D.U.P. NO. 91-15

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

In the Matter of

OCEAN COUNTY BOARD OF HEALTH,

Respondent,

-and-

Docket No. CO-90-313

DISTRICT 1199J, NUHHCE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint upon a charge filed by District 1199J, NUHHCE, against the Ocean County Board of Health. The Director finds that the union waived its right to file a charge of failure to execute an agreement and, derivatively, bad faith negotiations where the union and employer voluntarily submitted to binding interest arbitration. The Director finds Tp. of Denville, P.E.R.C. No. 78-51, 4 NJPER 114 (¶4054 1978) distinguishable; there the union did not allege refusal to execute an agreement.

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Appearances:

For the Respondent,
Berry, Kagan & Sahradnik, attorneys
(Seymour J. Kagan, of counsel)

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

DECISION

On April 30, 1990, District 1199J, National Union of Hospital and Health Care Employees, AFSCME ("District 1199J") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Ocean County Board of Health ("Board"), alleging that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 (a)(1), (5), and (6) ("Act").[1/] On August 9, 1990, an informal conference was

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1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

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held. On October 18, 1990, we issued a letter indicating that we intended to refuse to issue a complaint on the charges. Both parties resonded to our letter.

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 charged.[2/] The Commission has delegated its authority to issue complaints to me and has established a standard upon which unfair practice complaints shall be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act [3/] and

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1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) 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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

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.

the Commission's rules provide that I may decline to issue a complaint where appropriate. [4/]

For the reasons stated below, I find that the Commission's complaint issuance standard has not been met.

District 1199J asserts that the Board committed unfair practices when it refused to ratify and execute contract terms which were allegedly agreed to on October 26, 1989. The parties last negotiated agreement covered the period from April 1, 1986 through March 31, 1989. The parties entered into negotiations for a successor agreement prior to March 31, 1989. It is alleged that on October 26, 1989, a District 1199J representative met with two members of the Board, including the Board's chairman, and that an agreement was reached subject to ratification by the parties. The union ratified this agreement and alleges it was orally informed that the Board had also ratified it. The charge states that the Board's version of the draft differed from the terms of the October 26 agreement, and that the Board has since refused to execute a written agreement consistent with the terms of the October 26 agreement. It is alleged that the Board has violated subsection 5.4(a)(6) of the Act by failing to execute a contract containing the terms of the parties' October 26 agreement and violated subsection 5.4(a)(5) by refusing to negotiate in good faith over terms and conditions of employment.

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

The Board denies that it ratified the October 26 agreement or that it engaged in unfair practices under the Act.

It is undisputed that after October 1989, the Board and District 1199J entered mediation concerning their negotiations dispute and eventually agreed to submit to binding interest arbitration. The interest arbitrator issued an award on March 27, 1990. The unfair practice charge was not filed until April 30, 1990. The union claims that it agreed to binding interest arbitration because the Board persistently refused to modify its draft to conform with the agreed upon terms. The union argues that the arbitration award should not be binding because the parties had reached a binding agreement shortly after October 26, 1989.

Subsection 5.4(a)(5) and (6) prohibit public employers from:

> (5)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.
>
> (6)Refusing to reduce a negotiated agreement to writing and to sign such agreement.

At this stage of the proceeding, I must assume all facts alleged by the charging party are true. Nevertheless, I find that by agreeing to submit their negotiations dispute to binding interest arbitration, the union waived its right to bring these charges. The interest arbitration here was voluntarily entered and binding on the parties. The parties agreed to be bound to the Commission's rules covering police and fire interest arbitration. N.J.A.C. 12-1.1 *et seq*.

As a matter of law and policy, the Commission favors voluntary dispute resolution efforts. See N.J.S.A. 34:13A-2. Section 5.2 of the Act charges the Commission with the duty of making policy relating to public sector dispute settlements and grievance procedures. The Commission has promulgated rules for the implementation of compulsory interest arbitration for police and fire employees, which the courts have upheld. N.J.A.C. 16-1.1 et seq. Interest arbitration awards may be appealed only in Superior Court. N.J.S.A. 34:13A-20. Proper grounds for challenging such awards are narrow. See, FOP, Lodge 36A v. County of Hudson, Docket No. L-19758-78 (Law Div 1979); and Int'l Brotherhood of Teamsters, Local 560 v. Bergen-Hudson Roofing Supply Co., 159 N.J. Super. 313 (Ch. Div. 1978); See also, PBA Local 16 v. City of E. Orange, 164 N.J. Super. 436, (Ch. Div. 1978; and PBA Local 29 v. Town of Irvington, 80 N.J. 271 (1979). Similarly, the Commission defers processing unfair practice charges which are subject to appropriate resolution through parties' negotiated grievance arbitration procedures.[5/]

5/ See generally, N.J.S.A. 34:13A-5.3. N.J. Department of Human Services, P.E.R.C. 84-148, 10 NJPER 419 (¶15191 1984); In re Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 266 (¶14122 1983).

The National Labor Relations Board ("Board") has adopted similar policies. Spielberg Mfg. Co., 112 NLRB 1080, 36 LRRM 1152 (1955). In order to promote the private informal settlement of

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District 1199J cites the case of Tp. of Denville, P.E.R.C. No. 78-51, 4 NJPER 114 (¶4054 1978) as standing for the principle that the signing of a successor agreement does not render moot the unfair practices committed by a party during the period leading up to agreement. That case is factually distinguishable from this case and is therefore not on point. First, the unfair practice charge in Denville was filed prior to the conclusion of negotiations. Here, the union waited to file its charge until the conclusion of voluntary binding interest arbitration. If District 1199J believed it had reached an enforceable agreement with the Board then it should not have agreed to binding arbitration. I will not recognize a "duress" defense against the results of voluntary binding dispute resolution processes. In submitting to binding arbitration District 1199J waived its right to a remedy in this forum for the refusal to execute an agreement claim. Secondly, Denville did not involve an (a)(6) refusal to execute charge. The (a)(5) and (a)(1) charges here are derivative of the primary (a)(6) charge. Third, there was no agreement to submit to voluntary binding arbitration in

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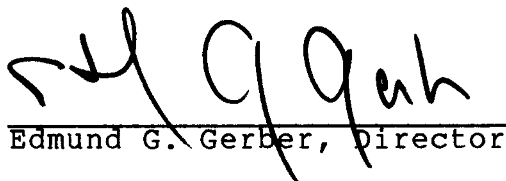
disputes and to avoid duplicative litigation, the Board has deferred to grievance arbitration where (1) the proceedings are fair and regular, (2) all parties have agreed to be bound by the award, and (3) the award is not clearly repugnant to the National Labor Relations Act. The Supreme Court has generally approved the Board's deferral policy. Carey v. Westinghouse Elec. Corp., 375 U.S. 261, 270, 55 LRRM 2042 (1964); and John Wiley & Sons Inc. v. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964).

Denville. Here, the employer was induced into a reasonable belief that it was taking a step which would finalize the contract and it and the union submitted to a process to which it had no obligation to submit - one in which a third party would decide the terms of their contract. The employer here had no notice that its submission to arbitration would later be challenged and the arbitartor's findings possibly set aside. Parties cannot agree to be bound and then if they are unhappy with the result seek to abrogate their agreements.

When District 1199J voluntarily entered into the interet binding arbitration process which, by its nature, insured the settlement of the negotiations dispute underlying the charge, District 1199J waived its right to bring these charges.

Based upon the foregoing, I do not believe that the Commission's complaint issuance standard has been met and refuse to issue a complaint on the allegations of this charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 12, 1990
Trenton, New Jersey