

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

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY and
LOCAL 194, IFPTE, AFL-CIO-CLC,
NEW JERSEY TURNPIKE EMPLOYEES UNION,

Respondents,

-and-

DOCKET NO. CI-83-38

ROBERT BEGROWICZ,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to allegations raised by the Charging Party that his majority representative unfairly represented him by not resubmitting a grievance to arbitration. Prior to a scheduled arbitration session, the majority representative and the public employer, with Charging Party's approval, settled the Charging Party's grievance. Charging Party at a later date withdrew his endorsement of the settlement and demanded that the majority representative resubmit the grievance to arbitration. Under the circumstances involved, the Administrator finds that the majority representative did not act in an arbitrary, discriminatory, or bad faith manner. The Administrator further declines to issue a complaint against the employer relating to its termination of Charging Party's employment.

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Appearances:

For the Respondent Authority
Mary Elizabeth Garrity, attorney

For the Respondent Local 194, IFPTE
Hartman, Schlesinger, Schlosser, Faxon & Foy, attorneys
(Thomas P. Foy of counsel)

For the Charging Party
Schiller, Vyzas, McGill & Squeo, attorneys
(Eugene P. Squeo of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on January 17, 1983, by Robert Begrowicz ("Charging Party"), against the New Jersey Turnpike Authority ("Authority") and Local 194, IFPTE, AFL-CIO-CLC, New Jersey Turnpike Employees Union ("Local 194") alleging unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"),

specifically N.J.S.A. 34:13A-5.4(a)(1) and (b)(1), respectively. ^{1/}
 The Charging Party alleges that the Respondent Authority improperly demoted him and thereafter terminated him for refusing to accept the demotion. The Charging Party further alleges that Respondent Local 194 unfairly represented him by refusing to re-submit his grievance over the discharge to arbitration following his rejection of an agreement intended to resolve the grievance.

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 to issue a complaint stating the unfair practice charge. ^{2/} 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. 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. ^{3/} The Commission's

^{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."

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."

^{2/} 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..."

^{3/} N.J.A.C. 19:14-2.1

rules provide that the undersigned may decline to issue a complaint. ^{4/}

The Charging Party alleges that in August 1981, he completed an approved leave of absence without pay from his maintenance position. The Authority requested that he return to a custodial job at a pay reduction. The Charging Party declined to accept the "demotion" and, thereafter, on October 9, 1981, the Authority terminated his employment. ^{5/}

The Charging Party grieved his dismissal, and eventually, Local 194, his majority representative, submitted the grievance to binding arbitration.

Charging Party states that prior to the arbitration hearing on September 14, 1982, Local 194 proposed a settlement of the grievance to which Charging Party orally assented.

The Charging Party, on an unspecified later date, withdrew his acceptance of the "proposed settlement" and requested that Local 194 reschedule the arbitration hearing. Local 194 declined to do so. Charging Party asserts that the grievance procedure grants the employee the right to submit a grievance to arbitration, that "[T]he union has no right to terminate the arbitration process before the arbitration is closed by a formal agreement," and that Local 194's refusal to proceed to arbitration was therefore arbitrary and capricious.

^{4/} N.J.A.C. 19:14-2.3. Effective November 1, 1983, the responsibilities of the Director of Unfair Practices were assumed by the Administrator of Unfair Practice Proceedings.

^{5/} Apparently, a dispute arose as to the Charging Party's medical condition and his ability to resume his maintenance position.

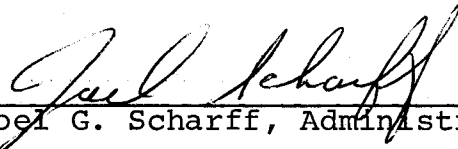
The undersigned's review of the instant unfair practice charge requires the application of the law of unfair representation as developed by the Commission. For the reasons stated below it appears to the undersigned that the Charging Party has not stated a basis for an unfair representation claim meriting the issuance of a complaint.

The Commission has determined that a majority representative violates its duty to provide fair representation to unit members when it acts in an arbitrary, discriminatory or bad faith manner. In re Council No. 1, AFSCME, P.E.R.C. No. 79-28, 5 NJPER 21 (¶ 10013 1978). The Charging Party argues herein that Local 194 acted arbitrarily and capriciously because the collective negotiations agreement gives the individual grievant the right to have his grievance arbitrated. However, a review of Article XVII of the contract reveals that the exclusive right to submit disciplinary matters to arbitration is reserved to "the Union," not the employee. Thus, it does not appear that the Charging Party has a contractual right to proceed to arbitration which has been interdicted by the Union.

As a matter of statutory right, a majority representative may abandon or settle grievances short of invoking binding arbitration, provided that its conduct is not arbitrary, discriminatory or in bad faith. Council No. 1, AFSCME, supra. Under the instant facts, as stated by the Charging Party, it appears that the Authority and Local 194 settled the grievance under terms assented to by the

Charging Party. The arbitration session was cancelled. Local 194's apparent insistence upon adhering to the terms of the settlement cannot ordinarily be described as arbitrary, discriminatory or in bad faith. Although provided the opportunity, the Charging Party has not presented evidentiary material in support of any claim that the settlement of the grievance on the date of arbitration was solely tentative, nor has the Charging Party referred to any legal authority to support the proposition that Local 194 was bound to proceed to arbitration upon the Charging Party's subsequent withdrawal of his assent to the settlement agreement. Moreover, the Charging Party has not alleged that Local 194's actions are the product of any personal hostility towards him. Accordingly, the undersigned concludes that Local 194's insistence upon adhering to the terms of the settlement agreement, under the instant circumstances, does not appear to be arbitrary, discriminatory or in bad faith. Therefore, the undersigned declines to issue a complaint.^{6/}

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: December 2, 1983
Trenton, New Jersey

^{6/} In the absence of any viable claim of unfair representation by the majority representative, a complaint may not issue with respect to unfair practice allegations of contract breach by the employer under §§ 5.4(a)(5). In re N.J. Turnpike Auth., 6 NJPER 560 (¶ 11284 1980), aff'd App. Div. No. A-1263-80T3 (10/30/81).