

D.U.P. NO. 97-34

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

In the Matter of

TOWNSHIP OF SOUTHAMPTON,

Respondent,

-and-

Docket Nos. CO-97-100  
CO-97-170

INDEPENDENT UNION, SOUTHAMPTON  
TOWNSHIP PUBLIC WORKS EMPLOYEES,  
LOCAL 1161,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on two unfair practice charges filed by Local 1161 against the Township of Southampton. The Director finds that the collective bargaining agreement has a self-executing grievance procedure and that the Township's actions in processing the disputed grievances do not rise to the level of repudiating the contract. Additionally, the Director finds that the Township's decision to be represented by an attorney in a grievance hearing is a managerial prerogative, which cannot be interfered with by Local 1161 pursuant to N.J.S.A. 34:13A-5.4(b)(2).

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Appearances:

For the Respondent,  
Parker, McCay & Criscuolo, attorneys  
(Stephen J. Mushinski, of counsel)

For the Charging Party,  
James L. Powell, Jr., Secretary

REFUSAL TO ISSUE COMPLAINT

On September 27, 1996 and October 21, 1996, the Independent Union, Southampton Township Public Works Employees, Local 1161 filed an unfair practice charge (CO-97-100) and an amendment against Southampton Township alleging that the Township violated subsections 5.4(a)(1), (5) and (6)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> 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. (5) Refusing to

Footnote Continued on Next Page

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Local 1161 asserts that it filed grievances on November 21, 1994, June 1995, September 7, 1995, October 16, 1995, February 26, 1996 and August 1, 1996 and that although the Township has denied each grievance in writing, it will not meet with the Union to try to settle the grievances. Local 1161 asserts that the Township's refusal to meet with them about grievances is an unfair practice.

The Township denies violating the Act asserting that Local 1161 has a self-executing grievance procedure in its contract giving it the right to move grievances to arbitration regardless of the employer's conduct. Additionally, the Township asserts that the charge is not timely filed because the grievances in it involve events occurring as far back as 15 years ago.

On November 25, 1996, Local 1161 filed a second charge against the Township (CO-97-170) alleging 5.4(a)(1), (2), (5) and (7) violations of the Act.<sup>2/</sup> Again, the Local alleges that the

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1/ Footnote Continued From Previous Page

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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

2/ 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. (2) Dominating or

Township administration has not abided by the contractual grievance procedure by insisting that the Township attorney be present during grievance discussions. The Union filed a grievance about the employer's action on November 27, 1996. The Township denies violating the Act, asserting that it has the right to select its representatives for purposes of negotiations or the adjustment of grievances and that the employee organization cannot interfere with the employer's selection of its representative.

Local 1161 and the Township are parties to an agreement whose duration is from January 1, 1996 - December 31, 1998. Article II, entitled "Grievance Procedure", in pertinent part provides:

Any grievance or dispute which may arise between the parties, involving the application, meaning, interpretation or alleged violations of the terms and conditions of this Agreement, shall be settled in the following manner:

Step 1: The Union Steward, with the aggrieved employee, shall take up the grievance or dispute with the employee's immediate supervisor, within seven (7) working days of the date of the occurrence of the grievance. The supervisor shall attempt to adjust the matter and shall respond to the Steward within seven (7) working

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2/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

days. If the grievance or dispute is not taken up in accordance with this provision within seven (7) working days of its occurrence, it shall be deemed abandoned.

Step 2: If the grievance still remains unadjusted, it shall be presented by the President, or Union Representative to the Administrator, or his representative in writing within seven (7) working days after the response of the supervisor is due. The Administrator (or his representative) shall meet with all parties involved within ten (10) working days.

Step 3: If the grievance still remains unadjusted, it shall be presented to the Public employees' (sic) Relations Commission for arbitration within seven (7) working days after the response of the Township representative in Step 2 is due.

Should the Township require a meeting with an employee or when discipline may be imposed upon an employee, the employee shall be advised of his right to Union representation. If the employee requests representation, a Union representative will be present at the meeting.

