

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

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-77-324

PATROLMEN'S BENEVOLENT ASSOCIATION,
LOCAL 11, INC.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to certain aspects of an unfair practice charge filed against the public employer. These aspects involve allegations that an arbitrator omitted certain material from his resume and that the employer has stated a legal position before a Superior Court that discipline with respect to a grievance was final as of a date certain. The Director, on the basis of the allegations made, states that there is no nexus between these allegations and unfair practices delineated in N.J.S.A. 34:13A-5.4(a).

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Appearances:

For the Respondent, George T. Dougherty,
City Attorney

For the Charging Party, Thomas P. Murphy, President

DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on May 19, 1977 by Patrolmen's Benevolent Association, Local 11, Inc. (the "PBA") against the City of Trenton (the "City") alleging that the City engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4) and (5).^{1/}

The Unfair Practice Charge contains three "counts". The first count relates to a provision in the parties' collective negotiations agreement which provides for " an election of remedies with respect to disciplinary

1/ These subsections prohibit public employers from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(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.

(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.

(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."

appeals" which the Charging Party claims "is repugnant to N.J.S.A. 34:13A-5.3 and should be declared void as against public policy and as not the result of good faith bargaining (sic)." The second count relates to the alleged failure of an arbitrator, selected by the parties to resolve a grievance, to disclose certain information on his resume. The third count alleges that the City has taken the position in a Superior Court proceeding that the discipline imposed upon the PBA's President, and which matter was subject of the aforementioned grievances, was final as of a date certain.

N.J.S.A. 34:13A-5.4(c) provides in relevant part:

"Whenever it is charged that anyone has engaged 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...."

N.J.A.C. 19:14-2.1 states in relevant part:

"After a charge has been filed and processed, if it appears to the Director of Unfair Practices that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, 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, the Director of Unfair Practices shall issue and cause to be served on all parties a formal complaint...."

N.J.A.C. 19:14-2.3 provides in relevant part:

"If, after a charge has been processed, the Director of Unfair Practices declines to issue a complaint, the parties shall be so advised in writing, accompanied by a simple statement of the procedural or other grounds for such action...."

Accordingly, the undersigned has reviewed the allegations contained in the Unfair Practice Charge and determines that the Commission's standards for issuance of a complaint contained in N.J.A.C. 19:14-2.1 have been met with respect to the "first count" of the instant Charge and that a complaint shall issue.

However, the undersigned declines to issue a complaint with respect to the allegations contained in the second and third "counts" of the Unfair Practice Charge.

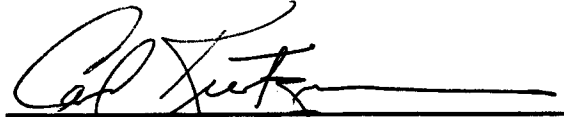
The PBA's allegations with respect to the "second count", stated above, refer to an alleged omission on the resume of the arbitrator. The PBA also states that it has disavowed the arbitrator's opinion and has instituted legal proceedings in Mercer County District Court. Even if the undersigned were to assume for the purposes herein the accuracy and the materiality of the allegations made by the Charging Party, the undersigned cannot see, on the basis of the allegations, any nexus between the claimed omission on the arbitrator's resume and an unfair practice under N.J.S.A. 34:13A-5.4(a) which may be attributable to the City as a public employer. If in fact the Charging Party seeks the reversal of the arbitrator's award on the basis of this claimed irregularity, the appropriate forum for such would appear to be a proceeding for vacation of the award pursuant to N.J.S.A. 2A:24-1 et seq.

With respect to the "third count" the undersigned, on the basis of the allegations of the PBA, cannot see the nexus between the City's legal position stated before the Superior Court as to when it considers discipline as final and the commission of an unfair practice under N.J.S.A. 34:13A-5.4(a). Presumptively, the correctness of the employer's position before the Superior Court will be resolved in that forum.

Accordingly, on the basis of the allegations contained in the second and third "counts" of the instant Unfair Practice Charge the undersigned determines that the City has not committed an unfair practice

with respect to these allegations and refuses to issue a complaint thereon.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

A handwritten signature in cursive script, appearing to read "Carl Kurtzman", written over a horizontal line.

Carl Kurtzman, Director
of Unfair Practices

DATED: September 20, 1977
Trenton, New Jersey