

D.U.P. NO. 87-7

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

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

DOCKET NO. CO-87-108

P.B.A. LOCAL NO. 11,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint where the City allegedly failed to fulfill its obligations under the parties' negotiated grievance procedure. The Commission has repeatedly held that an employer's refusal to respond to a grievance, or the incorrect processing of a grievance at any particular step of the grievance procedure, in and of itself, is not an unfair practice when the contract provides for a self-executing grievance procedure which culminates in binding arbitration, and where either side may unilaterally invoke binding arbitration. Article XVI of the parties' contract provides for a self-executing grievance procedure culminating in final and binding arbitration and either party may invoke arbitration.

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Appearances:

For the Respondent
Mayor Arthur Holland

For the Charging Party
Wills and O'Neill, Esqs.
(G. Robert Wills, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 24, 1986, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by P.B.A. Local No. 11. In its charge, the PBA alleges that the City of Trenton ("City") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection 5.4(a)(5).^{1/}

^{1/} This subsection prohibits 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.

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 me and has established a standard upon which unfair practice complaints shall be issued. The standard provides that the 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 the Commission's rules provide that I may decline to issue a complaint where appropriate.^{4/}

It is charged that the Trenton Business Administrator has consistently failed to exercise his appropriate function as an independent decision-maker in the parties' grievance procedure. Instead, the PBA asserts that the Business Administrator merely rubber-stamps what officials at steps one and two have previously

^{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

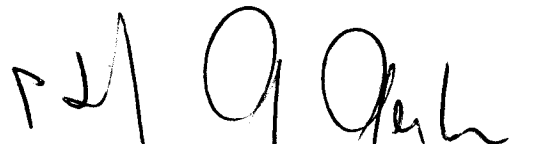
done. The PBA alleges that by this lack of action and/or independence, the Administrator has violated N.J.S.A. 34:13A-5.4(a)(5) by refusing to process grievances presented by the majority representative.

For the reasons stated below, I am inclined not to issue a complaint in this matter.

The Commission has repeatedly held that an employer's refusal to respond to a grievance, or the incorrect processing of a grievance at any particular step of the grievance procedure, in and of itself, is not an unfair practice, when the contract provides for a self-executing grievance procedure which culminates in binding arbitration and either side may unilaterally invoke binding arbitration. See, Township of Rockaway, D.U.P. NO. 83-5, 8 NJPER 644 (¶ 13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982); Essex County Vocational School Board of Education, D.U.P. No. 77-2, 2 NJPER 372 (1976); Englewood Board of Education, E.D. No. 76-34, 2 NJPER 175 (1975).

Article XVI of the parties' contract provides for a self-executing grievance procedure culminating in final and binding arbitration and either party may invoke arbitration. Accordingly, I decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 17, 1986
Trenton, New Jersey