

D.U.P. NO. 98-20

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

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

-and-

Docket No. CO-98-45

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 73, LOCAL 3527,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint alleging that the Borough of Sayreville failed to hold a hearing under a provision of the parties' grievance procedure. Article XXVIII of the parties' negotiated agreement provides for a self-executing grievance procedure culminating in final and binding arbitration where either party may invoke arbitration. The Commission has repeatedly held that an employer's failure to respond to a grievance is not an unfair practice, where there is a self-executing grievance procedure, which permits either party to invoke binding arbitration.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert J. Merryman, of counsel)

For the Charging Party,
Paul Mercatanti, Staff Rep.

DECISION

On August 6, 1997, the American Federation of State, County and Municipal Employees, Council 73, Local 3527 filed an unfair practice charge with the Public Employment Relations Commission against the Borough of Sayreville, alleging that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(5)^{1/} when it failed to hold a step 4 hearing on a

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

grievance filed on behalf of Truck Driver Ron Malet, a member of AFSCME's negotiations unit. The Borough denies violating the Act, asserting that although the parties' agreement provides for a hearing before the Mayor and Council at step 4, it also culminates in binding arbitration which can be requested by either party.

The Borough and AFSCME have a five step grievance procedure which states, at Article XXVIII:

Step 5. ARBITRATION: If the grievance is still unsettled, the Borough or the Union may within ten (10) working days after the reply of the Mayor and Council is due by written notice to the other, request binding arbitration...

Ronald Malet filed a grievance on July 10, 1996. On September 6, 1996, Bernard J. Bailey, Municipal Department Head, denied the grievance. On September 27, 1996, a hearing report written by Stanley Marcinczyk, who is unidentified, was issued, denying the grievance. On October 7, and November 4, 1996, AFSCME requested a step 4 hearing. Attached to the charge is a copy of a letter dated April 21, 1997, to AFSCME representative Paul Mercantante (sic) from the Borough's attorney, Robert Clarke, stating:

...the Borough did not continue to process [Malet's] grievances for the purpose of not interfering with [Malet's] EEOC charge [on the same issues].

If it is the preference of the union and Mr. Malet that we move forward on the grievances, by all means we would be happy to do this.

The Commission's complaint issuance standard has not been met. The parties' most recent agreement contains a five-step

grievance procedure which ends in binding arbitration (Article XXVIII). The Commission has held that where the parties' grievance procedure is self-executing,^{2/} an employer's failure to respond at intermediate steps prior to arbitration is not an unlawful refusal to negotiate. Wayne Bd. of Ed., D.U.P. No. 92-9, 18 NJPER 105 (¶23050 1992); State of New Jersey, D.U.P. No. 88-9, 14 NJPER 146 (¶19058 1988); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986) and Tp. of Millburn, D.U.P. No. 81-24, 7 NJPER 370 (¶12168 1981). AFSCME had the right to invoke the arbitration clause after the ten-day response period passed. Thus, the allegations of the charge concerning the Borough's conduct do not meet the Commission's complaint issuance standard. N.J.A.C. 19:14-2.1. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 16, 1997
Trenton, New Jersey

^{2/} That is, where either party can take a grievance to arbitration.