

D.U.P. NO. 97-17

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

In the Matter of

BOROUGH OF RED BANK,

Respondent,

-and-

Docket No. CO-97-105

PESU LOCAL 702,

Charging Party.

The Director of Unfair Practices refuses to issue a complaint where the union alleged that the employer committed an unfair practice when it refused to fill a vacant position. The Director held that an employer has a managerial prerogative to promote or not to promote an employee and cannot be compelled to negotiate or arbitrate a decision on whether to fill vacant positions.

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Appearances:

For the Charging Party,
Robert J. Feeney, Business Representative

REFUSAL TO ISSUE COMPLAINT

On October 1, 1996, PESU Local 702 filed an unfair practice charge against the Borough of Red Bank alleging that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (7) and 5.4(b)(1) and (5), when it refused to fill the position of assistant sanitation foreman which has been vacant since March 1996.

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.^{1/} 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.^{2/} The Commission's rules provide that I may decline to issue a complaint.^{3/}

An employer has a managerial prerogative to promote or not promote an employee. It cannot be compelled to negotiate or arbitrate a decision on whether to fill vacant positions. Paterson Police PBA v. City of Paterson, 87 N.J. 78 (1981); County of Monmouth, P.E.R.C. No. 96-15, 21 NJPER 347 (¶26213 1995).

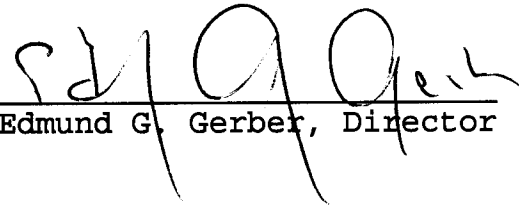
^{1/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, 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...."

^{2/} N.J.A.C. 19:14-2.1.

^{3/} N.J.A.C. 19:14-2.3.

Based upon the above, I find that the allegations of the charge do not meet the Commission's complaint issuance standard. Therefore, the charge does not state a cause of action under N.J.S.A. 34:13A-5.4 and I refuse to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 21, 1996
Trenton, New Jersey