

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON COUNTY BOARD OF CHOSEN  
FREEHOLDERS,

Respondent,

Docket No. CO-76-135

-and-

HUNTERDON COUNTY COUNCIL #15,  
Charging Party.

SYNOPSIS

The Executive Director refuses to issue a complaint at this time in an unfair practice proceeding, finding that further processing of the case should be held in abeyance pending submission of the parties' dispute to their contractual grievance procedure which terminates in binding arbitration. The dispute relates to a reorganization of the County Road and Bridge Department. The contractual definition of grievance is very broad and the Charging Party has filed a grievance regarding this matter. Jurisdiction is retained for the limited purpose of entertaining a request for further consideration in the event that the dispute has not with reasonable promptness either been resolved amicably or been submitted to arbitration, or the grievance or arbitration procedure has not been fair or regular, or the grievance or arbitration procedures have reached a result which is repugnant to the Act.

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REFUSAL TO ISSUE COMPLAINT

An unfair practice charge was filed with the Public Employment Relations Commission (the "Commission") by Hunterdon County Council #15 (the "Council") on November 26, 1975, alleging that the Hunterdon County Board of Chosen Freeholders (the "County") has engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a) (5) and (7).<sup>1/</sup>

The charge has 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 County, but that formal proceedings in respect thereto should not be instituted at this time.<sup>2/</sup>

<sup>1/</sup> These subsections prohibit employers from "(5) refusing to negotiate in good faith with a majority representative of the employees in an appropriate unit concerning the terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the Rules and Regulations established by the Commission.

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

The Charging Party alleges, in substance, that the County has unilaterally changed terms and conditions of employment "by the implementation of a proposed reorganization." The unfair practice charge is set forth in full below.<sup>3/</sup> The

3/ The New Jersey Employer-Employee Relations Act provides at N.J.S. 34:13A-5.3 as follows: "Any changes or modifications in terms or conditions of employment are made only through negotiation with the majority representative", and that "proposed new rules or modifications of existing rules governing work conditions shall be negotiated with the majority representative before they are established".

Negotiations are in progress between the parties regarding terms and conditions of employment for the period commencing January 1, 1976. The contract which is in existence terminates on or about December 31, 1975. The charging party relies on the determination of PERC in the matter of the Piscataway Township Board of Education, No. CO-133.

The public employer has changed the status quo by the implementation of a proposed reorganization as a result of which there have been changes which include but are not limited to the following:

1. A title which is presently within the Unit represented by the charging party is being changed although the duties are virtually the same;
2. The employer seeks to remove such title from the Unit represented by the charging party;
3. A change in salary is contemplated for such title;
4. Two individuals in titles presently represented by the charging party will be supplied with new titles;
5. The foregoing individuals' working location which has been in existence for long periods of time, is being changed without the consent of the individuals;
6. There have been changes in duties of employees in the Unit of a substantial nature;
7. Certain titles in the Unit and employees in those titles are required to supervise or review the work of many more employees than were previously supervised or reviewed and this creates unsafe conditions;
8. There have been other numerous changes.

County, in a statement of position to the Commission dated December 6, 1975, indicates that the allegations contained in the unfair practice have reference to a proposed reorganization for the Road and Bridge Department. The County asserts that the charges, even if true, would not constitute an unfair practice. The County also indicates, in a letter to the Commission dated January 12, 1976, that pursuant to a grievance filed by the Council an arbitrator has been designated "who shall deal with the reorganization of the Hunterdon County Road and Bridge Department." The parties' contractual agreement under which the grievance was filed<sup>4/</sup> provides for binding arbitration for any grievance or dispute which may arise between the parties. The County has asked that the Commission defer the processing of the unfair practice charge pending resolution of the grievance in arbitration.

In the judgment of the undersigned, 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.<sup>5/</sup> It is clear that the parties have entered into a contractual agreement which includes

4/ Agreement between the County of Hunterdon and Hunterdon County Council #15 for 1973-1975, Article XXVIII.

5/ See City of Trenton and Trenton Policemen's Benevolent Association, P.E.R.C. No. 76-10, 1 NJPER 58, 1975, and Board of Education of East Windsor and Hightstown Education Association, E.D. No. 76-6, 1 NJPER 59 (1975).

as a final step binding arbitration on any grievance in dispute.<sup>6/</sup> It is also clear that the Council has itself initiated the process for resolution of the dispute regarding the reorganization through the grievance procedure which the parties negotiated. The County indicates its willingness to proceed thereunder.

In the opinion of the undersigned, it is reasonably probable that the instant dispute will be resolved under the parties' voluntarily created grievance and arbitration machinery.

In deferring the processing of the charge to the parties' grievance-arbitration mechanism, the undersigned makes no determination as to the merits of the unfair practice charge, and makes no determination as to whether or not the action of the County, if any, constitutes a violation of N.J.S.A. 34:13A-5.4. 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 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.

<sup>6/</sup> Article XXVIII provides as follows: "GRIEVANCE PROCEDURE: Any grievance or dispute which may arise between the Parties, including the application, meaning or interpretation of this Agreement shall follow this procedure:..."

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

  
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Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
April 7, 1976