

A proceeding to determine the existence of probable cause was an initial threshold procedure to determine whether the matter should be brought to a halt. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

SUBCHAPTER 2. INVESTIGATIONS

13:4-2.1 Director's investigations

(a) The Director, pursuant to N.J.S.A. 10:5-6; 10:5-8c, g, h, i, j; 10:5-9.1, may, on his or her own motion or on the motion of any person entitled to be a complainant under N.J.A.C. 13:4-3.3, conduct investigations to determine the extent to which industries, groups of industries, business persons, or groups of business persons, or other persons or groups of persons are complying with the Law Against Discrimination.

(b) In the conduct of such investigations, all investigatory powers granted by N.J.S.A. 10:5-8h-j shall be available to the Director.

(c) In connection with an investigation of the operation of any real property, as defined by N.J.S.A. 10:5-5n, the Director may require the submission of information concerning the race, creed, color, national origin, ancestry, handicap, marital status, sex, nationality, affectional or sexual orientation or familial status of the occupants of such real property, the terms and conditions on which the sale or lease of said real property is to be made to the general public, the vacancy rate of such real property subject to rent, the plans for advertising or notifying the public of the availability of said real property for rental or sale, the standard form documents used in the rental or sale of such real property, and such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination.

(d) In connection with an investigation of any employer as defined by N.J.S.A. 10:5-5(e), the Director may require the submission of information concerning:

1. The race, creed, color, national origin, handicap, ancestry, age, marital status, sex, nationality, affectional or sexual orientation, atypical hereditary cellular or blood trait or military status of employees;
2. The employment records of employees;
3. The procedures for advertising or notifying the public of the availability of jobs;
4. The procedures for hiring or selecting employees;
5. The testing, seniority, promotion and discharge procedures; and

6. Such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination.

(e) An investigation by the Division may be conducted either prior to or subsequent to the filing of a complaint.

As amended, R.1970 d.94, eff. August 5, 1970.
 See: 2 N.J.R. 76(b).
 R.1972 d.122, eff. June 26, 1972.
 See: 4 N.J.R. 195(a).
 Amended by R.1985 d.697, effective January 21, 1986.
 See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).
 Added words "creed, handicap, and nationality".
 Amended by R. 1991 d.67, effective February 19, 1991.
 See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).
 Statutory cite corrected.
 Amended by R.1995 d.243, effective May 15, 1995.
 See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

13:4-2.2 Discovery procedure for Director's investigations

All investigatory and discovery powers which the Division may otherwise utilize in the investigation of complaints as set forth in N.J.S.A. 10:5-1 et seq., and in these rules of practice and procedure at Subchapter 8 (Depositions and Interrogatories) and 9 (Subpoenas), including, but not limited to, the power to issue subpoenas, take depositions and serve interrogatories, may be utilized in the discretion of the Director during an investigation.

Case Notes

Held that State Supreme Court affirmation of finding, that employee charging discrimination was fired for cause, was not res judicata. *Wood v. Garden State Paper Co., Inc.*, 577 F.Supp. 632 (D.N.J.1983).

13:4-2.3 Fact-finding conference

(a) Fact-finding, as part of an investigation in a discrimination complaint, is subject to the following:

1. As part of its investigation, the Division may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the complaint.

2. The Division shall provide the parties with written notice of the conference. Said notice shall identify the individuals requested to attend on behalf of each party, and any documents which any party is requested to provide within the specified time frame.

(b) The conference shall be conducted as follows:

1. The Division employee acting as fact-finder shall conduct and control the proceedings.

2. Upon prior notice to the Division, the parties may bring witnesses to the conference in addition to those whose attendance may be specifically requested by the Division, but the fact-finder shall have discretion over which witnesses shall be heard and the order in which

they are heard. The fact-finder may exclude any witness or other person from the conference not limited to those who are not giving evidence, except that one representative of each party and counsel shall be permitted to remain throughout.

3. The Division may request the parties to provide affidavits from witnesses who appear at the fact-finding conference.

4. A party may be accompanied at a fact-finding conference by his/her attorney or another representative, and by a translator, if necessary.

5. An attorney for a party who has not previously entered his or her appearance shall do so at the outset of the conference.

6. Because the fact-finding conference is a means of investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the fact-finder, unless in his or her discretion the fact-finder permits questions to be asked by other persons present at the conference.

7. During the conference, the fact-finder may allow a recess to permit the parties to discuss settlement.

(c) A record of the fact-finder conference shall be discovered as follows:

1. Following a Finding of Probable Cause or No Probable Cause, any reports of factual statements made at the fact-finding conference shall be discoverable by the parties.

2. Any records made of settlement discussions during the conference shall not be discoverable.

(d) Postponements of a fact-finding conference shall be subject to the following:

1. Postponements of a scheduled fact-finding conference will be granted only for good cause shown. Parties are discouraged from requesting adjournment from fact-finding conferences. Requests for adjournments should be directed to the branch manager. Except in extraordinary circumstances, requests for adjournments must be made, upon notice to all parties at least 10 working days prior to the conference.

2. If a party does not appear at a fact-finding conference without obtaining a postponement, the Division may proceed with the conference without the party.

(e) If the respondent or the complainant refuses or fails to attend a scheduled fact-finding conference, the Division may schedule an alternate conference date. The Division may subpoena any party or witness who has failed to attend the initially scheduled fact-finding conference. The Division may also subpoena any documents which either party was requested to bring, and fails to bring, to the fact-finding conference.

R.1983 d.385, September 19, 1983.

See: 15 N.J.R. 500(a), 15 N.J.R. 1604(a).

Amended by R. 1991 d.67, effective February 19, 1991.

See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).

Editorial change only.

Case Notes

It was not violation of due process to accord administrative determination, which had been affirmed by appellate division, full faith and credit. *Pittman v. La Fontaine*, D.N.J.1991, 756 F.Supp. 834.

Election to litigate her sexual harassment complaint through administrative procedure precluded employee from pursuing Title VII action in federal court. *Pittman v. La Fontaine*, D.N.J.1991, 756 F.Supp. 834.

Age discrimination law did not violate due process. *Ferrara v. Tappan Co.*, D.N.J.1989, 722 F.Supp. 1204.

Remand to Division on Civil Rights was required to determine whether student who obtained restraining order was prevailing party entitled to award of counsel fees. *Balsley by Balsley v. North Hunterdon Regional School Dist. Bd. of Educ.*, 117 N.J. 434, 568 A.2d 895 (1990).

High school student who brought successful sex discrimination claim before Commissioner of Education was entitled to seek award of counsel fees. *Balsley by Balsley v. North Hunterdon Regional School Dist. Bd. of Educ.*, 117 N.J. 434, 568 A.2d 895 (1990).

Chief of enforcement bureau designated to conduct fact-finding conference could not conduct adjudicatory hearing under statutes permitting agency head to send case to Office of Administrative Law for adjudicatory hearing. *Frank v. Ivy Club*, 228 N.J. Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Fact-finding conference could be employed solely as an investigative technique and not for adjudicatory purposes. *Frank v. Ivy Club*, 228 N.J. Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Private clubs closely associated with public university did not have the right to a hearing before an administrative law judge prior to the transfer of their case to Office of Administrative Law. *Frank v. Ivy Club*, 228 N.J. Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

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SUBCHAPTER 3. COMMENCEMENT OF ACTION

13:4-3.1 Manner actions commenced

Any action may be commenced by the filing of a verified complaint at the offices or with any official or field investigator of the Division.

Amended by R.1985 d.697, effective January 21, 1986.

See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Substituted "investigator" for "representative".