

D.U.P. NO. 90-7

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

In the Matter of

HOBOKEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-90-24

VINCENT GERMINARIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on the grounds that the charging party, as an individual, does not have standing to allege that the Hoboken Board of Education violated section 5.4(a)(5) of the New Jersey Employer-Employee Relations Act.

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Appearances:

For the Respondent
Murray, Murray & Corrigan, Esqs.
(David F. Corrigan, of counsel)

For the Charging Party
Vincent Germinario, pro se

REFUSAL TO ISSUE COMPLAINT

On September 7, 1989, Vincent Germinario ("Charging Party") filed an unfair practice charge against the Hoboken Board of Education ("Board") alleging violations of section 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when, on July 18, 1989, the Board unilaterally rescinded the memorandum of agreement it had executed on June 16, 1989 and ratified on June 29, 1989.

^{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. (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."

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.^{2/} 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.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

In correspondence dated December 28, 1989, we invited the parties to submit additional factual allegations and position statements. We advised them that absent the timely submission of additional assertions and argument which would warrant the conduct of an evidentiary hearing, we would issue a decision declining to issue a complaint. We have not received additional submissions.

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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

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

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

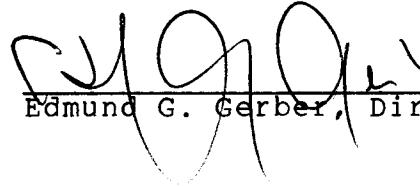
For the reasons stated below, we find that the Commission's complaint issuance standards have not been met.

N.J.S.A. 34:13A-5.4(a)(5) provides, in pertinent part, that an unfair practice charge arises only where the employer fails to negotiate with the majority representative. Such a charge can be filed only by the party to whom these rights and obligations flow, i.e., the majority representative. Accordingly, an individual employee, the charging party in this matter, lacks standing to maintain a claim that the Board has violated section 5.4(a)(5) of the Act. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt. No. A-1263-80T2; Rutgers University, P.E.R.C. No. 88-130, 14 NJPER 414 (¶19166 1988); City of Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); City of Atlantic City, D.U.P. No. 88-6, 13 NJPER 805 (¶18308 1987); Camden County Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). Consequently, since the charging party, as a matter of law, does not have standing to allege that the Board violated section 5.4(a)(5) of the Act, the unfair practice charge must be dismissed.^{5/}

^{5/} We find no facts in the unfair practice charge which allege an independent subsection (a)(1) violation. Consequently, we also dismiss the charge with respect to the allegation that the Board has violated section 5.4(a)(1).

Accordingly, we decline to issue a complaint in the above-captioned matter and the unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 10, 1990
Trenton, New Jersey