

D.U.P. NO. 85-15

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

In the Matter of

FANWOOD P.B.A., LOCAL 123,

Respondent,

-and-

DOCKET NO. CE-85-8

BOROUGH OF FANWOOD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to the allegations of the Charging Party against the Fanwood P.B.A., Local 123, because the charge concerns a procedural defect in an arbitration proceeding. The Director chooses not to intervene in a proceeding over which the arbitrator has been given exclusive jurisdiction in N.J.A.C. 19:16-5.7(a).

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

In the Matter of

FANWOOD P.B.A., LOCAL 123,

Respondent,

-and-

DOCKET NO. CE-85-8

BOROUGH OF FANWOOD,

Charging Party.

Appearances:

For the Respondent
Loccke & Correia
(Lawrence Henderson Of Counsel)

For the Charging Party
Mark S. Ruderman, Esq.

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on September 17, 1984, by the Borough of Fanwood ("Borough") against the Fanwood P.B.A., Local 123 ("Local 123") alleging that Local 123 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. ("Act"), specifically N.J.S.A. 34:13A-5.4(b) (3) and (5). ^{1/}

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

^{1/} N.J.S.A. 34:13A-5.4(b) prohibits public employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public lemployer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the Commission."

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 me and has established a standard upon which an unfair practice complaint may be issued. The 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 and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that I may decline to issue a complaint. ^{4/}

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

The charge alleges that the parties, during negotiations for a successor agreement, reached an impasse and that an arbitrator was appointed to resolve the parties' differences. After conducting two meetings, the arbitrator established a time table in which the parties were to file their final offers and briefs. The charge further alleges that Local 123 failed to file its final offer brief within

^{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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designed agent thereof..."

^{3/} N.J.A.C. 19:14-2.1

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

the time prescribed by the arbitrator and that in so doing, has violated the Act by refusing to negotiate in good faith.

Commission rule N.J.A.C. 19:16-5.7(a) provides that:

The conduct of the arbitration proceeding by an arbitrator or panel of arbitrators shall be under exclusive jurisdiction and control of the arbitrator or arbitrators.
(Emphasis supplied)

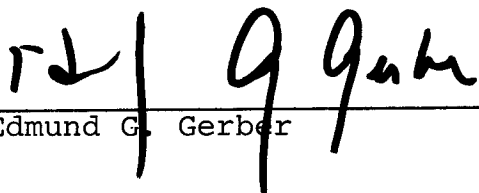
Further, under subsection (k), the arbitrator is given discretion in permitting the parties to file briefs and authority to set a time period for their submission.

The arbitrator has been given exclusive jurisdiction to conduct the proceeding in any way he deems most appropriate. He further has been given the authority to correct any deficiencies in the proceeding. In this particular instance, he has allowed Local 123 to file its brief some six weeks late.

The parties have chosen this particular proceeding and this particular arbitrator to ameliorate their differences. It is apparent that in §5.7(a) the Commission expressed a policy that grants to the arbitrator wide discretion in running the hearing as he or she sees fit. It would, therefore, be inappropriate for the Commission to intervene. Further, if after the arbitrator renders his award, the Borough truly believes that it has been harmed by this claimed procedural defect, it can move in the New Jersey Superior Court to vacate the arbitrator's award.

Accordingly, for the above reasons, I decline to issue a complaint.

BY ORDER OF COMMISSION DESIGNEE


Edmund G. Gerber

DATED: November 5, 1984
Trenton, New Jersey