

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

In the Matter of

TOWNSHIP OF MILLBURN,

Respondent,

-and-

DOCKET NO. CO-81-196

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 389,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge alleging that the employer was not responding to charging party's grievances. The Director notes the self-effectuating nature of the grievance procedure and the Commission's policy that an employer's lack of reply in such instances, which does not prevent the further processing of a grievance, is not an unfair practice.

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Appearances:

For the Respondent Township of Millburn
Murray, Granello & Kenney
(Robert Emmet Murray of counsel)

For the Charging Party
Rothbard, Harris & Oxfeld
(Barry A. Aisenstock of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 7, 1981, by the Service Employees International Union, Local 389, (the "Charging Party") against the Township of Millburn (the "Township") alleging that the Township was engaging 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)(5). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a)(5) prohibits public employers, their representatives or agents from "Refusing to negotiate in good 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."

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

Charging Party alleges that the Township is in violation of §(a)(5) by "fail(ing) to take any action to process" a grievance filed by the Charging Party on December 10, 1980. The expired agreement between the parties (January 1, 1979 - December 31, 1980) includes a grievance procedure, Article VIII, which allows a grievant to appeal an unsatisfactory disposition of the grievance to the next higher step of the grievance procedure through final and binding arbitration. The grievance may be processed by the grievant through the procedure even in the absence of a response from the

^{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

^{4/} N.J.A.C. 19:14-2.3

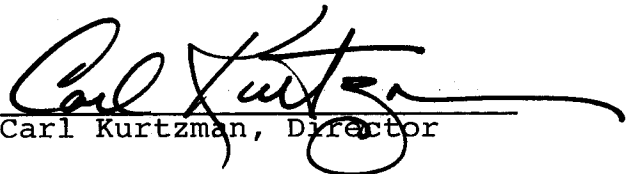
Township. In the instant case, there is no allegation that the Township attempted to prevent the grievant from processing the grievance through the procedure.

In a series of decisions ^{5/} the Commission has held that a simple failure to respond to a grievance at a given level does not constitute the unfair practice of refusing to process a grievance. In In re State of New Jersey and Council of N.J. State College Locals (NJSFT/AFT/AFL-CIO), D.U.P. No. 77-3, 2 NJPER 373 (1976) the undersigned stated:

...Regardless of the potential outcome, the employee organization is not precluded from pursuing the arbitration to conclusion ex parte and the grievance will be "processed" to arbitration pursuant to the parties' contract notwithstanding the public employer's failure to take part in that process. at p. 374.

For the reasons stated above, it appears to the undersigned that the Commission's complaint issuance standard has not been met. Accordingly, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 15, 1981
Trenton, New Jersey

^{5/} See also In re Englewood Bd/Ed, E.D. No. 76-34, 2 NJPER 175 (1976); In re City of Pleasantville, D.U.P. No. 77-2, 2 NJPER 372.