

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

FREEHOLD MUNICIPAL EMPLOYEES
ASSOCIATION,

Respondent,

-and-

DOCKET NO. CI-83-62

JOHN KRUTAK,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint concerning an allegation that the Freehold Municipal Employees Association refused to represent John Krutak at a third step grievance meeting because he was not an Association member. Noting that the underlying grievance has been resolved to Krutak's satisfaction and that the Association has acknowledged, in writing, its responsibilities under the New Jersey Employer-Employee Relations Act, the Administrator concludes that further proceedings before the Commission are not warranted. Charging Party's purpose in seeking litigation of his unfair practice charge is to obtain a specific finding of wrongdoing and to seek Respondent's apology.

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Appearances:

For the Respondent
Edward S. Donini, attorney

For the Charging Party
John Krutak, pro se

REFUSAL TO ISSUE COMPLAINT

On May 11, 1983, as amended on May 24, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by John Krutak ("Charging Party") against the Freehold Municipal Employees Association ("Respondent" or "Association"), alleging that the Respondent 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. ("Act"). Specifically, the Charging Party alleged that the Respondent failed to represent him at a third step meeting, and that Respondent would not represent him for lack of membership in the Association,

allegedly in violation of N.J.S.A. 34:13A-5.4(b)(1) and (3). ^{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. 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 and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

^{1/} These subsections prohibit employee organizations, 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) 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."

^{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

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standards have not been met.

In accordance with the Commission's case processing procedures, an exploratory conference with an assigned Commission staff agent was convened among the parties in June 1983. At the conference, settlement proposals were aired and the parties subsequently continued to engage in settlement discussions for many months. Throughout this time frame, Charging Party acknowledged that he had resolved the underlying grievance against the employer which gave rise to the filing of the charge against the Respondent for alleged improper representation. Charging Party has sought an acknowledgement by the Respondent of its responsibilities under the Act, as well as an apology for prior failure to meet such responsibilities.

By letter of October 12, 1983, the Respondent indicated to the Charging Party, as well as to the Commission, that it recognized its responsibilities under the Act to represent all unit members, and it warranted that it would fulfill its responsibilities to the Charging Party in the future.

In subsequent communications to the Commission, Charging Party has indicated that he wishes to pursue his charge before the Commission, apparently due to the absence of an explicit acknowledgment of wrongdoing and an apology by the Respondent.

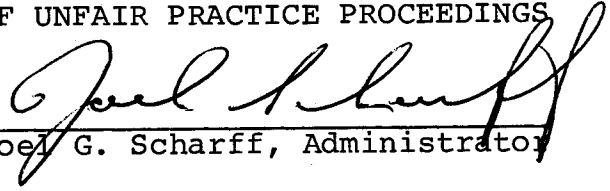
By letter of May 1, 1984, the undersigned reviewed the status of the pending matter with the parties and invited the submission of additional statements of position. Both parties provided such statements. ^{5/} Upon review of all correspondence submitted, the undersigned concludes that the underlying grievance in this matter has indeed been resolved to the satisfaction of the Charging Party and that the Charging Party wishes to pursue a course of litigation purely for the purpose of seeking a declaration that the Respondent failed to meet its responsibility under the Act to present his grievance and for the purpose of securing an agency mandated apology.

In Union Cty. Reg. H.S. Bd/Ed., D.U.P. No. 79-23, 5 NJPER 158 (§ 10088 1979) the Director of Unfair Practices exercised his discretion to withhold the issuance of a complaint where the Respondent took prompt and dispositive action to recognize its legal responsibilities, where there was minimal likelihood of reoccurrence of the allegedly prohibited conduct and where the harm to "public rights" occasioned by nonremedied unfair practices was de minimis. In that case, the Director determined that the issues did not warrant the institution of formal proceedings, and therefore declined to issue a complaint under the second part of the complaint issuance standard.

^{5/} The Charging Party's letter of May 22, 1984 references facts which occurred at a meeting convened by the Respondent on May 8, 1984. The alleged facts are entirely unrelated to the matters in the original unfair practice charge. Accordingly, should Charging Party wish to have these new facts considered as an unfair practice, he must file a new charge in accordance with N.J.A.C. 19:14-1 et seq.

The undersigned determines that in this matter, as in Union Cty. Regional, supra, complaint proceedings ought not to be instituted. In the limited context presented the harm to "public rights" is de minimis, and indeed the public interest has best been secured by Respondent's warrant of future appropriate conduct. It is highly unlikely that a Commission order would require an apology. Finally, as in Union Cty. Regional, "litigation of [this Charge] for the purpose of securing a cease and desist order and a posting for the benefit of the employees is not appropriate." Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: August 23, 1984
Trenton, New Jersey