

E.D. NO. 76-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

Docket No. CO-76-5,
CO-76-6, and CO-76-7

-and-

FRATERNAL ORDER OF POLICE, CAMDEN
LODGE 1,

Charging Party.

SYNOPSIS

The Executive Director refuses to issue a complaint at this time in three consolidated unfair practice proceedings, finding that further processing of the cases should be held in abeyance pending submission of the parties' dispute to their contractual grievance procedure, terminating in binding arbitration. The dispute revolves around differing interpretations of a specific provision in the parties' agreement. Jurisdiction is retained for the limited purpose of entertaining a request for further consideration in the event that the contractual procedures fail to produce a settlement or an arbitration award, or that the procedures or the award have not been fair and regular or have reached a result "repugnant to the Act".

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REFUSAL TO ISSUE COMPLAINT

Unfair practice charges were filed with the Public Employment Relations Commission (the "Commission") by the Fraternal Order of Police, Camden Lodge 1 (the "Lodge") on July 7, 1975 (Docket No. CO-76-5, CO-76-6, and CO-76-7) alleging that the City of Camden (the "City") has engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4 (a) (1), (2), and (3). ^{1/} These charges are hereby ordered consolidated.

The charges have been processed pursuant to N.J.A.C. 19:14-1.6 of the Commission's Rules and the undersigned, as the Commission's named designee, has reviewed the allegations of the Charging Party. It appears to the undersigned that the allegations of the Charging Party, if true, may constitute unfair practices on the part of the City, but that formal proceedings in respect thereto should not be instituted at this time. ^{2/}

1/ These subsections prohibit employers from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

2/ See N.J.A.C. 19:14-2.1

The three charges filed by the Charging Party arise out of alleged violations of Article III of the parties' contractual agreement. Article III of the contract refers to certain privileges granted to Lodge representatives. Section 4 of Article III provides:

The President of the Lodge, or in his absence his duly authorized representative, shall be excused from all duties and assignments when required in order to discharge his duties as the representative of the Lodge. The Director of Public Safety, or his designee, shall have the right to determine the reasonableness of the time being used under this article and his determination as to the reasonableness shall be subject to the grievance procedure. The City shall endeavor to place the President, at his request, in a position so as not to disturb city Police functions.

The Charging Party alleges that the President of the Lodge and other Lodge representatives have been wrongfully marked "absent without leave" for utilization of time needed to perform Lodge duties.

The contract between the parties also contains a grievance procedure culminating with binding arbitration if the parties are unable to resolve a grievance and where the grievance is not one subject to Civil Service appeal. A grievance is defined in the contract as "any disagreement or dispute between the City and the employees, or between the City and the Lodge, involving the application, interpretation or alleged violation of this agreement."

The Charging Party has indicated that a formal written

grievance was filed with the Director of Public Safety pertaining to the allegations contained in the charges. Moreover, in a letter dated November 12, 1975 the Lodge indicated to the Commission staff member assigned to the instant cases that it was proceeding with arbitration of its grievance and that it requested the Commission to defer consideration of the charges until after the grievance procedure was explored.

It appears that an issue of contract interpretation lies at the heart of the dispute. The particular provision alleged to have been violated is specifically subject to the grievance procedure of that contract.

In the undersigned's judgment, the purposes of the Act are best effectuated by the expeditious utilization of the grievance-arbitration mechanism negotiated by the parties where utilization of such procedures may resolve the underlying basis for a charge of unfair practice.^{3/} It is clear that the issue of contract interpretation raised by the parties is subject to resolution by the grievance procedure. It is also reasonably probable that the instant dispute will be resolved under the parties' voluntarily created grievance and arbitration machinery.

While deferral of the instant dispute at this time to the processes for resolution voluntarily established by the parties is appropriate, the Commission shall retain jurisdiction

3/ The undersigned has recently expressed this opinion favoring voluntary settlement of labor disputes through the grievance and arbitration process in Board of Education of East Windsor and Hightstown Education Association, E.D. No. 76-6, I.N.J.P.E.R. 59 (1975).

of the charge while that process is being pursued. Retention of jurisdiction will permit the Commission to re-enter the dispute to entertain an application submitted at the appropriate time which either asserts the failure to promptly pursue the dispute to resolution under the parties' own machinery, or lack of fairness in the grievance and arbitration process, or an arbitration determination repugnant to the Act.

Without prejudice to either party, the undersigned accordingly refuses at this time to issue a complaint herein. Jurisdiction of the charge shall be retained for the purpose of entertaining an appropriate and timely application for further consideration upon a proper showing that (a) the dispute has not with reasonable promptness after the issuance of this determination, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedure has not been fair and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act.

BY ORDER OF THE EXECUTIVE DIRECTOR


Jeffrey B. Tener

DATED: Trenton, New Jersey
December 23, 1975