

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CI-81-57

KATHLEEN SULLIVAN,

Charging Party.

SYNOPSIS

An Unfair Practice Charge was filed alleging that the City of Jersey City had engaged in an unfair practice in discharging Kathleen Sullivan from her position and failing to pay to her monies owed for reasons of anti-union animus. The Director of Unfair Practice dismissed the Complaint because the charge had failed to provide a nexus between the alleged discriminatory acts of the City and the exercise of rights guaranteed by the Act by Sullivan.

This decision was appealed to the Chairman of the Commission with again no mention of how the alleged acts of the City were motivated at all by Sullivan's exercise of her rights and the Chairman affirmed the Director's decision.

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Appearances:

For the Respondent, Thomas Focie, First Assistant  
Corporation Counsel

For the Charging Party, William Sullivan, Representative

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission by Kathleen Sullivan (the "Charging Party") on February 2, 1981 and amended on April 7, 1981, alleging that the City of Jersey City (the "City") had engaged 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"), specifically N.J.S.A. 34:13A-5.4(a)(3).<sup>1/</sup>

The Director issued his determination on May 14, 1981 declining to issue a complaint and relying on the standards upon which an unfair practice complaint can be issued pursuant to N.J.A.C. 19:14-2.1. This standard provides that a complaint shall

<sup>1/</sup> N.J.S.A. 34:13A-5.4(a)(3) prohibits public employers, their representatives or agents from 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.

issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.

Pursuant to N.J.A.C. 19:14-2.3<sup>2/</sup> the Charging Party, on May 22, 1981 filed an appeal of the Director's decision.<sup>3/</sup> The basis for the Director's dismissal of the Charging Party's complaint was that she had alleged in her charge that the City had discriminated against her in discharging her and in failing to pay her monies owed in violation of the contract; however, these allegations of discrimination were not connected at all to the exercise of rights guaranteed to her by the Act. In her charge,

<sup>2/</sup> N.J.A.C. 19:14-2.3 reads in pertinent part: "If, after a charge has been processed, the director of unfair practices declines to issue a complaint, the parties shall be so advised in writing, accompanied by a simple statement of the procedural or other grounds for such action. The charging party may obtain a review of such action by the director of unfair practices, if any, by filing an original and nine copies of an appeal with the commission within 10 days from the service of the notice of such refusal to issue. A copy shall be served simultaneously upon all other parties, and proof of service shall be filed with the commission. An appeal must be a self-contained document enabling the commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

<sup>3/</sup> This appeal was improperly headed as a Request for Review by the Charging Party rather than as an Appeal. Under Rule 19:11-8.2 the grounds for granting a request for review are as follows: 1) That a substantial question of law is raised concerning the interpretation or administration of the Act or these rules; 2) That the director of representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review; 3) That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or 4) That there are compelling reasons for reconsideration of an important commission rule or policy.

In deciding this appeal, these factors were also considered resulting in extending the review of all matters concerned herein and granting to the Charging Party a broader scope of review.

the Charging Party provided a list of items concerning pay that was not received by her as well as two items concerned with an "illegal suspension" and her "illegal" termination. Although these allegations suggest matters which are grievable, and in fact were grieved by the Charging Party, there is no suggestion in the charge that monies were denied her or that she was discharged, because of her union involvement or activity. The Director correctly distinguished the instant charge which failed to provide a nexus between the alleged discriminatory acts of the City and the exercise of the Charging Party's rights guaranteed by the Act and the appropriate jurisdiction of the Commission where such alleged discriminatory acts are alleged to be motivated in whole or in part by a desire to discourage the employees in the exercise of protected activities. See In re Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71, 72 (1977); cf. Township of Clark and Raymond Xifo, P.E.R.C. No. 80-117, 6 NJPER 186 (¶11089 1980), aff'd App. Div. Docket No. A-3230-79 (1/23/81).

In Charging Party's appeal, there is again no mention of how the alleged acts of the City were motivated, either in whole or in part, by protected rights being exercised by her and the matter must rest with the Director's decision to decline the issuance of a complaint. The appeal concentrated solely on the Director's mention in his decision that the allegation appeared to refer to 5.4(a)(5) violations,<sup>4/</sup> even though only 5.4(a)(3) was

<sup>4/</sup> N.J.S.A. 34:13A-5.4(a)(5) prohibits public employers, their representatives or agents from refusing to negotiate in good

mentioned by the Charging Party, because the allegations of discrimination related to claims that the City had violated various contractual provisions in relation to her employment and termination. Even on a 5.4(a)(5) charge, however, the Director reasoned that a complaint could not have been issued due to the fact that an employer's obligation under (a)(5) runs to a majority representative and not to an individual unless there is a simultaneous claim by the individual that the majority representative has failed to provide fair representation.

Since this aspect of the Director's decision was not controlling in his failure to issue a complaint, the Commission need not address the argument of the Charging Party as set forth in the appeal. This is especially true in that in her appeal, the Charging Party made it clear that it was her intention to file the unfair practice charge under the (a)(3) provision and that the charge did not relate to (a)(5).

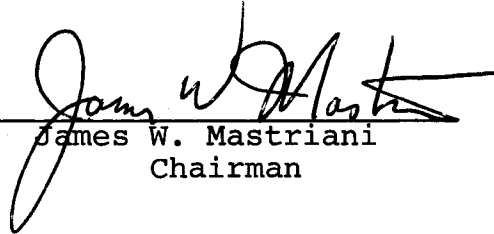
Careful consideration has been given to all of the facts and issues raised herein and I believe, based on the entire record in this proceeding, that the Director was correct in declining to issue a complaint in this matter. Accordingly, based upon the foregoing discussion, and the failure of the Charging Party to allege that the City acted discriminatorily against her because

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4/ (Continued) 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.

of her exercise of protected rights under the Act, acting under the authority delegated to the undersigned by the full Commission, the appeal is hereby denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
June 26, 1981