

D.U.P. NO. 84-32

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

In the Matter of

COUNTY OF CAMDEN
(HIGHWAY DEPARTMENT)

Respondent,

-and-

DOCKET NO. CI-84-40

JOHN T. BALLANCE,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to the allegations of an individual Charging Party that the County violated the Act by denying his request to be reassigned to drive his former truck. He asserts the County assigned a less senior employee to drive the truck. The Charging Party did not assert that the County's actions were in retaliation for the exercise of any specific protected activity under the Act. Additionally the Administrator notes that it is the exclusive province of the majority representative to assert that the employer, through violation of the contract, has altered terms and conditions of employment without prior negotiations.

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REFUSAL TO ISSUE COMPLAINT

On November 10, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by John T. Ballance ("Charging Party") against the County of Camden (Highway Department) ("County") alleging that the County has 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 §§ 5.4(a)(3) and (5). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives or agents from: "(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. (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."

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. The 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 and that formal proceedings in respect thereto should be instituted 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.

^{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

The Charging Party alleges that during the week of September 12, 1983, the County denied his request to be reassigned to drive his former truck. On September 29, 1983, he filed a grievance concerning the denial of this requested reassignment. The grievance was rejected by the Assistant Superintendent of Roads on the grounds that it was not filed in a timely fashion. Charging Party did not pursue the grievance through additional steps of the contractual grievance procedure, but rather, filed the instant unfair practice charge. In the charge, he states that the County assigned a less senior employee to the preferred truck; he claims that he had superior rights to this truck based on his seniority. The County's actions allegedly violate the preamble and Articles XI (E) and XVIII (A) of the collective negotiations agreement covering Charging Party's employment.

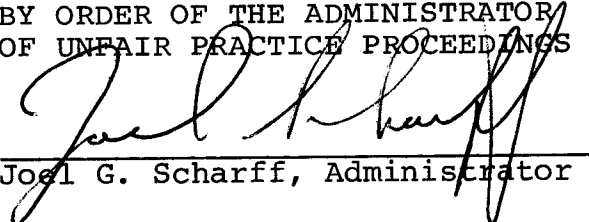
Although the Charging Party has alleged violations of §§ 5.4 (a)(3), his statement of facts does not indicate that the County was motivated in its assignment decision to discriminate against him due to his exercise of protected activities under the Act, such as union activities or grievance filing.

As to the claim under §§ 5.4(a)(5), it is the exclusive province of the majority representative to assert that the employer, through violation of a contract agreement, has altered terms and conditions of employment without prior negotiations. An individual employee may not stand in the shoes of the majority representative.

unless there are extenuating circumstances as outlined below. ^{5/}
These circumstances have not been alleged in the instant matter.

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

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: June 15, 1984
Trenton, New Jersey

^{5/} In several prior decisions it has been stressed that a claim of contract violation is solely addressed by the Commission in the context of an unfair practice charge alleging that an employer has unilaterally altered a term and condition of employment without negotiating in good faith with the majority representative, in violation of N.J.S.A. 34:13A-5.4(a)(5). Further it has been emphasized that under § 5.4(a)(5) the employer's duty is owed exclusively to the majority representative. Thus, unless it is claimed that the majority representative has violated its responsibility to fairly represent the interest of a unit member when a contract has been breached, the undersigned will not issue a complaint alleging that the employer has violated its responsibility to the majority representative. Full and extensive analyses of the basis of these determinations are contained in In re N.J. Turnpike Auth., D.U.P. No. 80-10, 5 NJPER 518 (¶ 10268 1979), and P.E.R.C. No. 81-64, 6 NJPER 560 (¶ 11284 1980), aff'd App. Div. Docket No. A-1263-80T3 (10/30/81). See also In re Cty. of Middlesex, P.E.R.C. No. 81-62, 6 NJPER 555 (¶ 11282 1980), aff'd App. Div. Docket No. A-1455-80 (4/1/82), pet. for certif. den. 6/16/82, mot for recon. den. 10/5/82, and In re Tp. of Cherry Hill, D.U.P. NO. 81-18, 7 NJPER 286 (¶ 12128 1981).