

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

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-76-353

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT/AFT/AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practice Proceedings declines to issue a Complaint against a Public Employer based upon an unfair practice charge brought by the Charging Party. The Charging Party claims that the employer is refusing to process a particular grievance in that it is alleged that the employer has indicated that it will not agree to present one of the issues presented in the grievance to an arbitrator. The Director notes that an aggrieved party may normally proceed to arbitration ex parte under the terms of a grievance procedure containing arbitration provisions. Consequently, an aggrieved party under this factual context could proceed to arbitration and present the matter before an arbitrator. The arbitrator could thus determine whether the issue is properly cognizable before him. In the instant charge there is no allegation that the Charging Party cannot proceed to arbitration and present the issue before an arbitrator.

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

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-76-353

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT/AFT/AFL-CIO,

Charging Party.

Appearances:

For the State of New Jersey, William F. Hyland, Attorney General
(Mr. Guy S. Michael, Deputy Attorney General, of Counsel)

For the Council of New Jersey State College Locals,
Mr. Marcoantonio Lacatena, President

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 28, 1976 by the Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO (the "Council") alleging unfair practices against the State of New Jersey (the "State") alleging that the State was engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(5)^{1/} by refusing to agree to submit one issue of a grievance presented by the Council to arbitration.

In a case of similar nature decided this day, In re City of Pleasantville, D.U.P. No. 77-2, 2 NJPER __ (1976), the undersigned relied upon In re Englewood Board of Education, E.D. No. 76-34, 2 NJPER 175, (1976),

^{1/} This subsection prohibits public employers 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."

and refused to issue a complaint upon an unfair practice charge alleging that an employer violated N.J.S.A. 34:13A-5.4(a)(5), among other subsections, by refusing to process and respond to a grievance at a given level of the grievance procedure. In Pleasantville the undersigned restated the Executive Director's reasoning in the Englewood matter that a public employer's failure to participate in contractual arbitration proceedings does not, on the facts alleged in most instances, constitute a refusal to process grievances within the meaning of N.J.S.A. 34:13A-5.4(a)(5).

In the instant matter, the Council asserts that it had moved a grievance relating to a denial of a unit member's promotion through the levels of the grievance procedure, and requested arbitration pursuant to the provisions of the parties' contractual agreement. The State is alleged to have informed the Council that it will not agree to arbitrate one of the issues presented in the grievance.

Absent an affirmative step by the public employer to restrain the arbitration proceeding, the failure of a public employer to participate in the arbitration proceeding or even to respond to the grievance at given levels of a grievance procedure will normally not prevent the arbitration provisions of the grievance procedure from proceeding on a self-executing basis. Likewise, the refusal of an employer to submit a particular issue to an arbitrator will normally not affect the appointment of an arbitrator under the self executing provisions of the grievance/arbitration mechanism. The arbitrator has competent authority to determine the arbitrability of the issue consistent with the law and with the provisions of the parties' agreement. If the subject matter underlying the grievance issue warrants an award, the arbitrator may so rule consistent with his authority under the contract and regardless of the extent of participation by the employer.

The award will be valid if otherwise valid, and if binding under the arbitration terms contained in the Agreement between the parties, the award may be subject to confirmation in proceedings under N.J.S.A. 2A:24-7. See Englewood, supra. If the grievance terminates in a non-binding award, the employer maintains its right to reject the award, but that reservation bears no relationship to a charge of "refusing to process a grievance" to arbitration. 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.

We are not presented herein with an allegation that the charging party cannot under the contract proceed ex parte. Absent an allegation that the contractual procedures may not proceed in the absence of the employer's participation, i.e., that the procedures are not self-enforcing, the charge fails to allege facts which, if true, may constitute an unfair practice. See Englewood, supra, at footnote 7.

Therefore, for the reasons set forth above the undersigned concludes that absent extraordinary circumstances not present herein, the alleged failure of the public employer to agree to submit an issue to an arbitrator does not constitute "refusing to process grievances" within the meaning of N.J.S.A. 34:13A-5.4(a)(5).

Accordingly, the undersigned hereby refuses to issue a Complaint thereon and the instant case is hereby closed.

BY ORDER OF THE DIRECTOR OF
UNFAIR PRACTICE PROCEEDINGS



Carl Kurtzman, Director

DATED: Trenton, New Jersey
December 14, 1976