

D.U.P. NO. 97-10

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

In the Matter of

COUNTY OF ATLANTIC,
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CO-94-363

FRATERNAL ORDER OF POLICE, ATLANTIC
LODGE #34,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint where the County allegedly failed to fulfill its obligations under the parties' negotiated grievance procedure. The Commission has repeatedly held that an employer's refusal to respond to a grievance, or the incorrect processing of a grievance at any particular step of the grievance procedure, in and of itself, is not an unfair practice when the contract provides for a self-executing grievance procedure which ends in binding arbitration, where the grievant may unilaterally invoke binding arbitration. Article XIV of the parties' contract provides for a self-executing grievance procedure culminating in final and binding arbitration where the grievant may invoke arbitration.

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Appearances:

For the Respondent,
Paul J. Gallagher, County Counsel
(Kenneth M. Shumsky, of counsel)

For the Charging Party,
Goldenberg, Mackler & Sayegh, attorneys
(Howard J. Heald, of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 3, 1994, the Fraternal Order of Police, Atlantic Lodge #34 filed an unfair practice charge with the Public Employment Relations Commission against the Atlantic County Department of Public Safety, Division of Adult Detention. The charge alleges that the County violated subsection 5.4(a)(5)^{1/} of the New Jersey

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it failed to adhere to the time guidelines for processing grievances set forth in the parties collective negotiations agreement while strictly holding grievants to the contractual deadlines.

The parties' most recent collective negotiations agreement covered the period from January 1, 1993 through December 31, 1995. The agreement contains the following relevant sections:

Article XIV Grievance Procedure

Step 4: If the grievance is not settled through Steps 1, 2 or 3, and only if the grievance alleges a violation of the terms and conditions of this Agreement, then the grievant shall have the right to submit the dispute to arbitration pursuant to the rules and regulations of the Public Employment Relations Commission within ten (10) days of the date on which the response of the representative was received or should have been received.

1. The Arbitrator... The decision of the arbitrator shall be binding.

The charge alleges that three grievances were filed on August 1, 2 and 3, 1993 respectively and answered between September 16, 1993 and September 19, 1993 at the first step, and on October 14, 1993 at the second step, many weeks after the County's deadline for responding. When these same grievances were forwarded to the third step, the response was given on January 10, 1994, allegedly much later than allowed by the parties' contract. All grievances were denied. The charge alleges that these denials were untimely and, as such, amount to bad faith negotiations. The FOP had the right to submit the grievance disputes to binding arbitration "within ten (10) days of the date on which the response...should have been received."

Assertions of an employer's refusal to respond to a grievance, or its improper treatment of a grievance at an intermediate step of the grievance procedure, normally does not violate subsection 5.4(a)(5) of the Act if the contractual grievance procedure is self-executing and ends in binding arbitration. See Rutgers Univ., D.U.P. No. 95-30, 21 NJPER 173 (¶26108 1995); Old Bridge Tp., D.U.P. No. 93-5, 18 NJPER 409 (¶23188 1992); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); Wayne Bd. of Ed., D.U.P. No. 92-9, 18 NJPER 105 (¶23050 1992); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982). The instant dispute, which concerns the employer's compliance with the contract's timeliness requirement, can be resolved by an arbitrator whom the parties have agreed should resolve disputes arising under the contract.

Accordingly, the Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1. Therefore, I decline to issue a complaint and the charge is dismissed. N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 19, 1996
Trenton, New Jersey