

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

In the Matter of

NEWARK TEACHERS UNION,

Respondent,

-and-

DOCKET NO. CI-78-15

HELEN MEANS, ET AL.,

Charging Party.

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-78-16

HELEN MEANS, ET AL.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to Unfair Practice Charges which do not contain allegations that the claimed unfair practices have occurred within the statutory six-month limitation period. Although provided the opportunity, the Charging Parties have not amended their Charges to allege events within the six-month limitation.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 20, 1977 by Helen Means, Judith Barrett, Alvan Cordasco, June Lockett, Hattie Black, Alphonse Del Guercio and Harold Wharton (the "Charging Parties") against the Newark Teachers Union and the Newark Board of Education (the "Respondents") alleging that the Respondents were engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended

(the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1),(2),(3)&(b)(1)&(2)^{1/}

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.^{2/} 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.^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint.^{4/}

^{1/} N.J.S.A. 34:13A-5.4(a)(1), (2) & (3) prohibit 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 interfering with the formation, existence or administration of any employee organization; and (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." N.J.S.A. 34:13A-5.4(b)(1) & (2) 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; and (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

^{2/} 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 named designated agent thereof..."

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

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

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

Pursuant to N.J.S.A. 34:13A-5.4(c) the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides: "...provided that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented."

Further, the Commission's rules state that an unfair practice charge shall contain inter alia:

"A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated." (Emphasis added) 5/

Accordingly, the undersigned has determined that it is incumbent upon the charging party to allege the occurrence of unfair practices, within the six month limitation requirement, and that in the absence of such allegations, the undersigned would

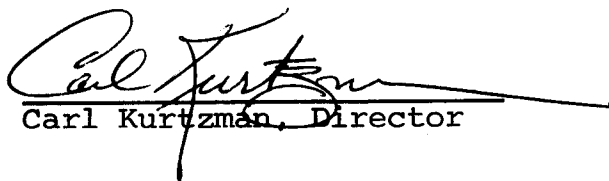
5/ N.J.A.C. 19:14-1.3.

decline to issue a complaint. See In re North Warren Regional Board of Education, D.U.P. No. 78-7, 3 NJPER ____ (1977).

Subsequent to the filing of the instant Unfair Practice Charges, by letter dated October 26, 1977, the undersigned informed the Charging Parties that the Charges could not be processed further unless they were amended, pursuant to N.J.A.C. 19:14-1.5, to include the time and place of occurrence of the particular acts alleged to constitute the unfair practices. The undersigned has not received a reply to the October 26, 1977 letter, nor have the Charges been amended, as requested.

Accordingly, as the Charging Parties have not included in their Charges the time of occurrence of the conduct alleged to constitute the unfair practices within the six month statutory limitation period, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: February 9, 1978
Trenton, New Jersey