

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

In the Matter of

BONNIE BRAE,

Respondent,

-and-

DOCKET NO. CO-79-329

BONNIE BRAE CHILD CARE
COUNSELORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed against Bonnie Brae. The Director finds based upon factual submissions presented by the parties that there is no public employer-employee relationship present upon which the Commission may issue an unfair practice complaint. Although Bonnie Brae is predominantly funded through State funds, Bonnie Brae is not a public employer. Bonnie Brae is chartered as a private non-profit corporation. Additionally, Bonnie Brae exercises substantial control over labor relations affecting its employees.

D.U.P. NO. 80-7

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Appearances:

For the Respondent
Apruzzese & McDermott
(Maurice J. Nelligan, of Counsel)

For the Charging Party
Rothbard, Harris & Oxfeld
(Sanford R. Oxfeld, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 6, 1979, and amended on July 18, 1979, by the Bonnie Brae Child Care Counselors Association (the "Association") against Bonnie Brae alleging that Bonnie Brae 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) and (5). ^{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/} These subsections prohibit employers, their representatives and 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. (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. (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."

^{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 designated agent thereof ... "

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

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

Bonnie Brae argues that a complaint should not issue in the instant matter inasmuch as it is not a public employer within the meaning of the Act. Accordingly, the issue presented before the undersigned is whether there is a public employer-employee relationship presented herein upon which a complaint may be issued. For the reasons stated below, the undersigned has determined that Bonnie Brae is not a public employer within the meaning of the Act, that there is not a public employer-employee relationship presented herein, and that a complaint may not issue. ^{5/}

The parties have presented factual submissions to the Commission. The information contained in these submissions reveals the following:

1. Bonnie Brae is a private non-profit corporation organized under the laws of New Jersey. The purpose of Bonnie Brae is primarily to provide treatment for severely emotionally disturbed children. A special education function is provided within the treatment operation of the facility.

2. Bonnie Brae has its own Board of Trustees who are not employees of any school district within this State. Vacancies within the Board are filled by a majority vote of the trustees. The Board of Trustees appoints the Executive Director who is the chief administrative officer.

3. The Executive Director and his subordinates (various directors) are responsible for hiring, firing, and directing the

^{5/} The undersigned notes that the Association filed an unfair practice charge concerning the instant dispute with the National Labor Relations Board. The Association has advised the Commission that the NLRB has declined jurisdiction over the Association and Bonnie Brae for various reasons.

work force at Bonnie Brae. When hiring employees who are paid from State funds, Bonnie Brae must adhere to the qualifications and requirements established by the New Jersey Department of Education and the New Jersey Department of Human Resources. The Executive Director and his subordinates also establish the working hours, vacations, sick time and other benefits of Bonnie Brae.

4. Bonnie Brae is funded primarily from State funds, but does receive additional financial support through various private sources. The budget for the current fiscal year exceeds \$2 million, of which approximately \$1.3 million is provided by the New Jersey Department of Human Resources, the Division of Youth and Family Services, \$.7 million from Beadleston Act funds, and an additional \$50,000 is provided by the federal government for the milk and lunch program.

5. Bonnie Brae owns its own land and buildings, pays for its employees on checks drawn on its own bank accounts, and pays for its employees' insurance coverage as well as all other benefits.

6. Bonnie Brae provides basic health insurance and major medical coverage to its employees in a plan limited in coverage to its employees, but does not have a private pension system. The employees of Bonnie Brae are not eligible to enter the New Jersey State Pension System.

7. Bonnie Brae employees are not subject to New Jersey Civil Service statutes or rules. However, Bonnie Brae's employees

must meet certain minimum educational requirements as set forth in Title 18 in order to qualify Bonnie Brae for State funding.

8. There is no interchange of supervision of employment assignments between Bonnie Brae and any public school, and no guarantee that Bonnie Brae employees will receive any credit from a public school for time worked at Bonnie Brae.

9. Bonnie Brae maintains all the employment records and data of its employees.

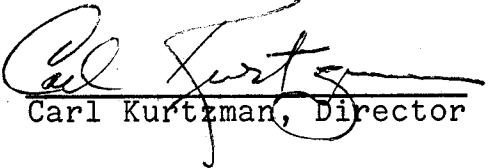
10. Bonnie Brae is a party to a written agreement with the New Jersey Department of Human Resources, Division of Youth and Family Services. One purpose of the agreement is to permit Bonnie Brae to obtain State funds. The Division of Youth and Family Services exercises minimal review of Bonnie Brae, limited to ascertaining that Bonnie Brae employees meet minimum educational requirements.

The above facts reveal that Bonnie Brae is not a public employer within the meaning of the Act. Bonnie Brae is a private, non-profit corporation. Bonnie Brae exercises substantial control over labor relations affecting the employees involved herein, and, furthermore, this control is not subject to Department of Youth and Family Services' review, except to assure that employees meet the qualifications set forth by law as a prerequisite for the disbursement of State funds. Therefore, the undersigned determines that the employment relationship presented is not a public employer-

employee relationship as contemplated within the meaning of the Act. See In re Newark Housing Development and Rehabilitation Corp., D.R. No. 80-2, 5 NJPER 328 (¶ 10175 1979); and In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977).

Accordingly, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: October 5, 1979
Trenton, New Jersey