D.U.P. No. 2005-10

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

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and- Docket No. CO-2004-308

EDISON FIREFIGHTERS ASSOCIATION,
LOCAL 1197,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by Local 1197 which alleged that the Township had violated the Act when it would not permit Local 1197 to passively observe its inspection of fire apparatus after an accident. The Director found that the ability of Local 1197 to conduct its own inspection before repairs were made coupled with the Township's readiness to share its information with Local 1197 adequately safeguarded the union's interest in the health and safety of its members.

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Appearances:

For the Respondent,
DeCotiis, Fitzpatrick, Cole & Wisler, LLP
(Louis N. Rainone, of counsel)

For the Charging Party,
Kroll, Heineman & Giblin, attorneys
(Raymond Heineman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 5, 2004, Edison Firefighters Association, Local 1197 (Local 1197) filed an unfair practice charge against the Township of Edison (Township), alleging that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1) and (5) (Act)[1/]. Local 1197 specifically alleges

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1/ These provisions 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 (continued...)

that the Township has repudiated the parties collective negotiations agreement by refusing to permit union representatives to monitor the inspection of fire trucks involved in motor vehicle accidents.

The Township denies it violated the Act and notes that there is no provision in the parties' agreement that concerns the inspection of vehicles involved in accidents; nor, it argues, is it a proper subject for a collective negotiations agreement. Further, the Township notes that the charge does not allege that disciplinary action was taken against any fire department employee as a result of these accidents.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated December 8, 2004, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond.

1/ (...continued)
refusing to process grievances presented by the majority representative."

On December 20, 2004, Local 1197 submitted additional facts and argument, asserting that it has a right to passively observe the Township's inspection of the fire apparatus. It further claims that it has the right to the Township's inspection report and access to the Township fire vehicles in order to conduct its own inspection at reasonable times so as not to disrupt the Township's operations. Based upon the following, I find that the complaint issuance standard has not been met.

Local 1197 represents a unit of Township fire department employees. The Township and Local 1197 are parties to a collective negotiations agreement effective January 1, 2001 through December 31, 2004.

Article 8 of the agreement, entitled "Safety and Health" provides:

> The Township and the Union agree to cooperate to the fullest extent in the promotion of SAFETY. Two (2) employees representing the Union and two (2) employees representing the Township shall comprise the safety and health committee. The committee will meet monthly and discuss safety and health conditions of the fire department. Both the Township and Union shall have the right to call additional meetings of the safety and health committee, which shall be held at a mutually agreed time. All recommendations shall be in writing and copies submitted to the Township and the Union. The two (2) employees representing the Union shall be granted time off to attend these meetings.

Article 36, Section 1(d) of the agreement, entitled "Work Uniforms and Equipment," provides in pertinent part:

> The Employer will develop and promulgate a procedure for verification of loss or damage to employee goods, clothing or equipment while in the line of duty and the prompt replacement thereof.

On March 20, 2004, two Township fire department vehicles were involved in separate accidents. As a result, the Township conducted an investigation and an inspection of the vehicles for potential mechanical deficiencies. Representatives of the union attempted to observe the inspection but were not permitted to do so.

Local 1197 asserts that it has a right under the Act to observe and monitor the Township's accident investigation, and cites certain private sector decision, specifically Hercules v. National Labor Relations Board, 833 F.2d 426 (2nd Cir. 1987); Asarco Inc. v. National Labor Relations Board, 805 F.2d 194 (6th Cir. 1986); and American National Can Company, 293 NLRB No. 110, 131 LRRM 1153 (1989), in support of its position.

The Township disagrees. It claims that Local 1197 has no right to participate in or observe its accident investigation, including its inspection of the vehicles, arguing the investigation and inspection are managerial prerogatives. The Township does not object to providing copies of accident reports or other information to Local 1197; nor would it object to a request by Local 1197 to examine the fire trucks in question at a reasonably convenient time.

The Township also argues that the cases relied upon by Local 1197 are inapposite because they involve requests for information after the conclusion of an employer's investigation and the right of access to an employer's property by a union's industrial hygienist. The Township notes that in the Asarco case, the Court held that an employer was not required to provide the union a copy of its internal investigation report. Finally, the Township asserts there are no Commission decisions or any other legal precedent supporting Local 1197's position that the Township's duty to negotiate gives Local 1197 the right to actively participate in or be passively present at all stages of the Township's internal accident investigation.

