

D.U.P. NO. 97-21

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

In the Matter of

COUNTY OF ATLANTIC,
(DEPARTMENT OF PUBLIC SAFETY),

Respondent,

-and-

Docket No. CI-97-14

SALVATORE FORNAROTTO,

Charging Party.

SYNOPSIS

Charging Party's claim of a subsection (a)(5) violation was dismissed for lack of standing where charging party alleged a violation of the collective negotiations agreement, but failed to allege a breach of the duty of fair representation. Charging Party's appeal of minor discipline was dismissed since the courts have determined that such appeals belong in Superior Court. Further, Charging Party's allegations that the employer violated subsections 5.4(a)(1), (2), (3), (4) and (7) of the Act were dismissed where Charging Party failed to allege facts which would constitute a violation.

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Appearances:

For the Respondent,
Kenneth M. Shumsky, Assistant County Counsel

For the Charging Party,
A.J. Fusco, Jr., attorney

REFUSAL TO ISSUE COMPLAINT

On August 12, 1996, Correction Officer Salvatore Fornarotto filed an unfair practice charge with the Public Employment Relations Commission against Atlantic County (Department of Public Safety), alleging that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically, subsections 5.4(a)(1), (2), (3), (4), (5) and (7).^{1/}

^{1/} 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

Charging Party alleges that the County violated the Act, N.J.S.A. 40:14-147, and the collective negotiations agreement in its handling of minor disciplinary action taken against him. According to the charge, Fornarotto was charged on March 5, 1996 with three minor notices of disciplinary action with a six-day suspension and never received a disciplinary hearing. Further, on or about April 3, 1996, the County charged Fornarotto with a Preliminary Notice of Disciplinary Hearing, was found guilty and received a five-day suspension.

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. 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

1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (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. (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. (7) Violating any of the rules and regulations established by the commission."

appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{2/} The Commission's rules provide that I may decline to issue a complaint.^{3/}

For the reasons below, I decline to issue a complaint.

An individual employee normally does not have standing to assert a subsection 5.4(a)(5) violation, as the employer's duty to negotiate in good faith runs only to the majority representative. Beall and N.J. Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981). An individual employee/charging party may pursue a claim of a subsection 5.4(a)(5) violation only where the charging party has simultaneously alleged facts which constitute an unfair practice claim of a breach of the duty of fair representation against the majority representative. N.J. Turnpike Auth., P.E.R.C. No. 80-106, 6 NJPER 106 (¶11055 1980), aff'g in part, rev'g in part D.U.P. No. 80-10, 5 NJPER 518 (¶10268 1979).

Here, although Fornarotto has alleged a violation of the collective negotiations agreement, he has not asserted a breach of the duty of fair representation against his majority representative. Hence, his potential claim of an (a)(5) violation must fall.

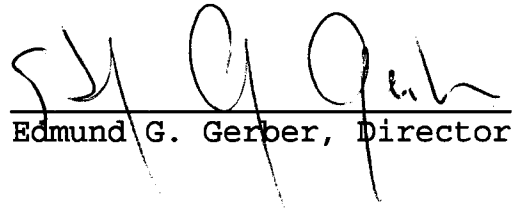
^{2/} N.J.A.C. 19:14-2.1.

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

As for the balance of Fornarotto's charge, it is an appeal of minor discipline and as such, must be appealed in the Superior Court. See Hudson Cty., P.E.R.C. No. 95-69, 21 NJPER 153 (¶26092 1995). Further, Fornarotto has not alleged any facts which may constitute a violation of subsection 5.4(a)(1), (2), (3), (4) and (7) of the Act.

Therefore, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge. N.J.A.C. 9:14-2.1, 2.2 and 2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: November 1, 1996
Trenton, New Jersey