

D.U.P. NO. 90-3

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

In the Matter of

ELIZABETH HOUSING AUTHORITY

Public Employer,

-and-

Docket No. CI-89-88

WILLIAM THOMPSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that an employee was suspended to retaliate against his supervisor. The Director finds that the charging party failed to allege any facts which, if true, would constitute a violation of the Act.

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Appearances:

For the Respondent

Carella, Byrne, Bain & Gilfillan, Esqs.  
(John F. Malone, of counsel)

For the Charging Party

SEIU, Local 455  
(Ed Kahn, Representative)

REFUSAL TO ISSUE COMPLAINT

On May 15, 1989, William Thompson ("Thompson") filed an unfair practice charge alleging that the Elizabeth Housing Authority ("Authority") violated subsections 5.4(a) (2), (3) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Thompson states that the Authority charged him with

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(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. (7) Violating any of the rules and regulations established by the commission."

fraud and suspended his salary for working as a security guard at a time when he was scheduled to work for the Authority. He alleges that these actions were taken because the Authority wanted to retaliate against Kyle Looney, Thompson's foreman at the time of his suspension.

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 charged.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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 I may decline to issue a complaint.<sup>4/</sup>

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<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 charged 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.

Thompson does not allege facts which indicate that the Authority discriminated against him to discourage the exercise of rights guaranteed by the Act.<sup>5/</sup> He does not allege facts which indicate that the Authority dominated or interfered with the formation, existence or administration of any employee organization<sup>6/</sup> and does not cite any Commission rule or regulation that the Authority allegedly violated.<sup>7/</sup> Rather, Thompson asserts that the Authority suspended him to retaliate against his foreman, Kyle Looney. He characterizes the Authority's conduct towards Looney as racist and retaliatory and notes that Looney had also filed charges with the Equal Employment Opportunity Commission.<sup>8/</sup> In his charge, Looney alleges that his discharge was racially motivated and was in retaliation for filing charges with the Equal Employment Opportunity Commission and the New Jersey Division of Civil Rights.

Thompson bases his charge on allegations that the Authority retaliated against Looney for racially motivated reasons. Looney's charge is also based on both allegations of racism and retaliation for filing charges at agencies other than the Commission. Although Thompson links his charge with Looney's, Thompson does not link

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<sup>5/</sup> N.J.S.A. 34:13A-5.4(a)(3).

<sup>6/</sup> N.J.S.A. 34:13A-5.4(a)(2).

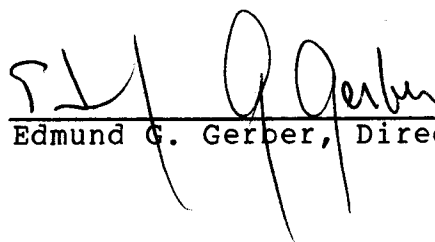
<sup>7/</sup> N.J.S.A. 34:13A-5.4(a)(7).

<sup>8/</sup> Looney has also filed an unfair practice charge with the Commission. Docket No. CI-89-87.

Looney's discharge with activity protected under the Act. Thompson does not specifically allege that the Authority violated any of his rights which are protected by the Act nor does he allege facts which indicate that his rights under the Act were violated. Looney's charge that the Authority retaliated against him for filing with the EEOC can be filed directly with the EEOC.<sup>9/</sup> We do not address whether Thompson's allegation that his suspension was in retaliation for Looney's filing with the EEOC is cognizable before the EEOC. However, Thompson's charge is not cognizable before this Commission. Thompson has failed to allege any facts which, if true, would constitute a violation of any of the subsections of the Act cited in his charge.

Accordingly, the Commission's complaint standard has not been met and I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: October 3, 1989  
Trenton, New Jersey

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<sup>9/</sup> Title VII of the Civil Rights Act of 1964, §704 (a) provides in pertinent part that "It shall be an unlawful employment practice for an employer to discriminate against any of his employees...because he has participated in any manner in an investigation, proceeding, or hearing under this title." 42 U.S.C. § 2000e, 78 Stat.253