

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

WILLINGBORO BOARD OF EDUCATION,
WILLINGBORO EDUCATION ASSOCIATION,
EAWS AND WESA,

Respondents,

-and-

DOCKET NO. CI-83-67

JOHN L. HORN,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to the allegations of an individual Charging Party that the Board and Respondent Associations violated the Act by refusing to renew his employment contract. The Charging Party alleged that the Board and PAC's actions were racially motivated. He did not assert that the discriminatory actions were in retaliation for the exercise of any specific protected activity under the Act. The Administrator notes that the Charging Party is not a member of any negotiations unit represented by the Respondent Associations.

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Appearances:

For the Respondent Board
Barbour & Costa, P.A.
(John T. Barbour of counsel)

For the Respondent Associations
Selikoff & Cohen, P.A.
(Steven R. Cohen of counsel)

For the Charging Party
John L. Horn, pro se

REFUSAL TO ISSUE COMPLAINT

On June 6, 1983, an unfair practice charge was filed with the Public Employment Relations Commission ("Commission") by John L. Horn ("Charging Party") against the Willingboro Board of Education ("Board") and the Willingboro Education Association, Employees Association of Willingboro Schools, and Willingboro Educational Secretaries Association, affiliated with WEA (collectively, the "Respondent Associations") alleging that the

Respondents were engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically, Charging Party alleges that the Board violated §§ 5.4(a)(3), (4), and (7) ^{1/} and that the Respondent Associations violated §§ 5.4(b)(1) and (5). ^{2/}

Charging Party alleges that "all [Respondents]...did engage in unfair practices in discriminating in regards to my hire," when on May 9, 1983, the Board failed to renew his employment contract as Foreman, Grounds Department, for the school year 1983-1984. Further, Charging Party alleged that the wife of his supervisor was among the Board members who voted against renewal. Additionally, he alleges that four Board members who voted against his renewal "were back [sic] by the three Unions 'WEA/PAC' Committee" and, therefore, the "WEA/PAC" Committee interfered with his continued employment.

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

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public 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 employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (7) Violating any of the rules and regulations established by the commission."

^{2/} N.J.S.A. 34:13A-5.4(b) 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. (5) Violating any of the rules and regulations established by the commission."

complaint stating the unfair practice charge. ^{3/} 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 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 the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below, it appears to the undersigned that the Commission's complaint issuance standards have not been met.

Initially, the undersigned notes that the Charging Party is not a member of any negotiations unit represented by the Respondent Associations. Thus, the Associations do not owe him a duty of fair representation. Nor does the Charging Party claim that he is being interfered with in his right to assist other employee representatives.

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

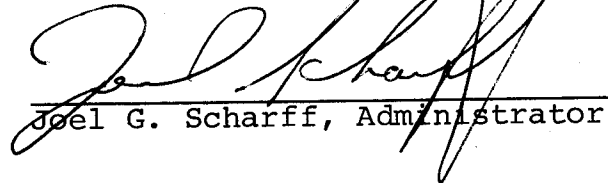
^{4/} N.J.A.C. 19:14-2.1

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

Although Charging Party has alleged "discrimination" by the Board under § 5.4(a)(3) he does not assert facts alleging that he was discriminated against in retaliation for any activities on behalf of an employee organization or for the exercise of any other protected activity under the Act. N.J.S.A. 34:13A-5.3. Rather, Charging Party's allegations are based upon a claim that the Board and the Association PAC actions were racially motivated and resulted in his termination as of June 30, 1983. In this regard, it has been determined by the Supreme Court that "the Legislature has established the State Division of Civil Rights as generally the most appropriate forum for resolving this issue." 6/

Accordingly, for the above reasons the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: April 5, 1984
Trenton, New Jersey