

D.U.P. NO. 84-7

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-83-41

MICHAEL COOPER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge filed by an individual negotiations unit member who claims that the employer is attempting to inject the terms of a new attendance improvement program upon all unit members. Board's duty to negotiate is owed exclusively to the majority representative and the Charging Party cannot stand in the shoes of the majority representative to assert negotiations rights.

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-83-41

MICHAEL COOPER,

Charging Party.

REFUSAL TO ISSUE COMPLAINT

On January 28, 1983, an Unfair Practice Charge (Docket No. CI-83-41) was filed with the Public Employment Relations Commission ("Commission") alleging that the Newark Board of Education ("Board") had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (2), (5) and (7). <sup>1/</sup>

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

<sup>1/</sup> These subsections prohibit public 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. (7) Violating any of the rules and regulations established by the Commission."

complaint stating the unfair practice charge. <sup>2/</sup> 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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

The instant Charge relates to the Board's implementation of a new attendance improvement program ("AIP") affecting all unit members. The Charge alleges that the Board is trying to inject the AIP into the collective negotiations agreement covering Charging Party's title. Charging Party also alleges that the theory upon which the AIP is based, the sick policy and the number of holidays and personal days, is inapplicable to the Repair and Maintenance Department Trade Unions.

For the reasons stated below, it appears to the undersigned that the allegations contained in the charge do not provide a basis upon which a complaint may be issued.

<sup>2/</sup> 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 charge and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof ..."

<sup>3/</sup> N.J.A.C. 19:14-2.1

<sup>4/</sup> N.J.A.C. 19:14-2.3

The undersigned notes that Charging Party is an individual whose majority representative is the Newark Building Trades Council.

With respect to the § 5.4(a)(1) allegation, the statement of facts does not indicate that the implementation of the AIP was related to any protected activity which the Charging Party--as an individual--may have engaged in, nor is there any allegation that the AIP has had a direct adverse impact upon Charging Party's terms and conditions of employment as opposed to other unit members who are similarly affected. Therefore, there does not appear to be a basis for a claim under § 5.4(a)(1) that the Board has interfered with Cooper's exercise of protected rights under the Act.

With respect to the § 5.4(a)(2) claim, there is no allegation in the Charge to suggest that the Board has dominated or interfered with the formation, existence or administration of any employee organization. As to the § 5.4(a)(5) claim, an allegation that the Board refused to negotiate in good faith with a majority representative may be filed by the majority representative in a timely fashion. An individual member of the negotiations unit cannot stand in the shoes of the majority representative and demand negotiations rights that are exclusively owed by the employer to the majority representative. <sup>5/</sup> The facts herein do not suggest that the Trades Council has improperly represented the interests of negotiations unit members. See In re State of New Jersey D.U.P. No. 82-18, 8 NJPER 69 (¶ 13028 1981). <sup>6/</sup>

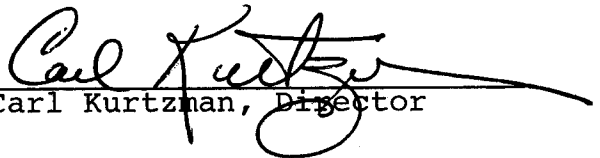
<sup>5/</sup> In correspondence from the Commission the Charging Party was advised of his problem concerning standing to pursue this claim.

<sup>6/</sup> If the AIP is implemented in a manner which directly affects Charging Party's terms and condition's of employment, the Charging Party may wish to seek the majority representative's assistance in presenting a grievance.

Finally, with respect to the § 5.4(a)(7) allegation, the Charging Party has not identified any rule or regulation established by the Commission which the Board allegedly violated. Neither do the alleged facts support a claim upon which an (a)(7) violation may be grounded. See In re Madison Tp. Bd. of Ed., E.D. No. 76-8 (1975).

Accordingly, for the above-stated reasons, the undersigned declines to issue a complaint. <sup>7/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: August 22, 1983  
Trenton, New Jersey

<sup>7/</sup> In other related proceedings before the Commission, the Newark Teachers Union, a majority representative of certain other employees of the Newark Board of Education, has filed unfair practice charges against the Board concerning the implementation of the AIP and its effect upon the members of that unit. Those charges are proceeding to hearing.