

D.U.P. NO. 95-22

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

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-95-52

I.U.I.S.T.H.E. DISTRICT 6,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses part of a charge and issues a Complaint on part of a charge filed by Local 6 against the City of Newark. The Director issues a Complaint concerning an allegation that the City is refusing to recognize federally funded positions as part of the Local 6 bargaining unit and denying contract coverage to those employees. The Director dismisses the remaining allegations that the City is demoting and suspending employees without proper disciplinary hearings as required under Local 6's contract. The Director finds that these are, in fact, allegations of contract violations which may not be litigated in the unfair practice forum under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Local 6 may grieve discipline through its negotiated grievance procedure or, where appropriate, appeal the discipline through the State Merit System Protection Board.

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Appearances:

For the Respondent,  
Ken Saunders, Asst. Corp. Counsel

For the Charging Party,  
William Perry, President

DECISION

On August 24, 1994, I.U.I.S.T.H.E. Local 6 filed an unfair practice charge alleging that the City of Newark violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically, subsections 5.4(a)(5)<sup>1/</sup> by: (1) denying permanent employees the right to join the union; (2) making changes in employees' pay without negotiations with Local 6, and (3) harassing and coercing union members by suspending them because of their union activities.

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<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: (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.

With regard to the first count, Local 6 asserts that the City is refusing to treat federally funded positions as part of the Local 6 bargaining unit and denying contract coverage to those employees. This allegation appears to meet the Commission's Complaint issuance standards. I will issue a Complaint and Notice of Hearing with regard to this allegation.

In counts two and three, Local 6 alleges that the City is demoting and suspending employees without proper disciplinary hearings as required under Local 6's contract. The Local 6 contract for this unit provides:

Article II, Management Rights -- The City hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities to ... (3) suspend, demote, discharge and take other disciplinary action for good and just cause according to the law.

Local 6 argues that the City is taking personnel actions (i.e., suspensions, demotions) without just cause. Contract Article IV, Grievance Procedure, contains a five-step grievance procedure as a mechanism for Local 6 to grieve adverse actions by the City, including such adverse personnel actions. That grievance procedure culminates in binding arbitration. The contract is self-executing; that is, when the grievance is not resolved at a given step, Local 6 may then move the grievance to the next step. Therefore, Local 6 has a remedy under the terms of its contract for alleged improper discipline--initiate and pursue a grievance through the grievance process.

Accordingly, counts two and three of Local 6's charge do not state a cause of action under N.J.S.A. 34:13A-5.4. Rather, the substance of the claim is that the City of Newark breached its collective negotiations agreement with Local 6. In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

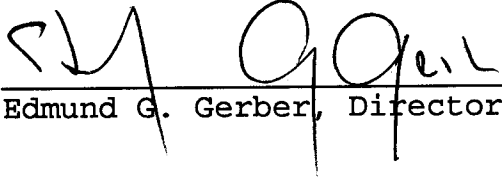
In that case, the Commission set forth some examples of situations where a breach of contract claim bears a sufficient relationship to an alleged violation of the Act so as to warrant the processing of the charge and the possible issuance of a complaint: (1) The employer repudiates an established term or condition of employment. (2) The employer decides to abrogate a contract clause based on its belief that the clause is outside the scope of negotiations. (3) The contract clause is so clear that an inference of bad faith arises from a refusal to honor it. (4) Factual allegations indicate that the employer changed the parties' past and consistent practice in administering the disputed clause. (5) Specific allegations of bad faith over and above mere breach of the collective negotiations agreement are present. (6) Breach of the agreement places the policies of the Act at stake.

Based upon the allegations set forth in the charge, I find that counts two and three assert contract claims and therefore

should be dismissed. None of the exceptions identified in Human Services appear to be present here. Further, this Commission has no jurisdiction over any claim that the employer may be violating employees' Civil Service rights to a hearing prior to suspension. Local 6 may seek to pursue such a claim before the New Jersey State Merit System Protection Board.

Based upon the foregoing, I find that the Commission's complaint issuance standard has not been met with regard to counts two and three of the charge and I refuse to issue a complaint with regard to those allegations. N.J.A.C. 19:14-1.5 and 2.1. Counts two and three are dismissed. A Complaint and Notice of Hearing will issue on count one.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: January 5, 1995  
Trenton, New Jersey