

D.U.P. NO. 98-15

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

In the Matter of

NEW JERSEY STATE PBA and  
PBA LOCAL 152,

Respondents,

-and-

Docket Nos. CI-97-51  
CI-97-52

KENNETH F. SMITH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a county correction officer's charge alleging his union failed to give him a fair hearing concerning certain internal union disputes. The Director finds that this charge alleges events occurring more than six months prior to the filing of the charge.

However, the Director issues a Complaint on an amendment to the charge, which alleged that the union threatened the employee with expulsion and collection of agency fees because he filed the first unfair practice charge.

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Appearances:

For the Respondents,  
Zazzali, Zazzali, Fagella & Nowak, attorneys  
(Robert E. Fagella, of counsel)

For Charging Party,  
Kenneth F. Smith, pro se

REFUSAL TO ISSUE COMPLAINT

On February 24, April 1, and June 16, 1997, Corrections Officer Kenneth F. Smith filed unfair practice charges and amended charges against New Jersey State PBA and PBA Local 152. Smith alleges that the New Jersey State PBA and Local 152 violated subsections 5.4 (b) (1) and (5) of the New Jersey Employer-Employee Relations Act<sup>1/</sup> Smith alleges that in 1996, he challenged Local

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<sup>1/</sup> These subsections prohibit employee organizations, their representatives or agents are prohibited from: (1)

152's election of officers and circulated a petition to recall the local's president, and that on August 15 and 22, 1996, he was afforded a "biased" hearing on these allegations before the State PBA. Further, in the April 1 amendment to the charge against Local 152, (Commission docket no. CO-97-52), Smith alleges that by letter of March 1, 1997, PBA Local 152 President Gene Conlon told Smith that because he filed these unfair practice charges before the Commission, the local would seek his removal from membership and would instead assess him agency fees.

For the reasons that follow, Smith's allegations concerning the August, 1996 events are dismissed.

N.J.S.A. 34:13A-5.4(c) provides 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.

Here, the alleged unfair practices concerning events that surrounded the hearings before the State PBA on August 15 and 22,

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1/ Footnote Continued From Previous Page

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. In the charge against the State PBA, Smith further pled violations of subsections 5.4(a)(1), (3), (4) and (5) of the Act; however, these subsections refer to certain prohibited employer conduct. The charge also refers to violations of subsection "5.4(b)(7)", but there is no subsection (7) of 5.4(b).

1996, more than six months beyond the statute of limitations as set forth in N.J.S.A. 34:13A-5.4(c). See, e.g., Certified Shorthand Reporters, et al., D.U.P. No. 97-14, 22 NJPER 336 (127175 1996). I find that these allegations are time barred and must be dismissed.

However, the allegation in the April 1 amendment states that Local 152 threatened to remove Smith from the local because he filed unfair practice charges. This allegation meets the Commission's complaint issuance standard. N.J.A.C. 19:11-2.3. A Complaint on this allegation of CI-97-52 will be issued. The remaining allegations of CI-97-52 are dismissed and CI-97-51 is dismissed in its entirety.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: September 5, 1997  
Trenton, New Jersey