

D.U.P. NO. 91-19

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

In the Matter of

TOWNSHIP OF BARNEGAT,

Respondent,

-and-

Docket No. CI-91-17

LT. EARL NIELSEN,

Charging Party.

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TOWNSHIP OF BARNEGAT,

Respondent,

-and-

Docket No. CO-91-174

BARNEGAT TOWNSHIP POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges brought by both Earl Nielsen, an individual and the Barnegat Township Police Superior Officers Association against the Township of Barnegat. The Township and the Association signed a contract in May 1990 retroactive to January 1, 1989. A provision in the earlier contract, carried over to the new contract, calls for one free eye exam and one pair of eyeglasses per year for an employee or family member. Nielsen didn't make a claim for this benefit in 1989 and applied twice for the benefit in 1990. The Township rejected the second eyecare claim stating the benefit was available in 1989 and had to be used in 1989. The charge alleges no more than a mere breach of contract and does not allege an unfair practice. Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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Charging Party.

Appearances:

For the Respondent,  
Russo, Foster, Secare & Ford, attorneys  
(Joseph L. Foster, of counsel)

For the Charging Parties,  
Lt. Earl Nielsen, Representative

REFUSAL TO ISSUE COMPLAINT

On October 5, 1990, Earl Nielsen ("Charging Party") filed an Unfair Practice Charge against the Township of Barnegat ("Township") with the Public Employment Relations Commission ("Commission") alleging that the Township violated subsection

5.4(a)(5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").<sup>1/</sup>

The Barnegat Township Police Superior Officers Association ("SOA") and the Township signed a collective negotiations agreement on May 21, 1990, retroactive to January 1, 1989. One of the benefits in the earlier contract and carried over in the 1989-90 contract was one free eye examination and one standard pair of eyeglasses for each contract year for an employee or a designated family member. Nielsen did not make a claim for this benefit in 1989 and applied for the benefit for two family members in 1990. The Township Treasurer rejected the eyecare benefit for Nielsen's second family member. She claimed the benefit was available in 1989 and had to be used during calendar year 1989. Nielsen argues that because the contract was not in place for 1989, he could not have received the eyecare benefit for 1989. The benefit was not available until the contract was executed and the benefit is retroactive to January 1989.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a

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<sup>1/</sup> These subsections prohibit 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. (7) Violating any of the rules and regulations established by the commission."

complaint stating the unfair practice charged.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.<sup>3/</sup> The Commission's rules provide that I may decline to issue a complaint.<sup>4/</sup>

On January 7, 1991, I wrote to Nielsen stating that his charge concerns the interpretation of the contract between the Township and the SOA. However, only the majority representative, the SOA, has standing to argue before the Commission that a contract provision has been repudiated. The majority representative that negotiated the provision can best understand and interpret it. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 860 (¶11284 1980), aff'd App. Div. Dkt. No. A-1263-80T2; Town of Morristown, D.U.P. NO. 90-15, 17 NJPER 68 (¶22032 1990). Nelson filed the charge as an

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<sup>2/</sup> N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

<sup>3/</sup> N.J.A.C. 19:14-2.1.

<sup>4/</sup> N.J.A.C. 19:14-2.3.

individual and lacks standing to maintain a charge concerning an (a)(5) violation of this nature.<sup>5/</sup> The letter concluded that I was inclined to refuse to issue a complaint on this charge.

In response, the Barnegat Township Superior Officers Association filed a charge on behalf of Nielsen which mirrors Nielsen's charge.

I wrote the Association on February 6, 1991, that their charge also fails to allege a violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Where an employer does not repudiate or disregard the terms of a contract but rather reasonably relies upon contract language to defend its action, the Commission will not find an unfair practice. N.J. Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Here, the Township did not repudiate the contract; rather, it has a different interpretation of the contract from the Association. The Association may argue that the earlier 1989 contract had expired and, therefore, Nielsen could not have been reimbursed for eye care until a retroactive contract was executed. However, where a contract has expired, all terms and conditions of employment embodied in the old contract remain in force and effect during negotiations and interest arbitration. Accordingly, the employees were apparently covered by the terms of the 1988 contract

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<sup>5/</sup> Nielsen has not alleged facts in support of an (a)(7) allegation.

until May 21, 1990 when the retroactive contract was signed.

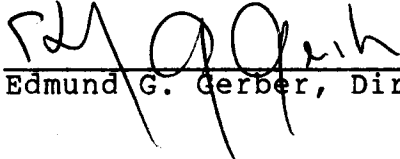
Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed Assn., 78 N.J. 25 (1978);

State of New Jersey, I.R. 82-7, 7 NJPER 532 (¶12235 1983).

The Township's position that Nielsen had to apply for benefits in 1989 to claim eye care benefits under the 1989 contract is consistent with the law and is not inconsistent with the express provisions of the contract.

Neither charge alleges facts which constitute an unfair practice. Accordingly, I decline to issue a complaint in these matters and dismiss both charges.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: February 28, 1991  
Trenton, New Jersey