

D.U.P. NO. 95-35

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

In the Matter of

BOROUGH OF WOODBURY HEIGHTS,

Respondent,

-and-

Docket No. CO-95-295

AFSCME COUNCIL 71,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by AFSCME Council 71 against the Borough of Woodbury Heights, alleging that the Borough violated subsections 5.4(a)(3), (4) and (5) of the Act when it neither notified nor negotiated with the union its decision to privatize trash and recycling collection in the Borough, resulting in the elimination of bargaining unit employees.

The Director finds the Borough had no obligation to negotiate over its decision to subcontract and that Council 71 has neither alleged nor shown any facts that the subcontracting was illegally motivated.

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Appearances:

For the Respondent,
Zane & Lozuke, attorneys
(Barry N. Lozuke, of counsel)

For the Charging Party,
Emanuel Murray, Staff Representative

REFUSAL TO ISSUE COMPLAINT

On February 28, 1995, AFSCME Council 71, Borough of Woodbury Heights, filed an unfair practice charge with the New Jersey Public Employment Relations Commission against the Borough of Woodbury Heights. The charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq., specifically subsections 5.4(a)(3), (4) and (5)^{1/} when it

^{1/} These subsections prohibit public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4)

neither notified nor negotiated with the union its decision to privatize the trash and recycling collection with the Borough's Department of Public Works, resulting in the elimination of a number of bargaining unit employees.

The Borough claims that it had no obligation to negotiate its decision to subcontract. Council 71 claims that although the Borough may have the non-negotiable right to subcontract its operations, it had to negotiate over the procedural aspects of the decision. Specifically, Council 71 claims that it should have been given the opportunity to present money saving alternatives to the subcontracting and that it should have been properly notified of the Borough's decision to subcontract.

There is nothing in the parties' collective negotiations agreement on the issue of subcontracting. The Borough claims that it invited bids for private trash services as early as 1992 and again in 1994, all of which were publicly displayed on the Municipal Building bulletin board. It further claims that Council 71 never made a request to negotiate any aspects of its decision to subcontract prior to filing the instant unfair practice charge.

1/ Footnote Continued From Previous Page

Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

Analysis

The Borough had no obligation to engage in negotiations here; its decision to subcontract is a managerial prerogative. IFPTE Loc. 195 v. State of New Jersey, 88 N.J. 408 (1992); Ridgewood Board of Education, P.E.R.C. No. 93-81, 19 NJPER 208 (¶24098 1993). The Local 195 decision does encourage discussions between an employer and majority representative in this situation. The decision, however, only holds that an employer and union may contractually agree to discuss subcontracting. Local 195 does not require such discussion, absent such a contractual agreement. Here, there is no such agreement and therefore, the Borough had no obligation to negotiate over its decision to subcontract and eliminate unit employees. Finally, Council 71 has neither alleged nor shown any facts that the subcontracting was illegally motivated by hostility towards Council 71. See Local 195; Ridgewood Board of Education.

Accordingly, I do not believe that the Commission's complaint issuance standard has been met and refuse to issue a complaint on the allegations of the charge.^{2/}

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 19, 1995
Trenton, New Jersey