

P.E.R.C. NO. 92-123

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF BRIGANTINE,

Respondent,

-and-

Docket No. CI-91-40

JAMES CUSACK,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices' refusal to issue a Complaint based on an unfair practice charge filed by James Cusack against the City of Brigantine. The charge alleged that the City violated the New Jersey Employer-Employee Relations Act when it failed to meet with Cusack to review his placement on a promotional list. Such a meeting is allegedly required by departmental promotion procedures and the relevant collective negotiations agreement. The Commission agrees with the Director that Cusack's allegations, even if true, would not constitute an unfair practice.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF BRIGANTINE,

Respondent,

-and-

Docket No. CI-91-40

JAMES CUSACK,

Charging Party.

Appearances:

For the Respondent, Wilson & Maguire, P.A., attorneys  
(Timothy Patrick Maguire, of counsel)

For the Charging Party, Valore Law Firm, P.C., attorneys  
(Hubert U. Barbour, Jr., of counsel)

DECISION AND ORDER

On January 28, 1991, James Cusack filed an unfair practice charge against the City of Brigantine. The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3) and (7),<sup>1/</sup> by failing to meet with Cusack to review his placement on a promotional list. Such a meeting is allegedly

---

<sup>1/</sup> 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. (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. (7) Violating any of the rules and regulations established by the commission."

required by departmental promotion procedures and the relevant collective negotiations agreement.

In an exchange of correspondence, the Director of Unfair Practice informed Cusack that he was not inclined to issue a Complaint. Despite several attempts, Cusack failed to persuade the Director that a Complaint should issue. D.U.P. No. 92-14, 18 NJPER 215 (¶23097 1992).

On April 16, 1992, Cusack appealed the Director's decision not to issue a Complaint. He summarizes his charge as follows:

Petitioner asserts that even though he has complied with contractual and extra contractual procedures condition precedent to possibly initiating a formal grievance, he remains precluded from doing so absent a detailed review of his individual examination results with the Respondent, Public Safety Director, Fire Chief or a suitable designee.... Petitioner cannot formally grieve the administration of the Respondent promotion examination absent the contemplated examination result review, which has been unilaterally denied by the Respondent.

The City has filed a statement in opposition to the appeal.

We sustain the decision not to issue a Complaint. We need not determine whether Cusack has standing to pursue his allegations or whether the charge was properly or timely amended to include Cusack's majority representative as a charging party. We sustain the decision because Cusack's allegations, even if true, would not constitute an unfair practice. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Human Services itself concerned an employer's alleged failure to abide by contractual procedures when terminating an employee. We


held that a mere breach of contract is not an unfair practice and that allegations of contractual breaches must be resolved through negotiated grievance procedures. As in Human Services, the sole issue is whether the employer breached certain procedural protections. The dispute is over an alleged failure to meet with Cusack to review his placement on a promotional list. That dispute must be resolved through the contractual grievance procedure.

Cusack has not alleged any facts to support a violation of sections 5.4(a). We sustain the refusal to issue a Complaint.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained.

DATED: June 25, 1992  
Trenton, New Jersey  
ISSUED: June 26, 1992