

D.U.P. NO. 92-10

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

In the Matter of

HUDSON COUNTY BOARD OF FREEHOLDERS,

Respondent,

-and-

Docket No. CI-92-1

DISTRICT 1199J AFSCME,

Respondent,

-and-

ARMAND ANTHONY PRIMO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refused to issue a Complaint on an unfair practice charge filed by County Parks employee Armand Primo. Primo alleged that Hudson County improperly reassigned his duties, suspended him and transferred him to another worksite. Primo also charged the County with failing to respond to his grievance. Primo also generally asserted District 1199J violated the Act by not holding union meetings and "stealing our money."

The Director found that Primo's charge did not meet the Complaint issuance standards. The charge did not include specific subsections of the Act, nor was proof of service provided. None of the charge's allegations concerning the adverse personnel actions implicate discrimination based upon protected activity. Further, the the County's alleged failure to answer Primo's grievance is not an unfair practice where the contract grievance procedure is self-executing and the employee may move the grievance to the next step.

Finally, no specific facts were asserted concerning District 1199 to warrant a Complaint.

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Appearances:

For the Respondent Employer,
Lawrence Henderson, Personnel Director

For the Respondent Employee Representative,
Balk, Oxfeld, Mandell & Cohen
Arnold S. Cohen, Attorney

For the Charging Party,
Armand Anthony Primo, pro se

REFUSAL TO ISSUE COMPLAINT

On July 10, 1991, Armand Primo ("Charging Party" or "Primo") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Hudson County Board of Freeholders ("County"). Charging Party filed amendments to the charge on August 8, September 18, September 20, September 24, September 25, September 26, September 27, September 30, October 1, October 8, October 15, October 22, October 31, November 4, 1991, and

January 22, 1992. On September 18, 1991, the Charging Party also charged his employee representative, District 1199J AFSCME ("District 1199J"), with unfair practices.

All filings were handwritten and only marginally legible. Charging party did not submit proof of service on the Respondents of the amendments. It appears that the Charging Party alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A ("Act") by reassigning his tennis court duties to seasonal workers, apparently depriving Primo of weekend work; by suspending Primo for allegedly leaving his worksite and using abusive language to a supervisor on September 17, 1991; by not responding to his grievance; by threatening his co-workers with discipline if they did not testify against Primo in a disciplinary hearing; by requiring him to provide his own transportation to the disciplinary hearing, which was conducted in another County facility; by involuntarily transferring Primo from one facility to another; and by notifying Primo that it intends to treat his unapproved absence from his position as a resignation from County employment. Primo's charge against District 1199J asserts generally that District 1199J does not hold union meetings and is "stealing our money." There is no specific factual assertion of any wrongdoing against District 1199J.

On July 30, I advised Primo that N.J.A.C. 19:14-1.3(a) requires that a charge include "a statement of the portion or portions of the Act alleged to have been violated." and that the

Charging Party is required to serve a copy of the charge and all amendments on the Respondent and to give this Commission proof of such service. Neither the original charge nor any of the amendments identify the particular subsection of the Act which Primo alleges the County or District 1199J violated. Charging Party also did not submit proof of service of the charge or any of the amendments on the Respondents.

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.^{1/} The Commission 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.^{2/}

1/ 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...."

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

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

Here, I find that Primo's charges do not meet the Commission's complaint issuance standard. First, none of the unfair practice charges contain a statement of the subsections of the Act which Primo contends the County's representatives violated. Although we twice advised Primo that his charges were defective and could not be processed without an amendment including such information.

Second, I do not find that the substance of any of Primo's allegations are violations of the Act. Primo's complaints that the County unfairly or improperly suspended, transferred or terminated him are matters which may be appealed through the District 1199 labor contract grievance procedure, or under the New Jersey State Department of Personnel (Civil Service) discipline rules, depending on the severity of the discipline. Except where there are allegations of discrimination based upon union activities (or a refusal to engage in union activities), this Commission has no jurisdiction to review such personnel matters.

Finally, the Charging Party asserts that the County failed to respond to grievances. The employer's failure to respond at an intermediate step of the grievance process is not, in and of itself, is not an unfair practice, when the contract provides for a

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

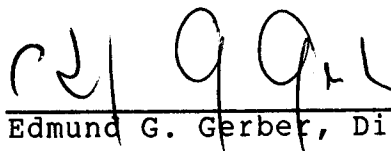
self-executing grievance procedure. See New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986).

Ordinarily, under the contractual grievance procedure, the aggrieved employee not receiving a satisfactory answer to an intermediary step may simply proceed to the next step.

Finally, the charge against District 1199J contains no factual assertions which might implicate a violation of our Act.

Based on the foregoing, I decline to issue complaints in these matters. Both charges are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February 19, 1992
Trenton, New Jersey