

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

In the Matter of

TEAMSTERS UNION LOCAL #11,

Respondent,

-and-

DOCKET NO. CI-83-13

ANDREW GANDZA,

Charging Party.

COUNTY OF PASSAIC,

Respondent,

-and-

DOCKET NO. CI-83-20

ANDREW GANDZA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to reassert jurisdiction over a charge filed by an individual which had been deferred to arbitration. The dispute underlying the alleged unfair practice was fully considered by the arbitrator.

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REFUSAL TO ISSUE COMPLAINT

On August 31, 1982, Andrew Gandza ("Charging Party") filed an Unfair Practice Charge (Docket No. CI-83-13) against Teamsters Union Local 11, IBT ("Local 11"), alleging that Local 11 failed to properly pursue Charging Party's grievance against his employer, the County of Passaic, which grievance requested payment of a 10% night differential from August 29, 1977 through December 31, 1981 inclusive. Charging Party alleged that Local 11 was in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., ("Act"), specifically N.J.S.A. 34:13A-5.4(b)(3). ^{1/} Charging Party

^{1/} This subsection prohibits public employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

alleged that had Local 11 properly pursued the grievance it would have been submitted to binding arbitration under the governing collective negotiations agreement. On September 14, 1982, Charging Party filed an amendment to his charge setting forth essentially the same facts and asserting the same violation; however, he supplemented the charge by providing the applicable dates of the acts alleged to constitute unfair practices and he further provided proof of service upon Local 11. On October 6, 1982, Charging Party filed an Unfair Practice Charge (Docket No. CI-83-20) against the County alleging that the County violated N.J.S.A. 34:13A-5.4(a)(3) ^{2/} by failing to pay the 10% night differential for the period in question.

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 practices, and that it has the authority to issue a complaint stating the unfair practice charge. ^{3/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This

^{2/} This subsection prohibits public employers, their representatives and agents from: "(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."

^{3/} 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..."

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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

In the initial processing of the instant charges, an exploratory conference was convened by a staff representative with all parties. At the conference the County and Local 11 indicated their willingness to submit the charging party's grievance to an arbitrator in accordance with the binding arbitration provision of their contract.

In consequence, the Acting Director advised all parties, including the Charging Party, that the instant dispute presented an appropriate case for the application of the Commission's policy of deferring the resolution of unfair practice charges to the parties' contractual grievance/binding arbitration procedure. Said policy is applicable where it appears reasonably probable that the dispute underlying the alleged unfair practice will be resolved in the parties' contractual forum. ^{6/} The parties were further advised that the Commission, pursuant to its deferral policy, would retain jurisdiction of the unfair practice charges filed by the Charging Party for the purpose of entertaining an appropriate and timely application for further consideration upon a

^{4/} N.J.A.C. 19:14-2.1

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

^{6/} See In re State of N.J. (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977), In re Board of Education of East Windsor and Hightstown Education Association, E.D. No. 76-6, 1 NJPER 59 (1975); and In re City of Trenton and Trenton PBA Local No. 11, P.E.R.C. No. 76-10, 1 NJPER 58 (1975). The Acting Director further noted the appropriateness of deferring the charge in view of the fact that the charge was rooted in the initial failure of the respondents to process charging party's grievance to arbitration.

showing that: (a) the dispute has not with reasonable promptness after the issuance of this determination, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act. ^{7/}

On May 2, 1983, an arbitration hearing was conducted and an Opinion and Award issued on May 17, 1983. The arbitrator found that the County had not violated the collective agreement by its failure to pay Charging Party a 10% night differential from August 29, 1977 through December 31, 1981.

Thereafter, in a letter dated May 29, 1983, Charging Party requested that the Commission resume processing the Charges filed by him against the County and Local 11. Charging Party asserted that: (1) He did not have a complete opportunity to argue orally before the arbitrator; (2) the County did not act in good faith with respect to its dealings with Charging Party; (3) the County presented false and misleading evidence which was considered by the arbitrator in rendering his decision; (4) the facts as alleged by the County do not support the arbitrator's award in the County's favor; (5) C.E.T.A. night shift employees received the 10% night differential in addition to their salary; (6) and the County's actions reflect a behavior and attitude which is repugnant to the Act.

^{7/} See In re Jersey City Bd. of Ed. and James Johnson, D.U.P. No. 80-5, 5 NJPER 405 (1979).

As noted, in determining whether or not to resume the processing of a charge that has been deferred to arbitration, the Commission is guided by established standards. The standards are consonant with standards first set forth by the National Labor Relations Board ("NLRB") in Spielberg Mfg. Co., 112 NLRB 1080, 36 LRRM 1152 (1955). See In re State of New Jersey (Stockton State College), supra. As set forth in Spielberg and Stockton, unless there is a proper showing that the arbitration proceeding was not fair and regular, or that a result was reached which is repugnant to the Act, or that the dispute was not submitted promptly to arbitration, the Commission will defer to the arbitrator's findings. ^{8/}

Here, Charging Party has not alleged any lack of a timely submission of the issues to arbitration, any unfair and/or irregular arbitration procedures, or a result, by virtue of the arbitration award, which is repugnant to the Act. ^{9/} Charging Party merely disputes the arbitrator's findings of fact and the conclusions ultimately drawn therefrom. An examination of the arbitrator's award in this matter reveals a lengthy consideration of all evidence presented. The Charging Party alleges, primarily, that the County presented false evidence to the arbitrator. However, there is no evidence that the arbitrator employed inadequate or insufficient procedures to test witness credibility. The arbitrator conducted a full and formal hearing

^{8/} Compare Thornton v. Potamkin Chevrolet, 94 N.J. 1 (1983).


^{9/} Charging Party appears to be confusing the County's alleged behavior with the effect of the arbitration award, with respect to the standard of repugnancy under the Act.

where all witnesses were given an opportunity to testify and present evidence. The parties were further provided a full opportunity to examine and cross-examine witnesses. Finally, the arbitrator issued a well-reasoned formal award predicated upon substantial findings of fact. 10/

Thus, on the basis of this review, the undersigned finds that the dispute underlying the unfair practice charge was fully considered by the arbitrator in his analysis and determination that the County did not violate the contractual agreement by refusing to pay a 10% night differential to Charging Party for the period August 29, 1977 through December 31, 1981, inclusive. 11/ Moreover, the arbitration proceeding did not reach a result repugnant to the Act.

Accordingly, based upon the above, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: September 20, 1983
Trenton, New Jersey

10/ Additionally, Local 11 provided counsel to Charging Party throughout the arbitration proceedings.

11/ Although the Charging Party denoted a violation of §5.4(a)(3) on the Charge form, it is clear from the pleadings that the Charging Party was alleging unfair practices based solely upon the County's purported contractual breach and not upon allegations of animus resulting from Charging Party's exercise of protected activity under the Act.