Except by mutual agreement, all timeliness provisions of this Article must be complied with and failure to comply by either party will result in default by that party of its position unless either party can demonstrate justification or reasonable cause for failure to do so.

Arbitration expenses incurred will be shared equally by the parties.

Our investigation<sup>3/</sup> reveals that IUSTPW Local 1161 filed a timely representation petition (RO-96-86) on February 21, 1996,

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<sup>3/</sup> On February 21, 1997, I wrote to the parties indicating my intention to make the following findings and giving them an opportunity to challenge their factual accuracy. Neither party responded.

seeking to represent all permanent public works department employees of the Township. Laborers Local 172 was the incumbent majority representative and had been since 1977; however, on March 4, 1996, the Laborers disclaimed interest in continuing to represent this unit.<sup>4/</sup> After winning a Commission-supervised election, IUSTPW, Local 1161 was certified as the majority representative on April 29, 1996.

Local 1161 alleges in CO-97-100 that it had filed grievances on November 21, 1994, June 1995, September 7, 1995, October 16, 1995, February 26, 1996 and August 1, 1996. However, the first four grievances were actually filed by the Laborers. The fifth grievance, filed on February 26, 1996, was filed by Local 1161 before it was certified as the majority representative and before the Laborers had disclaimed interest in the unit. The final grievance was filed on August 1, 1996, after Local 1161 became the certified majority representative.

The Township provided written responses denying each grievance to either the Laborers or Local 1161. The denials were supported by thorough explanations relying on the employer's interpretation of the applicable contracts in place at the time of the grievances.

Local 1161 alleges that the Township has refused to meet about grievances with the Union as required in Article II, Step 2

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<sup>4/</sup> The Laborers' contract ran from December 4, 1992 through December 4, 1995.

of the contract. However, representatives of Local 1161 and the Public Works Supervisor Mike Chaney did meet on October 18, 1996; discussed the grievances filed on September 7 and October 16, 1995 and settled them. Local 1161 has not moved the remaining four grievances forward to binding arbitration hoping that the Township would meet with them to settle the grievances.

Additionally, Local 1161 filed another grievance on November 27, 1996, protesting the employer's right to attorney representation at a meeting scheduled on November 20, 1996, which was to discuss an earlier filed grievance. The Township asserted its right to have its attorney at the grievance meeting. This grievance is the subject of CO-97-170. The parties met to discuss this grievance on December 10, 1996, but the grievance was not settled.

We have repeatedly held that where the parties' contract provides for a self-executing grievance procedure ending in binding arbitration, it is not an unfair practice for the employer to fail to act at an intermediate step of the grievance procedure. See State of New Jersey, D.U.P. No. 88-9, 14 NJPER 146 (¶19058 1988); New Jersey Transit Bus Opers., Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Boro. of Mountainside, D.U.P. No. 85-17, 11 NJPER 6 (¶16003 1984); 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); Essex Cty. Voc. Schl. Bd. of Ed., D.U.P. No. 77-2, 2

NJPER 372 (1976); Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1975).

However, repudiation of a grievance procedure is an unfair practice. State of New Jersey (Hum. Serv.), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984); New Jersey Transit Bus Opers., P.E.R.C. No. 89-29, 14 NJPER 638 (¶19267 1988). In New Jersey Transit, the Commission found that when the employer adopted a blanket policy refusing to meet at second or third step hearings if the grievant was not present, it had committed an unfair practice. This "blanket policy", as opposed to a case-by-case determination based on the circumstances of each grievance, was found to be a repudiation of the negotiated grievance procedure and a violation of the duty to process grievances due to the employer's behavior pattern.

Additionally, N.J.S.A. 34:13A-5.4(c) establishes a six-month statute of limitations period for the filing of unfair practice charges. The statute provides in pertinent part:

...that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such a charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

Five out of the six grievances described in the unfair practice charge CO-97-100 involve events which occurred more than six months prior to the filing of the charge. They were also grievances filed before Local 1161 was the certified majority



representative.<sup>5/</sup> The allegation in CO-97-100, concerning a grievance filed on August 1, 1996, by Local 1161, involving the utilization of vacation time by an employee, was timely filed. However, since there is a self-executing contractual grievance procedure, the processing of this grievance does not present a complaintable issue.<sup>6/</sup> The Township's demonstrated willingness to meet with Local 1161 since it has been the majority representative and settle at least two of the outstanding grievances does not point to a pattern of their intent to repudiate the contract with this Union.

