

D.U.P. NO. 82-32

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

In the Matter of

BOROUGH OF CLOSTER, DEPARTMENT
OF PUBLIC WORKS,

Respondent,

-and-

DOCKET NO. CI-82-33

JASON SIMPSON, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed against the Charging Party's employer and majority representative. The Charging Party has not complied with Commission rules requiring that he designate the portion(s) of the Act alleged to be violated.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practic Charge was filed with the Public Employment Relations Commission (the "Commission") on January 14, 1982 and amended on February 4, 1982 by Jason Simpson, Jr. (the "Charging Party") against the Borough of Closter, Department of Public Works (the "Respondent") alleging that the Respondent 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").

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. ^{1/} 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. ^{2/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{3/}

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

The Commission's rules state that an unfair practice charge shall contain inter alia:

A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated.
(Emphasis added) ^{4/}

^{1/} 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 ... "

^{2/} N.J.A.C. 19:14-2.1

^{3/} N.J.A.C. 19:14-2.3

^{4/} N.J.A.C. 19:14-1.3

Accordingly, it is incumbent upon the Charging Party to allege the specific portion(s) of N.J.S.A. 34:13A-5.4(a) and/or (b), which form the basis of the alleged statutory violation. The undersigned has determined that in the absence of such allegations, a complaint may not issue. ^{5/}

Subsequent to the filing of the Unfair Practice Charge, by letters dated January 21, 1982 and March 1, 1982, the undersigned informed the Charging Party that the Charge could not be processed further unless it was amended, pursuant to N.J.A.C. 19:14-1.5, to correct its deficiencies. The undersigned has not received a reply to the January 21, 1982 and March 1, 1982 letters, nor has the Charge been amended, as requested.

Moreover, the undersigned has reviewed the allegations contained in the "Statement of Charge" and cannot discern the nexus between the factual allegations and any violation of the Act as enumerated in the subsections of N.J.S.A. 34:13A-5.4(a) or (b).

Accordingly, as the Charge is deficient the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: April 29, 1982
Trenton, New Jersey

^{5/} See In re Newark Housing Authority, D.U.P. No. 80-16, 6 NJPER 139 (¶ 11069 1980); In re Union Cty. Welfare Bd., D.U.P. No. 80-8, 5 NJPER 473 (¶ 10238 1979).