* * *

Based upon the above, I dismiss the instant allegations for failure to meet our complaint issuance standard.

First, I find Local 1197's charge lacks the specificity required by the Act. N.J.A.C. 19:14-1.3(a)3 provides that a charge must contain the following:

> A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the time and place the alleged acts occurred, the names of the persons alleged to have committed such acts and the subsection(s) of the Acts alleged to have been violated.

While the instant charge alleges that since on or about March 20, the employer "refused to negotiate by repudiating the

[union contract]", it does not specify any particular action the Township took that forms the basis for that conclusion. There is no claimed past practice that was altered nor any new work rule implemented. Local 1197 does not allege that it made a demand to negotiate and that the Township refused to negotiate, nor did it specify the time and place of any alleged unlawful actions on the part of the Township.

Even if viable, Local 1197's charge fails to set forth an unfair practice under the Act. N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for an employer to refuse to negotiate in good faith. A mere breach of contract does not warrant the exercise of our unfair practice jurisdiction and will not be found to be a refusal to negotiate in good faith. We will, however, find an unfair practice in cases in which an employer has repudiated a contract clause that is so clear that an inference of bad faith arises from a refusal to honor it. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Here, Local 1197 claims the Township unlawfully repudiated the agreement by unilaterally refusing to permit it access to monitor the inspection of fire trucks involved in accidents. However, there are no contract clauses on that subject from which an inference of bad faith arises. Human Services. In fact, only Articles 8 and 36 even remotely involve the instant issue and they do not resolve or even cover the instant situation with any

certainty. Therefore, I reject Local 1197's claim of a contract repudiation by the Township and thus, I dismiss this allegation.

I also find the Township has the managerial prerogative to conduct its own accident investigation and inspection of Township vehicles involved in accidents. See e.g., Borough of Sayreville, P.E.R.C. No. 84-142, 10 NJPER 362 (¶15167 1984), aff'g H.E. No. 84-53, 10 NJPER 233 (¶15117 1984). In Sayreville, the Commission held that an employer has the managerial prerogative to establish an "accident review and safety board" for the purpose of investigating accidents by Borough employees while operating borough vehicles.

While the Commission in Sayreville further held that the employer had the duty to negotiate procedures for implementing any discipline recommended by the accident review and safety board, there is no allegation in the instant matter that the Township failed to negotiate any such disciplinary procedures. Indeed, Local 1197 does not assert that any disciplinary action was implemented in the instant case and, in fact, none was recommended as a result of the Township's accident investigation.

Finally, the NLRB cases relied upon by Local 1197, particularly Hercules and American National Can Company, are not on point since none of these cases involve a union's request to monitor the employer's own investigation of an accident, as in the present case. In fact, in Asarco, the Court held that an

employer did not have to provide its internal investigative report to the union, reasoning that the report is part of its effort to avoid future similar accidents. The Court stated,

> The practice of uninhibited self-critical analysis, which benefits both the union's and employer's substantial interest in increased worker safety and accident prevention, would undoubtedly be chilled by disclosure . . . disclosure would seriously thwart the intended purpose of the document to the ultimate detriment of both parties' interests. [805 F. 2d at 199]

The Asarco Court's reasoning applies here. The Township's accident investigation and inspection of vehicles involved in the accident is part of its effort to avoid future similar accidents. To allow Local 1197 representatives to monitor this activity may chill any uninhibited self-critical analysis by the Township.

I further note that, as in Asarco, the Township voiced no objection to providing Local 1197 with copies of accident reports or other information and further has no objection to allowing Local 1197 access to conduct its own independent examination of the trucks in question at a reasonably convenient time. See also Hercules and American Can Company. The ability of Local 1197 to conduct its own inspection before any repairs are made coupled with the Township's readiness to share information in this case, adequately safeguards the union's interest in the health and safety of its members.

Based on the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegation of this charge.[2/]

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Arnold H. Zudick, Director

DATED: March 10, 2005
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by March 23, 2005.

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