

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

In the Matter of

RUTGERS UNIVERSITY AND AMERICAN  
FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, COUNCIL 52,  
AFL-CIO,

Respondents,

-and-

DOCKET NO. CI-79-5

LLOYD JOSEPH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge in which an individual alleged that the employer and the majority representative were in violation of N.J.S.A. 34:13A-5.4(a)(1) and (b)(1), respectively. The Unfair Practice Charge relates to a grievance by the individual filed with respect to his discharge and a claim that he was unable to achieve reemployment notwithstanding four hearings. The Charging Party did not assert any facts which would indicate that either the employer or his majority representative interfered with, restrained or coerced him in the exercise of rights guaranteed by the Act.

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Appearances:

For the Respondent Employer  
Robert Bickal, Director of Employee Relations

For the Respondent Representative  
Michael Lanni, Executive Director

For the Charging Party  
Lloyd Joseph

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 8, 1978, by Lloyd Joseph (the "Charging Party") against Rutgers University (the "University") and American Federation of State, County and Municipal Employees, Council 52, AFL-CIO ("AFSCME"). The Charge, as amended on September 25, 1978, alleges that both the University and AFSCME committed unfair practices in violation

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) and N.J.S.A. 34:13A-5.4(b)(1), respectively. <sup>1/</sup>

The Charging Party alleges that on February 21, 1978, Mr. Bernard Smith, a supervisor, told the Charging Party that he was not performing his job and, therefore, the Charging Party was advised that he was terminated from employment. The Charging Party further alleges that after four hearings he was not reemployed. It was at this stage that the Charging Party alleges, "my union representative [told] me he cannot do anymore for me."

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. <sup>2/</sup> The Commission has delegated its authority to issue complaints to the

<sup>1/</sup> Subsection (a)(1) prohibits employers, their representatives and agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." Subsection (b)(1) prohibits employee organizations, their representatives or agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

<sup>2/</sup> 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..."

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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

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

In order to support claimed violations of §§ (a)(1) and (b) (1), the Charging Party must allege acts which interfere, restrain or coerce an employee in the exercise of rights guaranteed by the Act. The Charging Party has failed to allege that he was engaged in protected activity and that the actions of the University or AFSCME interfered, restrained, or coerced him in the exercise of such activities. Pursuant to N.J.A.C. 19:14-1.6, the undersigned, in the course of the processing of this matter, requested that the Charging Party supply more specific allegations. The Charging Party has failed to do so. He has simply alleged that he was fired for "not performing my duty" and that he was unable to achieve reemployment after four hearings. These actions, if true, do not constitute unfair practices in the absence of facts demonstrating any interference with protected activity. Further,

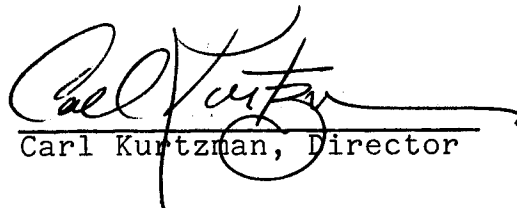
<sup>3/</sup> N.J.A.C. 19:11-2.1.

<sup>4/</sup> N.J.A.C. 19:11-2.3.

Charging Party has not alleged that any facts demonstrating arbitrary, discriminatory or bad faith actions by AFSCME which would constitute a breach of the duty of fair representation. See In re AFSCME, Council No. 1 and Banks, P.E.R.C. No. 79-28, 4 NJPER \_\_\_\_ (¶ 1978).

Accordingly, for the reasons stated above, the undersigned declines to issue a Complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: January 25, 1979  
Trenton, New Jersey