

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

In the Matter of  
CITY OF NORTHFIELD,

Respondent,

-and-

DOCKET NO. CO-79-199

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, NORTHFIELD  
LOCAL 2364,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the employer changed its table of organization without negotiations with the majority representative. The Director reiterates Commission determinations that changes in tables of organization as well as the criteria for appointing individuals to positions are managerial prerogatives. The Director also notes that Charging Party's claim that the employer failed to post or advertise the new position created under the change in the table of organization, is not supported by a factual submission which would indicate that the employer changed promotional procedures.

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Appearances:

For the Respondent  
McGahn & Friss, Esqs.  
(Patrick T. McGahn, Jr., of Counsel)

For the Charging Party  
James L. Marsh, President

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on February 5, 1979, and amended by letters dated June 6 and August 14, 1979, by the International Association of Fire Fighters, Northfield Local 2364 ("Local 2364") alleging that the Respondent City of Northfield (the "City") was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically, N.J.S.A.

34:13A-5.4(a)(5). 1/

Local 2364 states that the City changed its table of organization by appointing an Administrative Captain and, as a result thereof, the authority and responsibility of the Fire Line Captain has been changed. It is claimed that the City has not negotiated this organizational change. It is further claimed that the administrative position was not advertised or posted.

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

1/ This subsection prohibits 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."

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

the undersigned may decline to issue a complaint. <sup>4/</sup>

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

The Commission has consistently held, in a line of cases commencing with In re Borough of Roselle, PERC No. 76-29, 2 NJPER 142 (1976), that a change in the employer's table of organization is a managerial prerogative and that the employer is not required to negotiate its decision changing the table of organization.

Additionally, the Commission has held that the criteria for appointing an employee to a particular position is also a managerial decision and not mandatorily negotiable. The Commission has determined that procedures for promotional opportunities are terms and condition of employment (see, most recently, In re Fairview Board of Education, PERC No. 80-14, 5 NJPER 347 (¶ 10182 1979)) which would require that an employer adhere to any negotiated procedures or existing rules governing the procedures for promotions, such as posting of positions. Although the Charging Party herein has claimed that the new position was not posted, Charging Party has not alleged that the employer changed any existing rule or past practice concerning posting, nor has the Charging Party specified any provision in the parties' contractual agreement governing promotional procedures which may have been violated.

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

Accordingly, the facts alleged in the Charge, if true, may not constitute unfair practices within the meaning of the Act and the Charge is hereby dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: November 19, 1979  
Trenton, New Jersey