

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

In the Matter of

CITY OF MILLVILLE,

Respondent,

-and-

DOCKET NO. CI-80-52

LAWRENCE STILES & JOSEPH EVANS,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by two employees against the City. The charging parties complained of discriminatory conduct over which the Commission lacks jurisdiction. They have not alleged that the alleged discrimination occurred as a result of their exercise of activities protected by the Employer-Employee Relations Act.

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Appearances:

For the Respondent

Gant & Forester, attorneys
(William L. Forester of counsel)

For the Charging Parties

Lipman, Antonelli, Batt & Dunlap, attorneys
(Gerald R. Spall of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 26, 1980, as amended on July 2, 1980, by Lawrence C. Stiles and Joseph J. Evans (the "Charging Parties") against the City of Millville (the "City") alleging that the City 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)(1), (3) and (7). ^{1/}

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. ^{2/} 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. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

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

^{1/} These subsections prohibit 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. (3) Discriminating in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (7) Violating any of the rules and regulations established by the commission."

^{2/} 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 ... "

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

The Charging Parties allege that they were demoted from detectives to partolmen, without cause, improperly and in violation of the Department of Civil Service Regulations and State Statutes because of their age. They further claim that this action was in violation of Article X (Discrimination or Coercion) of the contract between the City and the Millville PBA Local 213 (the "PBA"), their exclusive representative.

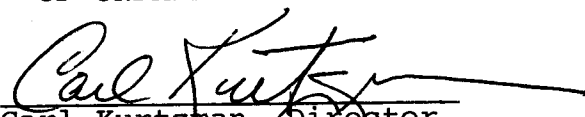
Initially, the undersigned observes that if the City has engaged in conduct which may constitute a violation of the Department of Civil Service Regulations or Statutes other than the Act, the Commission lacks jurisdiction over these matters. N.J.S.A. 34:13A-1 et seq. The Charging Parties have not stated facts which may support any claim that they were engaged in any protected activity set forth in § 5.3 of the Act over which the Commission has jurisdiction. Subsection 5.3 protects employees in the exercise of activities on behalf of employee organizations and, alternatively, protects employees who choose to refrain from such activities. Charging Parties have not alleged that they were engaged in such conduct. Further, § 5.3 protects employees in the exercise of certain other conduct such as the filing of grievances through a majority representative. The undersigned notes that the Charge does not indicate claims of interference or discrimination in this regard, and therefore, the Charge does not warrant the issuance of a complaint pursuant to § 5.4(a)(1) or (3).

Regarding the § 5.4(a)(7) allegation, the Charging Parties have not identified the rules and regulations established

by the Commission which the City is alleged to have violated. Accordingly, the facts alleged by the Charging Parties, if true, do not support a claim of a § 5.4 (a) (7) violation. See In re Madison Tp. Bd. of Ed., E.D. No. 76-8 (1975).

Accordingly, for the above reasons, the undersigned declines to issue a complaint herein. 5/

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: September 4, 1981
Trenton, New Jersey

5/ The undersigned has noted the Charging Parties' claim that the collective negotiations agreement covering them has been violated. On August 14, 1981, the undersigned advised the Charging Parties that allegations of contract violations as an unfair practice may be asserted before the Commission under the theory of a refusal to negotiate in good faith, In re Borough of Palisades Park, D.U.P. No. 78-1, 3 NJPER 238 (1977); In re New Jersey Turnpike Auth., D.U.P. No. 80-10, 6 NJPER 560 (¶ 11284 1980), but the charge did not assert a violation of § 5.4(a) (5) against the City and an allegation of unfair representation by the majority representative. See, In re N.J. Turnpike Auth., P.E.R.C. No. 81-66, 6 NJPER 560 (¶ 11284 1980); In re N.J. Turnpike Auth., D.U.P. No. 80-10, 5 NJPER 518 (¶ 10268 1980); and In re Middlesex Cty., P.E.R.C. No. 81-62, 6 NJPER 555 (¶ 11282 1980). The Charging Parties have not amended their charge to assert these claims.