

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

In the Matter of

CITY OF PLEASANTVILLE,

Respondent,

-and-

Docket No. CO-77-68

MAINLAND LOCAL NO. 77, NEW JERSEY STATE
POLICEMEN'S BENEVOLENT ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practice Proceedings declines to issue a Complaint against the Public Employer based upon an unfair practice charge brought by the Charging Party. The Charging Party claims that the Public Employer refused to process a particular grievance, insofar as it is alleged that the Public Employer did not respond to the grievance at a particular level of the grievance procedure embodied in the parties' contractual agreement. The Director notes that contractual agreements containing provisions whereby the processing of grievances terminates in arbitration normally contain self effectuating procedures. Therefore, in the absence of a response to a grievance at a given level of the procedure an aggrieved party may normally proceed to the next level of the grievance procedure and may ultimately place the matter ex parte, if need be, before an arbitrator. The allegations of the Charging Party in the instant matter do not indicate that the Charging Party is precluded from proceeding to arbitration under the grievance mechanism in the absence of a formal response to a grievance.

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Appearances:

For the City of Pleasantville, Mr. Irving A. Lilienfeld,
City Solicitor

For Mainland P.B.A. Local 77, Mr. Robert L. Hudson, President

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 20, 1976 by Mainland Local No. 77, New Jersey State Policemen's Benevolent Association ("Local No. 77") against the City of Pleasantville (the "City") alleging that the City engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a) by refusing to process a particular grievance presented by Local No. 77. The Unfair Practice Charge was amended on October 6, 1976 to allege particular subsections of the above statutory provision, particularly subsections (1), (5) and (7).^{1/} The amended Charge substantively reiterates the allega-

1/ These subsections prohibit public employers from "(1) Interfering with, restraining or coercing 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...(7) Violating any rules and regulations established by the commission."

tions contained in the Charge filed on September 20, 1976.^{2/}

In a previous decision issued by the Executive Director of the Commission, who at that time was the Commission's named designee for matters related to the issuance of Complaints, the Executive Director refused to issue a Complaint in unfair practice charges of similar issue, i.e. an alleged failure to process grievances to arbitration pursuant to grievance and arbitration provisions in negotiated agreements. In re Englewood Board of Education, E.D. No. 76-34, 2 NJPER 175 (1976). The Executive Director stated that as a matter of law a public employer's failure to participate

2/ The Unfair Practice Charge states as follows:

"Failing to process grievances presented by the Majority Representative

A Grievance is submitted and responded to in writing in a specified period of time, according to the Collective Bargaining Agreement, Grievance Procedure, between the City of Pleasantville, and the employees of the Police Department.

On 7/5/76 Former Captain Leo Ferrara filed a grievance concerning the fact that upon his retirement from the Department he was not paid for, or reimbursed for (40) forty Holidays accumulated during his employment. Captain Ferrara contents that other Officers have been paid for or compensated for their Holidays accumulated, when they left the Department. It is this contention under the "Past Practice" clause of the PBA/City Bargaining Agreement that this grievance was accepted and processed.

On 7/12/76 the PBA forwarded said grievance to the Police Chief of Pleasantville.

On 7/22/76 Chief Boney responded that he took the matter up with the Mayor and Council for consideration as required by the Grievance Procedure, and they refused to compensate Capt. Ferrara.

On 8/3/76 the PBA forwarded this grievance to Mayor Robert Johnson and Council as required by the Grievance Procedure. However, NO ANSWER WAS RECEIVED.

8/26/76 the PBA again forwarded this written grievance to the Mayor and Council for action, and warned if no answer was received that an "Unfair Labor Practice" Charge would be filed. NO RESPONSE HAS EVER BEEN RECEIVED.

On 9/10/76 the PBA Executive Board decided to move this grievance to Binding Arbitration as specified in the Bargaining Agreement, and further to file this Unfair Labor Practice charge. Since no response has ever been received from the City of Pleasantville regarding this matter we believe this shows bad faith, and is a violation of the rights of the employees and the PBA."

in contractual arbitration proceedings does not, on the facts alleged in most instances, constitute a refusal to process grievances within the meaning of N.J.S.A. 34:13A-5.4(a)(5). The underlying theory in refusing to issue a Complaint in such instances is that absent an affirmative step by the public employer to restrain the arbitration proceeding, the failure of the public employer to participate in the arbitration proceeding will not prevent the arbitration provisions of the grievance procedure from proceeding on a self-executing basis to arbitration. Thus, the employee organization is not precluded from pursuing the arbitration to conclusion ex parte and the grievance will be "processed" to arbitration pursuant to the parties' contract notwithstanding the public employer's failure to take part in that process.

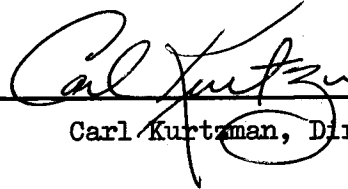
The undersigned finds that the reasoning of the Englewood case is applicable as well to the earlier stages of the grievance procedure. A public employer's failure to respond to a grievance at a given level is presumed to be a rejection of the grievance. Normally, the next level of the grievance procedure may be invoked unilaterally by the aggrieved party inasmuch as the grievance has not been resolved to the aggrieved party's satisfaction. The grievance will thus be "processed" through the given levels until it proceeds to arbitration. This appears to be the case at hand, insofar as Local No. 77 sets forth in detail in its charge allegations of fact that indicate that Local No. 77 has not been prevented from moving its grievance to arbitration.

We are thus presented with no allegation that the employer's actions will have the effect of precluding the ex parte processing of the dispute pursuant to a contractual grievance and arbitration clause. Absent an allegation that the contractual procedures may not proceed in the absence of the employer's participation, i.e. that the procedures are not self-enforcing,

the charge fails to allege facts which, if true, may constitute an unfair practice. See Englewood, supra, at footnote 7.

Therefore, for the reasons set forth above the undersigned concludes that absent extraordinary circumstances not present herein, the failure of the public employer to participate at a given level of a contractual grievance proceeding does not constitute "refusing to process grievances" within the meaning of N.J.S.A. 34:13A-5.4(a)(5). Similarly, the allegation alleging violations of N.J.S.A. 34:13A-5.4(a)(1) must fall. The allegation of a violation of N.J.S.A. 34:13A-5.4(a)(7) falls inasmuch as the Charging Party has failed to set forth a rule or regulation of the Commission in support of its claim. See In re Madison Township Board of Education, E.D. No. 76-8, (1975). Accordingly, the undersigned hereby refuses to issue a Complaint thereon and the instant case is hereby closed.

BY ORDER OF THE DIRECTOR OF
UNFAIR PRACTICE PROCEEDINGS



Carl Kurtzman, Director

DATED: Trenton, New Jersey
December 14, 1976