

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

In the Matter of

CITY OF CAPE MAY,

Respondent,

-and-

DOCKET NO. CO-79-77

WILDWOOD PBA LOCAL 29,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the employer in adopting a Performance Evaluation System refused to negotiate in good faith with the majority representative. The Director notes that the policy adopted by the employer was consistent with Civil Service regulations requiring the adoption of a personnel evaluation system.

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PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF CAPE MAY,

Respondent,

-and-

DOCKET NO. CO-79-77

WILDWOOD PBA LOCAL 59,

Charging Party.

Appearances:

For the Respondent  
Gerald L. Dorf, P. A.  
(David A. Wallace of counsel)

For the Charging Party  
Schneider, Cohen & Solomon  
(David Solomon of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 6, 1978, and amended on October 20, 1978, by the Wildwood PBA LOCAL 59 (the "Charging Party") against the City of Cape May (the "City") alleging that the Respondent 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), (3), (5) and (7). <sup>1/</sup>

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. <sup>2/</sup> 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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

<sup>1/</sup> These subsections prohibit employers, their representatives and agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (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. (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. (7) Violating any of the rules and regulations established by the commission."

<sup>2/</sup> 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 ... "

<sup>3/</sup> N.J.A.C. 19:14-2.1

<sup>4/</sup> N.J.A.C. 19:14-2.3

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

The Charging Party is the majority representative of all patrolmen, sergeants and lieutenants in the City. The Charge alleges that the City adopted a policy entitled "Performance Evaluation System" for police employees which will be used to determine salary adjustments, tenure, eligibility for training and development programs, merit pay, determining order of lay-offs and determining demotions or removals from service. Charging Party alleges that this action has a chilling effect on negotiations. The policy adopted by the City is attached to the Charge, and is attached hereto and made a part hereof.

The City has drawn the undersigned's attention to regulations established by the Civil Service Commission, N.J.A.C. 4:1-20.1 et seq. These regulations provide, in relevant part:

N.J.A.C. 4:1-20.1 Performance evaluation system

The Department of Civil Service shall prescribe or approve the keeping of performance evaluation records and the establishment of standards of performance for employees in the classified service and a system of performance based on such standards.

N.J.A.C. 4:1-20.2 Evaluation

(a) Evaluation shall be made at least once each year for all employees who have worked at least three months during a rating period.

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N.J.A.C. 4:1-20.3 Use of performance evaluations

Performance evaluations shall be used in determining eligibility for salary increases and decreases, as a factor in promotions, demotions, transfers and removals, and if unsatisfactory, as a factor in layoffs.

The City asserts that "even if this were otherwise a negotiable term and condition of employment, a binding civil service regulation sets this term and condition of employment," and raises the applicability of State v. State Supervisory Employees Association, 78 N.J. 54 (1978).

The Association states:

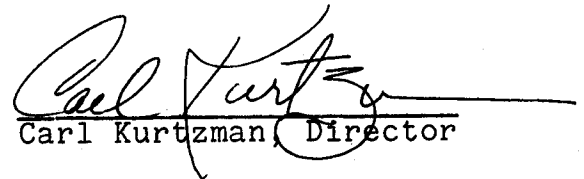
While we believe that the State Supervisory Assn. matter is not applicable for several reasons, one of which is that there is no statutory requirement that a municipality adopt and utilize this procedure, the Public Employment Relations Act [sic] was adopted subsequent to the civil service rule or regulation which is being relied upon by the City of Cape May .... The City of Cape May is suggesting that it may unilaterally change a person's wages and certain other terms and conditions of employment at its whim by utilization of this merit evaluation system.

The undersigned concludes the N.J.A.C. 4:1-20.1 et seq. requires the adoption of a personnel evaluation system and that the policy adopted by the City, which tracks the regulatory language, does not run afoul of the negotiations requirement of the New Jersey Employer-Employee Relations Act. The Charging Party does not allege that a term and condition of employment has, in fact, been altered, and it does not appear from the facts alleged

that the City's actions, in accordance with a specific regulatory mandate, may constitute an unfair practice.

Accordingly, the undersigned shall decline to issue a complaint herein. This determination, however, shall not prejudice the ability of the Charging Party to file a charge in the event that the City, in erroneous reliance upon the above regulations, alters mandatorily negotiable terms and conditions of employment prior to negotiations or declines to negotiate with respect to same.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: June 4, 1980  
Trenton, New Jersey