

D.U.P. NO. 97-18

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

In the Matter of

JERSEY CITY STATE COLLEGE,

Respondent,

-and-

Docket No. CI-96-74

WILLIAM R. DUSENBERRY,

Charging Party.

SYNOPSIS

Charging Party's breach of contract claim was dismissed for lack of standing. Further, the balance of Charging Party's charge containing allegations of improper conduct committed by the College was dismissed for failing to allege anything which would constitute an unfair practice within the meaning of the Act.

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Appearances:

For the Respondent,  
Peter Verniero, Attorney General  
(Don E. Catinello, Deputy Attorney General)

For the Charging Party,  
William R. Dusenberry, pro se

REFUSAL TO ISSUE COMPLAINT

On May 28, 1996, William R. Dusenberry filed an unfair practice charge against Jersey City State College, alleging that the College was in violation of the New Jersey Employer-Employee Relations Act, specifically, N.J.S.A. 34:13A-5.4(b)(1). Dusenberry asserts that there is corruption and malfeasance throughout the College. He also asserts that he has been "confronted with obstruction of justice, theft, sexual misconduct, fraud, corruption, conspiracy, falsification of documents, fallacious academic credentials, no-show jobs, nepotism, misuse of state and federal funds, and a pervasive implicit threat to remain quiet regarding these matters." Dusenberry further asserts that the College's

promotional policies violate the New Jersey Administrative Code and the collective bargaining agreement.

For the reasons stated below, the Commission's complaint issuance standard has not been met.

Although Dusenberry alleges that the College violated 5.4(b)(1),<sup>1/</sup> it is assumed that he intends to allege that the College violated 5.4(a)(1)<sup>2/</sup> for 5.4(b)(1) proscribes certain conduct by employee organizations. Nevertheless, Dusenberry fails to allege facts which, if true, would constitute an unfair practice.

Where unfair practice charge allegations constitute a mere breach of contract claim, such allegations cannot rise to the level of an unfair labor practice. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). On the other hand, an unfair labor practice may be maintained based on alleged repudiation of a collective negotiations agreement -- a unilateral change in terms and conditions of employment -- as an (a)(5) violation. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secs., P.E.R.C. No. 76-31, 2 NJPER 182 (1976), aff'd in pt., rev'd in pt., 149 N.J. Super. 346 (App. Div. 1977), aff'd in pt.,

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<sup>1/</sup> This subsection prohibits 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."

<sup>2/</sup> This subsection prohibits public 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."

rev'd in pt., 78 N.J. 1 (1978); Englewood Bd. of Ed. and Englewood Teachers Ass'n, 64 N.J. 1 (1973).

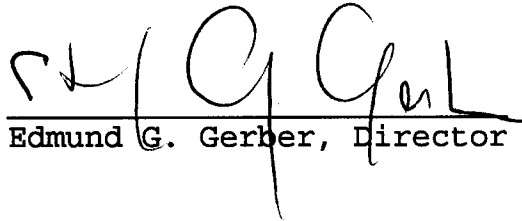
An individual employee normally does not have standing to assert an (a) (5) violation, as the employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980). An individual employee/charging party may pursue a claim of an (a) (5) violation only where the charging party has also asserted a viable unfair practice claim of a breach of the duty of fair representation against the majority representative. N.J. Turnpike, D.U.P. No. 80-10, 5 NJPER 18 (¶10268 1979).

Here, although Dusenberry has alleged a violation of the collective negotiations agreement, he has not asserted a breach of the duty of fair representation against his majority representative. Hence, his potential claim of an (a) (5) violation must fall.

As for the balance of Dusenberry's charge, it contains a lengthy and conclusionary list of assorted improper conduct allegedly committed by the College, including violations of the New Jersey Administrative Code; but there is nothing alleged which, even if true, would constitute an unfair practice within the meaning of the Act.

Based upon all of the foregoing, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge. N.J.A.C. 9:14-2.1, 2.2 and 2.3.  
The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: October 23, 1996  
Trenton, New Jersey