

D.U.P. NO. 93-35

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

In the Matter of

BOROUGH OF FREEHOLD,

Respondent,

-and-

Docket No. CI-93-19

JOHN KRUTAK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that creation of a 27th pay period constitutes an unfair practice. The Director finds that the allegations are contractual in nature and are therefore appropriately resolved through the grievance procedure. Allegations that the employer's rejection of a grievance related to the pay period issue constitutes an unfair practice are also dismissed based on the parties' self-executing grievance procedure.

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Appearances:

For the Respondent,
Robert Casey, Business Administrator

For the Charging Party,
John Krutak, pro se

REFUSAL TO ISSUE COMPLAINT

On August 18, 1992, John Krutak filed an unfair practice charge with the Public Employment Relations Commission against the Borough of Freehold. Krutak alleges that the Borough violated subsection 5.4(a)(5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by rejecting a grievance that he filed and by withholding money from his paycheck in violation of the contract between the Borough and his employee representative, CWA Local 1032.

^{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."

In 1992, the Borough of Freehold added one additional payroll period, creating 27 bi-weekly payroll periods for the year. On June 25, 1992, Krutak sent a letter to Borough Clerk Vivian Taylor stating his intention to retire on November 30, 1992. Since his employment would terminate at the 25th pay period in 1992, he stated that it would not be necessary for the Borough to take any further deductions from his earnings in order to fund the 27th pay period. Business Administrator Robert Casey replied by letter of July 1, 1992, that when Krutak's exact retirement date was determined, the payroll officer would recalculate his 1992 wages to ensure that he was paid in accordance with his established annual salary.

Krutak filed a grievance on July 15, 1992, contending that the Borough illegally withheld money from his paycheck to meet the 27th payroll. He also contended that the 27th pay period violated Article VII of the collective negotiations agreement between the Borough and Local 1032.^{2/}

On July 16, 1992, Casey denied Krutak's grievance. Casey responded that Borough employees are paid bi-weekly at an annual

^{2/} Article VII of the 1992-1993 agreement between the Borough and Local 1032 provides that: "Effective with the first pay period beginning after January 1, 1992, and up to and including the last pay period for the year 1992, the salary of each employee employed by the Borough of Freehold and a member of the bargaining unit referred to herein, who is in the service of the Borough as of the date of this contract, shall receive an increase in his/her annual wage amounting to five percent (5%) of his base salary paid to said employee on December 31, 1991."

salary computed in accordance with the number of paychecks issued during the calendar year and that in order to pay employees every other Thursday in 1992 without skipping a pay cycle, it was necessary to schedule 27 paychecks instead of 26. Casey also stated that the total number of hours worked during 1992 remained unchanged and if Krutak was going to retire in November as he indicated, that his salary for 1992 would be recalculated based upon the hours he worked and that any necessary adjustments would be made.

On July 21, 1992, Krutak sent a letter to Casey requesting that his grievance be moved to the next step as provided by the contract. On August 7, 1992, Casey sent Krutak a memorandum stating that pursuant to his request, a hearing with the personnel committee regarding his grievance was scheduled for August 17, 1992. On August 20, 1992, Casey sent Krutak a letter stating that the hearing for his grievance was scheduled for August 17, 1992, and that since Krutak failed to appear at that hearing, his grievance was dismissed pursuant to Article VI, Section 4 of the labor agreement. That section provides that "Failure by the aggrieved or the union to forward a grievance within the specified time limits shall terminate the grievance. Failure to respond to a grievance within the specified time limits shall permit the aggrieved to advance to the next step."

Krutak retired on November 30, 1992. The Borough provided him with figures showing how his salary was calculated on December

21, 1992.^{3/} Krutak disputes those calculations and contends that the Borough failed to provide a 5 percent annual salary increase pursuant to Article VII of the collective negotiations agreement.

The 27th pay period issue was grieved by another employee, Donald Maurice. Maurice's grievance was dismissed as untimely. However, the arbitrator found that Maurice was hired at a yearly salary, which was paid over 26 payroll periods per year. The yearly salary was divided by the number of hours worked per year, which determined Maurice's hourly rate of pay. When the Borough changed to 27 payroll periods in 1992, the yearly salary received by employees was the same, but the hourly rate the employees received decreased because of the additional pay period. However, by the end of 1992, the arbitrator found that Maurice would receive the correct yearly wage.

Krutak alleges that the Borough violated Article VII of the parties' collective negotiations agreement by creating the 27th payroll period. However, the appropriate forum for resolution of contractual disputes is the contractual grievance procedure, not an unfair practice charge. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).^{4/}

^{3/} The Borough calculated Krutak's salary by dividing his annual salary by 27 pay periods, and multiplying that 1/27th figure by 25, the number of pay periods Krutak worked in 1992.

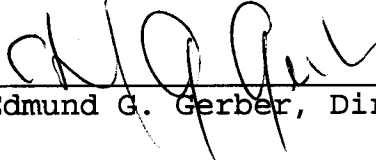
^{4/} On March 9, 1993, Krutak provided additional submissions which continue to allege that the change in his compensation constitutes an unfair practice. Those submissions do not change the fact that the proper forum for addressing such allegations remains the contractual grievance procedure.

Krutak also alleges that the Borough committed an unfair practice by rejecting the grievance he filed. The Borough's denial of Krutak's grievance does not constitute an unfair practice. The parties' contract provides for a self-executing grievance procedure which ends in binding arbitration. In cases where an employer refuses to respond to a grievance or improperly treats a grievance at an intermediate step of the grievance procedure, when the contract provides for a self-executing grievance procedure, the employer has not committed an unfair practice. See New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶180447 1986); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982); Essex County Vocational School Bd. of Ed., D.U.P. No. 77-2, 2 NJPER 372 (1976); Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1975). Krutak does not allege that the Borough refused to respond to his grievance or treated it improperly, rather he asserts that the employer rejected his grievance. However, the parties' self-executing grievance procedure afforded Krutak the opportunity to move the grievance to the next step of the procedure on his own. When Krutak did not appear for his scheduled step two grievance hearing, the grievance was terminated in accordance with Article VI, Section 4 of the parties' collective negotiations agreement.

I do not believe that the Commission's complaint issuance standard has been met and I will not issue a complaint on the allegations of this charge.^{5/}

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: April 6, 1993
Trenton, New Jersey

^{5/} N.J.A.C. 19:14-2.3.