

D.U.P. NO. 87-17

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

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY,

Respondent

-and-

Docket No. CI-87-48

WALTER HOLSEY,

Charging Party.

SYNOPSIS

The Director refuses to issue a complaint on an unfair practice charge filed by Walter Holsey against the New Jersey Highway Authority. Holsey alleged that the Authority had violated its collective negotiations agreement with IFPTE Local 196 when it suspended him for three days, refused to credit his time-off as vacation and refused to arbitrate his grievance. No complaint issues because the underlying dispute is contractual and no demand for arbitration was made. Local 196 is not a party to the charge.

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Appearances:

For the Respondent
Apruzzese, McDermott, Mastro & Murphy, Esqs.
(Melvin Gelade, of counsel)

For the Charging Party
Walter Holsey, pro se

REFUSAL TO ISSUE COMPLAINT

On January 27 and February 20, 1987, Walter Holsey filed respectively, an original and amended unfair practice charge against the New Jersey Highway Authority ("Authority"). Holsey alleges that the Authority violated section 5.4(a)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/}, by suspending him for three days. Holsey contends that the Authority violated its collective agreement with IFPTE, Local 196, when it

^{1/} This subsection prohibits 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

suspended him and that the Authority refused to process his related grievance through arbitration. Holsey also alleges a contract violation because the Authority refused to permit him to use the time off as vacation time.

N.J.S.A. 34:13A-5.4(c) provides 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 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.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

On May 7, 1987, I advised Holsey that it appeared that the Commission's complaint issuance standards had not been met for the following reasons. The underlying dispute in this matter is contractual. Holsey alleges that the Authority violated the

^{2/} N.J.S.A. 34:13A-5.4(c) provides, in part: "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...."

^{3/} N.J.A.C. 19:14-2.1.

^{4/} N.J.A.C. 19:14-2.3.

contract when it suspended him and refused to permit him to credit the time to vacation leave. The Commission has consistently refused to issue a complaint where the charge merely alleges a dispute over the interpretation of a collective negotiations agreement. New Jersey Department of Human Services and C.W.A., P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984); Perth Amboy Board of Education, P.E.R.C. No. 87-29, 12 NJPER 759 (¶17287 1986).

Further, N.J.S.A. 34:13A-5.4(c) grants the Commission the exclusive power to prevent anyone from engaging in any unfair practices. The enumerated unfair practices are concerned with public employer/public employee representation and an individual's freedom to engage in or refrain from any such activity. Although Holsey is a public employee, he has not alleged that the Authority has infringed upon his guaranteed rights under the New Jersey Employer-Employee Relations Act. Holsey does not allege that the three-day suspension was the result of his exercise of protected rights.

With respect to Holsey's allegation that the Authority failed to arbitrate his grievance, there is no supporting allegation made by Holsey that an appropriate demand for arbitration was made to the Authority.

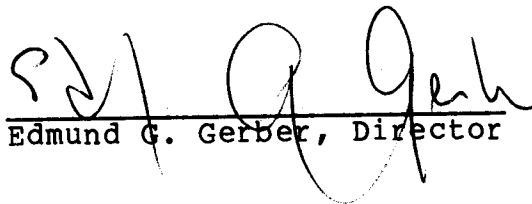
On May 7, 1987, I advised Holsey that, absent the filing of factual proffers warranting an evidentiary hearing, I would refuse to issue a complaint. Holsey has failed to amend his unfair practice charge to allege facts which, if true, might constitute

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unfair labor practices. Accordingly, I refuse to issue a complaint and I dismiss the unfair practice charges.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: May 20, 1987
Trenton, New Jersey