

D.U.P. NO. 91-17

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

In the Matter of

HIGHLAND PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-90-274

HIGHLAND PARK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed one day after the six month statutory period expired. The Director also determined that the charge was not a continuing violation.

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Appearances:

For the Respondent
Cassetta, Taylor & Whalen
(Bruce Taylor, Consultant)

For the Charging Party
Klausner & Hunter, attorneys
(Stephen Klausner, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 26, 1990, the Highland Park Education Association ("Association") filed an unfair practice charge against the Highland Park Board of Education ("Board"). The Association asserts that in September 1989, the Board reduced its secretarial staff by three (one each in three schools), replacing them with paraprofessional employees. The reassignments were all "effective September 25, 1989" and the paraprofessionals were given secretarial duties. "Despite requests to cease, [the Board] has permitted the paraprofessionals to continue to do unit work...", allegedly

violating subsections 5.4(a)1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

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/}

^{1/} These subsections 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. (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."

^{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.

The Commission's rules provide that I may decline to issue a complaint.^{4/}

On December 24, 1990, we issued a letter tentatively dismissing the charge because it is not timely filed. Neither party responded.

On or about September 1, 1989, the Board reorganized its office staff, reducing the number of supervisors by 3. It also reduced the secretarial staff, who are included in the Association's broad-based unit of professional employees and support staff employees. When the workload of the remaining secretaries increased, the Board assigned non-unit paraprofessional employees to school offices, where they performed secretarial duties. Paraprofessionals have allegedly been doing unit work since September 25, 1989.

The Board asserts that the charge is not timely filed, that the portion of the charge concerning the Irving school is inaccurate and that the assignment of clerical paraprofessionals is "consistent historically with duties assigned to them."

Our Act requires that unfair practice charges be filed within six months after the alleged unfair practice occurred unless the charging party was prevented from filing the charge. N.J.S.A. 34:13A-5.4(c).

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

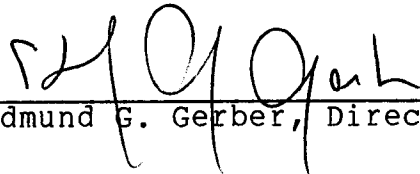
Six months and one day have lapsed since the Board assigned paraprofessionals to perform secretarial duties. In Salem Cty. Bd. of Freeholders, P.E.R.C. No. 87-159, 13 NJPER 584 (¶18216 1987), the Commission dismissed a "continuing violation" argument. There, the employer unilaterally eliminated a paid lunch hour of two unit employees and the union asserted that each succeeding payroll check not containing the "lunch hour" wage was a separate violation. The Commission stated:

There is nothing in the record to show that [the union] was prevented from filing the charge earlier. Nor are we persuaded by [the] "continuing violation" theory under this case's circumstances. The charge's allegations solely allege a unilateral change which occurred well outside the six month period. There have been no allegations concerning any unilateral changes within that period....
 [13 NJPER 585]

See also Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978).

Nothing in the charge suggests that the Association was ever "prevented" from filing a charge. Nor does this case concern anything more than a unilateral change outside the six month period. No changes appeared to have occurred within the six month period. The charge is untimely filed and therefore, does not meet the Commission's complaint issuance requirements. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
 OF UNFAIR PRACTICES


 Edmund G. Gerber, Director

DATED: January 14, 1991
 Trenton, New Jersey