

D.U.P. NO. 99-16

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

In the Matter of

TOWNSHIP OF MIDDLE,

Respondent,

-and-

Docket No. CI-98-100

BOBETTE M. SCULL,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses a charge alleging various claims of hostile work environment, unfair discipline, discrimination and violations of the Conscientious Employee Protection Act (CEPA). The Director found that the claims related to alleged conduct occurred outside the six (6) month limitations period of N.J.S.A. 34:13A-5.4(c) and that the Commission lacked jurisdiction over CEPA claims.

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Appearances:

For the Respondent,  
Bruce M. Gorman, attorney

For the Charging Party,  
Bobette M. Scull, pro se.

**REFUSAL TO ISSUE COMPLAINT**

On June 25, 1998, Bobette M. Scull (Charging Party) filed an unfair practice charge against Middle Township with the New Jersey Public Employment Relations Commission. The charge alleges that the Township violated 5.4a(1), (3) and (7)<sup>1/</sup> and 5.4b(1) and

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<sup>1/</sup> These provisions prohibit public 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. (7) Violating any of the rules and regulations established by the commission."

(5)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The charge also alleges that the Township violated N.J.S.A. 34:19-3a of the Conscientious Employee Protection Act (CEPA, commonly referred to as the "Whistleblower's Act").

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. Based upon the following, I find that the Complaint issuance standard has not been met.

Although it is not clear from the charge, the Charging Party seems to contend the following:

1. She works in a hostile environment;
2. On some occasions she may have been required to pay for service to Township-owned office equipment;
3. She had been discriminated against by the Township in terms of salary;
4. She had been unfairly disciplined; and
5. She had not been given the opportunity to present evidence in defense of disciplinary actions.

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<sup>2/</sup> These provisions 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. (5) Violating any of the rules and regulations established by the commission."

On July 17, 1998, the Charging Party was advised that the charge did not meet the requirements of N.J.A.C. 19:14-1.3; it did not include the date(s) of the act(s) described in the charge. Charging Party was afforded an opportunity to amend her charge and she did so on July 21, 1998. The amended unfair practice charge consists of what appears to be a series of dates and events beginning in or about April 1995, continuing to approximately June 25, 1996, related to various disciplinary actions.

On September 17, 1998, the Charging Party was advised that her amended unfair practice charge still did not comply with N.J.A.C. 19:14-1.3; it did not supply dates of alleged unfair practices occurring within six months of the filing of the original charge. She was advised that she may file a second amendment with the Commission.

On September 28, 1998, the Charging Party filed a second amended unfair practice charge. She repeated her allegations that the Township engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4a(1), (3) and (7) and N.J.S.A. 34:13A-5.4b(1) and (5) and that the Township violated N.J.S.A. 34:19-3a.

The second amended charge is equally unclear; it states the following:

During the period of punishment, I repeatedly requested neutral arbitration. According to [the] Teamsters Local 676 contract, Section 4.D., I expected and insisted on neutral arbitration. I was not aware of the Union's refusal to do so until I received Mr. Buondonno's letter dated February 20, 1998. I have attached a copy of the contract page, Mr. Buondonno's 2/20/98 letter,

and my response to him dated March 6, 1998. The period of time from February 20, 1998, to June 23, 1998, or Mr. Buondonno's letter of advisement to me and my ORIGINAL Unfair Practice Charge is approximately - give or take a few days - four months and three days.

It appears, therefore, that the Charging Party contends she repeatedly requested her union, Teamsters Local 676, to process a grievance to arbitration pursuant to the collective negotiations agreement between Local 676 and the Township. Apparently, the union refused to process the grievance to arbitration and advised the Charging Party of its decision by letter dated February 20, 1998. Importantly, however, neither the unfair practice charge nor any of the amendments names Teamsters Local 676 as a party to this matter.

The Charging Party submitted a letter dated October 21, 1998 providing a timeline of events beginning on or about December 28, 1995 and continuing through July 2, 1997. The letter purports to summarize the allegations made in the three amended unfair practice charges and is primarily related to the Charging Party's various disciplinary actions during the 1995-1997 period.

