

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

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Respondent,

-and-

DOCKET NO. CI-82-2

EDWARD SALFELDER,

Charging Party.

MIDDLESEX COUNTY COLLEGE,

Respondent,

-and-

DOCKET NO. CO-82-6

FRATERNAL ORDER OF POLICE
LODGE NO. 85,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge. The Charging Party alleged that Middlesex County College had unilaterally altered the assignment of supervisory responsibilities. The Director finds that the assignment of supervisory responsibilities is a fundamental management prerogative and, thus, the employer did not violate his responsibility to negotiate with respect to terms and conditions of employment.

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REFUSAL TO ISSUE COMPLAINT

On August 18, 1981, an Unfair Practice Charge, (Docket No. CO-82-6) was filed with the Public Employment Relations Commission (the "Commission") by the Fraternal Order of Police, Lodge #85 (the "FOP"), ^{1/} alleging that Middlesex County College (the "College") has engaged in unfair practices within the meaning of the New Jersey

1/ This charge is intended to "amend" an earlier charge (Docket No. CI-81-2) filed by Edward Salfelder, an officer of the FOP, filed in an individual capacity. Salfelder has filed the second charge on behalf of the FOP in his official union capacity as secretary/treasurer.

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)(5). ^{2/}

The FOP alleges that the College unilaterally changed written rules and regulations concerning terms and conditions of employment without negotiations with the majority representative. As a result of these changes, the FOP claims that the chain of command which formerly existed among police officers at the College has been and will continue to be altered during extra-duty, overtime assignments.

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. ^{3/} 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,

^{2/} This subsection prohibits public employers, their representatives or agents from: (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."

^{3/} 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..."

may constitute an unfair practice within the meaning of the Act. ^{4/}
The Commission's rules provide that the undersigned may decline to
issue a complaint. ^{5/}

For the reasons below, it appears to the undersigned that
the Commission's complaint issuance standard has not been met with
respect to the instant charges.

The FOP alleges that under the rules and regulations of
the College police department, sergeants have immediate supervision
over officers assigned to patrol and special duty. This policy,
allegedly, was altered when a sergeant assigned to an extra-duty,
overtime assignment with an officer was told by a captain that
"each of us, as individuals, were under the control of the person
to whom we were instructed to report to."

In asserting a §(a)(5) charge under the present facts,
the FOP alleges that the College has refused to negotiate in good
faith with respect to a term and condition of employment. If the
allegations do not relate to terms and conditions of employment,
there cannot be a violation of §(a)(5).

In the instant matter, the underlying subject concerns
the employer's designation, without earlier negotiations, of the
chain of command for extra duty, overtime assignments at the College.
The FOP asserts that a sergeant should be in charge of junior
officers assigned to such events, that this has been the College's
policy heretofore, and that any change in that policy must be
negotiated.

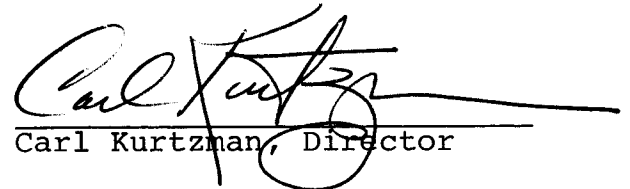
4/ N.J.A.C. 19:14-2.1

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

It would appear to the undersigned that the assignment of supervisory responsibilities is a fundamental management prerogative and is not a term and condition of employment. Ridgefield Park Ed/Assn., 78 N.J. 144 (1978); Bd/Ed of Tp. of No. Bergen and No. Bergen Fed/Teachers, 141 N.J. Super. 97 (App. Div. 1976); see also In re City of White Plains, 5 PERB ¶3008 (rank of supervisors assigned in a management prerogative). The refusal or failure of an employer to negotiate with a majority representative over an issue which is not a term and condition of employment cannot constitute an unfair practice under the Act.

Accordingly, the undersigned declines to issue a complaint with respect to the instant charges.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: January 28, 1982
Trenton, New Jersey