

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

In the Matter of

BOROUGH OF MOUNTAINSIDE,

Respondent,

-and-

DOCKET NO. CO-85-8

P.B.A., LOCAL 126 and TODD TURNER,

Charging Parties.

SYNOPSIS

Commission Designee determines that an unfair practice charge filed by P.B.A. Local 126 and Todd Turner ("Charging Parties") against the Borough of Mountainside ("Borough") does not meet the Commission's complaint issuance standards. The Charging Parties alleged that the Borough violated §§ 5.4(a)(1), (3), and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by improperly disciplining Mr. Turner and by refusing to process and properly investigate a grievance relating to his discipline. The Charging Parties fail to allege, however, that the discipline imposed on Mr. Turner was a form of discrimination in retaliation for the exercise of protected activity. The Commission Designee also applies Commission law providing that an employer's refusal to respond or correctly process a grievance is not an unfair practice where, as here, the parties' contractual grievance procedure permits an aggrieved party to unilaterally invoke the higher levels of the procedure up to, and including, binding arbitration.

Accordingly, the Commission Designee declines to issue a complaint.

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Appearances:

For the Respondent  
David A. Wallace, Esq.

For the Charging Parties  
Schiller & Sasso  
(Richard M. Sasso Of Counsel)

REFUSAL TO ISSUE COMPLAINT

On July 5, 1984, P.B.A. Local 126 and Police Officer Todd Turner ("Charging Parties") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Borough of Mountainside ("Borough") had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically §§ 5.4(a)(1), (3), and (5). <sup>1/</sup>

<sup>1/</sup> N.J.S.A. 34:13A-5.4(a) prohibits 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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."

N.J.S.A. 34:13A-5.4(c) provides that the Commission has 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. <sup>2/</sup> 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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

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

The Charging Parties allege that the Borough violated §§ 5.4 (a) (1), (3), and (5) of the Act by improperly disciplining Mr. Turner and by refusing to process and properly investigate a grievance relating to his discipline.

The Charging Parties have failed to allege, however, that the discipline imposed on Mr. Turner was a form of discrimination in retaliation for the exercise of protected activity on behalf of an employee organization, or for the exercise of any other protected

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<sup>2/</sup> 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 designated agent thereof..."

<sup>3/</sup> N.J.A.C. 19:14-2.1

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

activity. They have failed, therefore, to allege facts which, if true, may constitute an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (3). In re Union County Bd/Social Services, D.U.P. No. 83-10, 9 NJPER 240 (# 14112 1983).

Concerning the claims that the Borough refused to process and properly investigate Mr. Turner's grievance, the Commission has repeatedly held that an employer's refusal to respond to a grievance, or the incorrect processing of a grievance at any step of the grievance procedure, in and of itself, is not an unfair practice where the parties have a self executing grievance procedure with binding arbitration as the final step. That is, the parties' contractual grievance procedure permits an aggrieved party to unilaterally invoke the higher levels of the procedure through arbitration. In re Township of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (# 13309 1982); In re Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (# 13101 1982); In re Essex Cty. Vocational School Bd/Ed, D.U.P. No. 77-2, 2 NJPER 372 (1976); In re Englewood Bd/Ed, E.D. No. 76-34, 2 NJPER 175 (1975).

The Commission has received a copy of the parties' contract. It contains, in Article III, a grievance procedure that does permit an aggrieved party to unilaterally invoke its higher levels, if no response (or a negative response) is received from the employer at a given step. The grievance procedure culminates in binding arbitration.

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF COMMISSION DESIGNEE

  
Edmund G. Gerber

DATED: November 15, 1984  
Trenton, New Jersey