

D.U.P. NO. 95-26

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

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

Docket No. CI-93-44

JOSEPH POLILLO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Joseph Polillo against his employer, the City of Atlantic City. The Director refuses to issue a Complaint on Polillo's allegations that the City failed to respond to his complaints and to process his grievance. The grievance procedure in the collective agreement between Polillo's majority representative and the City is self-executing and ends in arbitration; therefore, Polillo may ask his representative to proceed to the next step of the grievance procedure to redress the procedural impropriety.

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Appearances:

For the Respondent,
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Charging Party,
Joseph Polillo, pro se

REFUSAL TO ISSUE COMPLAINT

On December 9 and December 31, 1992, Joseph Polillo, an employee of the Atlantic City Fire Department, filed an unfair practice charge with the Public Employment Relations Commission against his employer, the City of Atlantic City. Polillo alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/} by failing to respond to

^{1/} These subsections 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; and (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."

his complaints and failing to process his grievances.

Specifically, Polillo alleges in his charge that the City's fire department officials ignored his written and oral complaints, that the City's personnel director failed to hear his complaint in a timely manner, and did not process his grievances in accordance with the collective negotiations agreement between the City and Teamsters Local 331.

Polillo is a member of the negotiations unit represented by Teamsters Local 331. The agreement between the City and Teamsters Local 331 provides a four-step grievance procedure at Article IV:

Within 10 working days of the occurrence or knowledge of any grievance or dispute, the union steward may meet with the immediate supervisor and attempt to reach a satisfactory solution. The immediate supervisor has 3 working days to respond.

(2) If no solution can be reached, the steward may refer the matter to the business agent of the union, and the steward or business agent may take the matter up with the department head....The Department head has five working days to respond.

(3) If no solution can be reached within ten days from the answer in step 2, the union may submit the grievance in writing to the business administrator. The business administrator or his designee has 10 working days to respond in writing.

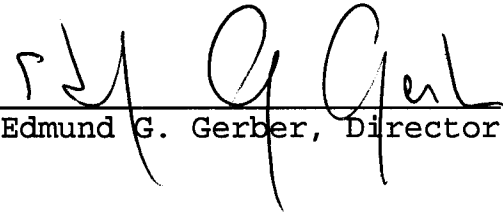
(4) if the business agent of the union and the business administrator or his designee do not reach an agreement or adjustment satisfactory to the union, the union may, in its discretion, submit the matter to an arbitrator.

Where, as here, there is a self-executing grievance procedure which ends in arbitration, it is not an unfair practice if an employer fails to act or acts improperly at an intermediate step

of the grievance procedure. The employee has the right to ask his union representative to move his grievance to the next step of the grievance process, and eventually to arbitration. Camden Cty. College (Zaleski), D.U.P. No. 87-10, 13 NJPER 166 (¶18074 1977); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982).

Accordingly, I find that this charge does not allege a violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. I decline to issue a complaint and dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 19, 1995
Trenton, New Jersey