

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-79-33

JAMES EDWARD JOHNSON,

Charging Party.

JERSEY CITY EDUCATION ASSOCIATION,

Respondent,

-and-

DOCKET NO. CI-79-34

JAMES EDWARD JOHNSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to Unfair Practice Charges which had been deferred to binding arbitration since the Charging Party did not show that: (a) the dispute has not with reasonable promptness after the issuance of the deferral 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 and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act. The Charging Party claimed that the arbitrator demonstrated bias when he allegedly told the Charging Party, in the course of settlement discussions, that a particular remedy sought by the Charging Party could not legally be awarded. Additionally, the Charging Party claimed that the arbitrator did not consider relevant portions of the contract. The Director finds that the facts alleged did not show bias on the part of the arbitrator against the Charging Party and that the arbitrator did

not show a predisposition toward the merits of the claimed contractual violations. Further, the Director finds that the arbitrator reached the dispute underlying the Unfair Practice Charges and that the result of the arbitration proceeding was not repugnant to the Act.

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Appearances:

For the Board of Education
Louis Serterides, Assistant Attorney

For the Education Association
Philip Feintuch, Esq.

For the Charging Party
Horatius A. Greene, II, Esq.

REFUSAL TO ISSUE COMPLAINT

Two related Unfair Practice Charges were filed with the Public Employment Relations Commission (the "Commission") on December 11, 1978, and amended on January 5, 1979, by James Edward Johnson (the "Charging Party"): one against the Jersey City Board

of Education (the "Board") and the other against the Jersey City Education Association (the "Association"). The former alleged 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-5.4 (a)(1), (3), (4), (5) and (7). ^{1/} The latter alleged that the Association was engaging in unfair practices violative of N.J.S.A. 34:13A-5.4(b)(1), (3), (4) and (5). ^{2/}

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

^{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 and 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. (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 in the selection of his representative for the purpose of negotiations or the adjustment of grievances. (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."

any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{3/} The 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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

The Charging Party alleges that the Board, in violation of its collective negotiations agreement with the Association, failed to hire him for a summer school teaching position during the summer of 1978. In his Charge against the Association, the Charging Party alleges that Association representatives attempted to discourage and restrain him from presenting a grievance concerning the Board's actions described above.

During the processing of the Charges, the Respondents agreed to present the Charging Party's grievance to an arbitrator in accordance with the arbitration provision in their contract. ^{6/} The undersigned advised the Charging Party that the instant dispute presented

^{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 ..."

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

^{6/} The agreement provides for the selection of an arbitrator from a panel of neutral arbitrators provided by the Commission.

an appropriate case for the application of the Commission's policy of deferring the resolution of unfair practice charges to the parties' contractual grievance/binding arbitration procedure. Said policy is generally applied where it appears reasonably probable that the dispute underlying the alleged unfair practice will be resolved in the parties' contractual forum. ^{7/} Upon receipt of notification that the Board and the Association were proceeding to binding arbitration in this matter, the undersigned deferred the processing of the Charges and refused to issue complaints. At that time, the undersigned also advised the parties that the Commission, pursuant to its deferral policy, would retain jurisdiction of the unfair practice charges filed by Johnson 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 and regular, or (c) the grievance or arbitration procedures have reached a result which is repugnant to the Act.

On March 14, 1979, an arbitration hearing was conducted and an Opinion and Award issued on March 26, 1979. The arbitrator found

7/ See Board of Education of East Windsor and Hightstown Education Association, E.D. No. 76-6, 1 NJPER 59 (1975); and City of Trenton and Trenton PBA Local No. 11, P.E.R.C. No. 76-10, 1 NJPER 58 (1975).

that the Board had not violated the parties' contract by failing to hire Johnson for the summer school program.

Thereafter, in a letter dated April 27, 1979, Johnson requested that the Commission resume processing the Charges filed by him against the Board and the Association. The Charging Party asserted that the arbitrator demonstrated bias when he allegedly told Johnson, in the course of settlement discussions, that the Board could not legally compensate him for monies lost during the summer of 1978 when he was denied employment as a summer school teacher. In addition, Johnson maintained that the arbitrator had misapplied the contract. ^{8/}

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 (the "NLRB") 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.

The Charging Party has requested that the Commission reassert jurisdiction on two grounds. On the one hand, Johnson maintains that the arbitration proceeding was not fair and regular as a result of the arbitrator's bias. On the other hand, the Charging Party asserts that the arbitrator misconstrued the contract.

^{8/} In a letter dated June 18, 1979, Johnson's attorney repeats the allegations contained in Johnson's April 27 correspondence.

In the instant matter, the Charging Party's allegations, assuming their factual accuracy, do not constitute evidence of bias which would warrant refusal to defer to the arbitrator's decision and award. Even if the arbitrator, in settlement discussions, exhibited a "pre-determination" as to the remedy or lack of remedy available to the grievant should he succeed in his claim, this does not show a predisposition toward the merits of the claimed contractual violation which would affect the final decision, nor does this show a bias against the grievant. Johnson does not cite any other behavior by the arbitrator either before or during the hearing which would even remotely suggest the existence of some animosity by the arbitrator toward the grievant. Certainly, nothing in the transcript or the award in any way substantiates the Charging Party's allegation of bias. The undersigned therefore concludes that, by itself, the arbitrator's statement as to the legality of any eventual remedy does not demonstrate that the arbitration hearing was unfair or that the proceeding was irregular.


With regard to the Charging Party's assertion that the arbitrator misconstrued the contract, the undersigned points out that this contention, on its face, does not satisfy any of the three criteria mentioned infra which would preclude deferring to the arbitration award. 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.

On the basis of this 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 did not violate the contractual agreement by failing to employ the Charging Party in a 1978 summer school position. ^{9/} The arbitration proceeding did not reach a result repugnant to the Act.

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: August 31, 1979
Trenton, New Jersey

^{9/} The Charging Party claims that the arbitrator ignored a relevant contract provision. The undersigned's review reveals that the arbitrator analyzed this provision and reached a result different than the interpretation urged by the Charging Party.