D.U.P. NO. 80-31

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

In the Matter of

OVERBROOK EMPLOYEES ASSOCIATION,

Respondent,

-and-

DOCKET NO. CI-80-23

GEORGEENA BAILEY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to the Charging Party's allegations that the Association refused to negotiate in good faith with the public employer concerning terms and conditions of employment resulting in her not receiving an increment. The Director notes that the Charge admits that the public employer and the Association have negotiated over the elimination of increments. Furthermore, the Director reiterates prior determinations that according different treatment to different classifications of employees is not an unfair practice in the absence of arbitrary, discriminatory or bad faith conduct.

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Appearances:

For the Respondent
Berkley Howard, President

For the Charging Party
Melvin A. Jacobs, attorney

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 28, 1980 by Georgeena Bailey (the "Charging Party") against Overbrook Employees Association (the "Association") alleging that the Association was engaging in unfair practices within the meaning 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(b)(3). 1/

1/ This subsection prohibits employee organizations, their representatives or agents from: "(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."

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. 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 constitute an unfair practice within the meaning of the Act. 3/ The Commission's rules provide that the undersigned may decline to issue a complaint. 4/

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

The Charging Party indicates that she did not receive an increment in 1979 under the contract negotiated by the Respondent and the public employer, County of Essex. She did receive a $400 bonus, but contends that she should have received an increment on her anniversary date in accordance with statements made

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 ... "

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

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

to her when hired. The Charge also suggests that all unit employees have not been treated alike under the collective bargaining agreement.

According to the agreement, bonuses are provided in place of increments for those individuals who did not receive 1979 increments. 5/ The Charge admits that the public employer and the exclusive representative have negotiated over the elimination of increments. It therefore follows that the parties' negotiations obligations have been met. There is no claim that the agreement between the County and the Association is not being adhered to by these parties.

As to the allegation that all unit employees have not been treated alike, there is no claim herein that like classifications of employees have been treated dissimilarly. Further, there is no factual claim that the Association has acted in an arbitrary, discriminatory or bad faith manner. In the absence of such conduct, according different treatment to different classification of employees is not, by itself, an unfair practice. See Belen, et al. v. Woodbridge B/E & Woodbridge Fed./Teachers, Local 822, AFT, AFL-CIO, 142 N.J. Super. 486 (1976), certif. den. 72 N.J. 458 (1976); In re Township of Springfield, D.U.P. No. 79-13, 5 NJPER 15 (¶ 10008 1978). See also Ford Motor Co. v. Huffman, 345 U.S. 330 (1953).

5/ Item 14 of the Agreement states in part: "Each employee on the payroll on the date of execution of this agreement shall receive a one-time payment of $400.00 under the following conditions: A) The employee did not receive an increment in 1979."

Accordingly, the instant Charge does not allege facts which, if true, may constitute unfair practices on the part of the Association. Therefore, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Carl Kurtzman, Director

DATED: June 11, 1980
Trenton, New Jersey