

D.U.P. NO. 88-13

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

In the Matter of

BOROUGH OF WILDWOOD CREST

Respondent,

-and-

Docket No. CO-88-200

UNITED INDEPENDENT UNION a/w  
NATIONAL FEDERATION OF INDEPENDENT UNIONS

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint where the charge alleged no more than a mere breach of the parties' collective negotiations agreement. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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Appearances:

For the Respondent,  
Fineberg and Rodgers  
(Robert A. Fineberg, of counsel)

For the Charging Party,  
Henry Schickling, Business Representative

REFUSAL TO ISSUE COMPLAINT

On February 8, 1988, the United Independent Union ("Union" or "Charging Party") filed an Unfair Practice Charge against the Borough of Wildwood Crest ("Borough") alleging violations of the Public Employer-Employee Relations Act, N.J.S.A. 34:13A--5.4, specifically subsections (a)(1) and (2)<sup>1/</sup>. The charge alleges that the Borough deducted money from certain employees' pay as

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<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; and (2) Dominating or interfering with the formation, existence or administration of any employee organization."

discipline for failing to punch in for work on the Borough's time clock. The Union asserts that the employees involved worked on the day in question but neglected to punch in before beginning their shift. The Union argues that the Borough illegally withheld money for time worked in lieu of discipline for the employees' failure to follow the punch-in procedure.

The Borough denies any violation of the Act. It maintains that the men did not work on the day in question and accordingly, were legitimately docked. The Borough further argues that the allegations contained in the charge do not constitute an unfair practice under the Act.

We find that the Union's allegations do not state a cause of action under N.J.S.A. 34:13A-5.4. Rather, the allegation of this charge at best is no more than a mere breach of the parties' collective negotiations agreement.

In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

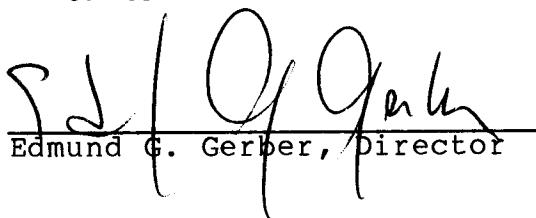
a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

In that case, the Commission set forth some examples of situations where a breach of contract claim bears a sufficient relationship to an alleged violation of the Act so as to warrant the processing of the charge and the possible issuance of a complaint: (1) The employer repudiates an established term or condition of employment; (2) The employer decides to abrogate a contract clause based on its

belief that the clause is outside the scope of negotiations; (3) The contract clause is so clear that an inference of bad faith arises from a refusal to honor it; (4) Factual allegations indicate that the employer changed the parties' past and consistent practice in administering the disputed clause; (5) Specific allegations of bad faith over and above mere breach of the collective negotiations agreement are present; and (6) Breach of the agreement places the policies of the Act at stake.

None of these situations appear in the instant case. The charge here alleges no more than a possible breach of the "just cause"/discipline provision and/or the salary provision in the contract. Both of these allegations are proper subjects for resolution through the parties' negotiated grievance procedure. Moreover, the Charging Party presented no evidence of repudiation or bad faith which would raise this dispute to the level of a cognizable unfair practice. Further, the contract provides that disputes involving the meaning, application or interpretation of the terms of the contract can be taken to binding arbitration. Accordingly, we find that the Commission's complaint issuance standard has not been met and we decline to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: May 4, 1988  
Trenton, New Jersey