

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

MIDDLESEX COUNTY HEALTH
DEPARTMENT,

Respondent,

-and-

DOCKET NO. CI-82-57

STEPHEN STANKOVITS,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to allegations raised by the Charging Party against the Middlesex County Health Department. The Administrator finds that some of the allegations are untimely, others do not allege a nexus between specific protected activities under the Act and allegedly discriminatory conduct, others appear to be appropriately addressed to the Civil Service Commission, and others do not state violations of averred subsections of the Act. The Administrator holds in abeyance that aspect of the charge concerning the refusal of the Respondent to process certain grievances filed by the Charging Party in February 1983 until completion of all related litigation.

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Appearances:

For the Respondent

Henry Orzulski, Labor Relations Specialist

For the Charging Party

George G. Gussis, attorney

REFUSAL TO ISSUE COMPLAINT

On May 28, 1982, as amended on June 10, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Stephen Stankovits ("Charging Party") against the Middlesex County Health Department ("Respondent") 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. ("Act"), specifically §§ 5.4(a)(1),

(2), (3), (4), (5) and (7). ^{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 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. 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 and that formal proceedings in respect thereto

^{1/} These subsections prohibit public employers, 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) 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. (7) Violating any of the rules and regulations established by the commission."

^{2/} 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..."

should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standards have not been met. ^{5/}

The Charge, as amended, contains lengthy allegations of unfair practices dating to 1970 which are incorporated here by reference. Generally, the charges relate a history of disputes concerning the Charging Party's salary, his Civil Service classification, the County's compliance with Civil Service Orders, and his job equipment and resources such as phones and cars. Rather than alleging a nexus to specific protected activity under the Act, or evidence of union animus, the charge merely alleges that the Respondent has not accorded the Charging Party the tools and responsibilities consistent with his supervisory position. Based on these claims, it appears to the undersigned that the allegations do not present facts which may constitute violations of §§ 5.4(a)(1) and (3) of the Act.

The Charging Party further alleges that the County has not⁴ complied with Civil Service rulings in his favor and that the

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

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

^{5/} By correspondence dated February 2, 1984 the undersigned deemed this charge withdrawn. This matter has been reopened upon Charging Party's presentation of evidence that a January 20, 1984 request was made for the continued processing of the charge.

County has retaliated against him because of his filings with Civil Service. By letter of March 22, 1984, as well as at informal conferences with a Commission staff agent, Charging Party confirmed that he was vigorously pursuing his Civil Service remedies. Accordingly, it appears to the undersigned that these matters are appropriately addressed to the Civil Service Commission, and do not merit duplicative consideration by this Commission. In re Camden Cty. Sheriff's Dept., D.U.P. No. 84-30, 10 NJPER _____ (¶ _____ 1984).

The charge also includes allegations of isolated conduct which are addressed specifically below:

1. In the original charge, Charging Party alleges that the Respondent violated § 5.4(a)(4) by discriminating against him "...in title, seniority, salary and duties..." due to a grievance which he filed in 1978. These facts do not state a violation of the averred subsection of the Act. There is no allegation that the Charging Party was discriminated against for invoking access to this Commission's processes. See Randolph Tp. Bd. of Ed., P.E.R.C. No. 82-19, 8 NJPER 365 (¶ 13167 1982), aff'd App. Div. Docket No. A-5077-81T2 (6/24/83).

2. In the amended charge, Charging Party alleges that he was retaliated against for filing the original charges with the Commission when he was suspended immediately after the informal conference held at PERC in October 1982. This allegation, although cognizable under §§ 5.4(a)(1) and (4) of the Act, was filed six

months after the aggrieved conduct. Pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. Accordingly, the undersigned declines to issue a complaint as to the above allegation.

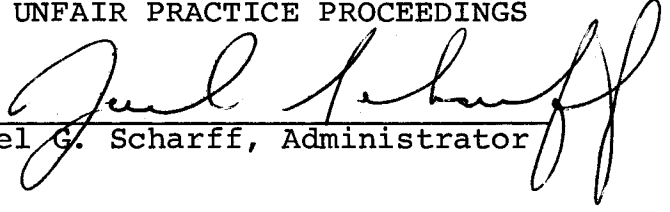
3. In the amended charge, the Charging Party alleges that the Respondent has violated § 5.4(a)(2) by interfering with the formation of the Middlesex County Supervisors' Inspectors' Association in 1982 by proposing certain allegedly inappropriate titles for inclusion in the proposed negotiations unit. In addition to the timeliness concerns raised above, the undersigned notes that this claim does not implicate union membership issues. Instead, the issues concern disputes over unit composition which are appropriately addressed in the Commission's representation forum. Accordingly, the undersigned declines to issue a complaint with respect to this allegation.

4. In the amended charge, the Charging Party alleges that the Respondent violated § 5.4(a)(5) of the Act in February 1983 when it refused to process twenty-two grievances filed by the Charging Party at that time. By letter of July 5, 1983, the Respondent advised the Commission that it had advised the Charging Party that it would hold the twenty-two grievances in abeyance in view of their overlap with all pending litigation. Under these particular circumstances, the undersigned finds Respondent's position reasonable. However, the undersigned cannot conclude

with certainty that the Charging Party will be granted access to grievance proceedings upon the completion of all related litigation. Therefore, the undersigned will hold this aspect of the charge in abeyance pending the conclusion of all related litigation and the subsequent action, if any, by the parties with regard to the twenty-two grievances.

Accordingly, the undersigned declines to issue a complaint with respect to the instant charge in accordance with the above.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: June 20, 1984
Trenton, New Jersey