

D.U.P. NO. 2006-3

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

In the Matter of

NEW JERSEY STATE JUDICIARY,  
CUMBERLAND COUNTY VICINAGE,

Respondent,

-and-

Docket Nos. CO-2004-368  
CO-2005-344

PROBATION ASSOCIATION OF NEW JERSEY,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses an unfair practice charge filed by the Probation Association of New Jersey (PANJ) against the New Jersey State Judiciary, Cumberland Vicinage, alleging that the State violated the Act when it delayed in scheduling both the step one and step two hearings of a grievance initiated in April 2003. The Director determined that since the parties' contract has a self-executing grievance procedure, the State's delay did not constitute an unfair practice. He found that PANJ was not precluded from processing its grievance to arbitration.

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Appearances:

For the Respondent,  
New Jersey Administrative Office of the Courts  
(Elaine D. Dietrich, Counsel to the Administrative  
Director)

For the Charging Party,  
Mark Cimino, attorney

**REFUSAL TO ISSUE COMPLAINT**

On May 14, 2004, the Probation Association of New Jersey (PANJ) filed an unfair practice charge (CO-2004-368) with the Public Employment Relations Commission (Commission) against the New Jersey State Judiciary, Cumberland Vicinage (Judiciary). PANJ alleges that the Judiciary violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and(5)<sup>1/</sup>, when it delayed in scheduling a hearing at step

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the (continued...)"

1, and again at step 2, of the parties grievance procedure for a grievance initiated April 22, 2003.<sup>2/</sup>

The State denies it violated the Act. It contends that PANJ and the aggrieved employee settled the grievance in writing and therefore waived their rights to pursue the grievance. It also argued that the contract grievance procedure is self-executing.

The Commission has the 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. Based upon the following, I find that the complaint issuance standard has not been met.

PANJ represents a collective negotiations unit of case-related professional employees employed by the Judiciary, including the Cumberland Vicinage. The current collective agreement covers the period July 1, 2004 through June 30, 2008,

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1/ (...continued)  
rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with the 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.

2/ On June 3, 2005, PANJ filed a separate charge under Docket No. CO-2005-344 which essentially makes the same allegations as its first charge.

and includes a grievance procedure at Article 10, which was provided by Charging Party's statement of position filed June 3, 2005. Article 10, entitled Grievance Procedure, defines contractual and non-contractual grievances. Article 10 sets forth a 4-step procedure, which ends in binding arbitration for contractual grievances. The Article provides in pertinent part:

Step 1. The complaint or grievance shall be presented in writing to the Division Manager or Chief Probation Officer within twenty (20) business days from when the grievant knew or should reasonably have known of the action being grieved.

A meeting shall be scheduled between the grievant and the Division Manager or Chief Probation Officer or their designee within ten (10) business days of receipt of the complaint or grievance. A written disposition of the complaint or grievance shall be given to the grievant within five (5) business days of the meeting. . . . .

Step 2. If the complaint or grievance is not resolved at Step 1, the grievant or the Union may, within ten (10) business days of receipt of the disposition of Step 1, or if no disposition or decision has been made within fifteen (15) business days of presentation of the Step 1 complaint or grievance, submit the grievance in writing to the Trial Court Administrator or his/her designee. . . . .

Step 3. If the Complaint or grievance is not resolved at Step 2 of this procedure, then the Union, or the grievant with the consent of the Union, may within ten (10) business days of receipt of the disposition of Step 2, or if no disposition or decision has been made within twenty (20) business days of the presentation of the step 2 complaint or grievance, submit the complaint or grievance

to the Counsel to the administrative Director of the AOC. . . .(emphasis added.)

PANJ alleges that it filed a grievance on April 22, 2003 concerning the employer's interrogation of Senior Probation Officer Susan Lively as well as Lively's disciplinary charges. On October 27, 2004, Lively and the Judiciary entered into a settlement agreement and release, which provided in part,

[Lively] and the Vicinage are to fully and finally settle all matters in dispute between them regarding two Notices of Minor Disciplinary Action issued on March 25, 2003 and April 10, 2003 respectively; a Vicinage preliminary notice of disciplinary action issued by the Vicinage against the employee on June 10, 2003.

