

D.U.P. NO. 92-17

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

In the Matter of

CITY OF MARGATE,

Respondent,

-and-

Docket No. CI-92-61

JULES CATTIE, JR.

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that eight months earlier, the City of Margate refused to hire Jules Cattie as a lifeguard because he had filed unfair practice charges against a neighboring municipality. The Director rejects the charging party's argument that his efforts to resolve the matter informally with the City should toll the statute of limitations, and finds that Cattie was not "prevented" from filing a timely charge.

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Appearances:

For the Respondent
Martin R. Pachman, attorney

For the Charging Party
Jules Cattie, pro se

REFUSAL TO ISSUE COMPLAINT

On February 6, 1992, Jules Cattie filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the City of Margate ("City"). Cattie alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically subsections 5.4(a)(3) and (7) ^{1/} by refusing to hire him in June, 1991 as a City lifeguard. The charge further alleges that Cattie was advised

^{1/} These subsections prohibit public employers, their representatives or agents from: "(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."

by a Margate Beach Patrol officer on June 16, 1991, that his test scores had been altered and that the City would not hire him because of his "actions exercised at PERC and the Atlantic County Prosecutors Office...".

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 charged.^{2/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

^{2/} 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

^{3/} N.J.A.C. 19:14-2.1.

^{4/} N.J.A.C. 19:14-2.3.

N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a Complaint where an unfair practice charge has not been filed within six (6) months of the occurrence of any unfair practice, unless the aggrieved person was prevented from filing the charge. See North Warren Bd. of Ed., D.U.P. No 78-7, 4 NJPER 55 (¶4026 1977). On March 5, we advised Cattie by letter that it appeared the charge was filed beyond the Commission's six-month statute of limitations. The event constituting the alleged unfair practice--the City's decision not to hire Cattie--occurred more than six months prior to the filing of this charge. More importantly, Cattie became aware of the City's alleged motives in its refusal to hire him on June 16, 1991. This date is also beyond the six-month statute of limitations.

The charge asserts that, between June and October, 1991, Cattie sought review and resolution of the matter directly with the City. Cattie argues that his attempts to voluntarily resolve the matter should, in essence, toll the statute of limitations. The charge does not indicate that Cattie was prevented from filing his charge within the six-month period. The Commission has previously held that the filing of grievances and other forms of voluntary resolution does not constitute an extension of the six-month statute of limitations. See New Jersey Dept. of Higher Education, P.E.R.C. No. 85-48, 10 NJPER 638 (¶15306 1984); Camden Vocational Bd. of Ed., P.E.R.C. No. 83-28, 8 NJPER 558 (¶13256 1982).

For the reasons set forth above, I find that the charge is not timely filed and therefore, the Commission's complaint issuance standard has not been met. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 16, 1992
Trenton, New Jersey