

D.U.P. NO. 95-38

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

In the Matter of

CITY OF ATLANTIC CITY and
IAFF LOCAL 198, AFL-CIO, CLC,

Respondent,

-and-

Docket No. CI-95-47

KIM FIORIGLIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the public employer violated subsections 5.4(a)(3) and (4) of the Act by refusing to promote the charging party and that a majority representative violated subsection 5.4(b)(1) of the Act by refusing to process a grievance.

The Director determined that the alleged unlawful motive of the public employer, retaliation against the charging party for opposing the Mayor in a public election is not protected by the Act. He also determined that some allegations filed against the majority representative were already the subject of another charge and that a grievance was filed in fact.

D.U.P. NO. 95-38

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

In the Matter of

CITY OF ATLANTIC CITY and
IAFF LOCAL 198, AFL-CIO, CLC,

Respondent,

-and-

Docket No. CI-95-47

KIM FIORIGLIO,

Charging Party.

Appearances:

For the Respondent, City
James Whelan, Mayor

For the Respondent, IAFF
J. Rush, President

For the Charging Party,
Kim Fioriglio, pro se

REFUSAL TO ISSUE COMPLAINT

On February 2 and 10, and May 22, 1995, Kim Fioriglio filed an unfair practice charge and amended charges against the City of Atlantic City and Atlantic City Firefighters, IAFF Local 198. The original charge (including accompanying documents totalling more than 75 pages) alleges "unfair labor practices" (no subsections cited) from Fioriglio's "non-selection" as Battalion Fire Chief. He alleges that the respondents conspired "at the wishes of [Mayor] James Whelan to deprive [him] of a promotion based solely on discriminating and retaliatory motives." The May 22 amended charge alleges that the "...non-appointment to the position of Battalion

Fire Chief was based on discriminatory and retaliatory motives solely on the fact that I ran against the mayor in the May 1994 election." The City's action allegedly violates 5.4(a)(3), (4) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Fioriglio also alleges that in June 1994, he asked the IAFF president to file a grievance to fill the vacated Battalion Chief's position. The request was denied. He also alleges that on November 23, 1994, he filed a grievance on the City's failure to promote him and it was denied. The action allegedly violates subsection 5.4(b)(1), (3) and (5)^{2/} of the Act.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(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. (7) Violating any of the rules and regulations established by the commission."

^{2/} 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. (5) Violating any of the rules and regulations established by the commission."

On June 16, 1995, I issued a letter tentatively dismissing the entire charge. No response was filed.

Public employers are prohibited from "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 rights guaranteed them by this act" (my emphasis). Among those rights is,

The right, freely and without fear of penalty or reprimand, to form, join and assist any employee organization or to refrain from any such activity.... [N.J.S.A. 34:13A-5.3].

See In re Bridgewater Tp., 95 N.J. 235 (1984).

Fioriglio has alleged no facts suggesting that the City has violated any right guaranteed him by the Act. In fact, he contends that the employer's action -- the failure to appoint him as Battalion Chief -- was in retaliation for his "[running] against the mayor in the May 1994 election." Such motivation has no bearing on Fioriglio's rights set out in subsection 5.3 of the Act.

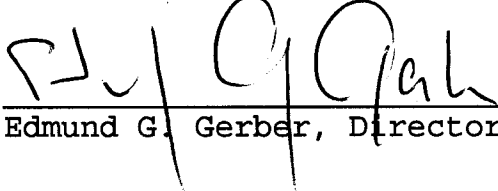
Fioriglio has also alleged that the City discriminated against him because "he has filed...a complaint", pursuant to subsection 5.4(a)(4). On September 29, 1994, Fioriglio filed an unfair practice charge against his majority representative, IAFF Local 198 (docket no. CI-95-16). Fioriglio has not explained how or alleged facts showing that a charge against his majority representative results in a discriminatory act by his public employer. See Hunterdon Cty. and CWA, 116 N.J. 322, 334 (1989).

Accordingly, I dismiss all allegations against the City of Atlantic City.

Some allegations against Fioriglio's majority representative apparently repeat allegations made in CI-95-16. I am inclined to consider such allegations merged into the previously filed charge. Fioriglio also alleges that although Local 198 "refused" to file a grievance concerning his non-appointment, he filed a grievance, which was denied. These facts, standing alone do not implicate the duty of fair representation. See D'Arrigo v. N.J. State Bd. of Mediation, 119 N.J. 74 (1990).

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 26, 1995
Trenton, New Jersey