

D.U.P. NO. 2015-5

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

In the Matter of

NORTHWEST BERGEN COUNTY  
UTILITIES AUTHORITY,

Respondent,

-and-

Docket No. CO-2014-218

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 11,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the Northwest Bergen County Utilities Authority (Authority) violated 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act). Specifically, the charge alleges the Authority violated the Act by refusing to respond to the merits of a contractual grievance filed by Teamsters Local 11 and by refusing to participate in the grievance process. The Authority contended the grievance did not merit a response because it was untimely and thereby waived under an express provision in the grievance procedure. The Teamsters disagreed, contending the Authority was required to respond to its grievance under the grievance procedure. The Director found that the grievance procedure in the parties' collective negotiations agreement was self-executing and that the Teamsters could pursue the grievance through binding arbitration without the Authority's participation in the grievance process. Since there was no allegation the Authority prevented the Teamsters from pursuing binding arbitration of the grievance and since the gravamen of the dispute was over competing contractual interpretations of the grievance procedure, the Director concluded the charge did not allege a violation of the Act.

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Appearances:

For the Respondent  
Eric M. Bernstein & Associates, LLC  
(Eric M. Bernstein, of counsel)

For the Charging Party  
Kroll, Heineman and Carton, LLC  
(Curtiss T. Jameson, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On March 18, 2014 and April 23, 2014, the International Brotherhood of Teamsters, Local 11 (Charging Party or IBT) filed an unfair practice charge and amended charge against the Northwest Bergen County Utilities Authority (Respondent or Authority). The charge, as amended, alleges that on November 20, 2013 and April 16, 2014, the Respondent violated sections

5.4(a)(5) and, derivatively, (a)(1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by interfering with unit members' access to the grievance procedure set forth in the parties' collective negotiations agreement. Specifically, IBT alleges that the Respondent interfered with unit member access to the grievance procedure by failing to participate in the grievance process and by claiming IBT's grievances were defective under the contractual grievance procedures.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); 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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

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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 rights guaranteed to them by this act; and (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."

On September 16, 2014, I issued a letter to the parties tentatively dismissing the charge and inviting responses. No responses were filed.

I find the following facts.

The IBT is the exclusive majority representative of a unit of Authority employees that includes several technical, operational and maintenance-related job titles.<sup>2/</sup> The IBT and Authority are parties to a collective negotiations agreement (agreement) extending from July 1, 2014 through June 30, 2017.<sup>3/</sup> Section 9 of the agreement sets forth a detailed grievance procedure.

Under Section 9.1(B) of the agreement, "all grievances shall be settled" according to the procedures in Section 9.1. The grievance procedure consists of a four (4) step appeal process

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2/ The titles in the unit are laboratory technician, maintenance mechanic, incinerator operator, plant operator/utility stock clerk/collection system operator, buildings and grounds maintenance, meter maintenance technician, maintenance man, pump station operator, electrician, laboratory analyst, operations & maintenance helper, principle lab analyst, and ,aborer B&G/O&M.

3/ The Respondent also submitted a collective negotiations agreement between the Authority and former majority representative, the Authority Non-Supervisory Employees Group, which extends from July 1, 2009 and expired on June 30, 2014. On September 27, 2013, the Director of Representation certified IBT as the exclusive majority representative of this unit for collective negotiations after a contested election. The grievance procedures in the current IBT agreement and 2009-2014 agreement are identical.

culminating in binding arbitration. Section 9.2 of the agreement states that "any grievance not appealed from one step to the other, within the time limits above set forth [in Section 9.1], shall be deemed settled on the basis of the previous answer and not subject to further review."

Under the grievance appeal process, IBT must submit an appeal in writing within fixed time-lines. At Step 1, the IBT must discuss the grievance with the affected (sic) employee's immediate supervisor. If the discussion at Step 1 does not "satisfactorily resolve" the grievance, the IBT can file a written appeal at Step 2 to the employee's Plant Superintendent, but must do so within five (5) working days "from the time the Union or the affected (sic) employee knew or should have reasonably known of the event giving rise to the grievance." If the Plant Superintendent's answer does not "satisfactorily dispose" of the grievance within ten (10) days, the IBT has ten (10) working days to submit a written request to meet with the Executive Director or his/her designee pursuant to Step 3 of the process. Finally, if Step 3 does not yield a satisfactory result, the IBT can file a request for arbitration with the New Jersey State Board of Mediation within two (2) weeks.<sup>4/</sup>

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<sup>4/</sup> The grievance procedure does not describe the event that triggers this time period. It is unclear whether a request for arbitration must be filed within two weeks of the employer's answer at Step 3, the union's step 3 appeal, or  
(continued...)

