

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

In the Matter of

MAPLE SHADE PBA, LOCAL 267,

Respondent,

-and-

DOCKET NO. CE-80-7

TOWNSHIP OF MAPLE SHADE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an employer's claim under N.J.S.A. 34:13A-5.4(b)(3) that the majority representative of police refused to negotiate in good faith by failing to commence negotiations with the employer within four days of the employer's correspondence soliciting the representative's negotiations intentions. Noting the Commission's standard that a Respondent's refusal to negotiate requires an examination of a totality of conduct, the Director observes that the Unfair Practice Charge does not set forth facts indicating a totality of conduct. While the representative's failure to respond to the Township's inquiry may constitute a violation of § (b)(3), such a violation is de minimis in nature and is not a basis for complaint issuance.

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Appearances:

For the Respondent

Tomar, Parks, Seliger, Simonoff & Adourian  
(Steven Kudatsky, of Counsel)

For the Charging Party

Richard Clark, Township Manager

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 24, 1979, by the Township of Maple Shade (the "Charging Party") against Maple Shade PBA, Local 267 (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(b)(3). <sup>1/</sup>

<sup>1/</sup> This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

N.J.S.A. 34:13A-5.4(c) provides that "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 ... " 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 to the director of unfair practices, that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues ... " 2/ The Commission rules provide that the undersigned may decline to issue a complaint. 3/

For the reasons stated below, it does not appear to the undersigned that the Commission's complaint issuance standards have been met.

The Charging Party states that negotiations in 1979 had not commenced with the Respondent employee organization in accordance with the Commission rules establishing a date for the commencement of negotiations and in accordance with the parties' contractual agreement which established a date of September 1 for the commencement of negotiations. On September 17, 1979, the Charging Party wrote to the employee organization indicating that it had not heard

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

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

from the Respondent, and that the Charging Party was prepared to commence negotiations. The Charging Party requested that the Respondent advise of its intentions and that the Respondent be prepared with negotiations demands at a meeting if it desired to commence negotiations. The instant Unfair Practice Charge was executed on September 21, 1979, and was filed on September 24, 1979, alleging that "the employee organization to date has refused to commence negotiations and, therefore, the employer charges the employee organization with an Unfair Labor Practice."

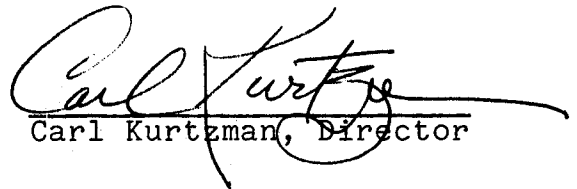
The Commission has stated that the totality of conduct engaged in by a respondent, rather than the occurrence of an isolated event, must be examined in order to establish a violation of the Act. This standard has been approved in State of New Jersey v. Council of N.J. State College Locals, NJSFT-AFT, AFL-CIO, 141 N.J. Super. 470 (1976), aff'g E.D. No. 79, 1 NJPER 39 (1975).

It appears that the Charging Party waited four days for a reply to its initial communication to the Respondent and in the absence of the commencement of negotiations proceeded to file the instant Charge. The facts asserted by the Charging Party do not describe a totality of conduct which, if true, may constitute an unfair practice of refusal to negotiate in good faith on the part of the Respondent. Therefore, the Commission's standard for the issuance of a complaint with respect to a § 5.4(b)(3) allegation has not been met.

As noted above, the Charging Party's letter was an inquiry concerning the Respondent's intentions in regard to negotiations. The alleged failure of the Respondent to advise the Charging Party of its negotiations intentions may constitute a technical violation of the Act. However, since such a violation would be so de minimis in nature, it would not warrant the issuance of a complaint. The undersigned, in implementing the Commission's complaint standards, declines to issue complaints where a possible violation of the Act would be de minimis in nature. See In re Union County Regional High School Board of Education, D.U.P. No. 79-23, 5 NJPER 158 (¶ 10088 1979).

Accordingly, for the reasons stated above, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: December 18, 1979  
Trenton, New Jersey