

D.U.P. NO. 93-34

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. CI-93-52

KEVIN MILLER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses the charge filed by Kevin Miller concerning his employer's failure to schedule a disciplinary hearing within the time limits established in the applicable collective bargaining agreement. Absent facts not present here, Miller, as an individual, has no standing to allege that a contract provision has been repudiated. Only the majority representative has standing to raise this issue. However, an employer's refusal to follow the grievance procedure is generally not an unfair practice where the contract contains a self-executing grievance procedure culminating in binding arbitration. Finally, no facts alleged in the charge indicate that the delayed scheduling of Miller's hearing was in retaliation for any protected activity.

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Appearances:

For the Respondent,
Office of Employee Relations
(Melvin Gelade, Director)

For the Charging Party,
Kevin Miller, pro se

REFUSAL TO ISSUE COMPLAINT

On February 1, 1993, Kevin Miller 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. ("Act"), specifically subsections 5.4(a)(1) and (3),^{1/} when it failed to convene a hearing within the time limits established in the State Law

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. (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."

Enforcement collective bargaining agreement on a disciplinary matter affecting Mr. Miller.


Absent facts not present here, an individual has no standing to contest the application or interpretation of a contract provision. Only the majority representative which negotiates and administers the contract has standing to allege a contract provision has been repudiated. See City of Brigantine, D.U.P. No. 92-14, 18 NJPER 215 (¶23097 1992).

Further, allegations of an employer's refusal to respond to a grievance or otherwise follow the grievance procedure is generally not an unfair practice when the contract contains a self-executing grievance procedure culminating in binding arbitration. See Tp. of Old Bridge, D.U.P. No. 93-5, 18 NJPER 409 (¶23188 1992); Wayne Bd. of Ed., D.U.P. No. 92-9, 18 NJPER 105 (¶23050 1992); State of New Jersey, D.U.P. No. 88-9, 14 NJPER 746 (¶19058 1988); N.J. Transit Bus Opers., Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986). See also N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt. No. A-1273-80T2. Accordingly, subsection 5.4(a)(1) has not been violated.

Finally, no facts alleged in the charge indicated that the delayed scheduling of Mr. Miller's disciplinary hearing was in retaliation for any protected activity. Accordingly, the part of the charge alleging a violation of subsection 5.4(a)(3) is dismissed.

Accordingly, the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations in this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: March 30, 1993
Trenton, New Jersey