On October 30, 1998, the Township submitted its position statement contending the following:

1. The Charging Party's allegations do not relate to union activity and, therefore, are not appropriate subjects for unfair practice charges;
2. The charges regarding inappropriate discipline belong before the Merit System Board, not P.E.R.C.;
3. The Charging Party's various grievances were not arbitrable but even if they were, neither she nor her union requested arbitration and to the

extent her union failed to do so, her dispute is with it, not the Township; and,

4. The Charging Party is paid in accordance with the collectively negotiated agreement between the union and the Township, and to the extent she is dissatisfied with the terms of the agreement, her dispute is with the union not the Township.

On November 6, 1998, the Township submitted a supplemental position statement reiterating its earlier statement urging dismissal of the charge. The Township noted that the Charging Party's allegations emphasized the results of her numerous disciplinary actions between 1995 and 1997. Accordingly, the Township contends that the Charging Party's chief complaint is with her union representation in those actions.

On November 9, 1998, the Charging Party responded to the Township's position statement by addressing each of the various disciplinary actions which occurred during the 1995-1997 period.

On December 30, 1998, the Charging Party supplemented her position statements stating, inter alia, that "during the past year to year and one-half, my work life has improved" and goes on to speculate about why she believes her work life has improved. The clear import of her statement, however, is that her allegations of unfair practices are based on conduct that occurred prior to 1998.

By letter dated April 23, 1999, the parties were advised that I was inclined to dismiss Charging Party's unfair practice allegations as untimely filed pursuant to N.J.S.A. 34:13A-5.4c. The parties were also advised that the Commission lacked jurisdiction over Charging Party's CEPA claim.

On April 29, 1999, Charging Party filed a letter which stated:

1. She was unjustly disciplined;
2. She was not afforded the opportunity to defend herself;
3. Her union is being treated unfairly; and
4. She believes she should have hired an attorney.

Charging Party acknowledged that there are "time limitations" to bring certain actions but offered no explanation for her delay in filing the instant charge. She did not address the jurisdictional bar to her CEPA claim.

#### ANALYSIS

With regard to the Charging Party's section 5.4 claims, N.J.S.A. 34:13A-5.4(c) states that:

no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

The Legislature included a six month statute of limitations in the Act to prompt charging parties to file charges expeditiously and to prevent the litigation of stale claims.

In this matter, the Charging Party asserts numerous complaints against the Township. Her second amended unfair practice charge, however, reflects two critical points:

1. Her allegations against the Township are related to alleged conduct which occurred prior to 1998; and,

2. The only conduct which occurred within the six months preceding the filing of the charge was that Teamsters Local 676 advised the Charging Party on or about February 20, 1998, that it refused to process one of her disciplinary actions to arbitration.

Based on the foregoing, the only apparent connection between the Township's alleged conduct (related to disciplinary matters during the 1995-1997 period) and the filing of the charge, is the union's refusal to process a grievance to arbitration in February 1998.

The Legislature provided only one exception to the six month limitation period; under circumstances where a party is prevented from filing a charge, the period may be tolled. City of Margate, P.E.R.C. No. 94-40, 19 NJPER 572 (¶24270 1993).

Here, the Charging Party claims that the Township committed certain unfair practices related to conduct occurring between 1995 and 1997; well outside of the limitations period. However, when advised that her charge failed to provide dates of alleged unfair practice conduct which occurred within six months of the filing of the charge, she was unable to adduce any dates within the statute of limitations as to when the Township engaged in conduct which she alleges violate the Act.

There is no indication in any of the numerous documents filed in this matter that the Charging Party was ever prevented from filing unfair practice charges against the Township related to the disciplinary matters which were alleged to have occurred between



1995 and 1997. Accordingly, allegations in the charge concerning Township conduct related to that period are beyond the Commission's statute of limitations.


As to Charging Party's CEPA claims, the Commission lacks jurisdiction. City of New Brunswick, D.U.P. No. 94-23, 20 NJPER 112 (¶25057 1994) app. den. P.E.R.C. No. 94-95, 20 NJPER 193 (¶5089 1994).

Based upon all of the above, I find that the Commission's complaint issuance standard has been not been met and I decline to issue a complaint on the allegations of this charge.<sup>3/</sup>

**ORDER**

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: May 17, 1999  
Trenton, New Jersey