

D.U.P. NO. 96-5

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CI-95-55

CHARLES ROSS BRIGHT,

Charging Party.

SYNOPSIS

Where individual's charge alleged that the employer refused to process his grievance and refused to release witnesses for a group hearing, the Director dismissed as untimely. Where individual's charge alleged that the employer refused to negotiate with the employee representative regarding terms and conditions of employment and breached the collective bargaining agreement with the union by not permitting him on the grounds, Director dismissed for lack of standing.

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Appearances:

For the Respondent,
Stephan M. Schwartz, Deputy Attorney General

For the Charging Party,
Charles R. Bright, pro se

REFUSAL TO ISSUE COMPLAINT

On February 21, 1995, Charles Ross Bright filed an unfair practice charge alleging that the Arthur Brisbane Child Treatment Center (Center) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically, subsections 5.4(a)(1), (2), (3), (5) and (7)^{1/} by: (1) cancelling his access to the

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of

grounds of the Center; (2) refusing to process grievances; (3) refusing to release witnesses for a group hearing; (4) refusing to negotiate terms and conditions of employment with the employee representative; (5) verbally harassing Bright while on the grounds; and, (6) charging Bright with criminal trespass.

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

The Commission is precluded from issuing a complaint when a charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides, in part:

c. ...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months

1/ Footnote Continued From Previous Page

employment to encourage or discourage 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. (7) Violating any of the rules and regulations established by the commission."

period shall be computed from the day he was no longer so prevented.

This charge was filed on February 21, 1995. Thus, I cannot issue a complaint on any unfair practice which occurred before August 21, 1994.

Bright alleges in Count Two that CEO Vince Giampeitro refused to process his grievances. Bright was notified by letters dated June 25, 1993 and June 20, 1994 that this allegation is untimely.

Bright alleges in Count Three that the Center refused to release witnesses for a group hearing on May 5, 1994. Since this charge was not filed within six months of May 5, 1994, this allegation is also untimely.

In Count Four, Bright alleges that the Center refused to negotiate with the employee representative regarding terms and conditions of employment. However, normally, only the exclusive majority representative, not an individual, can make such an allegation. Cty of Camden, D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). This allegation does not meet the Commission's complaint issuance standards. I also note that Bright did not state when the refusal to negotiate occurred.

The substance of the allegations of Counts One, Five and Six is that the Center breached its collective negotiations agreement with the union by not permitting Bright to be on the Center's grounds. In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

We have repeatedly held that deferral to a negotiated grievance procedure culminating in binding arbitration is generally appropriate when a charge essentially alleges a violation of subsection 5.4(a)(5) interrelated with a breach of contract claim. See, e.g., In re Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 267 (¶14122 1983) ("Brookdale"). That policy ensures that the parties' grievance procedures will be used, as section 5.3 commands, for any dispute covered by the terms of such agreement. In State v. Council of State College Locals, 153, N.J. Super. 91 (App. Div 1977), the Court, endorsing our deferral policy, said:

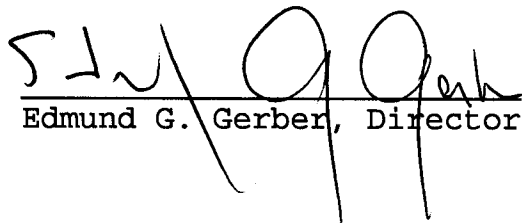
This language, together with that of other statutory provisions, has been held to evidence "a clear legislative intent that disputes over contractual terms and conditions of employment should be solved, if possible, through grievance procedures. Id at 93.

Section 5.2 of the Act charges this Commission with the duty of making policy relating to public sector dispute settlements and grievance procedures.

Human Services, at 420, 421.

Bright, as an individual, does not have standing to bring such a claim. Accordingly, I find that the Commission complaint issuance standards have not been met. The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 1, 1995
Trenton, New Jersey