

D.U.P. NO. 85-3

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

In the Matter of

BURLINGTON COUNTY SPECIAL
SERVICES SCHOOL DISTRICT,
and SPECIAL SERVICES CUSTODIAL
MAINTENANCE ORGANIZATION,

Respondents,

-and-

DOCKET NO. CI-84-70

MICHAEL G. CUZZUPE,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge filed by an individual concerning his discharge from employment by the Respondent. The alleged unfair practice occurred prior to the six month period immediately preceding the filing of the charge.

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Appearances:

For the Respondent Public Employer
Parker, McCoy & Criscuolo, P.C.
(Stephen J. Mushinski of counsel)

For the Respondent Employee Organization
James R. George, UniServ Representative, NJEA

For the Charging Party
Michael G. Cuzzupe, pro se

REFUSAL TO ISSUE COMPLAINT

On March 29, 1984, Michael G. Cuzzupe ("Charging Party" or "Cuzzupe") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that both the Burlington County Special Services School District ("County") and the Special Services Custodial Maintenance Organization ("CMO") violated the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. ("Act"), specifically and respectively §§ 5.4(a)(1), (2), (3) and (5) and §§ 5.4(b)(1), (3) and (4). ^{1/} The charge alleges that on May 26, 1983 the Superintendent of Schools, Dr. Carmine DeSopo, notified Charging Party that the Board did not renew his individual contract of employment as a custodian ^{2/} and that the CMO, his exclusive representative, refused to take action on his behalf during the process which led to his nonrenewal.

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

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits 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. (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(b) prohibits 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. (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."

^{2/} Charging Party was employed under a contract for a one year fixed term which expired on June 30, 1983.

complaint stating the unfair practice charge. ^{3/} 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 should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

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

Pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing a complaint where the unfair practice has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:5.4(c) provides:

^{3/} 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..."

^{4/} N.J.A.C. 19:14-2.1

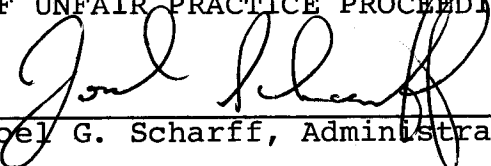
^{5/} N.J.A.C. 19:14-2.3

...provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented.

The Charging Party states that he was notified on May 26, 1983 of his termination effective July 1, 1983, (although his salary paychecks continued until August 15, 1983). He further claims that prior to May 26, he approached the President of the CMO and requested he be given some aid regarding "labor problems" he was encountering. He claims as well that a New Jersey Education Association UniServ Representative did not assist him when he asked for representation at the Board meeting on May 25, 1983, at which his contract renewal was considered.

The Charge was filed on March 29, 1984, well over six months from the date of Charging Party's employment termination. Charging Party states that the reasons why he delayed filing the charge were because he had no knowledge of the Commission's existence until just prior to filing the charge and because he was waiting until he obtained permanent employment and could afford to hire an attorney. Neither of these reasons suffice to toll the running of the six month limitations period. Accordingly, the undersigned declines to issue a complaint with respect to the instant charge.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: July 18, 1984
Trenton, New Jersey