

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

DOCKET NO. CO-82-54

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, COUNCIL 52, LOCAL 888,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an unfair practice charge alleging that the employer refused to process certain grievances filed by the Charging Party. There is no claim that the employer impeded the grievance from being processed by the majority representative to binding arbitration under the grievance mechanisms of the collective negotiations agreement.

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Appearances:

For the Respondent
Carpenter, Bennett & Morrissey
(Edward T. Ryan, of counsel)

For the Charging Party
Richard Gollin, Staff Representative

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the American Federation of State, County and Municipal Employees, AFL-CIO, Council 52, Local 888 (the "Charging Party" or "Local") on September 14, 1981, against Rutgers, the State University (the "Respondent" or "Rutgers"). The charge alleges that Rutgers violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (5) and (7), ^{1/} when Rutgers

1/ These subsections prohibit public employers, their representatives and 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, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the Commission."

failed to process grievances filed by the Local.

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 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 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. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Charging Party alleges that Rutgers has committed an unfair practice by refusing to process certain grievances which the Charging Party has filed. There is no allegation, however, that the Respondent's actions have prevented the Local from further pursuance of the grievances.

^{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

The Commission has previously determined that an employer's refusal to respond to a grievance is not of itself an unfair practice when the mechanisms of the contractual grievance procedure permit the aggrieved party to unilaterally invoke the higher levels of the grievance procedure through binding arbitration. ^{5/} In Pleasantville, supra, n.5, the undersigned stated:

A public employer's failure to respond to a grievance at a given level is presumed to be a rejection of the grievance. Normally, the next level of the grievance procedure may be invoked unilaterally by the aggrieved party inasmuch as the grievance has not been resolved to the aggrieved party's satisfaction. The grievance will thus be "processed" through the given levels until it proceeds to arbitration. At page 373.

Article 4 paragraph 6 of the parties' contract contains a provision which states:

If Rutgers should exceed the time limits in replying to any grievance at any step in the grievance procedure, the grievance may be advanced to the next step.

The parties' grievance/arbitration mechanism is, thus, self-executing and the Charging Party may, in fact, have the grievance processed. The Charging Party has not alleged that its ability to proceed with its grievance has in any way been hindered by the Respondent's actions, and:

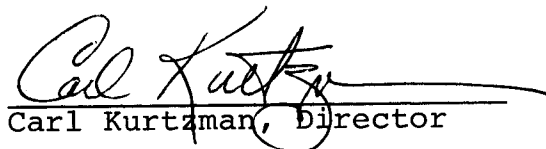
Absent an allegation that the contractual procedures may not proceed in the absence of the employer's participation, i.e., that the procedures are not self-enforcing, the charge fails to allege facts which, if true, may constitute an unfair practice. City of Pleasantville, supra, at p. 373.

^{5/} See In re City of Pleasantville, D.U.P. 77-2, 2 NJPER 372 (1976); In re Essex County Vocational School Board of Education, D.U.P. No. 78-11, 4 NJPER 222 (¶ 4112 1978); In re Englewood Board of Education, E.D. No. 76-34, 2 NJPER 175 (1975).

Therefore, for the reasons set forth above, the undersigned concludes that absent extraordinary circumstances not present herein, the failure of the public employer to participate at a given level of a contractual grievance proceeding does not constitute "refusing to process grievances" within the meaning of N.J.S.A. 34:13A-5.4(a)(5). Similarly, the allegation of violations of N.J.S.A. 34:13A-5.4(a)(1) must fall. The allegation of a violation of N.J.S.A. 34:13A-5.4(a)(7) falls inasmuch as the Charging Party has failed to set forth a rule or regulation of the Commission in support of its claim.

Accordingly, the undersigned declines to issue a complaint. ^{6/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: March 12, 1982
Trenton, New Jersey

^{6/} In response to the unfair practice charge, Rutgers has stated that some of the grievances involve the exercise of managerial prerogatives. For the purposes of the limited decision herein, the undersigned's review is confined to the allegations of the charging party. The actual content of the grievances is not set forth in the unfair practice charge. As noted above, if the Local seeks the continued processing of the grievance, it merely has to invoke arbitration. The Commission's scope of negotiations procedures are available to either the employer or the majority representative to obtain a ruling on negotiability.