

D.U.P. NO. 81-17

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

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

DOCKET NO. CI-81-57

KATHLEEN SULLIVAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by an individual who alleged that her employer violated certain contractual terms of her employment. The Director determines that in the absence of a simultaneous claim by the charging party against her majority representative, there is no basis for a claim against the employer alleging unilateral changes of the contract. The employer's obligations, in this regard, are to the majority representative.

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Appearances:

For the Respondent

City of Jersey City

(Thomas Fodice, First Assistant Corporation Counsel)

For the Charging Party

(William Sullivan, Representative)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by Kathleen Sullivan (the "Charging Party") on February 2, 1981, and amended on April 7, 1981, alleging that the City of Jersey City (the "City") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et. seg. (the "Act") specifically N.J.S.A. 34:13A-5.4(a)(3). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a)(3) prohibits public employers, their representatives and agents from 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.

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. This 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 the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Charging Party was discharged by the City on December 19, 1980. The Unfair Practices alleged concern the procedures leading to that discharge, as well as computations of monies owed Charging Party upon discharge. The Charging Party alleges that the City has discriminated against the Charging Party. However, the Charging Party has not alleged that the discrimination is in any way related to the exercise by the Charging Party of rights guaranteed to her by the Act.

^{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.


The Commission has found violations of N.J.S.A. 34:13A-5.4(a)(3) where discriminatory acts by a public employer with respect to hire or tenure of employment or terms and conditions of employment "were motivated in whole or in part by a desire to encourage or discourage an employee in the exercise of rights guaranteed by the Act or had the effect of so encouraging or discouraging employees in the exercise of those rights." In re Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71, 72 (1977); cf. Township of Clark and Raymond Xifo, P.E.R.C. No. 80-117, 6 NJPER 186 (¶11089 1980), aff'd App. Div. Docket No. A-3230-79 (1/23/81).

Although the Charging Party does not allege a violation of subsection 5.4(a)(5), it appears that the thrust of the Charging Party's allegations of "discrimination" relate to claims that the employer has violated various contractual provisions in relation to her employment and termination. The Charging Party grieved these alleged violations and the employer denied the grievances. The Commission has indicated that it does not consider its role as the arbiter of contract violation claims; however, the Commission has found violations of subsection (a)(5) where an employer's alleged contractual violations have been claimed by a majority representative to constitute a refusal to negotiate in good faith. See, In re Borough of Palisades Park, D.U.P. No. 78-1, 3 NJPER 238 (1977). Since an employer's obligations under subsection (a)(5) run to a majority representative, the undersigned has determined that a complaint

with respect to a charge filed by an individual under subsection (a) (5) may not issue where there is no simultaneous claim by the individual that a majority representative has failed to provide fair representation to a unit member.^{5/} In the instant matter, the Charging Party has not alleged that a majority representative has violated its responsibility to provide fair representation. Thus, even if the Charging Party were to allege a subsection (a) (5) violation by the employer, which would appear to be the type of claim which the Charging Party is raising, the undersigned would be required to decline to issue a complaint herein.

Accordingly, for the reasons stated above, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 14, 1981
Trenton, New Jersey

^{5/} A full and extensive analysis of the basis for this determination is contained in In re New Jersey Turnpike Authority, D.U.P. No. 80-10, 5 NJPER 518 (¶10268 1979), aff'd P.E.R.C. No. 81-64, 6 NJPER 560 (¶11283 1981), appeal pending App. Div. Docket No. A-1263-80T and In re County of Middlesex, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), appeal pending App. Div. Docket No. A-1455-80-T2.