

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

In the Matter of

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL #269,

Respondent,

-and-

DOCKET NO. CI-84-66

JAMES M. PALMIERI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge filed by an individual concerning alleged discriminatory treatment. The individual had already filed nearly identical charges with the National Labor Relations Board and these charges had been dismissed by the N.L.R.B. as being without merit or foundation. Neither the public interest nor the interest of the parties is served by providing the individual another forum for litigation.

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Appearances:

For the Respondent
Pellettieri, Rabstein & Altman
(Ira C. Miller, of Counsel)

For the Charging Party
James M. Palmieri, Pro se

REFUSAL TO ISSUE COMPLAINT

On March 7, 1984, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by James Palmieri ("Charging Party"), alleging that the International Brotherhood of Electrical Workers, Local #269 ("Local") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5), (6), (7) and 5.4(b)(1), (2), (3), (4) and (5). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a) 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. (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 (continued)

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 practices, 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

1/ (Continued)

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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the Commission. N.J.S.A. 34:13A-5.4(b) prohibits 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. (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. (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. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the Commission."

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..."

constitute an unfair practice within the meaning of the Act and that formal proceeding in respect thereto should be initiated in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standards have not been met.

The Charging Party alleges that Local 269 has discriminated against him in denying him job referrals through Local 269's hiring hall arrangements, because he filed certain unfair labor practice charges with the National Labor Relations Board. The Charging Party alleges as well that Local 269 has discriminated against him as a non-member because it failed to send him written notice of special union meetings, elections, and referendums. He further alleges that Local 269 is both a "public contracting employer agency" and a public employee representative in that it refers electrical workers to employment with several public entities and it represents those employees as well.

Local 269 responded to the charge and seeks its dismissal. It argues that the Charging Party is not a public employee in that he works in the private sector as an independent contractor or as an employee of private electrical contractors. It further argues that Local 269 is not a public employee representative within the meaning

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

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

of the Act and is not subject to its provisions. It claims that Local 269 does not maintain a contract with any public employer although its members are employed by several public entities under a contract between those entities and the Mercer County Building Trades Council.

Finally, Local 269 argues that the Charging Party has filed identical charges with the National Labor Relations Board and that these charges were recently dismissed by the N.L.R.B. as being without merit or foundation. ^{5/}

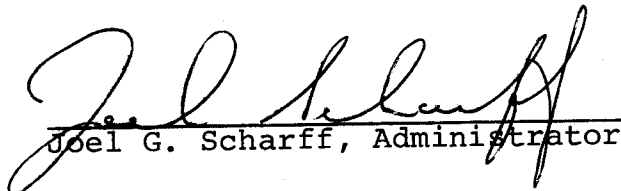
The undersigned need not address the jurisdictional claims relevant to the unfair practice filing. It appears that the charges and allegations raised herein raise the same issues as those recently placed before the N.L.R.B. The Commission's complaint issuance standards provide for formal proceedings in order to afford the parties an opportunity to litigate legal and factual issues. In those cases where the unfair practice charges do not involve circumstances appropriate for litigation and where the individual circumstances of a charge do not call for an examination of the facts, the undersigned may appropriately refuse to issue a complaint.

^{5/} In decisions dated November 30, 1983 and March 14, 1984, NLRB Regional Director Arthur Eisenberg found that the NLRB investigation failed to support Mr. Palmieri's charges that 1) Local 269 refused to refer him for employment because he had previously filed charges against it; 2) Local 269 permitted the National Electrical Contractors Association to engage in domination of and interfere with Local 269's administration; 3) Local 269 discriminates against non-members in the operation of its hiring hall because unlike members, non-members do not receive written notice of special union meetings, elections, or referendum; or that 4) Local 269 has accepted dues from employees' pay, without any written authorization permitting such deductions.

In this matter, the Charging Party has already filed nearly identical charges with the N.L.R.B. and has been afforded every opportunity to support the charges. The N.L.R.B. Regional Director has issued two well reasoned expositions of the factual and legal issues implicated in this matter. The public interest nor the interest of the parties is served by providing the Charging Party yet another forum for litigation. There is no distinction in the public sector and private sector law to warrant an examination of the issues raised by the Charging Party. ^{6/}

Accordingly, for the foregoing reasons, the undersigned determines that the Commission's complaint issuance standards are not met herein. The undersigned declines to issue a complaint with respect to the instant charge.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICES


Joel G. Scharff, Administrator

DATED: May 10, 1984
Trenton, New Jersey

^{6/} The undersigned notes that the Regional Director found the dues assessment argument to be without factual support.