

D.U.P. NO. 2012-2

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

In the Matter of

NORTH HUDSON FIREFIGHTERS  
ASSOCIATION,

Respondent,

-and-

Docket No. CE-2011-002

NORTH HUDSON REGIONAL  
FIRE AND RESCUE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by North Hudson Regional Fire and Rescue against the North Hudson Firefighters Association. The charge alleges that the Association violated 5.4b(1), (3), and (5) of the Act when the Association filed an unfair practice charge and abrogated the parties' contractual grievance procedure. The Director finds that the Commission uses several mechanisms to dispose of charges, including the deferral of disputes over contractual terms and conditions to grievance procedures, and the Association, like the Regional, has the right to file charges. Accordingly, the Director declines to issue a complaint.

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FIRE AND RESCUE,

CHARGING PARTY.

Appearances:

For the Respondent, Cohen, Leder, Montalbano &  
Grossman, LLC, attorneys (Bruce D. Leder, of counsel)

For the Charging Party, Scarinci Hollenbeck, attorneys  
(Ramon E. Rivera, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On October 19 and 26, 2010, the North Hudson Regional Fire and Rescue (Regional) filed an unfair practice charge and amended charge against the North Hudson Firefighters Association (Association), alleging that the Association violated 5.4b(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act)<sup>1/</sup>, when it filed an unfair

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<sup>1/</sup> These provisions prohibit 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate (continued...)"

practice charge and abrogated the parties' contractual grievance procedure. The charge alleges that for two years the Association filed charges which were appropriate by contractual grievances. The charge was accompanied by an application for interim relief seeking "temporary restraints."

On November 5, 2010, a Commission Designee denied the Regional's application for interim relief. The Designee, citing N.J.S.A. 34:13A-5.4, wrote that the Commission cannot restrain "public employers, their representatives or agents" or "employee organizations, their representatives or agents" from filing charges alleging violations of the Act.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. The following facts appear:

The Regional and Association are parties to a collective negotiations agreement extending from July 1, 2004 through June

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1/ (...continued)  
unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

30, 2009. The Association filed for interest arbitration on April 30, 2010.

Under Article 7 of the parties' agreement, the grievance procedure is the sole and exclusive method for resolving issues of interpretation, application, or a violation of the agreement.

On September 21, 2010, the Association filed an unfair practice charge against the Regional, alleging that it violated 5.4a(1) and (3) of the Act<sup>2/</sup> when it disciplined a unit member as "an attempt to coerce and intimidate [the firefighter] from engaging in protected activity."

On October 15, 2010, the Association filed another unfair practice charge against the Regional, alleging that it violated 5.4a(1) and (5) of the Act<sup>3/</sup> when it unilaterally changed a past practice regarding the payment of terminal leave.

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2/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (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/ These provisions prohibit public employers, their representatives or 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."

ANALYSIS

The Act demands that "grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement." N.J.S.A.

34:13A-5.3. However, many alleged unfair practices - usually a claim that an employer has refused to negotiate in good faith - are interrelated with alleged contractual violations. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Accordingly, the Commission has adopted a policy of deferring the resolution of unfair practice charges to the parties' contractual grievance/binding arbitration mechanism where it is reasonably probable that the dispute underlying the alleged unfair practice will be resolved in the parties' contractual forum. Id.

Deferral is appropriate where an alleged violation of subsection 5.4a(5) is interrelated with a breach of contract claim. See, e.g., Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 267 (¶14122 1983). This policy ensures that the parties' grievance procedure will be used, as section 5.3 commands, for any dispute covered by the terms of such agreement. Human Services. In State v. Council of State College Locals, 153 N.J. Super. 91, 93 (App. Div 1977), the Court endorsed the Commission's deferral policy, finding "a clear legislative intent

that disputes over contractual terms and conditions of employment should be solved, if possible, through grievance procedures.”

If an unfair practice charge merely alleges a breach of contract, the charge will be dismissed. See City of Jersey City, P.E.R.C. No. 2006-66, 32 NJPER 78 (¶39 2006), recon. den. P.E.R.C. No. 2006-83, 32 NJPER 159 (¶70 2006); Hudson Cty., P.E.R.C. No. 2010-15, 35 NJPER 346 (¶116 2009); City of Newark, D.U.P. No. 95-22, 21 NJPER 53 (¶26037 1995); New Jersey Transit, D.U.P. No. 88-11, 14 NJPER 163 (¶19066 1988).

In light of the several mechanisms available to dispose of charges - complaint, deferral, and dismissal - and because the Association, like the Regional, has the right to file charges,<sup>4/</sup> I find that the Commission's complaint issuance standard has not been met, and I decline to issue a complaint on the allegations of this charge.<sup>5/</sup>

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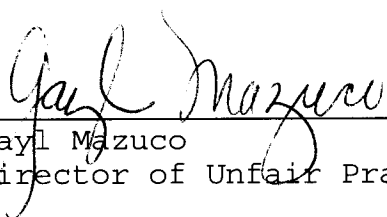
<sup>4/</sup> N.J.S.A. 34:13A-5.4.

<sup>5/</sup> N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE  
DIRECTOR OF UNFAIR PRACTICES

  
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Gayl Mazuco  
Director of Unfair Practices

DATED: August 9, 2011  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to  
N.J.A.C. 19:14-2.3.

Any appeal is due by August 19, 2011.