

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

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

DOCKET NO. CI-82-5

DELANEY W. ZANES,

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 the State failed to negotiate certain changes in terms and conditions of employment with his majority representative. The Director notes that the charging party did not allege that the majority representative sought negotiations; nor did the charging party claim that the majority representative was improperly representing unit members. Under the Act, the employer's responsibility to negotiate is owed exclusively to the majority representative. Under the instant facts, the individual could not assert the rights of the majority representative to assert a violation of negotiations responsibilities.

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REFUSAL TO ISSUE COMPLAINT

On July 20, 1981, an Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by Delaney W. Zanes (the "Charging Party") alleging that the State of New Jersey (the "State") has engaged 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"). The Charging Party alleges that the State failed to negotiate a change in a term and condition of employment with the Communications Workers of America ("CWA"), the majority representative of a negotiations unit in which the Charging Party is included, allegedly in violation of N.J.S.A. 34:13A-5.4(a)(5). ^{1/}

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

^{1/} This subsection prohibits employers, their representatives and 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."

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.

The Charging Party alleges that the State has committed an unfair practice by failing to negotiate certain changes in terms and conditions of employment with the majority representative. By the filing of the charge, the Charging Party is seeking to require that the State engage in negotiations with CWA. There is no allegation, however, that CWA has sought negotiations with the State; nor is there any claim that CWA has improperly represented the interests of negotiations unit members by not seeking negotiations.

^{2/} N.J.S.A. 34:13A-5.49c) 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 of any designated agent thereof..."

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

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

Under the limited facts which are alleged, it would run contrary to the purpose of the Act to permit the individual to stand in the shoes of the majority representative. The obligation of public employers to negotiate in good faith under N.J.S.A. 34:13A-5.3 is owed solely to a majority representative. Pursuant to § 5.3 majority representatives are the "exclusive representatives for collective negotiations." Although the majority representative is statutorily obligated to represent the interests of unit members, under the principle of exclusivity, negotiations may only be demanded by the majority representative. Accordingly, as the right to demand negotiations flows exclusively to the majority representative, and as it is not alleged herein that the majority representative has violated its representational responsibilities to unit members, there can be no basis for the individual's assertion of a § 5.4(a)(5) claim.

For this reason, the undersigned has consistently declined to issue complaints under § 5.4(a)(5) in similar cases. The Commission has also found allegations of this nature inappropriate for litigation. ^{5/}

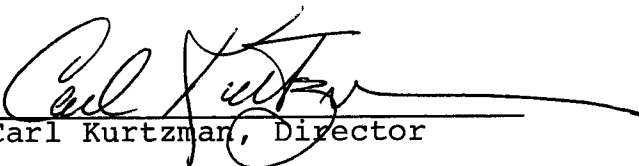
Subsequent to the filing of the instant Unfair Practice Charge, by letter dated August 5, 1981, the undersigned informed the

^{5/} Full and extensive analyses of the bases for these determinations are contained in In re New Jersey Turnpike Authority, D.U.P. No. 80-10, 5 NJPER 518 (¶ 10268 1979), and P.E.R.C. No. 81-64, 6 NJPER 560 (¶ 11284 1980), aff'd App. Div. Docket No. A-1263-80T (October 30, 1981), petition for certification pending Supreme Court Docket No. 19,188; See also In re County of Middlesex, P.E.R.C. No. 81-62, 6 NJPER 555 (¶ 11282 1980), appeal pending App. Div. Docket No. A-1455-80-T2; In re Twp. of Cherry Hill, D.U.P. No. 81-18, 7 NJPER 286 (¶ 12128 1981).

Charging Party that in the absence of a withdrawal request or amended Charge which would meet the Commission's complaint issuance standards, the undersigned would issue a decision declining to issue a complaint. The undersigned has not received a reply to the August 5 letter, nor has the Charge been amended.

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: December 22, 1981
Trenton, New Jersey