While each step of the appeal process requires a written answer from management, IBT can move to the next step of the grievance procedure without a response from management. An inadequate response from management does not preclude the IBT from pursuing a grievance through binding arbitration.

IBT unit member Wilbur DeGroat presented a grievance to his immediate supervisor pursuant to Step 1 of the grievance procedure.<sup>5/</sup> DeGroat's grievance was not satisfactorily resolved at Step 1. On November 20, 2013 IBT pursued the grievance on behalf of DeGroat at Step 2 by appealing in writing to Robert Genitelli, the Authority's Plant Superintendent. Genitelli did not respond to the merits of the grievance and claimed the grievance was untimely and therefore not subject to review under the contractual grievance procedure.

On April 16, 2014, IBT presented another grievance at Step 2 of the grievance procedure.<sup>6/</sup> The grievance alleged a violation of the agreement concerning rates of pay for incinerator work. Genitelli again claimed the grievance was defective and untimely

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4/ (...continued)  
from some other occurrence.

5/ The amended charge does not indicate when the grievance was presented and does not allege who received the grievance at Step 1. The amended charge also does not allege what the grievance concerned and whether DeGroat's supervisor responded to the grievance.

6/ It is unclear whether the grievance was presented at Step 1.

under the grievance procedure. The charge does not allege when or if the grievance was presented at Step 1. The charge also does not allege the Authority actually prevented IBT from processing its grievances through arbitration.

The Commission has held that good faith disputes over the interpretation of a contractual grievance procedure are not unfair practices. N.J. Transit Bus Operations, P.E.R.C. No. 89-29, 14 NJPER 638, 639 (¶19267 1988). We have found that an employer's invocation of contractual waiver defenses against a majority representative's right to present grievances is not an unfair practice. Id. Contractual waiver defenses falling outside the Commission's purview include employer claims that a grievance is untimely under the grievance procedure. Id. However, an employer's repudiation of a grievance procedure may be an unfair practice. City of Newark, P.E.R.C. No. 90-83, 16 NJPER 182 (¶21078 1990) (Commission held employer repudiated the grievance procedure by declaring all provisional employees in a bargaining unit were not eligible to grieve disciplinary determinations).

An employer's failure to respond to a grievance, by itself, is not an unfair practice. Tp. of Millburn, D.U.P. No. 81-24, 7 NJPER 370 (¶12168 1981). In Millburn, the majority representative alleged the employer violated the Act by failing to take any action to process a grievance. The parties'

negotiated grievance procedure allowed a grievant to appeal an unsatisfactory grievance disposition to the next step of the grievance procedure through binding arbitration. Under this procedure, the majority representative could pursue arbitration even in the absence of a employer response. The Director determined that a "simple failure to respond to a grievance at a given level does not constitute the unfair practice of refusing to process a grievance." 7 NJPER at 370, quoting In re State of New Jersey, D.U.P. No. 77-3, 2 NJPER 373 (1976). There, the Director explained:

Regardless of the potential outcome, 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., 7 NJPER at 370]

Moreover, an employer's flawed processing of a grievance at intermediate steps of the grievance procedure is not an unfair practice. State of New Jersey (Dyott, et al.), D.U.P. No. 2000-11, 26 NJPER 111 (¶31045 2000).

Here, I dismiss the charge since it raises a good faith dispute over the interpretation of the agreement's grievance procedure. The Authority views IBT's grievances as untimely and not subject to review under Section 9.2 of the agreement. The IBT disagrees and contends the Authority violated the grievance



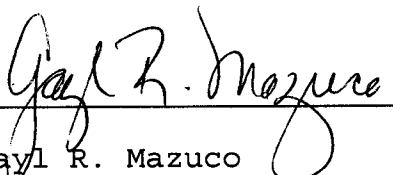
procedure by not responding in a timely manner to the merits of IBT's grievances. This is a contractual dispute that the Commission does not have jurisdiction to resolve.

Furthermore, nothing in the agreement's grievance procedure prevents IBT from appealing ex parte through each step of the grievance procedure, up to and including binding arbitration. IBT alleges that the Authority failed to adequately participate in the grievance process by not responding to the merits of its grievances. A lack of participation alone is not an unfair practice. No facts indicate that IBT was prevented from pursuing the charge through binding arbitration even if the Authority did not respond to its grievances.

Accordingly, I find that the Association's 5.4(a)(5) and derivative (a)(1) allegations do not satisfy the complaint issuance standard.

**ORDER**

The unfair practice charge is dismissed.

  
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Gayl R. Mazuco  
Director of Unfair Practices

DATED: October 8, 2014  
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 October 20, 2014.