

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

In the Matter of

BOROUGH OF SHREWSBURY,

Respondent,

-and-

DOCKET NO. CI-79-12

RAYMOND MASS, CHIEF OF POLICE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed by a chief of police asserting that the chief's employer did not negotiate in good faith and refused to reduce a negotiated agreement to writing. The Director finds that an employer's obligation to negotiate in good faith and to reduce negotiated agreements to writing only arises where there is a majority representative of employees in an appropriate unit. Despite the chief's claim that he is a representative of a negotiations unit, consisting solely of himself, the Director, relying upon a previous decision, In re Borough of Jamesburg, D.U.P. No. 79-5 (1978), finds that a single individual cannot constitute an appropriate collective negotiations unit. The Director also declines to issue a complaint with respect to allegations by the chief that his employee organization was being dominated and/or interfered with by the employer. The Director observes that N.J.S.A. 34:13A-5.4(a)(2) is intended to protect bona fide employee organizations and is not designed to provide additional protections to individuals who seek to deem themselves "employee organizations."

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 28, 1978, by Police Chief Raymond Mass against the Borough of Shrewsbury (the "Borough"). The Charge alleges that the Borough has committed unfair practices in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically, N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (6). ^{1/} Generally, Charging Party alleges that the Borough

1/ 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

has interfered, restrained, and coerced him "in his right to negotiate and file impasse and other grievances with PERC," that the Borough has dominated and interfered with the existence of "the Chief's employee organization," that the Borough has discriminated against him due to his filing a notice of impasse with the Commission, that the Borough has refused to negotiate in good faith with "the Chief's Collective Bargaining Unit", and that the Borough has refused to reduce a negotiated agreement to writing. The Charging Party alleges that he, individually, constitutes an employee organization. Accordingly, the "Chief's Collective Bargaining Unit" to which the Charging Party refers, consists of one person -- namely, the Chief of Police. Portions of the Charging Party's Statement of Charge are set forth below. These portions more fully explain the gravaman of the instant Unfair Practice Charge. 2/

2/ The Charging Party's Statement of Charge commences with the following narrative:

(1) Interfered, restrained and coerced the Chief of Police in his right to negotiate and file impasse and other grievances with PERC by: a) conducting a confidential survey by an independent security agent to discredit the Chief, and/or coerced the Chief, and for use in negotiations and, thereafter, refusing to negotiate in good faith; and b) issuing demeaning and onerous directives against the Chief of Police affecting the terms and conditions of his employment. (2) The Employer has dominated and interfered with the existence of the Chief's employee organization by filing a petition for clarification of unit after it had expressly agreed to the jurisdiction of PERC. (3) The Employer has discriminated against the Chief by means of the terms and conditions of his employment by issuing directives and demeaning statements at public hearings mentioning the salary of the Chief of Police subsequent to the Chief's attempts to file a Notice of Impasse at PERC. (4) The Employer has discriminated against the Chief because he filed not only the Notice of Impasse, but pursued grievance procedures by putting him on night patrol duty and

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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. ^{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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below, the undersigned has

2/ (Cont'd)

requiring other unjust, impractical and demeaning duties of the Chief of Police. (5) The Employer has refused to negotiate in good faith with the Chief's Collective Bargaining Unit concerning the terms and conditions of employment in that Unit despite certain promises and agreements to negotiate. (6) The Employer has refused to reduce a negotiated agreement to writing and to sign such agreement subsequent to assurances by the negotiating committee of the Public Employer that a tentative agreement had been reached and further, by withdrawing offers it had made concerning terms and conditons of employment.

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 named designated agent thereof..."

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

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

determined that the Commission's complaint issuance standards have not been met with respect to the allegations under §5.4(a) (2), (5) and (6). The undersigned shall first address the issues relating to allegations under §5.4(a)(5) and (6), and thereafter, shall review the issues relating to the allegation under §5.4(a) (2).

N.J.S.A. 34:13A-5.4(a)(5) requires that a public employer negotiate terms and conditions of employment in good faith with a majority representative of employees "in an appropriate unit." The undersigned has previously determined that a single individual cannot constitute an appropriate unit under the Act. In re Borough of Jamesburg, D.U.P. No. 79-5, 4 NJPER ____ (1978). Accordingly, for reasons identical to those addressed in the Jamesburg matter ^{6/} the undersigned determines that the Borough herein does not have an obligation under the Act to negotiate with the Charging Party and may not be found in violation of §5.4(a)(5).

Regarding the Charging Party's §5.4(a)(6) allegation, the undersigned observes that the duty of a public employer to reduce a negotiated agreement to writing flows from the obligation under §5.4(a)(5) to negotiate with a majority representative of employees in an appropriate unit. N.J.S.A. 34:13A-5.3 provides,

^{6/} In re Borough of Jamesburg, the unfair practice charge was filed by the Chief of Police, alleging that the Borough violated §5.4(a)(5) by refusing to negotiate in good faith with the Chief as the representative of a negotiating unit consisting of a single person, i.e., himself.

When an agreement is reached on terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

The insertion of this paragraph of §5.3 immediately after the language relating to the employer's responsibility to negotiate with the collectively chosen majority representative "of public employees in an appropriate unit" indicates the legislative intent to limit the requirement to reduce agreements to writing to those situations where negotiations are required by statute.

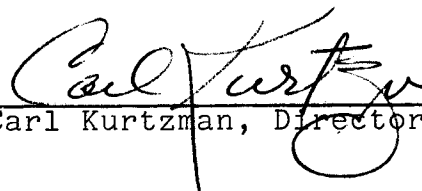
N.J.S.A. 34:13A-5.4(a)(2) prohibits employers from dominating or interfering with the formation, existence or administration of any employee organization. As stated above, the matter herein does not involve a labor organization in the usual sense but, rather, involves an individual who has deemed himself an employee organization for the purpose of representing his own individual interests with the employer. Section 5.4(a)(2) is designed to protect bona fide employee organizations representing groups of public employees from improper employer activity which threatens the formation, existence, or administration of the organization. Given the essence of collective activity necessary for sustenance of an employee organization, the ascribing of protections under §5.4(a)(2) to persons who are acting on behalf of their individual interest requires a tortured construction. Subsection 5.4(a)(2) is designed to protect employee organizations and not individuals, and an

individual acting on his/her own behalf cannot clothe himself/herself with the protections of §5.4(a)(2) granted to an employee organization simply by "self incorporation" into an "employee organization." Stated in another way, individuals, whether as "single person units" or as individual employees who are members of a collective negotiations unit, may not add to the Act's other protections in a "bootstrap" manner by calling themselves employee organizations. Accordingly, the undersigned determines that an individual representing his/her own interest cannot claim the protections of §5.4(a)(2). ^{7/}

Therefore, for the above stated reasons, the undersigned declines to issue a complaint with respect to allegations under §5.4(a)(2), (5) and (6). Further, the undersigned refuses to issue a complaint with respect to those aspects of §5.4(a)(1) which arguably could derive from a claimed violation of §5.4(a)(2), (5) and (6).

The undersigned has determined to issue a complaint under §5.4(a)(1), (3) and (4) inasmuch as the allegations of the Charge, if true, may constitute unfair practices. A Complaint and Notice of Hearing with respect to these allegations is being issued contemporaneously with this determination.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: December 7, 1978
Trenton, New Jersey

^{7/} The undersigned's refusal to issue a complaint for the above reason does not necessarily mean that a complaint would otherwise issue.