

D.U.P. No. 2011-3

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

In the Matter of

NEWARK HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-2010-282

SKILLED TRADES ASSOCIATION, INC.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Skilled Trades Association, Inc. against the Newark Housing Authority. The charge, as amended, alleges that the Authority violated 5.4a(3) and (5) of the Act by not complying with the terms of four settlement agreements previously entered into by the parties. The Director finds that pursuant to the Commission's decision in City of Asbury Park, P.E.R.C. No. 2002-73, 28 NJPER 253 (¶33096 2002), a breach of a settlement agreement does not violate the Act. The Director also dismisses a second allegation for failing to meet the requirements of N.J.A.C. 19:14-1.3(a)(3).

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

In the Matter of

NEWARK HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-2010-282

SKILLED TRADES ASSOCIATION, INC.,

Charging Party.

Appearances:

For the Respondent,
Samuel M. Manigault, Esq., Chief Personnel/Labor
Relations

For the Charging Party,
Oxford Cohen, P.C., attorneys
(Arnold Shep Cohen, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 26 and February 1, 2010, the Skilled Trades Association, Inc. (Association) filed an unfair practice charge and amended charge against the Newark Housing Authority (Authority). The charge, as amended, alleges that the Authority violated 5.4a(3) and (5)^{1/} of the New Jersey Employer-Employee

^{1/} These provisions prohibit public employers, their representatives or 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"; and, (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 (continued...)"

Relations Act (Act) by not complying with the terms of four settlement agreements previously entered into by the parties. The charge further alleges that whenever Association President Gerard Costello attempts to contact Housing Authority Executive Director Keith Kinard, he does not receive a response.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated September 15, 2010, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

The parties entered into settlement agreements regarding two unfair practice charges and two grievances. The Association alleges that the Authority has not complied with the terms of those agreements. The agreements resolved the following matters:

(1) P.E.R.C. Dkt. No. CO-2008-114, settled January 23, 2008;

1/ (...continued)
in that unit, or refusing to process grievances presented by the majority representative."

- (2) P.E.R.C. Dkt. No. AR-2008-004, settled June 23, 2008;
- (3) P.E.R.C. Dkt. No. CO-2006-165, settled March 6, 2009; and,
- (4) NJSBM Dkt. No. 09-245, settled November 2, 2009.

ANALYSIS

The only settlement agreement listed above that was reached within the six-month statute of limitations period preceding the filing of this charge, was the settlement reached on November 2, 2009, docketed as NJSBM 09-245. I assume NJSBM stands for the New Jersey State Board of Mediation. While we certainly encourage and support the voluntary resolution of disputes filed with the State Board, that was not a matter over which we had jurisdiction. Settlements reached before arbitrators should be enforced in Superior Court. Additionally, the Commission has held that a mere breach of a settlement agreement does not ordinarily violate the Act, and that an unfair practice alleging such a breach may not warrant a complaint.

In City of Asbury Park, P.E.R.C. No. 2002-73, 28 NJPER 253 (¶33096 2002), the Commission affirmed the decision of the Director of Unfair Practices to refuse to issue a Complaint where the charging party sought enforcement of a settlement agreement resolving two prior charges against the City. The charge alleged that the City refused to comply with an alleged requirement of the agreement. The Director found that a breach of a settlement agreement resolving an unfair practice charges does not violate the Act. The Commission agreed, holding:

Since a settlement agreement is essentially a contract between the parties, a mere difference of opinion concerning the extent to which compliance has been achieved does not rise to the level of a new unfair practice. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). [28 NJPER 254]

See Atlantic City Housing Authority (Nickson), D.U.P. No. 2004-006, 30 NJPER 191 (¶71 2004).

In Asbury Park, the Commission distinguished a breach of a settlement agreement from a repudiation, where a party denies the existence of an agreement or otherwise does not comply with its clear terms. See, e.g., Red Bank Bd. of Ed., P.E.R.C. No. 87-39, 12 NJPER 802 (¶17305 1986) (in absence of exceptions, Chairman adopted recommendation to find a violation of the Act where employer had repudiated settlement agreement). The Commission held that where a party seeks to enforce the terms of a settlement agreement, it must do so in Superior Court. The Commission noted that it only has power to seek enforcement of its own orders pursuant to N.J.S.A. 34:13A-5.4f.

Based upon the foregoing, I find that the allegation in the charge that the Authority has not complied with four settlement agreements does not meet the standard for complaint issuance.

The Association also alleges in its charge that whenever Costello attempts to contact Kinard, he does not receive a response.

N.J.A.C. 19:14-1.3(a)(3) requires that a charge contain:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

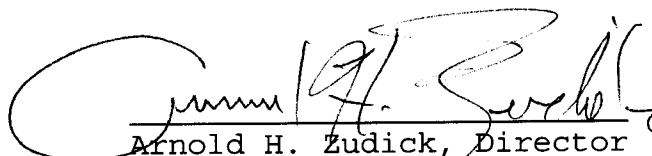
The Association's charge does not meet this requirement because it does not provide the dates on which Costello attempted to contact Kinard, nor does it provide information about the nature of the matters Costello wished to discuss with him. Therefore, I find that this allegation also does not meet the standard for complaint issuance.

In addition, the Association has not alleged facts to demonstrate that the Authority's action or inaction was done for anti-union reasons. Accordingly, I find that the Commission's complaint issuance standard has not been met.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Arnold H. Zudick, Director

DATED: October 7, 2010
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by October 18, 2010.