

D U.P. NO. 83-8

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

In the Matter of

JERSEY CITY,

Respondent,

-and-

DOCKET NO. CI-83-15

TERENCE RUDDY, JR.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to charges filed by a firefighter who claimed that the City's conduct relating to his request for reinstatement to the fire department constituted unfair practices. Charging Party did not allege that the employer was motivated to discriminate against him due to his exercise of rights protected under the Employer-Employee Act.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 7, 1982, by Terence Ruddy, Jr. (the "Charging Party") against Jersey City (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")., specifically N.J.S.A. 34:13A-5.4(a)(1) and (3). ^{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 in any unfair practice, and that it has the authority to issue a complaint

^{1/} These subsections prohibit 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. (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.

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 alleges that over the period of 1972 through 1977, the City first failed to reinstate him as a firefighter and, thereafter, upon his reinstatement failed to reappoint him to a line firefighting position. The City's actions are alleged to be predicated upon its adherence to wrongful assessments of the Charging Party's medical condition by its appointed medical personnel. Charging Party states that by these actions he has been deprived of pension credits, denied an opportunity to bid on certain job openings and has

^{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

been victimized by age discrimination. He also asserts that he was not paid for two months after being reinstated. ^{5/}

Although the Charging Party has alleged violations of N.J.S.A. 34:13A-5.4(a)(1) and (3), he has not identified the rights under the Act which have arguably been interfered with and his statement of facts does not indicate that the employer was motivated to discriminate against him due to his exercise of any protected activities as set forth in the Act, such as activities in support of an employee representative.

The Charging Party has been advised of the above deficiencies in his Charge, but has not provided any additional materials in support of his allegations.

Accordingly, inasmuch as the Charging Party has failed to posit any nexus between his employer's actions and his exercise of any rights under the Act, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: December 16, 1982
Trenton, New Jersey

^{5/} Charging Party claims that he first obtained receipt of these wrongful assessments in February, 1982. Since the undersigned declines to issue a complaint for the other reasons, the issue as to the possible non-timely filing of this charge under Sub-section 5.4(c) need not be examined.