

D.U.P. NO. 86-15

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

In the Matter of

MORRIS COUNTY COLLEGE AND
MORRIS COUNTY COLLEGE FACULTY
ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-86-4

PROFESSOR KATHLEEN ZIMMERMAN,

Charging Party.

Synopsis

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed against Morris County College and the Morris County College Faculty Association. The charges involve numerous incidents surrounding a denied application for salary increment and grievance filed pursuant thereto.

The Director found that Zimmerman had fully argued her case before an arbitrator who entered an award which was not repugnant to the Act. The binding arbitration proceeding, properly established by the collective bargaining agreement, was found to be fair and regular. Accordingly, relying on East Windsor, E.D. No. 76-6, 1 NJPER 59 (1975) and the NLRB cases of Collyer Insulated Wire, 92 NLRB 837, 77 LRRM 1931 (1971) and Spielberg Manufacturing Company, 12 NLRB 1080, 36 LRRM 1152 (1955), the Director deferred to the arbitrator's decision.

In addition, with regard to the allegations that the Association breached its duty of fair representation, the Director found that the Association had acted in a reasonable and diligent manner. Zimmerman made no allegations that the Association acted arbitrarily or discriminated against her in any way. Accordingly, the Director determined that the Commission's complaint issuance standard had not been met.

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Appearances:

For Morris County College
Vogel, Chait, Schwartz & Collins, Esqs.
(Aron M. Schwartz, of counsel)

For Morris County College Faculty Association
Sterns, Herbert & Weinroth, Esqs.
(Michael J. Herbert, of counsel)

For the Charging Party
Prof. Kathleen Zimmerman, pro se

REFUSAL TO ISSUE COMPLAINT

On July 15, 1985, Professor Kathleen Zimmerman ("Zimmerman") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the County College of Morris ("College") and the Faculty Association of the County College of Morris ("Association"), alleging violations of

subsections 5.4 (a)(1), (3), (5), (6), (7)^{1/} and (b)(1), (3), (4) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

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.^{3/} The Commission

^{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 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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

^{2/} These subsections prohibit employee organizations, 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) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (5) Violating any of the rules and regulations established by the commission."

^{3/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have the 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 practice, the commission, or designated agent thereof, shall have authority to issue and cause to be served upon such party a

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. The Commission's rules also provide that I may decline to issue a complaint if the allegations in the charge do not on their face constitute an unfair practice.^{4/}

It is Zimmerman's position that numerous incidents (as set forth in the lengthy charge and supplemental letter of September 16, 1985) surrounding a denied application for salary increment, and grievance filed pursuant thereto, constitute unfair labor practices by both Morris County College and the Morris County College Faculty Association. Conversely, the Association and the College, respectively, each contend that it did not violate any provisions of the Act, and further that even assuming all of the facts alleged in the charge were true, the allegations set forth do not establish unfair practices as a matter of law.

3/ Footnote Continued From Previous Page

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..."

4/ N.J.A.C. 19:14-2.1 et seq.

With regard to the merits of Zimmerman's charge against the College, it is undisputed that on June 17, 1985, Zimmerman had a grievance which went to binding arbitration. The arbitrator entered an award finding that Professor Zimmerman's salary had been properly established pursuant to the collective bargaining agreement between the parties. The Commission has long held that where the underlying dispute in an unfair practice charge concerns the interpretation of a contract, the parties' own voluntarily selected resolution process (i.e. arbitration) should be utilized in preference to an unfair practice proceeding. The Commission held in In re East Windsor Bd. of Ed., E.D. No. 76-6, 1 NJPER 59 (1975):

...voluntary settlement of labor disputes through the grievance and arbitration process, finds specific support in the policy declaration of the Act, N.J.S.A. 34:13A-2, in the interplay between the duty of public employer and employee organizations to negotiate in good faith, and in their concomitant responsibility to utilize their own voluntarily created grievance procedures to resolve disputes subject to such procedures."
(Footnotes omitted)

The rationale of the Commission's policy to defer to arbitration has its genesis in the long standing deferral policy of the National Labor Relations Board. See, In re Collyer Insulated Wire, 92 NLRB 837, 77 LRRM 1931, 1934 (1971).

Moreover, long before it first enunciated its policy in Collyer, supra, the NLRB held that where the underlying dispute has already been litigated in the arbitration forum, it will not relitigate that dispute, providing:

the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the [arbitrator] is not clearly repugnant to the purposes and policies of the Act. In these circumstances we believe that the desirable objective of encouraging the voluntary settlement of labor disputes will best be served by our recognition of the arbitrators' award.

In re Spielberg Manufacturing Company, 12 NLRB 1080, 36 LRRM 1152 (1955). The rationale in Spielberg, supra, is completely consistent with the Commission's rationale and is applicable here.

Zimmerman had the opportunity to fully argue her case before the arbitrator. A decision was made based on the evidence presented. Although Zimmerman detailed certain difficulties she had leading up to the arbitration hearing, it appears that the arbitration was fair and regular and there is no factual allegations that the arbitrator's award was repugnant to the Act.^{5/} Accordingly, after careful consideration of all of the charges alleged against the College, I have determined that the Commission's complaint issuance standard has not been met.

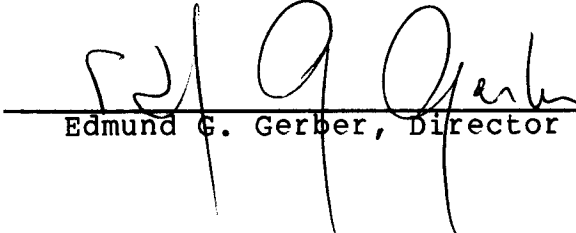
Further, with regard to the charges set forth against the Faculty Association, Zimmerman alleges generally that the union breached its duty to fairly represent her. In In re N.J. Turnpike Employees Union, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979), the Commission set forth the standards for finding a breach of the duty of fair representation as follows:

^{5/} c.f. In re N.J. Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

In considering a union's duty of fair representation, certain principles can be identified. The union must exercise reasonable care and diligence in investigating, processing and presenting grievances; it must make a good faith judgment in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. 5 NJPER at 413.

See also, In re Council No. 1, AFSCME, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978); Vacca v. Sipes, 366 U.S. 171 (1976). Here, the Association agreed to and did take Zimmerman's grievance to arbitration and provided her with representation at the proceedings. Thus, it appears from the facts presented that the Association did exercise reasonable care and due diligence. Moreover, although Zimmerman points to certain inconsistencies leading up to the arbitration she makes no allegations that the Association acted arbitrarily or discriminated against her in any way. Zimmerman's dissatisfaction with the outcome of the arbitration does not provide a basis to charge the Association with a breach of its duty of fair representation. Accordingly, I have determined that here again, the Commission's complaint issuance standard has not been met and therefore, I decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICE PROCEEDINGS


Edmund G. Gerber, Director

DATED: May 5, 1986
Trenton, New Jersey