

D.U.P. NO. 96-21

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

In the Matter of

DELAWARE RIVER PORT AUTHORITY,

Respondent,

-and-

Docket No. CO-96-211

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 716,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the Delaware River Port Authority refused to negotiate a first collective negotiations agreement with the IUOE, Local 716. The Director relies upon N.J.S.A. 32:3-2 and Port Authority Transit Corp., P.E.R.C. No. 62, NJPER Supp. ¶62, and finds that the Commission lack jurisdiction over the bi-state Authority.

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Appearances:

For the Respondent,
Stevens & Lee, attorneys
(John B. Nason, III, of counsel)

For the Charging Party,
Sheller, Ludwig & Badey, attorneys
(Bruce M. Ludwig, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 26, 1996, the IUOE, Local 716 filed an unfair practice charge alleging that the Delaware River Port Authority has violated New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq., specifically subsections (a)(1), (2), (3) and

(5).^{1/} IUOE states that the Port Authority voluntarily recognized

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of

it as the majority representative of a unit of administrative employees. It asserts that the Authority has violated the Act by refusing to negotiate for a first collective bargaining agreement and by terminating the president/business manager of Local 716 in retaliation for engaging in protected activities. The Port Authority contends that the charge must be dismissed because it is not a public employer under the Act.^{2/}

Under N.J.S.A. 32:3-2, the Port Authority is a "public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey." In Port Authority Transit Corp., P.E.R.C. No. 62, NJPER Supp. ¶62, the Commission found that the bi-state compact may only be bound "...by the action of either state concurred in by legislation of the other." Therefore, absent an expressed agreement by Pennsylvania that N.J.S.A. 34:13A-1 et seq. apply to the Authority, the Commission found that it lacked

1/ Footnote Continued From Previous Page

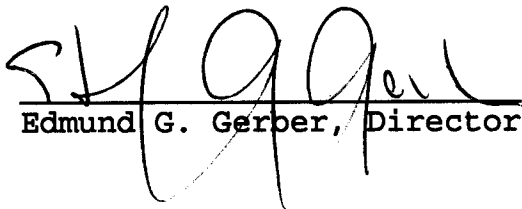
any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees 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-3(c) defines public employer to mean "... (the) State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service."

jurisdiction over the employees of the Port Authority and its subsidiary, PATHCO. See Delaware River & Bay Authority v. PERC, 112 N.J. Super. 160 (App. Div. 1970)., aff'd per curiam 58 N.J. 388 (1971).

Based upon the foregoing, I find that the Commission lacks jurisdiction over the Port Authority and, accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: April 8, 1996
Trenton, New Jersey