

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

In the Matter of

UNION COUNTY COLLEGE,

Respondent,

-and-

DOCKET NO. CO-83-299

OFFICE & PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 32,
AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge in which the Charging Party alleges that the employer is refusing to negotiate with it. Citing In re County of Middlesex (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶ 12118 1981), the Director notes that the Commission is processing a valid question concerning representation involving the employees.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on May 9, 1983, by the Office & Professional Employees International Union, Local 32, AFL-CIO (the "Charging Party") against Union County College (the "College") alleging that the College 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(a) (1), (2) and (5). 1/

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

1/ N.J.S.A. 34:13A-5.4(a) prohibits 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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.

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 is a majority representative of certain secretarial and clerical employees of the College. It alleges that on February 2, 1983, and again on April 6, 1983, the College refused to negotiate with it, citing the pendency of a petition before the Commission raising a question concerning the representation of these employees. In its charge, the Charging Party states that the referred to representation petition was administratively dismissed on March 9, 1983, thus creating a negotiations obligation for the College.

^{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

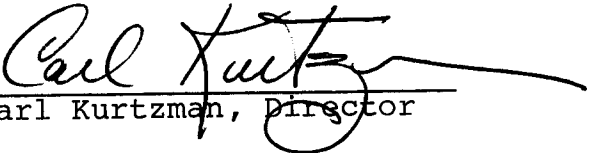
The Commission's investigation reveals that on December 3, 1982 a Petition for Certification of Public Employee Representative (RO-83-110) was filed by the Union County College Staff Association, N.J.E.A. That petition sought certification of the Petitioner in a unit consisting of all secretarial and clerical employees of the College. On March 9, 1983 the undersigned, as Director of Representation, advised the parties that he was inclined to invoke the contract bar rule, N.J.A.C. 19:11-2.8(c), which would preclude the further processing of the Petition unless the Petitioner or College submitted documentation which would establish a basis for their assertions that the contract bar rule was not applicable. The material which these parties subsequently provided was reviewed, and the undersigned found, after his review, that the contract bar rule was not applicable. The Petition was determined to have raised a valid question concerning representation and an election was directed on May 16, 1983. See In re Union County College, D.R. 83-30, 9 NJPER ____ (¶ ____ 1983).

On the basis of that decision, which found that a valid question concerning representation exists in an appropriate unit, there can be no basis to assert that the employer violated the Act by declining to negotiate with the Charging Party during the pendency of the representation petition on either February 2, 1983 or April 6, 1983. See Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶ 12118 1981), wherein the Commission stated: "We believe that the proper action to be taken by an employer who is faced with and has knowledge of a pending question concerning representation to avoid

the committing of an unfair practice pursuant to N.J.S.A. 34:13A-5.4
(a) (1) and (2), is not to begin or if begun, to cease negotiations
with the incumbent union until the representation issue has been
properly determined." (footnote omitted)

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 31, 1983
Trenton, New Jersey