

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION  
and LOCAL 2262, AFSCME, AFL-CIO,

Respondents,

-and-

DOCKET NO. CI-79-19

BENJAMIN CONTE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge which had been deferred to arbitration. The Director first notes that the unfair practice allegations filed against the individual's majority representative were withdrawn after the majority representative agreed to permit the individual to present his grievance to arbitration through his own attorney. The dispute was submitted to arbitration and there has been no claim that the proceedings have not been fair and regular. While the Charging Party claimed that the result of arbitration was not in his favor and that his arguments were not considered, the Director concludes, after a review of the arbitrator's decision, that the arguments presented by the Charging Party were considered and that the result reached by the arbitrator is not repugnant to the Act.

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Appearances:

For the Jersey City Board of Education  
Louis Serterides, Esq.

For Local 2262, AFSCME, AFL-CIO  
Michael Lanni, Executive Director

For the Charging Party  
Brown & Gold  
(Mark E. Gold, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 24, 1978, and amended on November 6 and November 14, 1978, by Benjamin Conte (the "Charging Party") against the Jersey City Board of Education (the "Board") and against Local 2262, American Federation of State, County and Municipal Employees, AFL-CIO ("Local 2262") alleging that the Board 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. (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) <sup>1/</sup> and that Local 2262 was engaging in unfair practices violative of N.J.S.A. 34:13A-5.4(b)(1) and (2). <sup>2/</sup>

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. <sup>3/</sup> The

1/ These subsections prohibit 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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

3/ N.J.S.A. 34:13A-5.4(c) provides: "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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This 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. <sup>4/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>5/</sup>

The Charging Party alleges that he was improperly suspended, and discharged, as head custodian by the Board, and that Local 2262, <sup>6/</sup> his majority representative, refused to process his related grievances to arbitration.

Pursuant to agreements reached among the parties at an exploratory conference conducted by a Commission staff agent, the Charging Party was permitted through his own attorney, to submit the issues related to his discharge to binding arbitration, in accordance with the governing collective negotiations agreement. The Charging Party requested that the Commission hold the Charge in abeyance pending the completion of the arbitration proceeding.

On February 22, 1979, the Charging Party was advised of the Commission's deferral to arbitration policy. Contemporaneously, the Commission staff agent confirmed the Charging Party's agreement

<sup>4/</sup> N.J.A.C. 19:14-2.1

<sup>5/</sup> N.J.A.C. 19:14-2.3

<sup>6/</sup> More specifically, the Charging Party claims that his discharge was preceded by "threats, coercion and harassment," and pressure to buy political tickets.

to withdraw the allegations of the Charge against Local 2262. On March 19, 1979, the undersigned formally deferred to arbitration the remaining aspects of the Charge (those allegations against the Board). At that time, the undersigned also advised the parties that the Commission, pursuant to its deferral policy, would retain jurisdiction of the Unfair Practice Charge filed by Conte 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 procedures have not been fair or regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act.

On April 12 and June 6, 1979, an arbitration hearing was conducted and an Opinion and Award issued on August 1, 1979. The arbitrator sustained the discharge.

Thereafter, in a letter dated September 23, 1979, Conte, in response to an inquiry from the Commission, stated that he wished "to protest," stating:

... I haven't been represented properly by [my] Union and also arbitration was not in my favor. All of managements charges were unfairly sustained. My charges and complaints were not considered.

In determining whether or not to resume the processing of a charge that has been deferred to arbitration, the Commission

is guided by the standards first set forth by the National Labor Relations Board in Spielberg Mfg. Co., 112 NLRB 1080, 36 LRRM 1152 (1955). See In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977). As set forth in Spielberg, and as previously noted, unless there is a proper showing that the arbitration proceeding was not fair and regular, or that a result was reached repugnant to the Act, or that the dispute was not submitted promptly to arbitration, the Commission will defer to the arbitrator's findings.

With respect to the claim against his union, the undersigned notes that the Charging Party has previously withdrawn his Unfair Practice Charge. The Charging Party does not allege any facts regarding improper representation by Local 2262 which have occurred after such withdrawal. The undersigned also notes that the Charging Party was represented by his own attorney in the arbitration proceeding and the arbitrator's decision indicates that Local 2262 fulfilled its responsibility, pursuant to the settlement of the Charge, to permit the Charging Party to utilize the binding arbitration procedure in the contract. Accordingly, there is no basis upon which a complaint may be issued against Local 2262.

The fact that the arbitration did not culminate in a decision favorable to the Charging Party/grievant, is not a basis for reassertion of jurisdiction by the Commission over the Unfair Practice Charge. There is no showing by the Charging Party that

the dispute was not submitted promptly to arbitration, or that the proceeding was not fair and regular. The arbitrator identified the argument presented by the grievant, i.e., harassment for his failure to buy political tickets and significantly found that the allegation was unsupported. The Charging Party has not provided any showing of an argument which was presented before the arbitrator but not considered. As the undersigned has previously stated,

The burden of presentation and argument of the claimed violation and pertinent theories is upon the Charging Party in the grievance/arbitration forum. In those instances where the Charging Party fails to convince the neutral of the claimed violation or fails to argue the pertinent theories, it is inappropriate for the Commission to reassert jurisdiction in the unfair practice proceeding.

In re State of New Jersey (Kean College), D.U.P. No. 80-3,  
5 NJPER 332 (¶ 10178 1979).

Finally, the undersigned again observes, as stated in In re Jersey City Board of Education (Johnson), D.U.P. No. 80-5,  
5 NJPER 405 (¶ 10211 1979):

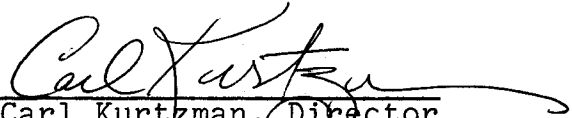
Where an arbitrator interprets a contract in a manner which is unfavorable to the grievant and which may, in some instances, differ from an interpretation of another neutral, the result reached is not necessarily repugnant to the purposes of the Act. Moreover, N.J.S.A. 2A:24-7 provides a mechanism for judicial review of an arbitration decision. Nevertheless, the undersigned has reviewed the arbitrator's award in order to determine

whether the dispute underlying the Unfair Practice Charge against the Board has been reached in the grievance forum, and, if so, whether the arbitration procedure reached a result which is repugnant to the Act.

These same considerations are applicable herein on the basis of the undersigned's review. The undersigned finds that the dispute underlying the Unfair Practice Charge was reached by the arbitrator in his analysis and determination that the Board's discharge of the Charging Party did not violate the contractual agreement. <sup>7/</sup>

Accordingly, based upon the above, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: October 17, 1979  
Trenton, New Jersey

<sup>7/</sup> The undersigned further finds that there is no basis in the Unfair Practice Charge to support the allegations that the Charging Party was interfered with, restrained, or coerced, or discriminated against in the exercise of his rights guaranteed under the Act.