

D.U.P. NO. 94-6

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF CORRECTIONS,

Respondent,

-and-

Docket No. CO-93-423

AFSCME, COUNCIL 71,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by AFSCME alleging the employer representative failed to convene an employee's disciplinary hearing. The Director finds that an employer's failure to respond or improper treatment of a grievance is not an unfair practice where the parties' contractual grievance procedure is self-executing.

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Appearances:

For the Respondent,
Robert J. DelTufo, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party,
Linda Cossey, Staff Representative

REFUSAL TO ISSUE COMPLAINT

On June 17, 1993, AFSCME Council 71 filed an unfair practice charge against the State of New Jersey, Department of Corrections, alleging that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(7) and (b)(2)^{1/} when the

^{1/} Subsection (a)(7) prohibits public employers, their representatives or agents from: (7) Violating any of the rules and regulations established by the commission." Subsection (b)(2) prohibits employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

Corrections Department representative at Mid-State Prison failed to convene an employee's disciplinary hearing.

The Commission has often held that claims concerning the employer's refusal to respond to a grievance or its improper treatment of a grievance at an intermediate step of the grievance procedure, in and of itself, is not an unfair practice when the contract provides for a self-executing grievance procedure which culminates in binding arbitration. See New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); Wayne Bd. of Ed., D.U.P. 92-9, 18 NJPER 105 (¶23050 1992); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982).

Here, AFSCME's contract with the State includes a self-executing grievance procedure which culminates in binding arbitration. The contract permits the union, if not satisfied with the result (or non-result) of any step of the grievance procedure, to simply proceed to the next step.

Additionally, while AFSCME alleges that the State's conduct violates the Commission's Rules, no rule section is identified in the charge. There is no portion of the Commission's Rules which involves employee disciplinary hearings.

Based on the foregoing, I find that the Commission's complaint issuance standard has not been met and decline to issue a

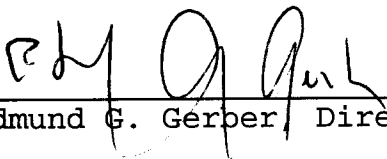
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3.

complaint on the allegations of this charge. N.J.A.C. 19:14-2.3.

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: July 22, 1993
Trenton, New Jersey