

P.E.R.C. NO. 91-64

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY BOARD OF HEALTH,

Respondent,

-and-

Docket No. CO-90-313

DISTRICT 1199J, NATIONAL UNION  
OF HOSPITAL AND HEALTH CARE  
EMPLOYEES, AFSCME,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices's refusal to issue a complaint based on an unfair practice charge filed by District 1199J, National Union of Hospital and Health Care Employees, AFSCME against the Ocean County Board of Health. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act by refusing to modify a draft successor contract to conform to an alleged understanding between the parties. The parties voluntarily submitted their contract dispute to binding interest arbitration. After receiving the award, District 1199J filed its unfair practice charge. Under these circumstances, the Commission finds that District 1199J waived its right to claim that it had an earlier binding agreement.

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Appearances:

For the Respondent, Berry, Kagan & Sahradnik, attorneys  
(Seymour J. Kagan, of counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,  
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On April 30, 1990, District 1199J, National Union of Hospital and Health Care Employees, AFSCME ("District 1199J") filed an unfair practice charge against the Ocean County Board of Health. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (5) and (6),<sup>1/</sup> by refusing to modify a draft successor contract to conform to an alleged understanding between the parties.

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<sup>1/</sup> 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, (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..." and "(6) refusing to reduce a negotiated agreement to writing and to sign such agreement."

On December 12, 1990, the Director of Unfair Practices refused to issue a Complaint. D.U.P No. 91-15, 17 NJPER \_\_\_\_ (¶\_\_\_\_ 1990). He found that District 1199J waived its right to bring this charge by entering into binding interest arbitration.

On December 24, 1990, District 1199J appealed the refusal to issue a Complaint. It argues that any belief which the employer might have had as to the finalization of the contract through interest arbitration should not prejudice its right to bring an unfair practice charge.

District 1199J's charge alleges that the parties agreed to contract terms on October 26, 1989 and that the Board refused to reduce those terms to writing. Subsequently, the parties entered binding interest arbitration. The arbitrator issued his award on March 27, 1990. District 1199J filed its charge on April 30 claiming that the arbitration award is not binding.

We affirm the Director's refusal to issue a Complaint. By agreeing to submit the contract dispute to binding interest arbitration, District 1199J waived its right to later claim that there was already a binding agreement.

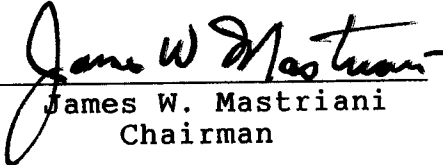
Denville Tp., P.E.R.C. No. 78-51, 4 NJPER 114 (¶4054 1978) is distinguishable. There, during negotiations, the union filed a charge claiming that the employer had refused to negotiate in good faith by threatening a reduction in force to coerce a settlement and by issuing a notice that it was ceasing all prior contractual benefits. Finding that the signing of a successor agreement did not erase the chilling effect of the employer's actions, we ordered rescission of the notice.

Here, the parties voluntarily submitted their contract dispute to binding interest arbitration. After receiving the arbitration award, District 1199J filed its unfair practice charge alleging that the parties earlier had entered into an agreement which the Board refused to execute. Under these circumstances, we find that District 1199J waived its right to claim that it had an earlier binding agreement.

ORDER

The refusal to issue a Complaint is affirmed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
January 17, 1991  
ISSUED: January 18, 1991