Union Vice-President Peter Tortoretto also signed the Settlement Agreement.

On January 29, 2004, a step 1 grievance meeting took place. A decision was issued on February 2, and PANJ appealed the grievance decision to Step 2 on February 13, 2004. PANJ alleges that by the filing date of its charge - May 14, 2004 - the Step 2 grievance hearing still had not been held. It alleges that the Judiciary's failure to schedule the grievance hearings at step 1, and again at step 2, violated 5.4(a)(5) and (1) of the Act.

#### **ANALYSIS**

Subsection 5.4a(5) of the Act prohibits public employers from 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.

Here, Article 10 of the contract specifically provides that, at any step of the process, if the employer issues no decision within a given number of days from the grievance presentation, the Union has the right to move the grievance to the next step. Thus, the grievance procedure is self-executing. When a contract includes a self-executing grievance procedure ending in binding arbitration, an employer's failure to respond to a grievance at intermediate steps is not usually an unfair practice. See State of New Jersey, P.E.R.C. No. 89-39, 14 NJPER 656 (¶19277 1988); N.J. Transit Bus Opers., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); State of N.J., Department of Corrections, D.U.P. No. 2005-2, 30 NJPER 356 (¶116 2005); UMDNJ, D.U.P. No. 2003-2, 28 NJPER 374 (¶33136 2002); State of N.J. (DEPE), D.U.P. No. 98-18, 23 NJPER 534 (¶28260 1997); Township of Southampton, D.U.P. No. 97-34, 23 NJPER 258 (¶28124 1997); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); 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); City of Pleasantville, D.U.P. No. 77-2, 2 NJPER 372 (1976); Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1976).

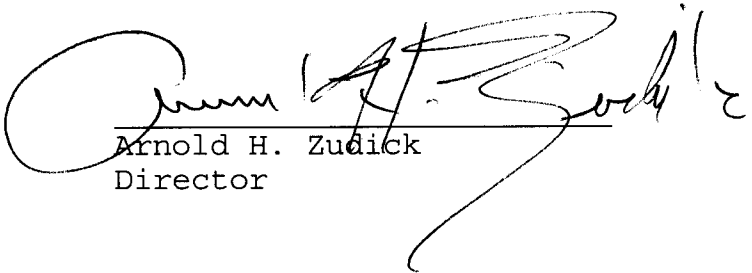
In City of Pleasantville, the then Director of Unfair Practices explained why an employer's failure to respond to a grievance is usually not a violation of subsection 5.4a(5):

The underlying theory in refusing to issue a Complaint in such instances is that absent an affirmative step by the public employer to restrain the arbitration proceeding, the failure of the public employer to participate in the arbitration proceeding will not prevent the arbitration provisions of the grievance procedure from proceeding on a self-executing basis to arbitration. Thus, the employee organization is not precluded from pursuing the arbitration to conclusion ex parte and the grievance will be "processed" to arbitration pursuant to the parties' contract notwithstanding the public employer's failure to take part in that process. Id. at 373.

Here, the Judiciary contends that it was not obligated to conduct a grievance hearing because the issues had already been resolved by the October 27, 2003 settlement agreement. PANJ contends that the issue was not resolved and it was entitled to have its grievance heard. Regardless of the Judiciary's rationale for allegedly declining to hearing the grievance, PANJ could have moved the grievance through the grievance steps if it believed it still had a valid grievance and was dissatisfied with the Judiciary's response (or non-response) to the grievance.

Based on the foregoing, I decline to issue a complaint on any facts alleging a violation of 5.4a(5) regarding the failure to process the grievance.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Arnold H. Zudick  
Director

DATED: November 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 November 23, 2005.