

D.U.P. NO. 91-29

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

In the Matter of

BOROUGH OF HILLSDALE and HILLSDALE
CROSSING GUARDS ASSOCIATION,

Respondents,

-and-

Docket No. CI-91-19

THERESA M. CARDINALE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint based on a charge filed by Theresa Cardinale against the Borough of Hillsdale. Cardinale contended that the Borough violated the Act by refusing to accept a note from her doctor which stated that she was fit to return to work after she was on a disability leave and by requiring her to see the Borough doctor. The Director found that these allegations, standing alone, did not rise to the level of an unfair practice because there was nothing to indicate that the Borough's actions were taken against Cardinale as a result of protected activity.

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Appearances:

For the Respondent Borough
Ronald Schramm, Chief of Police

For the Respondent Association
Arlene Meier, President

For the Charging Party
Theresa Mary Cardinale, pro se

DECISION

On October 15, 1990 and May 10, 1991, Theresa Cardinale ("Cardinale") filed an unfair practice charge and amendment against the Borough of Hillsdale ("Borough") alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3), (4), (5) and (7).^{1/}

^{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

Footnote Continued on Next Page

Cardinale contends that the Borough violated the Act by refusing to accept a note from her doctor which stated that she was fit to return to work after she was on a disability leave and by requiring her to see the Borough doctor. The doctor stated that she was not fit to return to work. Cardinale alleges that as a result of the Borough doctor's negative determination, she lost wages. Cardinale further contends that she was treated differently than other Borough employees.

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.^{2/} The Commission

1/ Footnote Continued From Previous Page

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. (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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

has delegated its authority to issue 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.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

These allegations, if true, do not constitute an unfair practice as defined by the Act. There is nothing to indicate that these actions were taken against Cardinale as a result of protected activity. Standing alone, these complaints do not rise to the level of an unfair practice. Accordingly, I dismiss the parts of the charge and amended charge filed against the Borough.

Based upon the foregoing, the Commission's complaint issuance standard has not been met and no complaint will issue on the above-mentioned allegations against the Borough of Hillsdale.

On March 1, 1991, May 10, 1991, and May 28, 1991, Cardinale filed additional amendments to the above charges against the Hillsdale Crossing Guards Association and by inference the Borough. In those charges, Cardinale alleged that the Association did not represent her fairly and conspired with the Borough to defeat her grievances. Under separate cover, I am issuing a complaint and

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

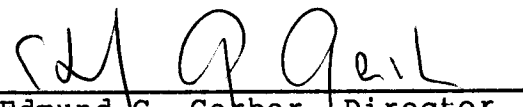
^{4/} N.J.A.C. 19:14-2.3.

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4.

Notice of Hearing regarding those facts contained in the amended charges.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 5, 1991
Trenton, New Jersey