

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

In the Matter of
HOBOKEN BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-79-54

ROBERT W. TAYLOR,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the Respondent violated N.J.S.A. 34:13A-5.4(a)(1) and (5) and thereby committed unfair practices by not negotiating in good faith with its Board attorney. The Director, noting the factual claim that the Charging Party was engaged in individual negotiations with the Respondent, reiterates previous determinations that an employer's obligation to negotiate in good faith under the New Jersey Employer-Employee Relations Act is limited to negotiations relationships with majority representatives of employees and that the Act does not impose upon an employer an obligation to negotiate with individuals. The Director rejects the Charging Party's contention that since the Respondent initiated the negotiations relationship, the Charging Party was entitled to assert collective negotiations rights under the Act.

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Appearances:

For the Respondent
Albert J. Hordes, Esq.

For the Charging Party
Robert W. Taylor, Esq. (Pro se)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 27, 1979, and amended on June 13, 1979, by Robert W. Taylor (the "Charging Party") against the Hoboken 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)(1) and (5). ^{1/}

^{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."

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. ^{2/} 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. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

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

Mr. Taylor has filed the instant Unfair Practice Charge as a "self-employee" employed by the Board in the capacity of Attorney and Fiscal Advisor Administrator. He states in his Charge that he initially presented salary proposals to the Board on behalf

^{2/} 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 ... "

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

of a group of eight Board administrators. Mr. Taylor asserts that the Board refused the group approach to negotiations and advised employees that they should approach the Board individually with their salary requests. Subsequently, while engaged in negotiations with the Board in his own individual interest, Mr. Taylor alleges that "... the Board without any notice and while in negotiations with me, rescinded said salary Ratio," which had been in effect as early as 1969, and which was again promulgated in 1976. Additionally, Mr. Taylor claims that during negotiations, the Board rejected his salary proposals, and offered him a salary which was less than that given to other employees and which was less than an amount which would have resulted from application of the aforementioned salary ratio. Taylor alleges that a prime motive for the termination of his services was a refusal on his part to accept and condone the above actions of the Board.

The undersigned has previously observed that under the Act there is no statutory obligation on the part of a public employer to negotiate with individuals and, therefore, inasmuch as an alleged § (a)(5) violation may only be supported by a claim that an employer is "refusing to negotiate in good faith with a majority representative of employees in an appropriate unit," (emphasis added), an allegation of refusal to negotiate in good faith with an individual cannot constitute an unfair practice under § (a)(5). See, In re Plumsted Township Board of Education,

D.U.P. No. 78-4, 3 NJPER 335 (1977). The undersigned has further determined that a single individual may not constitute a collective negotiations unit and, accordingly, may not assert § (a)(5) protections on this basis. See, In re Borough of Shrewsbury, D.U.P. 79-12, 5 NJPER 13 (¶ 10037 1978), aff'd P.E.R.C. No. 79-42, 5 NJPER 13 (¶ 10017 1979), and In re Borough of Jamesburg, D.U.P. No. 79-5, 4 NJPER 398 (¶ 4180 1978).

On June 8, 1979, the undersigned advised the Charging Party that there did not appear to be a basis in the Charge for the claim that the Board had interfered with, restrained or coerced the Charging Party in the exercise of rights protected under the Act or that the Board had refused to negotiate in good faith with a majority representative of public employees. The undersigned advised the Charging Party of the relevant Commission precedent and stated that inasmuch as the Charging Party was alleging unfair practices arising out of individual negotiations on his own behalf, the Charge herein, appeared to fail to meet the Commission's complaint issuance standards. Mr. Taylor was afforded an opportunity to specifically identify that conduct claimed to give rise to a violation of the Act and to brief the relevant issues.

On June 13, 1979, Mr. Taylor amended his Charge to incorporate by reference the materials which he had previously provided to the Commission during the processing of the Charge.

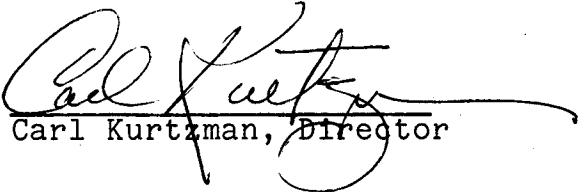
Additionally, Mr. Taylor submitted a short statement urging that the facts in the instant matter were distinguishable from In re Borough of Shrewsbury, supra, in that the Board herein "demanded the individual negotiations between the Members and myself." Taylor states that under the circumstances herein the Board "caused and recognized the 'bargaining unit' on its own initiative" and that "once the 'unit' was created, 'it' must be negotiated with"

The undersigned determines that the factual circumstances herein are not such as to be distinguishable from the Shrewsbury, Jamesburg, and Plumsted matters. Preliminarily, the undersigned observes that the Commission has not been asked to address issues relating to whether the Board had previously recognized a unit of administrators. It is not alleged that the Board refused to negotiate in good faith with a unit of administrators; nor has the Charge been filed by an organization claiming to be a majority representative. Rather, the Charge herein has been filed with the Commission by an individual regarding his negotiations with his employer. The question of which party initiated the individual negotiations relationship (i.e., the Board rather than the individual employee), is irrelevant to the issue of whether an individual may assert § (a)(5) rights with regard to alleged improper negotiations conduct.

Accordingly, for the reasons stated above, the undersigned determines that, even assuming the facts as claimed by

the Charging Party, the Board may not be in violation of a § (a)(5) and, therefore, a complaint may not issue. ^{5/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: July 9, 1979
Trenton, New Jersey

^{5/} In addition, the undersigned finds that the Board may not be in violation of § (a)(1), derivatively or independently of the § (a)(5) claim, inasmuch as the Charge does not allege any facts which may constitute interference with protected activities.