

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

In the Matter of

CITY OF GLOUCESTER,

Respondent,

-and-

DOCKET NO. CO-79-152

GLOUCESTER CITY, FMBA LOCAL #51,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by the Gloucester City FMBA, Local #51 alleging that the City violated N.J.S.A. 34:13A-5.4(a) by not providing the FMBA unit members with bonuses provided to other employees of the City who were represented in other collective negotiations units. The Director, citing Commission decisions in Township of West Windsor, observes that there is no statutory obligation on the part of a public employer to match benefits granted to employees in other collective negotiations units and that such disparate treatment does not amount to "discrimination" contemplated by Section (a)(3). The Charging Party did not allege facts indicating that its unit employees were discriminated against due to their exercise of protected rights under the Act.

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Appearances:

For the Respondent
William E. Gartland, Mayor

For the Charging Party
Edward Daley, President

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 20, 1978, by the Gloucester City FMBA, Local #51 (the "FMBA") against the City of Gloucester (the "City") alleging that the City 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)(3). ^{1/}

^{1/} This subsection prohibits employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage any employee in the exercise of the rights guaranteed to them by this Act."

The FMBA alleges that the City discriminated against the firemen by granting a Christmas bonus to other city employees while denying this benefit to firemen represented by the FMBA.

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 also 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.

^{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

The Charge does not allege that the City's "discriminatory actions" violated a provision of the contract with the FMBA or unilaterally altered an established past practice for firemen in regard to a term or condition of their employment for the purpose of discouraging firemen in the exercise of protected rights under the Act. ^{5/} The assertion of facts alleging such a claim is necessary to support an alleged § (a)(3) violation. See In re Plumsted Township Board of Education, D.U.P. No. 78-4, 3 NJPER 335 (1977); In re Borough of Palisades Park, D.U.P. No. 78-1, 3 NJPER 238 (1977).

The Charge states that when the FMBA questioned the Mayor regarding this disparate treatment, his response was: "... I promised them (nonuniformed city employees) that if the police and firemen got a bigger raise then [sic] what they got, I would see that they got compensated." Furthermore, the Charge contains the Mayor's stated rationale for his action: since the other unions signed a three year contract, without wage reopeners, and they had not received a raise, they were entitled to a bonus while the firemen were not.

Accordingly, the allegations of the Charge do not claim that the Mayor and Council, on behalf of the City, discriminated against the firemen in regard to a term and condition of employment

^{5/} N.J.S.A. 34:13A-5.3 provides: "Except as hereinafter provided public employees shall be protected in the exercise of, the right, free and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity ... "

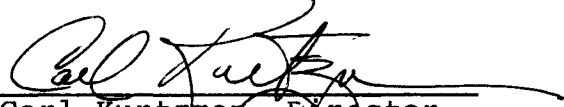
with an intent to discourage them in the exercise of protected rights under the Act. Rather, it appears that the basis of the FMBA's claim of discrimination is limited to the disparate treatment accorded to different bargaining units by the City. There is no statutory obligation on the part of public employers to match benefits negotiated with other negotiations units. The Commission has recently stated, in a matter closely analagous to the subject matter herein:

Initially the Commission finds that the Township, having contractually agreed to provide certain benefits to members of the PBA, could, without violating N.J.S.A. 34:13A-5.4(a)(1) and (3), grant additional benefits, i.e. snow emergency holidays, to other Township employees, while denying these additional benefits to members of the PBA. As the Hearing Examiner noted, this is not the type of "discrimination" contemplated within the meaning of (a)(1) and (a)(3).

In re Township of West Windsor, P.E.R.C. No. 79-79, 5 NJPER 193
(¶ 10110 1979).

Therefore, since the allegations of the Charge fail to meet the standard for the issuance of a complaint claiming an (a)(3) violation, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: July 20, 1979
Trenton, New Jersey