

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

In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

-and-

THE ASSOCIATION OF PUBLIC WORKS

DOCKET NO. CI-85-34

Respondent,

-and-

DENNIS CIANFRONE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an Unfair Practice Charge filed against the Township of Teaneck and the Association of Public Works. The charge, in part, alleges that the employer refused to supply certain work records the Charging Party at an arbitration hearing. However, the arbitrator specifically made a finding of fact adopting the Charging Parties representation of the contents of those records. Accordingly, there was no harm done.

The other part of the charge alleges the Charging Party was wrongfully discharged, but the Civil Service Commission found the discharge to be proper and the employing authority's release of the Charging Party was justified. Pursuant to the criteria set out in the Township of Bridgewater, the employer has already proved the legitimate business justification necessary for the discharge. Accordingly, the Director will not issue complaint on this charge.

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Appearances:

For the Respondent Township
Grotta, Glassman & Hoffman
(M. Joan Foster of counsel)

For the Respondent Association
Margaret A. Holbrook, Esq.

For the Charging Party
Dennis Cianfrone, pro se

REFUSAL TO ISSUE COMPLAINT

On August 21, 1984, Dennis Cianfrone filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission"), and an amended charge on September 5, 1984, against both the Township of Teaneck ("Township") and the Association of Public Workers ("Association") alleging that the Township and the

Association had 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 N.J.S.A. 34:13A-5.4(a)(4) and (5), and 5.4(b)(1), (2), (3), and (5).^{1/}

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 charge.^{2/} The Commission

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives or agents from: "(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; and (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."

N.J.S.A. 34:13A-5.4(b) prohibits employee organizations, 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) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; (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; and (5) Violating any of the rules and regulations established by the commission."

^{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 charged and
(Footnote continued on next page)

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 and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

For the reasons stated below, it does not appear to me that there is a basis upon which to issue a complaint at this time.

In the instant charge, Cianfrone alleges that he was terminated from employment one week after the Commission conducted an exploratory conference on a previous charge that he had filed (Docket No. CI-84-46 filed on November 29, 1983). At that conference, the Township agreed to take several of Cianfrone's grievances to arbitration; however, Cianfrone alleges here that the Township refused to supply him with certain records needed for the arbitration, and it is further alleged, that the Association did not negotiate in good faith on Cianfrone's behalf when it failed to obtain these needed records.

(Footnote continued from previous page)
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. 19:13-2.1.

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

The documentation submitted in this matter reveals the following facts.

The Township, the Association and the Charging Party agreed to settle Cianfrone's earlier unfair practice charge (CI-85-46) by submitting all of Cianfrone's grievances against the Township to a neutral arbitrator. When the arbitration was held, Cianfrone sought an adjournment in order to procure certain work records. Although the arbitrator denied Cianfrone's request for an adjournment, the arbitrator ruled that he would accept Cianfrone's representation of what was in those work records. Nevertheless, the arbitrator ultimately ruled against Cianfrone and found that the Township's personnel actions against Cianfrone were proper under the collective negotiations agreement. The records Cianfrone requested would not have changed the arbitrator's findings. Accordingly, the dispute underlying this aspect of the unfair practice charge against the Association is fully subsumed by the arbitration and the result reached is not repugnant to the Act. This Commission has held that unless there is a proper showing that an 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. See, Speilberg Mfg. Co., 112 NLRB 1080, 36 LRRM 1152 (1955); Teamsters Union Local No. 11 and Andrew Gandza, P.E.R.C. 84-65, 10 NJPER 22 (¶ 15012 1983); and In re State of N.J. (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977).

Moreover, Cianfrone appealed his discharge to Civil Service and, after a full hearing and recommended decision by an

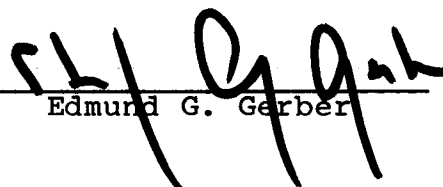
Administrative Law Judge, the Civil Service Commission found that Cianfrone's termination was proper, on both procedural and substantive grounds. Civil Service's order of March 21, 1985, states that the action of the employing authority in releasing the Appellant was justified and the Civil Service Commission dismissed Ciafrone's appeal. This agency has no jurisdiction to relitigate the determination made by the Civil Service Commission. See, Hackensack v. Winner, 82 N.J. 1 (1980).

One factor of the unfair practice allegation not addressed by the Civil Service Commission was the relative timing of the exploratory conference, the arbitration and the Charging Party's discharge. However, in Tp. of Bridgewater v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), the New Jersey Supreme Court held that where a charging party establishes that an employer has discharged an employee for unlawful reasons, if the employer can then otherwise show that it had a legitimate business justification for the discharge and would have discharged the employee anyway, that discharge will be upheld. Here, the Township's business justification for Charging Party's discharge has already been established by the decision of the Civil Service Commission. Civil Service's determination precludes a finding of an unfair labor practice against the employer under the Bridgewater standard (supra). Under such circumstances, this Commission will not rehear this matter. ^{5/}

^{5/} See, In re State of New Jersey and Gattoni, P.E.R.C. No. 81-32, 6 NJPER 443 (¶ 11227 1980).

In view of the foregoing, I decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber

DATED: August 14, 1985
Trenton, New Jersey