

D.U.P. NO. 92-8

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

In the Matter of

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Respondent,

-and-

Docket No. CI-91-74

THOMAS FITZPATRICK, et al.

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint in a matter brought by individuals retired from the Jersey City police force. These individuals asserted that the Police Superior Officers Association failed to process their post-retirement grievance to arbitration or advise them of its disposition. However, the Director found that the Association had no duty to represent the retirees since they were no longer employees covered by the Act or the Act.

D.U.P. NO. 92-8

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

In the Matter of

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Respondent,

-and-

Docket No. CI-91-74

THOMAS FITZPATRICK, et al.

Charging Party.

Appearances:

For the Respondent,  
Loccke & Correia, attorneys  
(Manuel A. Correia, of counsel)

For the Charging Party,  
Feintuch, Prowich & Feintuch, attorneys  
(Philip P. Feintuch, of counsel)

REFUSAL TO ISSUE COMPLAINT

On July 30, 1991, Thomas Fitzpatrick, Edward Healy, Chester Major, and William Luck ("Charging Parties") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Jersey City Police Superior Officers Association ("Association"). The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act,

N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(b)(1), (2), (3), (4) and (5).<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 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>

---

<sup>1/</sup> These subsections prohibit 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) 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 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.

The Commission's rules provide that I may decline to issue a complaint.<sup>4/</sup>

Charging parties allege that the Association failed to process their September 14, 1990 grievance, through the grievance procedure to arbitration and failed to advise the charging parties of its disposition.

In March 1991, these charging parties filed an unfair practice charge alleging that the City of Jersey City ("City") violated the Act by coercing them to waive their contractual benefits during the 18-month period from October 1988 until their retirement in April 1990. On April 26, 1991, I dismissed the charge against the City, finding that the charge was not filed within the six-month statute of limitations -- that is, within six months of their retirement in April 1990. City of Jersey City, D.U.P. No. 91-27, 17 NJPER 278 (¶22125 1991).

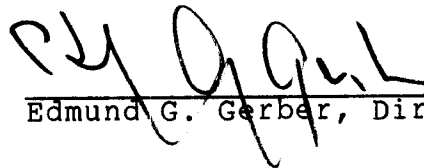
These officers retired and were no longer City employees as of April 1990. They were no longer employees at the time they initiated the September 1990 grievance. As retirees, they were not members of the negotiations unit of employees covered by the terms of the collective agreement between the City and the Association. Therefore, the Association had no duty to represent them and it could not have breached its duty to represent them within the meaning of the Act; they were no longer employees under the contract or under the Act by September 1990.

---

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

Based on the foregoing, I decline to issue complaints in this matter. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Edmund G. Gerber, Director

DATED: December 17, 1991  
Trenton, New Jersey