

D.U.P. NO. 85-25

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

In the Matter of

ESSEX COUNTY DIVISION OF WELFARE,

Respondent,

-and-

DOCKET NO. CI-85-42

EUGENE J. BAYLIS,

CHARGING PARTY

ESSEX COUNTY DIVISION OF WELFARE,

-and-

DOCKET NO. CI-85-47

A. E. AUDICK,

Charging Party.

ESSEX COUNTY DIVISION OF WELFARE,

Respondent,

-and-

DOCKET NO. CI-85-51

MICHAEL S. GOLDBERGER,

Charging Party.

ESSEX COUNTY DIVISION OF WELFARE,

-and-

DOCKET NO. CI-85-63

STANLEY MAJEWSKI,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refused to issue a complaint on the grounds that the Charging Parties failed to set forth "a clear and concise statement of the facts constituting the alleged unfair practice...." See, N.J.A.C. 19:14-1.3.

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REFUSAL TO ISSUE COMPLAINT

On August 27, 1984, Eugene J. Baylis, A. E. Audick, and Michael S. Goldberger and on September 14, 1984 Stanley Majewski

("Charging Parties") filed unfair practice charges with the Public Employment Relations Commission ("Commission"). Subsequently, said parties filed amended charges with the Commission. ^{1/} Taken together, the amended unfair practice charges allege that the Essex County Division of Welfare ("County") has violated §§ 5.4(a)(3) and (a)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). ^{2/} More specifically, the charges allege that the County discriminated against the Charging Parties when it instituted a dual seniority system which favored certain other (less senior) employees and made improper permanent job transfers.

N.J.S.A. 34:13A-5.4(c) states that the Commission shall have exclusive power to prevent anyone from engaging in any unfair practice and that it has the authority to issue a complaint stating

^{1/} Mr. Baylis filed an amended charge on September 26, 1984. Messrs. Audick and Goldberger filed an amended charge on September 19, 1984. Mr. Majewski filed an amended charge on October 3, 1984. The Charging Parties again filed amended charges on December 13, 1984. It is unclear whether any of the amended charges were served on Respondent Essex County Division of Welfare in accordance with N.J.A.C. 19:14-1.5(a)(1).

^{2/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives and 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."

the unfair practice charge. ^{3/} The Commission has delegated its authority to issue complaints to me 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, 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. ^{4/} The Commission's rules provide that I may decline to issue a complaint. ^{5/}

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

In correspondence from the Administrator of Unfair Practice dated September 11, 1984, the Charging Parties were advised that their unfair practice charges contained certain deficiencies and would not be processed until those deficiencies were corrected.

^{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 charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof..."

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

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

Specifically, the Administrator advised the Charging Parties that pursuant to N.J.A.C. 19:14-1.3, they were required to provide the Commission with "a clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names and respondent's agents or other representatives by whom committed..." Additionally the charging parties were requested, pursuant to N.J.S.A. 34:13A-5.4(c), to amend their charges to specify dates of the acts alleged in order to insure that the charges were filed within six months of the occurrence of the alleged unfair practice. Charging Party's filed amended charges with the Commission which established the timeliness of the unfair practice charges. 6/

On December 3, 1984, a Commission staff agent advised the Charging Parties that their unfair practice charges still contained defects which precluded their continued processing. The Charging Parties allege that the County violated §§ (a)(1) and (a)(3) of the Act when it discriminated against the Charging Parties by instituting a dual seniority system. However, the charges do not allege facts supporting the claim that the Charging Parties engaged in any activity protected by N.J.S.A. 34:13A-5.3, and further, the employer took the disputed personnel action in retaliation for the

6/ the amended charges were filed by Mr. Baylis on September 26, 1984, Messrs. Audick and Goldberger on September 19, 1984 and Mr. Majewski on October 3, 1984.

exercise of said protected activity. ^{7/} The Charging Parties were given until the close of business (5.00 p.m.) on December 14, 1984, to submit the missing information. Charging Party requested and received an extension of time until December 21, 1984 to submit these materials.

On December 19, 1984, this Agency received a letter-amendment from the Charging Parties in response to correspondence dated December 3, 1984, from the Commission's investigating agent. Charging Parties' submission failed to cure the deficiencies previously noted by the Commission's investigating agent. While the Charging Parties again stated that the County had treated them unfairly by instituting a dual seniority system and by improperly making permanent job transfers, they still failed to submit the necessary factual information. The Charging Parties were then given until January 18, 1985, to cure the continuing deficiencies.

On January 21, 1985, this Agency received a letter of response from the Charging Parties. In their letter, the Charging Parties concluded that no additional submission of information was necessary since they had "elaborately documented the legal basis for the charges raised...against the employer." Additionally, the

^{7/} N.J.S.A. 34:13A-5.3 states in pertinent part that "...public employees shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity..."

Charging Parties requested that the matter be transferred to the Litigation Alternative Program.


On February 5, 1985, a Commission staff agent again advised the Charging Parties that in order for this Agency to process their charge, the Charging Parties, must tell us what the activity was they engaged in which is protected by N.J.S.A. 34:13A-5.3. It was pointed out that an allegation of violation of New Jersey Civil Service law or rule does not necessarily provide the Commission with jurisdiction in the instant matter nor does such a circumstance necessarily constitute a violation of N.J.S.A. 34:13A-5.4(a)(3). The Charging Parties were afforded yet another -- and equal -- opportunity to provide this Agency with the factual information which would cure the deficiencies indicated in the earlier letters, by February 15, 1985.

On February 19, 1985, this Agency received a letter of response from the Charging Parties. The letter reiterated the Charging Parties' request for the transfer of the instant matter to the Litigation Alternative Program.

It is clear from the above procedural history, that the Charging Parties were repeatedly advised that additional information was required in order to meet the complaint issuance standard utilized by the Commission. Charging Parties were given ample opportunity to submit such factual information to cure the deficiencies existing in their charges. The Charging Parties have failed to provide the requested information.

Accordingly, on the basis of the foregoing, it is clear to me that the Charging Parties have not met the most preliminary standards required under the Commission's rules to process their charges. 8/ Consequently, I decline to issue a complaint with respect to the instant charges. 9/

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 19, 1985
Trenton, New Jersey

8/ Charges duplicating the allegations of this matter were filed by various other employees of the Essex County Division of Welfare. All of those charges were all previously dismissed for a variety of procedural reasons. However, the substantive determinations and the rationale set forth herein would equally apply to those previously dismissed charges

9/ The Charging Parties' request to have the instant matter transferred to the Litigation Alternative Program ("LAP") is inappropriate. The LAP procedure is utilized only in circumstances where, inter alia, all parties to the dispute voluntarily agree to enter into that process. There is no indication in the instant matter that the Essex County Division of Welfare has agreed to submit the issues raised by the Charging Parties to the LAP process.