D.U.P. NO. 86-1

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

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-85-264

LOCAL UNION NO. 11, I.B.T.,

Charging Party.

Synopsis

The Director of Unfair Practices declines to issue a Complaint with respect to allegations of subcontracting raised by the Charging Party against Middlesex County College. The Director finds that under Local 195, IFPTE v. State of New Jersey, 88 N.J. 393 (1982), even in situations where a layoff or job displacement might result, all incidents of contracting or subcontracting are non-negotiable matters of managerial prerogative.

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Appearances:
For the Respondent, Jackson, Lewis, Schnitzer & Krupman
(Patrick L. Vaccaro, of Counsel)

For the Charging Party, Schneider, Cohen & Solomon
(David Grossman, of Counsel)

REFUSAL TO ISSUE COMPLAINT

On April 15, 1985, an unfair practice charge was filed with the Public Employment Relations Commission ("Commission") by Local Union No. 11, I.B.T. ("Local 11") alleging that the Middlesex County College ("College") 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 §§5.4(a)(1), (3) and (5).[1/]

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; (5) Refusing to negotiate in good faith with a majority

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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 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 unfair practice complaints shall be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act.[3/] The Commission's rules provide that I may decline to issue a complaint.[4/]

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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."

2/ N.J.S.A. 34:13A-5.4(c) states: 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; provided 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 charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

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

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

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

Local 11 is the exclusive majority representative of a unit of Custodial and Maintenance Employees employed by the College, and alleges that although historically, all painting done on the premises of the College had been done by bargaining unit employees, on or about April 1, 1985, without notice and without negotiations with Local 11, the College illegally had painting done by non-union, non-employees of the College.

Local 11's charge alleges that the College unilaterally subcontracted painting historically done by bargaining unit employees. However, in Local 195, IFPTE v. State of New Jersey, 88 N.J. 393 (1982), the New Jersey Supreme Court ruled that even in situations where a layoff or job displacement might result, all incidents of contracting or subcontracting were non-negotiable matters of managerial prerogative. See also, In re City of Jersey City, P.E.R.C. No. 84-53, 9 NJPER 679 (¶ 14297 1983).[5/] Thus, under Local 195, supra, there being no obligation to negotiate with Local 11 before subcontracting, it would appear that no unfair practice charge lies in this matter.

On June 20, 1985 I advised Local 11 of the deficiencies in its charge, and requested the submission of additional facts

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5/ In Local 195, supra, the Court stated further that the parties' contract may provide for discussion between the majority representative and employer on an employer's

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alleging unfair practices which would fall within the Act's cognizable limitations. Local 11 has not provided any additional information in support of its allegations.

Accordingly, inasmuch as Local 11 has failed to substantiate its charge, I decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber
Director

DATED: July 3, 1985
Trenton, New Jersey

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decision to sub-contract prior to an employer contracting or sub-contracting. However, no such provision is in the contract between the parties here.