

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

In the Matter of

TRENTON BOARD OF EDUCATION AND
TRENTON ADMINISTRATORS & SUPERVISORS
ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-81-40

HARRY DEARDEN,

Charging Party.

NEW JERSEY STATE COMMISSIONER OF
EDUCATION AND NEW JERSEY STATE BOARD
OF EDUCATION AND NEW JERSEY STATE
MONITORING TEAM,

Respondents,

-and-

DOCKET NO. CI-81-54

HARRY DEARDEN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices, declines to issue a complaint with respect to an Unfair Practice Charge alleging that the Board of Education, the Trenton Administrators and Supervisors Association, and the State Monitoring Team, violated the New Jersey Employer-Employee Relations Act by downgrading the Charging Party's position and depriving him of the pay increments. The Charging Party alleged that the Respondents did not negotiate in good faith. However, the Director notes that an individual employee may not ordinarily assert such claims, since negotiations responsibility involves duties which flow between the public employer and the majority representative, not to individual employees. The Charging Party did not allege that the majority representative violated its duty of providing fair representation to him. The Charging Party did not allege facts which would indicate that the Board discriminated against him in the exercise of rights which the Act guarantees.

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Appearances:

For the Respondent Board of Education
Merlino, Rottkamp & Flacks, attorneys
(Robert Rottkamp of council)

For the Respondent Association
Sterns, Herbert & Weinroth, attorneys
(Mark Schorr of council)

For the Charging Party
Kivler & Halper, attorneys
(Richard Angelini of council)

REFUSAL TO ISSUE COMPLAINT

Two unfair practice charges have been filed with
the Public Employment Relations Commission (the "Commission")
by Harry Dearden (the "Charging Party"). In Docket No.

CI-81-40, filed against the Trenton Board of Education (the "Board") and the Trenton Administrators and Supervisors Association (the "Association") on December 5, 1980 and amended on December 22, 1980, Charging Party alleges the Board is engaged 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), ^{1/} and that the Association is engaged in unfair practices under N.J.S.A. 34:13A-5.4(b)(3). ^{2/} In Docket No. CI-81-54, Charging Party alleged that the New Jersey State Commissioner of Education, the New Jersey Board of Education, and the New Jersey Monitoring Team (hereinafter the "State Board") are engaging in unfair practices under N.J.S.A. 34:13A-5.4(a)(2). ^{3/}

The first charge (CI-81-40) alleges that the Association discriminatorily downgraded the Charging Party's position and deprived him of a pay increase by creating a new column for him, at a salary range below another employee of the same title. The charge further alleges that the Board accepted and

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives and 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."

^{2/} N.J.S.A. 34:13A-5.4(b) prohibits 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(a) prohibits public employers, their representatives and agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization." Charging Party's additional allegations under §(b)(3) appear to be misfiled since §(b)(3) applies to employee organizations.

approved the Association contract containing the allegedly discriminatory salary column.

The second charge (CI-81-54) alleges that Monitor General, Dr. Catrambone, an agent of the State Board, denied a salary adjustment that had been awarded to the Charging Party by the Trenton Board of Education.

The Commission has delegated authority to the undersigned to issue complaints with respect to unfair practice charges and has established a standard for complaint issuance. This standard provides that a complaint shall issue where the charge, if true, may constitute unfair practices under the Act. The undersigned may decline to issue a complaint where the above standard has not been met. See N.J.A.C. 19:14-2.1 and 2.3.

For the reasons stated below, it appears to the undersigned that the Commission's complaint issuance standard has not been met with respect to the instant Charges.

With respect to the first charge, the Charging Party alleges that the Association violated § 5.4(b)(3) of the Act. Normally, an individual employee may not assert a violation of § 5.4(b)(3) of the Act. Ordinarily, only the public employer may file and process a § 5.4(b)(3) charge, since the duty owed by a majority representative to negotiate in good faith flows to a public employer, not to individual employees. ^{4/}

^{4/} In re Council of New Jersey State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶ 11271 1980) wherein the undersigned held that § 5.4(b)(3) is designed to protect rights which flow to a public employer and may not be the basis for a charge by a minority representative. This holding is equally applicable to individual employees who file
(Continued)

In addition, the undersigned notes that the Charging Party has not alleged that through its actions, the Association has interfered with, restrained or coerced him in the exercise of his rights guaranteed by the Act, nor has he alleged that the Association has failed in its duty of fair representation.

The Charging Party also claims that the Board has violated § 5.4(a)(3) of the Act. To warrant the issuance of a complaint thereunder, a Charging Party must allege facts indicating that the employer discriminated against him in regard to a term or condition of employment in order to encourage or discourage him in the exercise of rights which the Act guarantees. Here, the Charging Party has not alleged facts indicating discriminatory treatment against him as a result of his exercise of activities protected by the Act. See, In re Tp. of Springfield, D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1978).

With respect to the second charge, the Charging Party alleges that the State Board violated § 5.4(b)(3) of the Act. However, the State Board is not an employee organization within the meaning of the Act and cannot be in violation of § 5.4(b)(3).

The Charging Party also alleged that the State Board, through the Monitor General, violated § 5.4(a)(2) of

^{4/} (Continued) § 5.4(b)(3) charges which seek to protect or vindicate rights flowing to a public employer.

Compare In re Board of Chosen Freeholders of Middlesex Cty., P.E.R.C. No. 81-62, 6 NJPER 560 (¶ 11284 1980), wherein the Commission held that individual employees could not file § 5.4(a)(5) charges because the duty therein was owed by an employer to the majority representative. The underlying reasoning is applicable in the instant matter.

the Act. That section prohibits public employers from dominating or interfering with employee organizations. A review of the charge, however, shows that the Charging Party has not alleged facts which would establish that the State Board interfered with the Association or any other labor organization. If the Charging Party had intended to allege an (a)(3) violation rather than a § (a)(2) violation, the charge still does not allege facts that the State Board discriminated against him in order to encourage or discourage him in the exercise of the rights guaranteed to him by the Act.

Subsequent to the filing of the instant Unfair Practice Charges, by letter dated April 15, 1981, the undersigned informed the Charging Party that in the absence of a withdrawal request or amended Charges which would meet the Commission's complaint issuance standards, the undersigned would issue a decision declining to issue a complaint. The undersigned has not received a reply to the April 15 letter, nor have the Charges been amended as requested.

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 30, 1981
Trenton, New Jersey