

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

In the Matter of

CAMDEN COUNTY SHERIFF'S DEPARTMENT,

Respondent,

-and-

DOCKET NO. CI-78-28

JOHN EDWARD KOZAK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the employer's assertion of charges against and subsequent dismissal of the Charging Party was in violation of the New Jersey Employer-Employee Relations Act. The Charging Party did not assert that the employer's actions were motivated by a desire to interfere, restrain or coerce Charging Party in the exercise of rights guaranteed by the Act, nor did the Charging Party allege he was represented by an exclusive representative with whom the employer had the obligation to negotiate and process grievances. The Charging Party requested that the Commission conduct a complete investigation of the circumstances surrounding his being charged and dismissed. The Director notes that the Commission's processes do not provide the type of investigation requested by the individual and that the existence of its jurisdiction regarding the employer's actions in charging and dismissing the individual only extends to where it is alleged that the employer's actions were motivated, in whole or in part, to deny the Charging Party the specific rights guaranteed to him under the Act.

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Appearances:

For the Respondent,  
Vincent J. Paglione, Assistant County Counsel

For the Charging Party,  
John Edward Kozak

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 3, 1978, and amended on May 5, 1978, by John Edward Kozak (the "Charging Party") against the Camden County Sheriff's Department (the "Respondent") alleging that the Respondent had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1) and (5). <sup>1/</sup>

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. (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."

It is alleged that as a result of certain action by the Respondent, the Charging Party was charged and dismissed from CETA employment, and that this action was in violation of 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. <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>

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

<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 and including a notice of hearing containing the date and place of hearing before the commission or any named 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.

Preliminarily, the undersigned observes that the Charging Party may have a misunderstanding of the nature of the Commission's processes in unfair practice proceedings. The New Jersey Employer-Employee Relations Act at N.J.S.A. 34:13A-5.4(c) provides that a charging party prosecutes unfair practice complaints which may be issued by the Commission and has the burden of proving the commission of an unfair practice by a preponderance of the evidence. The Charging Party, in his Charge, has requested that the Commission provide "an unbiased investigation of my dismissal." The Commission does not "investigate" circumstances surrounding unfair practice charges in the manner requested by the Charging Party. Rather, the Commission processes the initial charge of a charging party by exploring with the parties the issues that are raised, and, if appropriate, under N.J.A.C. 19:14-2.1, issues a complaint which states the unfair practice charge. Thereafter, it is the burden of the charging party to litigate the charge before a Commission Hearing Examiner, who shall file a recommended report with the Commission for the Commission's determination.

The undersigned has analyzed the Charge to determine whether the Charging Party's Unfair Practice Charge states allegations which, if true, may constitute a violation or violations of the Act.

The New Jersey Employer-Employee Relations Act contains provisions designed to protect employees in the exercise of rights guaranteed under the Act, which generally are set forth in N.J.S.A. 34:13A-5.3. These rights are normally associated with the selection

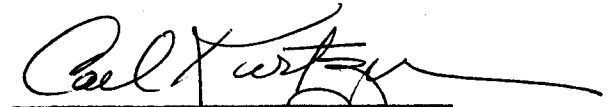
of a majority representative of public employees and the individual's right to participate in activities on behalf of an employee organization or to refrain from any such activity. This statutory provision also provides that a majority representative shall have the exclusive right to negotiate with an employer and the responsibility and right to negotiate a grievance procedure.

It appears to the undersigned that the Charge does not allege that the Respondent has interfered with, restrained or coerced the Charging Party in the exercise of any right to be represented by an employee representative or to participate in activity on behalf of an employee organization. Furthermore, the Charging Party does not state that there is a majority representative which represents the Charging Party. In the absence of a recognized or certified representative, an employer does not have a statutory responsibility to negotiate with any party, including the Charging Party, regarding terms and conditions of employment. Further, the Charge does not state that the employer has refused to process any grievances which the Charging Party may have filed, or which a majority representative may have filed on the Charging Party's behalf concerning the charges and dismissal. The Commission does not have jurisdiction to review the determination of a public employer in any discharge proceeding unless it is alleged that the employer's actions either were motivated in whole or in part by the exercise of activities on behalf of an employee representative or deprived

employees of other specific rights protected by the Act.

Accordingly, for the reasons set forth above, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: October 5, 1978  
Trenton, New Jersey