

D.U.P. NO. 88-9

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

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

DOCKET NO. CO-88-151

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint where the State allegedly failed to process grievances. An employer's refusal to process grievances at intermediate steps of the grievance procedure is not an unfair practice where the grievance procedure ends in binding arbitration which either party may invoke unilaterally. The Director found the State's refusal to process certain grievances at intermediate steps of the self-executing grievance procedure is not an unfair practice.

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Appearances:

For the Respondent
Attorney General's Office
(Michael L. Diller, DAG)

For the Charging Party
John Loos, Staff Rep.

REFUSAL TO ISSUE COMPLAINT

On October 24, 1986, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by the Communication Workers of America, AFL/CIO ("CWA"). In its charge, the CWA alleges that the State of New Jersey ("State") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5).^{1/}

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

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

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by 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."

2/ 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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

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

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

CWA charges that the State has failed to process grievances arising under Article II.C.6^{5/} of the parties' current agreement.

6/ CWA asserts that the State's refusal to process grievances arising under this clause results in repudiation of the grievance procedure with respect to Article II.C.6.

The State contends that the parties' grievance procedure is self-executing, allowing the grievance to proceed to arbitration unilaterally. The State has not refused to arbitrate these grievances.

We have repeatedly held that where the parties' contract provides for a self-executing grievance procedure ending in binding arbitration, it is not an unfair practice for the employer to fail to act at an intermediate step of the grievance procedure. New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Borough of Mountainside, D.U.P. No. 85-17, 11 NJPER 6 (¶16003 1984); Township 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 Board of Education, D.U.P. No. 77-2, 2 NJPER 372 (1976); Englewood Board of Education, E.D. No. 76-34, 2 NJPER 175 (1975).

5/ Article II.C.6 provides that "[t]he State and the Union agree that the working environment shall be characterized by mutual respect for the common dignity to which all individuals are entitled.

6/ Article IV.H.1. of the parties' agreement provides each grievant with the right to a grievance hearing before the arbitration step.

CWA asserts the State has repudiated the grievance procedure with respect to Article II.C.6 by failing to process those grievances or to provide a pre-arbitration hearing. However, it is not alleged that the State has refused to process all grievances or to follow contractual procedures for all grievances. Rather, CWA asserts that the State has violated Article IV.H.1 by failing to provide pre-arbitration hearings in grievances filed under Article II.C.6.

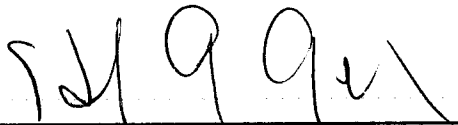
In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that parties must attempt to resolve breach of contract claims through their negotiated grievance procedures. Noting that some breach of contract claims might also implicate policies and obligations arising under the Act, the Commission listed situations where a refusal to negotiate in good faith might be implicated by a contract claim. Repudiation of the contract is among them.

It appears that the State has consistently refused to follow the intermediate steps of the grievance procedure with regard to a particular contract article. The State has not refused to arbitrate grievances under the disputed contract article. This course of action does not, standing alone, constitute a repudiation of the contract. Failure to follow the intermediate steps of the grievance procedure with respect to a certain grievance does not rise to the level of a repudiation of the agreement. Cf. N.J. Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442

(A17164 1986). Because the parties' contract herein contains a self-executing grievance procedure terminating in binding arbitration, the State's refusal to follow all intermediate steps of the grievance procedure does not, in and of itself, constitute an unfair practice.

Accordingly, because the Commission's complaint issuance standards have not been met, we decline to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: January 22, 1988
Trenton, New Jersey