The only allegation raised by Local 1161 in CO-97-170 challenges the Township's right to have an attorney present at a grievance meeting scheduled on November 20, 1996. Local 1161 claims this is against any union procedures, past practice and the contract. I do not find, however, the Township's desire to be represented by an attorney to be an unfair practice.

Neither the employer nor the majority representative may interfere with each other's choice of representatives for negotiations and grievance processing or insist upon negotiating over the identity of those representatives. Matawan Reg. Bd. of

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<sup>5/</sup> The November 21, 1994 grievance involves the actual date of hire established for an employee over 15 years ago.

<sup>6/</sup> Charges which allege a mere interpretation of a contract, as this one grievance may, do not rise to the level of an unfair labor practice and are dismissable. See State of New Jersey (Hum. Serv.).

Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980); General Electric Co. v. N.L.R.B., 412 F.2d 512, 71 LRRM 2418 (2d Cir. 1969); see generally Hardin, The Developing Labor Law, at 927 (3d ed. 1992). Proposals concerning the composition of a negotiations team are not mandatorily negotiable. Willingboro Bd. of Ed., P.E.R.C. No. 92-48, 17 NJPER 497 (¶22243 1991) (proposal not mandatorily negotiable to extent it would circumscribe employer's right to designate representative to negotiate over overtime compensation); Borough of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284 (¶20125 1989) (proposal requiring police commissioner to be present at negotiations not mandatorily negotiable); Matawan (proposal setting number and identity of negotiations team members not mandatorily negotiable); Jackson Tp., I.R. No. 90-16, 16 NJPER 210 (¶21083 1990) (article prohibiting Director of Public Safety from sitting on negotiations team is unenforceable).

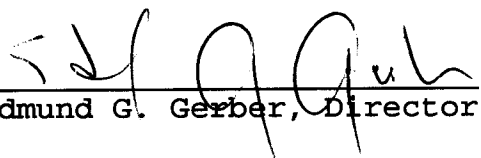
N.J.S.A 34:13A-5.4(b)(2) expressly prohibits an employee organization from interfering with, restraining, or coercing a public employer's selection of its representatives for negotiations or grievance adjustments while N.J.S.A. 34:13A-5.4(a)(1) and (5) implicitly prohibit a public employer from interfering with, restraining, or coercing an employee organization's selection of its representatives. See, e.g., Bogota Bd. of Ed., P.E.R.C. No. 91-105, 17 NJPER 304 (¶22134 1991); Bergen Pines Cty. Hosp., P.E.R.C. No. 91-98, 17 NJPER 254 (¶22117 1991); Salem Cty., P.E.R.C. No. 87-122, 13 NJPER 294 (¶18124 1987). Contrast Downe Tp. Bd. of Ed., P.E.R.C.

No. 86-66, 12 NJPER 3 (¶17002 1985) (union did not interfere with board's right to select its negotiations representatives by opining that employer should not be represented by supervisor and principal who evaluated teachers on union's negotiations team; no coercion or refusal to negotiate shown). The Commission restrained arbitration of grievances contesting the number and identity of the Board representatives at grievance hearings. Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-46, 22 NJPER 35 (¶27017 1995).

Local 1161 cannot insist that the Township's past choice to not have an attorney at grievances precludes it from being represented by an attorney in grievances now. Local 1161 cannot determine who the Township representative will be.<sup>7/</sup>

Accordingly, I find that the Commission's complaint issuance standard has not been met and I will not issue complaints on the allegations of these charges.<sup>8/</sup> The charges are dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: March 14, 1997  
Trenton, New Jersey

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<sup>7/</sup> The Township has not filed an unfair practice charge against Local 1161 alleging 5.4(b)(2) violations.

<sup>8/</sup> N.J.A.C. 19:14-2.3.