

D.U.P. NO. 87-11

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

In the Matter of

WEST DEPTFORD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-87-15

JOHN C. CARROLL, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint in the matter of John C. Carroll and the West Deptford Board of Education wherein Mr. Carroll claimed his dismissal was unwarranted and the nature in which the employer proceeded with the dismissal was unethical. No allegations were made that the Board infringed upon Mr. Carroll's rights pursuant to the New Jersey Employer-Employee Relations Act.

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Appearances:

For the Respondent,  
Holston, MacDonald, Donnely and Morgan  
(Robert G. Holston, of counsel)

For the Charging Party,  
John Falciani, of counsel

DECISION

On August 27, 1986, an unfair practice charge was filed with the Public Employment Relations Commission ("Commission") by John C. Carroll, Jr. alleging that the West Deptford Board of Education ("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., specifically, §§5.4(a)(1) and (5).<sup>1/</sup>

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<sup>1/</sup> 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; (5) Refusing to

The Charging Party was employed by the West Deptford Board of Education for five years in the position of support staff worker. He was on the night shift. The Board contends that on June 18, 1986, Mr. Carroll was terminated from his employment for allegedly failing to report a missing bag of student clothing which he found in the hallway. The Board states that, pursuant to instructions from the supervisory staff, the bag should have been immediately given to the maintenance supervisor.

During his conversation with Mr. Brown, the West Deptford Board of Education Maintenance Services Supervisor, Carroll was told that he would be given an excellent referral for future employment and was being listed as terminated because of a reduction of staff. Mr. Carroll's suspension was effective immediately.

On June 30, 1986, the Board of Education met to consider the recommendation that Mr. Carroll be dismissed. Mr. Carroll was notified of the proceedings; however, he did not receive the notice until after the Board had convened. Mr. Carroll has made every effort to follow the necessary procedures in order to resolve the problem, but has been unsuccessful to this point.

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1/ Footnote Continued From Previous Page

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."

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.<sup>2/</sup> The Commission has delegated its authority to issue complaints to the Director of Unfair Practices and has established a standard upon which unfair practice complaint may be issued. The standard provides that the complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act<sup>3/</sup> and the Commission's rules provide that the Director may decline to issue a complaint where appropriate.<sup>4/</sup>

On November 6, 1986, a Commission staff attorney conducted an exploratory conference to discuss the parties' factual allegations and positions on the issues. Based upon the allegations contained in the charge and the facts proffered at the conference, it appears that the Commission's complaint issuance standard was not

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<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 charged 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.

satisfied. Accordingly, for the reasons stated below, we decline to issue a complaint in this matter.

Mr. Carroll alleged that his dismissal was unwarranted and the manner in which the employer proceeded with the dismissal was unethical.

The employer contested the Commission's jurisdiction in this matter. It based its challenge upon the premise that the charge does not concern a unilateral change in terms and conditions of employment, nor does it allege any other violations of the Act.<sup>5/</sup>

The employer indicated that the employee was on a year-to-year renewable employment contract as a support staff maintenance worker. His most recent contract for employment was entered into in April 1986 for the 1986-87 school year. The School

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<sup>5/</sup> The Act prohibits 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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; (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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

Board's Policy Manual establishes the terms and conditions of said employment.

Mr. Carroll was responsible for performing janitorial duties at the West Deptford Middle School. The Board indicates that Carroll's dismissal was based on insubordination, gross misjudgment, and substandard performance arising out of his recent failure to follow direct instructions and his failure to meet standard work performance requirements that all lost and found items be immediately turned in to the supervisor of maintenance.

Carroll objects to the employer's evaluation and contends his five year employment history with West Deptford Board of Education has been good.

Although, N.J.S.A. 34:13A-5.4(c) grants the Commission the exclusive power to prevent anyone from engaging in any unfair practices, the enumerated unfair practices are concerned with the public employer/public employee representation and an individual's freedom to engage in or refrain from such activity. Although Mr. Carroll was a public employee, the Board had not infringed upon Mr. Carroll's guaranteed rights under the New Jersey Employer-Employee Relations Act.

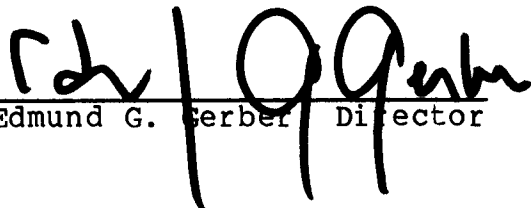
The Charging Party failed to establish that the Board infringed upon the rights guaranteed him by the Act and further, the Charging Party has not alleged any facts which would indicate that the claimed unlawful discharge constituted conduct undertaken by the Board in retaliation for the exercise of rights protected under the

Act. Therefore, there is no factual basis to support Charging Party's allegation that West Deptford Board of Education violated §5.4(a)(1) and (5).

On January 23, 1987, we sent the Charging Party a letter indicating our decision not to issue a complaint on this matter and inviting the Charging Party to submit additional factual allegations which would warrant the issuance of a complaint. (Copies of same were forwarded to all other parties.) Neither party submitted additional factual allegations.

Accordingly, for all the reasons set forth above, we have determined that the Commission's complaint issuance standard has not been met and decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Serber Director

DATED: February 10, 1987  
Trenton, New Jersey