D.U.P. NO. 82-6

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

In the Matter of

MERCER COUNTY COMMUNITY COLLEGE,

Respondent,

-and-

DOCKET NO. CI-81-79

DOROTHY KODYTEK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to certain allegations of an Unfair Practice Charge filed by an individual, in part, due to the apparent untimeliness of the charges and in part because the facts alleged would not support the issuance of a complaint.

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Appearances:

For the Respondent
D. David Conklin, Dean for Planning & Development

For the Charging Party
Hartman, Schlesinger, Schlosser & Faxon, attorneys
(Thomas P. Foy of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 27, 1981, as amended May 14, 1981, by Dorothy Kodytek (the "Charging Party") against the Mercer County Community College (the "College"), alleging that Ms. Kodytek, who is president of the American Federation of Teachers, Local #2319 ("Local 2319"), has been discriminated against in the terms and conditions of her employment in order to discourage her in the exercise of rights guaranteed by 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 (3). 1/

The allegations of the Unfair Practice Charge are currently before the undersigned for a determination as to whether a complaint shall issue. Such determination is based upon the standard of whether the allegations of the charge, if true, may constitute an unfair practice. N.J.A.C. 19:14-2.1. Further, the Act prohibits the issuance of a complaint where the alleged unfair practices have not occurred within six months of the filing date of the unfair practice charge.

The undersigned has reviewed the Unfair Practice Charge, as amended, and it appears that the allegations merit the issuance of a complaint, with the exceptions of ¶ 3 and ¶ 4 of the amended Unfair Practice Charge. These allegations relate to grievances filed by the Charging Party on September 15, 1980 and September 24, 1980, which are allegedly either unresolved or unsatisfactorily resolved "from the Union's standpoint."

If the intent of the Charging Party is to assert that the events giving rise to the filing of the grievance i.e., the alleged contractual violations, are violations of the Act, then it would appear that these allegations have not been timely

1/ These subsections prohibit 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. (3) Discriminating in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act."

filed. The Commission has determined that the filing of a grievance related to contractual violations does not toll the responsibility to file an unfair practice charge within six months of the alleged contractual violation. See In re State of New Jersey (Stockton State College), P.E.R.C. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (App. Div. 1977), pet. for certif. den. 78 N.J. 326 (1978).

If the Charging Party's claim is that the College did not properly process grievances presented by the majority representative, such a claim may only be raised by the majority representative under N.J.S.A. 34:13A-5.4(a)(5). Under this subsection, public employers are prohibited from refusing to process grievances presented by the majority representative. Moreover, the Commission has ruled that the mere refusal by an employer to respond to a grievance would not constitute a violation of the Act where the majority representative was nonetheless able to move the grievance to higher levels under a self-executing grievance procedure. Local 2319's contract with the College permits the submission of grievances to advisory arbitration. Accordingly, a grievance presented by the majority representative may be processed unilaterally by Local 2319 notwithstanding the absence of a reply to the grievances by the College at a given level. See, In re Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1976); In re State of New Jersey, D.U.P. No. 77-3, 2 NJPER 373 (1976).

By letter dated July 9, 1981, the undersigned advised the parties that it appeared that the Charging Party's allegations

under ¶ 3 and ¶ 4 of the amended Unfair Practice Charge were either not timely filed or did not warrant the issuance of a complaint and of his intent to decline to issue a complaint with respect to these two issues. The Charging Party was provided an opportunity to advise the undersigned and to assert the basis of the claimed unfair practice and reasons why the allegations should be considered as timely filed, and that in the absence of such filing, the undersigned would issue a Complaint and Notice of Hearing in this matter exclusive of ¶ 3 and ¶ 4 of the amended Charge. The undersigned has not received a reply to the July 9, 1981 letter.

Accordingly, for the reasons above, the undersigned declines to issue a complaint with respect to ¶ 3 and ¶ 4 of the amended Charge and shall issue a Complaint and Notice of Hearing in this matter exclusive of these two paragraphs.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Carl Kurtzman, Director

DATED: July 23, 1981
Trenton, New Jersey