

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

In the Matter of

PATERSON BOARD OF EDUCATION AND  
PATERSON EDUCATION ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-79-20

MAJORIE D. HILLIARD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by an individual alleging that her employer refused to process her grievance and to respond to her demand to binding arbitration, and that her collective negotiations representative failed to take action with regard to her grievance. The Director holds that the employer did not have an obligation pursuant to N.J.S.A. 34:13A-5.4 (a)(5) to process the individual's grievance and to submit the individual's grievance to arbitration where the individual was represented by a collective negotiations representative. The Director further notes that the Unfair Practice Charge filed against the exclusive representative was not filed within the statutory six month limitations period contained in the Act.

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

In the Matter of

PATERSON BOARD OF EDUCATION AND  
PATERSON EDUCATION ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-79-20

MAJORIE D. HILLIARD,

Charging Party.

Appearances:

For the Respondent Board  
Neil Chessin, Esq.

For the Charging Party  
Robert T. Tessano, Esq.

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 26, 1978 and amended November 17, 1978, by Majorie Hilliard (the "Charging Party") against the Paterson Board of Education (the "Board"), alleging that the Board 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)(5). <sup>1/</sup> The Charging Party amended the

1/ This subsection prohibits employers, their representatives or agents from: "(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."

Charge again on October 1, 1979, by alleging unfair practices against the Paterson Education Association (the "Association") pursuant to N.J.S.A. 34:13A-5.4 (b)(1), (2) and (3). <sup>2/</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 complaint stating the unfair practice charge. <sup>3/</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>4/</sup> The Commission's rules provide that

---

<sup>2/</sup> These subsections prohibit employee organizations, 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) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (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."

<sup>3/</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 designated agent thereof ... "

<sup>4/</sup> N.J.A.C. 19:14-2.1

the undersigned may decline to issue a complaint. <sup>5/</sup>

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

The Charging Party states that in June 1978, she filed, through her attorney, a grievance against the Board in accordance with the terms of the collective negotiations agreement between the Board and her majority representative and that the Board refused to acknowledge her grievance and her demand for binding arbitration. On September 7, 1979, the undersigned advised the Charging Party that her standing to file an Unfair Practice Charge under § 5.4(a)(5), which relates to rights which exclusively flow to a majority representative, was questionable. Further, the undersigned advised that even assuming arguendo Charging Party's standing to file such a charge, the facts alleged would not state a basis upon which an unfair practice complaint could issue. Specifically, the Charging Party was advised of Commission determinations holding that the failure to reply to a grievance, in and of itself, could not constitute a refusal to process grievances presented by a majority representative within the meaning of § 5.4(a)(5). The undersigned also noted that pursuant to the contractual agreement between the Board and the exclusive representative, a demand for arbitration could only be made by the exclusive representative and, therefore, the employer did not have an obligation to respond to a

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

demand for arbitration made by the Charging Party.

Further, where there is an exclusive representative, the employer is under no obligation to respond to grievances presented by individuals. This would also include a refusal to submit to a demand by an individual to have his/her grievances presented to binding arbitration. As noted by the Supreme Court in Red Bank Regional Education Association v. Red Bank Regional H.S. Board of Education, 78 N.J. 122 (1978):

Section N.J.S.A. 34:13A-5.4(a)(5) does not make it an unfair practice for a public employer to refuse to process a grievance presented personally by an individual employee or one presented through a non-majority representative.

at 139.

The undersigned noted, in passing, that the Charging Party had not alleged that she requested the Association to present her grievance to arbitration. In reply to the undersigned's letter, the Charging Party sought to amend the Unfair Practice Charge by initiating an action against the exclusive representative, the Association. Charging Party claims that the Association did not "take any action with regard to this matter or acknowledge the complaint in any manner." The Charge against the exclusive representative has not been timely filed within the six month statutory limitations period set forth in N.J.S.A. 34:13A-5.4(c), inasmuch as the amended Charge against the Association was filed on November 17, 1979, and the claimed unfair practice occurred in June, 1978.

Accordingly, the Charge against the employer does not allege facts, which, if true, may constitute unfair practices on the part of the Board. With regard to the claim that the exclusive representative failed to acknowledge the individual's demand for binding arbitration, this Charge, as noted above, has not been timely filed pursuant to N.J.S.A. 34:13A-5.4(c). Therefore, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: December 4, 1979  
Trenton, New Jersey