

D.U.P. NO. 93-30

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

In the Matter of

TOWNSHIP OF EVESHAM,

Respondent,

-and-

Docket No. CI-92-69

ROBERT THEURER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed by Robert Theurer against the Township of Evesham. Theurer alleges that the Township violated subsections 5.4(a)(1), (3) and (4) when it allowed test questions for a promotional exam to be given to certain individuals enabling them to get better test results and when it refused to provide him with a copy of the internal investigation into the matter. The Director finds that Theurer's allegations did not involve any protected activities, nor did he allege that his protected rights were interfered with. The Director also finds that Theurer lacks standing to make a request for information.

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Appearances:

For the Respondent,  
Dyer & Harrington, attorneys  
(John Harrington, of counsel)

For the Charging Party,  
Mark J. Molz, attorney

REFUSAL TO ISSUE COMPLAINT

On March 12, 1992, Robert Theurer filed an unfair practice charge with the Public Employment Relations Commission against the Township of Evesham. Theurer alleges that the Township violated subsections 5.4(a)(1), (3) and (4)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> 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 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."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it (1) allowed test questions for a promotional exam to be "leaked"; and (2) refused to provide him with a copy of a report concerning an internal investigation on the matter.

On April 30, 1991, Theurer took a promotional exam for the position of sergeant/corporal. On June 3, 1991, Theurer and other members of the Township police department who had also taken a promotional exam filed a step one group grievance with Chief Matteo. The grievance stated, in part, that certain individuals were given test information before they took the exam, enabling them to score "better than 97%." The grievants requested that the Township conduct another promotional exam.

On June 4, 1991, Chief Matteo issued an order suspending the promotional process for the sergeant/corporal positions until an internal investigation into the allegations contained in the grievance was completed. On October 22, 1991, Chief Matteo announced that the Township, after reviewing the internal investigation report, found no support for the grievant's complaints of exam improprieties and, therefore, the promotional process for sergeant/corporal would proceed using the contested exam scores. On October 28, 1991, the grievants appealed the Chief's action to the Township manager at the second step and requested a copy of the internal investigation report. The Township denied the request for the internal investigation report on December 18, 1991.

An employer violates subsection 5.4(a)(3) when it discriminates in regard to hire or tenure of employment or other term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act. For there to be a violation of this subsection, there must be a nexus between the discriminatory conduct and protected activity.

Theurer claims he was discriminated against because the Township used exam scores even though the other highest scoring candidates were given test information in advance of the exam. Assuming the veracity of this allegation, it does not implicate protected activity under the Act, such as filing grievances or actively participating in employee organization and negotiations. Theurer did, in fact, file and process a group grievance that challenged the allegedly tainted testing process, but that grievance is not part of this charge. Accordingly, I decline to issue a complaint on this part of the charge.

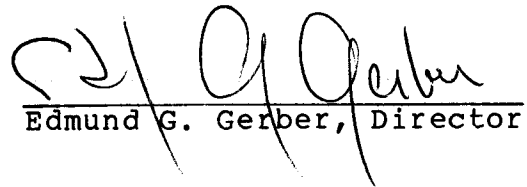
Theurer's allegations of violations of subsections 5.4(a)(1) and (4) are similiarly unsupported by any facts. He does not indicate how his protected rights were interefered with, nor that he was discriminated against because of any actions taken before this Commission.

Theurer requests that the Township give him its internal investigation report. Only the majority representative may request information relevant to carrying out its responsiblity to administer the negotiated agreement; therefore, Theurer lacks standing to

enforce this request. New Jersey Transit Bus Operations, Inc.,  
P.E.R.C. No. 88-12, 13 NJPER 661 (¶18249 1987).

The Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: February 25, 1993  
Trenton, New Jersey