

D.U.P. NO. 96-25

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

In the Matter of

SOUTH JERSEY PORT CORPORATION,

Respondent,

-and-

Docket No. CO-96-308

IFPTE LOCAL 18,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on IFPTE's allegation against the South Jersey Port Corporation that a refusal to implement a fact-finders report and recommendation is a per se violation of the Act. However, the Director of Unfair Practices issues a Complaint and Notice of Hearing on the facts contained in the charge alleging that the Corporation has refused to negotiate in good faith concerning alternative contract terms since the issuance of the fact-finder's report and recommendations in February 1996.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Frank X. McDermott, of counsel)

For the Charging Party,
Meranze and Katz, attorneys
(Bernard N. Katz, of counsel)

DECISION

On April 11, 1996, the International Federation of Professional and Technical Engineers, Local 18 (IFPTE) filed an unfair practice charge against the South Jersey Port Corporation (Corporation) alleging violations of subsections 5.4(a)(5) and (6)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A.

^{1/} These subsections prohibit public employers, their representatives or agents 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."

34:13A-1 et seq. IFPTE alleges that the Corporation has failed to and refuses to implement the recommended terms of a fact-finder's report issued in February 1996. Additionally, IFPTE alleges that since the issuance of the fact-finder's report and recommendations, the Corporation has failed and refuses to negotiate in good faith with IFPTE representatives concerning alternative contract terms. IFPTE seeks the imposition of the fact-finder's recommended terms of settlement as a remedy.

The Corporation denies the allegations of the charge, asserting that it is not required to implement a fact-finder's report and recommendations. Further, the Corporation maintains that it has negotiated in good faith with IFPTE throughout the past 18 months^{2/} and has continued to bargain in good faith while attempting to resolve the bargaining impasse and reach a successor agreement with IFPTE.

N.J.A.C. 19:12-4.3 regulates the fact-finder's function.

Subsection (d) provides:

(d) If the impasse is not resolved prior thereto, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible.

By the language of the rule, any terms of settlement recommended by the fact-finder are just that - recommendations for a settlement. No compulsion is expressed or implied in the rule. An

^{2/} The most recent collective bargaining agreement between the parties expired on November 30, 1994.

employer's refusal to implement a fact-finder's recommendations is not a per se violation of the Act. Therefore, I dismiss the portion of the charge alleging that the Corporation has committed an unfair practice by failing and refusing to implement the fact-finder's recommendations.^{3/}


The charge also includes allegations that the Corporation has refused to negotiate in good faith with representatives of IFPTE concerning alternative contract terms since the issuance of the fact-finder's report and recommendations in February 1996. The Act prohibits employers from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employees in that unit. An employer is prohibited from refusing to reduce a negotiated agreement to writing and to sign such agreement.

N.J.A.C. 19:14-2.1(a) provides:

(a) After a charge has been processed, if it appears to the Director of Unfair Practices that the allegations of the charge, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Director shall issue and serve a formal complaint including a notice of hearing before a hearing examiner at a stated time and place.

^{3/} This determination does not reflect on the ability of IFPTE to seek the implementation of the fact-finder's report as a remedy to its charge of refusal to negotiate in good faith, infra.

Accordingly, I will issue a Complaint and Notice of Hearing on the refusal to negotiate in good faith portion of the charge. The rest of the charge is dismissed.



Edmund G. Gerber
Director of Unfair Practices

Dated: May 23, 1996
Trenton, New Jersey