

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-80-12

SHEILA M. FOUSHEE,

Charging Party.

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NEWARK TEACHERS UNION,

Respondent,

-and-

DOCKET NO. CI-80-17

SHEILA M. FOUSHEE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to unfair practice charges filed by an individual against the Board and the NTU. The charging party claimed that Board administrators assaulted her and, thereafter, she was "blackballed." The charging party also claimed that the NTU denied its assistance in processing her grievances and in obtaining reemployment. The Director finds that many of the alleged violations occurred outside the six month statutory limitations period for complaint issuance. The Director also concludes that the alleged discrimination against the charging party did not relate to the exercise of activity protected under the Employer-Employee Relations Act. As to the timely unfair practice allegations against the NTU, the Director, noting that the charging party had not been an employee of the Board for two years, concludes that the NTU did not have an obligation to assist the charging party in obtaining reemployment.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 16, 1979 by Sheila Foushee (the "Charging Party") against the Newark Board of Education (the "Board") alleging that the 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. (the "Act"), specifically, N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5), (6) and (7). A second Unfair Practice Charge was filed by the Charging Party on November 28, 1979 and amended November

30, 1979 against the Newark Teachers Union (the "NTU") alleging that the NTU was engaging in unfair practices under N.J.S.A. 34:13A-5.4(b) (1), (2), (3), (4) and (5). The two charges are interrelated.

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. <sup>1/</sup> 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. <sup>2/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>3/</sup>

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

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 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

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

Specifically, the charge against the Board alleges that in September 1971 or 1972, and again in September 1977, the Charging Party was subject to repeated incidents of sexual harassment by a male teacher and a male administrator, and on one occasion, in September 1977, was physically assaulted by a male teacher in full view of the students. The Charging Party further alleges: (1) that as a result of these incidents she has suffered mental stress and physical injury; (2) that the Board took no action in response to her complaints; and (3) that after the physical assault her pay was withheld, she was "blackballed," and the Board refused to provide her with a letter of reference, all in violation of N.J.S.A. 34:13A-5.4(a)(1) through (a)(7).

Under N.J.A.C. 19:14-2.1, the undersigned may not issue a complaint when the facts as alleged by the Charging Party, if true, would not constitute unfair practices. N.J.S.A. 34:13A-5.3 states:

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; ...

N.J.S.A. 34:13A-5.4(a)(1) and (3) state:

Employers, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

(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.

Assuming that the facts as alleged in the Charge are true, the Charging Party has not alleged that the Board has interfered with her rights under N.J.S.A. 34:13A-5.3, or that she has been discriminated against in regard to her tenure of employment in order to encourage or discourage her from exercising those rights. Rather, the Charge alleges that the Charging Party has been discriminated against by the Board in regard to her tenure of employment due to the incidents involving sexual harassment and physical assaults. This is not the type of interference or discrimination contemplated within the meaning of §§ (a)(1) and (3) of the Act. Accordingly, it appears that no complaint may issue under §§ (a)(1) and (a)(3). <sup>4/</sup>

<sup>4/</sup> Similarly, the Charge does not allege: (1) that the Board has dominated or interfered with the formation, existence, or administration of any employee organization, N.J.S.A. 34:13A-5.4(a)(2); (2) that the Charging Party was discharged or otherwise discriminated against because she has signed or filed an affidavit, petition or complaint, or given any information or testimony under this Act, N.J.S.A. 34:13A-5.4(a)(4); (3) that the Board refused to negotiate in good faith with her majority representative or failed to process any grievances presented by the NTU, N.J.S.A. 34:13A-5.4(a)(5); (4) that the Board refused to reduce a negotiated agreement to writing and to sign such agreement, N.J.S.A. 34:13A-5.4(a)(6); or (5) that the Board has violated any of the rules and regulations established by the Commission, N.J.S.A. 34:13A-5.4(a)(7). Accordingly, it appears that no complaint may issue under §§ (a)(2), (4), (5), (6) and (7).

Further, N.J.S.A. 34:13A-5.4 provides that: "no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge ... " The undersigned questions the timeliness of the Charge since it appears from the Charge that the Board's alleged withholding of pay, "blackballing," and refusal to provide the Charging Party with a reference all occurred in September 1977 or shortly thereafter. The Charge against the Board was not filed until October 16, 1979.

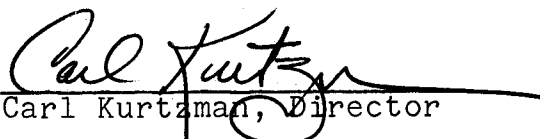
With respect to the amended Charge against the NTU, the Charging Party alleges that in September and October 1977, the NTU refused to process the Charging Party's grievance concerning her involuntary transfer, withholding of compensation, termination of benefits, termination of employment and alleged false documents in her personnel folder. The Charge further alleges that in June 1978, June 1979 and November 1979, the NTU failed to assist the Charging Party when the Board refused her reemployment.

As previously indicated under N.J.S.A. 34:13A-5.4 a complaint cannot issue concerning any alleged unfair practice which occurred more than six months prior to the filing of the Charge. As to the alleged unfair practices which occurred in June 1979 and November 1979, it appears that the essence of these allegations is the NTU's failure to assist the Charging Party in obtaining reemployment with the Board. However, without addressing the issue of negotiability/arbitrability of this employee's

reemployment rights, Union Cty. Reg. H/S Bd. of Ed. v. Union Cty. Reg. H/S Teachers Assn., 145 N.J. Super 435 (1976), since the Charging Party was not then an employee of the Board and had not been an employee of the Board or a unit member for approximately two years, the NTU had no responsibility to assist the Charging Party. Therefore, even assuming that the facts as alleged in the Charge are true, it appears that no complaint against the NTU may issue under §§ (b) (1) and (3) of the Act. <sup>4/</sup> Additionally, there is no basis for the issuance of a complaint under §§ (b) (2), (4) and (5). <sup>5/</sup>

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

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: April 14, 1980  
Trenton, New Jersey

<sup>4/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

<sup>5/</sup> The Charge contains no allegation: (1) that the NTU has interfered with the Board's selection of its representative for the purpose of negotiations or the adjustment of grievances, N.J.S.A. 34:13A-5.4 (b) (2); (2) that the NTU has refused to reduce a negotiated agreement to writing and sign such an agreement, N.J.S.A. 34:13A-5.4 (b) (4); or (3) that the NTU has violated any of the rules and regulations established by the Commission. Accordingly, it appears that no complaint may issue under §§ (b) (2), (4) and (5).