of Personnel that determines appeals regarding appointments to the State Career Service.

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Appearances:

For the Respondent,
Frank Mason, Director, Office of Employee Relations

For the Charging Party,
Robert P. Daly, pro se

REFUSAL TO ISSUE COMPLAINT

On May 16, 1990, Mr. Robert P. Daly ("Daly") filed an unfair practice charge with the Public Employment Commission ("Commission") alleging that Robert P. Robertson, Assistant Director of Personnel and Training, New Jersey Department of Labor ("Department") had violated subsections 5.4(a)(3) and (4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A 34:13A-1 et

^{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. (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."

seq. ("Act"). Daly alleges that he and a group of 35 other potentially eligible candidates were denied the opportunity to apply for a competitive promotional examination for the Career Service title of "Referee-Labor" because the Department unreasonably limited the "unit scope" or the identified organizational unit within an agency used as a factor in determining eligibility for promotional examinations. Daly also alleges the Department has failed to respond to an appeal he filed on January 16, 1990, contesting his exclusion from the promotional announcement.^{2/}

N.J.S.A. 34:13A-5.4(c) provides 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. 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.^{3/} The Commission has delegated its authority to issue

^{2/} The promotional announcement was typed on a Department of Personnel form containing the following footnote: ATTENTION: Employees who believe they were improperly excluded from this announcement or would like to contest any aspect of the announcement procedure have the right to make an appeal to their Personnel Office and/or to the Office of Selection and Placement, Department of Personnel.

^{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

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.^{4/} The Commission's rules provide that I may decline to issue a complaint.^{5/}

On May 21, 1990, I wrote to Daly indicating that I was inclined to dismiss the unfair practice charge since, as a matter of law, the allegations set forth in the charge did not meet the Commission's complaint issuance standard. I provided Daly with an opportunity to respond. He submitted a timely response.

I find that the Commission's complaint issuance standard has not been met in this case.

Daly alleges that the Department has unreasonably precluded him from applying for a promotional examination within the State Career Service by limiting the unit scope for the title of "Referee Labor". Regular appointments to titles allocated to the competitive

3/ Footnote Continued From Previous Page

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...."

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

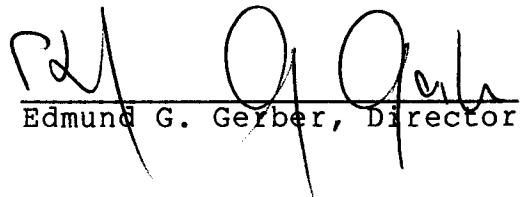
5/ N.J.A.C. 19:14-2.3.

division of the Career Service are subject to the provisions of the Civil Service Reform Act of 1986, N.J.S.A. 11A:1-1 et seq. In accordance with the regulations adopted pursuant to that act, any appeal regarding appointments must be brought to the Department of Personnel. Daly has stated in the charge that he in fact filed such an appeal with the Department and with the Office of Selection and Placement, Department of Personnel.

The Commission, by statute, regulates the conduct of relations between unions and employers and protects employees who engage in, or decline to engage in, such related activity. Daly has not alleged facts in his charge relating to such activity and the Commission has no jurisdiction to hear appeals of Career Service appointments.

Based upon the foregoing, the Commission's complaint standard has not been met and I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: August 8, 1990
Trenton, New Jersey