

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

In the Matter of

ESSEX COUNTY GERIATRIC CENTER,

Respondent,

-and-

DOCKET NO. CI-82-34

ANNA DeFRANZA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge filed by an Essex County Geriatric Center employee alleging that the employer improperly refused to permit the charging party to utilize accrued sick leave, vacation leave, personal leave and holidays. The charging party failed to designate the sections of the Act claimed to be violated. Further, the Director does not find a nexus between the alleged activities of the employer and a violation of any subsection of N.J.S.A. 34:13A-5.4(a).

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 18, 1982, by Anna DeFranza (the "Charging Party") against the Essex County Geriatric Center (the "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. (the "Act"). An amended charge was filed on February 9, 1982.

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. ^{1/} The Commission

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

has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This 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 the undersigned may decline to issue a complaint. ^{3/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

Initially, the undersigned notes that pursuant to N.J.A.C. 19:14-1.3(a)(3), an unfair practice charge must contain "... a statement of the portion or portions of the Act alleged to have been violated." Accordingly, the undersigned has determined that it is incumbent upon the Charging Party to allege the particular sections of the Act claimed to have been violated, and has declined to issue complaints where this requirement has not been met. Subsequent to the filing of the instant Unfair Practice Charge, by letter dated January 27, 1982, the undersigned informed the Charging Party that the Charge could not be processed further unless it was amended, pursuant to N.J.A.C. 19:14-1.5, to include the section or sections of the Act alleged to have been violated. The undersigned directed the Charging Party's attention to the relevant provision of N.J.A.C. 19:14-1.3(a)(3) and advised that a complaint would not issue if the Charging Party failed to state the specific section or sections of the Act alleged to have

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

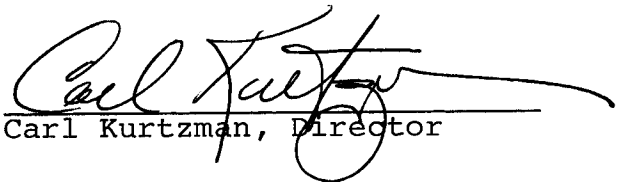
^{3/} N.J.A.C. 19:14-2.3

been violated. Pursuant to a letter dated February 25, 1982, Commission agent Susan L. Wood again referred the Charging Party to the letter of January 27, 1982 and specifically informed said Charging Party that if the Charge was not amended to include the section of the Act alleged to have been violated, the undersigned would decline to issue a complaint. The undersigned has not received a reply to the January 27, 1982 or February 25, 1982 letters, nor has the Charge been amended, as requested.

The gravamen of the Charge is that the Respondent has refused to permit the Charging Party to utilize accrued sick leave, vacation leave, personal leave and holidays, based allegedly on her absence of approximately sixteen months due to a job-related injury for which the Charging Party received Workman's Compensation for approximately one year. The undersigned, based on the Charge as written, is unable to discern a nexus between the Respondent's alleged actions and any prohibited practice under 5.4(a).

Accordingly, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: May 6, 1982
Trenton, New Jersey