D.U.P. NO. 93-2

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

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

Docket No. CI-90-65

GERALD E. HARRIGAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that Atlantic City repudiated a LAP decision by offering an employee a settlement with terms that were contrary to that decision. An individual is not a party to such a decision and has no standing to allege repudiation of its terms.

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Appearances:

For the Respondent
Murray, Murray & Corrigan, attorneys
(Karen A. Murray, of counsel)

For the Charging Party
Hubert U. Barbour, attorney

REFUSAL TO ISSUE COMPLAINT

On March 16, 1990, Gerald E. Harrigan filed an unfair practice charge[1/] with the Public Employment Relations Commission against the City of Atlantic City. The charge alleges that the City violated subsections 5.4(a)(1), (2), (3) and (7)[2/] of the New

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1/ On March 15, 1990, Harrigan's majority representative filed a second charge covering issues similiar to those raised here. (Docket No. CO-90-287). The processing of this charge was held in abeyance pending resolution of the second charge. The union's charge remains unresolved. Harrigan's attorney has now requested that I render a decision on this matter.

2/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by offering Harrigan a settlement with terms that were contrary to a decision issued through the Commission's Litigation Alternative Program (LAP).

The allegations of the charging party are unclear. However, it does appear that Harrigan is the City's payroll supervisor. The payroll supervisor position was the subject of a clarification of unit petition before the Commission. (Docket No. CU-88-47) The City and the majority representative of the affected unit, the Atlantic City Supervisors Association, used the Commission's LAP procedure to resolve the unit placement issue. The finding in the LAP procedure was that the payroll supervisor was a confidential employee and should be removed from the supervisory unit.

Harrigan now faces a disciplinary action[3/]. Harrigan is apparently claiming that an Assistant City Solicitor, as part of the

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2/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

3/ Although the charge does not specifically state when the discipline arose, the events in the charge imply that the action occured sometime after the issuance of the LAP decision.

settlement of the disciplinary action, suggested that Harrigan be returned to the supervisors unit, in return for accepting lesser discipline. Harrigan claims that the City then changed its offer to one that was less favorable to him. Harrigan alleges that "the City's intention (is) to repudiate the clarification of unit decision which both excludes Harrigan from union membership and also binds the City to unconditionally accept the clarification of unit decision's terms and conditions".

As a confidential employee, Harrigan neither enjoys the protection of the Act nor of the Association's collective negotiations agreement. Additionally, his allegations fail to specifically state any improper conduct on the part of the employer.

As the Commission held in Essex County Vo-Tech, P.E.R.C. No. 89-6, 14 NJPER 508 (¶19214 1988):

> Parties are free to negotiate about the composition of a negotiations unit. Bor. of Wood-Ridge, P.E.R.C. No. 88-68, 14 NJPER 130 (¶19051 1988); see also Salt River Valley Users Ass'n, 204 NLRB 83, 83 LRRM 1536 (1973), enf'd 498 F.2d 393, 86 LRRM 2873 (9th Cir. 1974); Douds v. Longshoremen, 241 F. 2d 278, 39 LRRM 2388 (2d Cir. 1957). Neither side is required to agree or make a concession on a unit change proposal. Neither side can insist to impasse on a change. Wood-Ridge, 14 NJPER at 132. If agreement cannot be reached, unit changes can only come about through our unit clarification procedures. N.J.A.C. 19:11-1.5. However, we cannot intervene in matters of unit definition unless there is a dispute between the parties. N.J.S.A. 34:13A-5.3. (emphasis supplied).

Here, the City properly raised the issue of the unit placement of Harrigan's position through the clarification of unit

petition. The issues raised by that petition were resolved by the decision in the LAP proceeding. It appears that the City is complying with that decision. As an individual, Harrigan does not have standing to allege a repudiation of the the LAP decision. Only the parties to that proceeding -- the City and the Association -- have such standing. While the City might be free to offer to restore Harrigan's position to the unit, its ultimate refusal to do so is not, on these facts, an unfair practice; neither is it an unfair practice for the City to modify its original settlement offer to one that was less favorable to Harrigan.

Based upon the foregoing, I find that the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: July 1, 1992
Trenton, New Jersey