

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

In the Matter of

WOODBRIIDGE TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-82-168

LOCAL 2293, COUNCIL #73,
AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge alleging that the employer refused to process a particular grievance filed by the Charging Party. The employer had denied the grievance and then obtained a restraint of arbitration from Superior Court when the Charging Party had sought to move the grievance to arbitration. The Director concludes that the employer cannot be in violation of its responsibility to process a grievance when the subject matter of the grievance has been deemed non-grievable and non-arbitrable by the court. In addition, the Charging Party may not collaterally attack the judgment of the Court before the Commission.

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Appearances:

For the Respondent
Hutt, Berkow, Hollander & Jankowski, attorneys
(Robert J. Mascenik of counsel)

For the Charging Party
Don Dileo, Staff Representative

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 11, 1982, and amended January 22, 1982, by Local 2293, Council #73, AFSCME, AFL-CIO ("Council #73") against the Woodbridge Township Board of Education (the "Board") alleging that the Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, specifically, N.J.S.A. 34:A-5.4 (a)(1) and (5). ^{1/}

^{1/} 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. (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 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/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

Local 2293 states that on April 15, 1981, Ms. Elaine Clouter, a ten month cafeteria worker employed by the Board, was informed that her employment contract would not be renewed. Local 2293 filed a grievance with the Board on June 11, 1981, objecting to the nonrenewal and, in addition, the refusal of the Board to grant a hearing to Ms. Clouter.

^{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

The Board denied the grievance and Local 2293 sought to move the grievance to arbitration. The Board thereafter sought and obtained restraints of arbitration from the superior court on the basis of the claim that the subject matter of the dispute was not grievable and not arbitrable. Initially, the Board's request for temporary restraints was granted and an Order to Show Cause was entered on December 24, 1981, requiring Local 2293 to serve upon the attorney for the Board an answer to the Board's complaint. Local 2293 failed to provide an answer and, thereafter, on February 17, 1982, a judgment was entered in favor of the Board permanently restraining arbitration with regard to the instant grievance.

Based upon the above it appears to the undersigned that the final judgment entered by the court disposes of the issues here presented. The subject matter of the charging party's claim has been deemed non-grievable and non-arbitrable; therefore, the Board cannot be in violation of its responsibility to process a grievance. Further, the charging party may not collaterally attack the judgment of the court by now seeking to have the issue presented before the Commission. If the charging party desires review of the court's judgment an appeal of the court's decision should be filed.

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: March 19, 1982
Trenton, New Jersey