

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

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-81-71

AD HOC COMMITTEE OF HAMILTON
TOWNSHIP,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by individual teachers alleging that the Board unilaterally changed working conditions, thereby violating its duty to negotiate in good faith with the majority representative of employees. The Unfair Practice Charge did not allege that the majority representative was in violation of its responsibility to fairly represent employees.

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Charging Party.

Appearances:

For the Respondent, Aron, Till & Salsberg, Esqs.
(David A. Wallace, of Counsel)

For the Charging Party, Strauss, Wills, O'Neil &
Voorhees, Esqs.
(G. Robert Wills, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on March 12, 1981 by certain individuals purportedly comprising the "Ad Hoc Committee of Hamilton Township teachers representing 88 teachers employed by the Hamilton Township Board of Education" (the "Charging Parties"), against the Hamilton Township Board of Education (the "Board"), alleging that the Respondent 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, N.J.S.A. 34:13A-5.4(a)(5).^{1/}

^{1/} This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and condition 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 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.

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

The Charging Parties are teachers employed by the Board who were absent from their employment on either March 5, 1980 or April 16, 1980. They assert that the Board violated the collective negotiations agreement governing their employment conditions by requiring a physician's note relating to their absence and by refusing to grant teachers a hearing prior to docking their pay. The Hamilton Township Education Association (the "Association") is the Charging Parties' majority representative. Since the Association had previously filed a charge related to the instant subject matter, but withdrew its charge on November 4, 1980, the Charging Parties state that they were "effectively

^{2/} N.J.A.C. 19:14-2.1.

^{3/} N.J.A.C. 19:14-2.3.

prevented from filing the within charge."^{4/}

The instant charge requires an examination as to whether a party other than a majority representative of employees may assert that an employer has violated its responsibility to negotiate in good faith with a majority representative by violating a contract.^{5/} The undersigned has previously determined that a complaint may issue against an employer under such circumstances only where the §(a)(5) allegation filed by an individual is coupled with a viable claim of the violation of the majority representative's obligation to provide fair representation under §5.4(b)(1). See, In re N.J. Turnpike Authority, D.U.P. No. 80-10, 5 NJPER 518 (¶10268 1979). Whether a violation of §(a)(5) relating to a charge filed by an individual may be found even where a majority representative has unfairly represented employees remains an outstanding question. In re N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), appeal pending App. Div. Docket No. A-1263-80T. The Commission, however, has conclusively determined that "in the absence of allegations of collusion or unfair representation by the majority representative, [an individual cannot] use the unfair practice forum to litigate an alleged breach of a collective negotiations agreement unrelated to union activity." Id, slip opinion at p. 7.

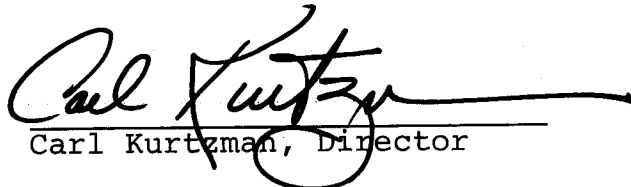
^{4/} N.J.S.A. 34:13A-5.4(c) requires the filing of charges within six months of an unfair practice, unless the Charging Party is prevented from filing a timely charge.

^{5/} For purposes herein, the undersigned shall not address the timeliness issue.

See also, In re County of Middlesex, P.E.R.C. No. 81-62, 6 NJPER 555 (111282 1980), appeal pending App. Div. Docket No. A-1455-80-T2.

Accordingly, since the Charging Parties have not alleged facts which would establish "collusion or unfair representation" by the majority representative, the undersigned may not issue a complaint against the Board under §(a)(5), based upon an alleged breach of contract.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 27, 1981
Trenton, New Jersey