

D.U.P. NO. 94-23

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

In the Matter of

CITY OF NEW BRUNSWICK,

Respondent,

-and-

Docket No. CI-94-7

CHARLES H. KOCH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by a former employee of City of New Brunswick. The Director determines that the employee's allegations that the City violated the MEA contract by failing to advertise vacancies, inequitably distributing overtime assignments, "overpaying" employees to balance its payroll calendar, and failing to "properly address" grievances are, at best, contract violations, and do not constitute unfair practices.

Further, the employee's claim that the City unfairly terminated him in violation of the Conscientious Employee Act, after he filed various complaints against the City with the County Prosecutor, DEPE, and PEOSHA, is not within this Commission's jurisdiction.

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Appearances:

For the Respondent,  
DeMaria, Ellis, Hunt, Salsberg & Friedman, attorneys  
(Brian Flynn, of counsel)

For the Charging Party,  
Charles H. Koch, Pro Se

REFUSAL TO ISSUE COMPLAINT

On August 11, 1993, Charles Koch, a former provisional employee of the City of New Brunswick, filed an unfair practice charge alleging that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"); specifically, subsections 5.4(a)(1), (2), (3), (4), (5), (6) and (7)<sup>1/</sup> of the Act. Koch charges that the City (1) failed to post

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to

or advertise vacant positions; (2) violated certain provisions of its contract with the Municipal Employees Association and refused to "properly address" grievances Koch filed as the MEA shop steward; (3) violated his federal and State constitutional rights; (4) failed to appoint him to a permanent position in violation of Civil Service statutes, and unjustly terminated him on May 14, 1993 in violation of the Conscientious Employee Act after he filed charges against the City with the EPA and PEOSHA; and (5) misappropriated public funds by regularly "overpaying" employees about three dollars per payperiod to balance out the unevenness in the payroll calendar and violating the contract provisions on overtime assignments. Further, Koch claims that the collective negotiations agreement between the City and the MEA is "illegal" because it includes provisional employees as MEA members.

The Charging Party's allegations fail to meet the Commission's complaint issuance standard and I refuse to issue a complaint with respect to this charge. N.J.A.C. 19:14-2.3.

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1/ Footnote Continued From Previous Page

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."

Koch's allegations that the City violated the MEA contract by failing to advertise vacancies, inequitably distributing overtime assignments, "overpaying" employees to balance its payroll calendar, and failing to "properly address" grievances are, at best, contract violations, and do not constitute unfair practices. The Commission will not substitute its judgment on contract interpretation issues for that of an arbitrator or other final step in the parties' contractual grievance procedure. Further, we note that the contract grievance procedure is self-executing: if the employee or union is unsatisfied with the employer's response to grievances at lower levels of the grievance procedure, the grievant or union may move the grievance to the next procedural step. Failure to comply with an intermediate step of the grievance procedure, in and of itself, is not an unfair practice, when the contract provides a self-executing grievance procedure. New Jersey Transit Bus Operation, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987). Therefore, the City's alleged failure to "properly respond" to grievances is not actionable as an unfair practice before this Commission.

We have no jurisdiction over Koch's allegations that his constitutional rights were violated and that the City failed to properly appoint provisional employees to permanent positions in violation of civil service statutes. These assertions do not allege

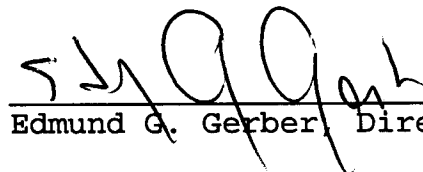
any violation of Koch's rights protected by our Act. Therefore, we will not review these allegations.

Further, Koch's allegation that the MEA illegally represents provisional employees in its negotiations unit is also not actionable as an unfair practice. An individual employee has no standing to challenge the legitimacy of the composition of the negotiations unit, at least in this context. Moreover, neither the Act nor the Commission's caselaw requires permanent status as a prerequisite for employee representation in negotiations units. N.J.S.A. 34:13A-1; See State of New Jersey, P.E.R.C. No. 86-24, 11 NJPER 16122 (1985) (Temporary, "special services" employees who work regularly are eligible for unit inclusion.).

Finally, Koch alleges that under the Conscientious Employee Act, he was unfairly terminated after he filed various complaints against the City with the County Prosecutor, DEPE, and PEOSHA. This Commission has no jurisdiction to enforce the Conscientious Employee Act (commonly called the "whistleblower" statute), N.J.S.A. 11A:2-24.

Based on the foregoing, I find that the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: January 25, 1994  
Trenton, New Jersey