

D.U.P. NO. 89-8

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

In the Matter of

CITY OF BAYONNE,

Respondent,

-and-

Docket Nos. CI-89-29, CI-89-30
CI-89-31

JAMES ROESINGER, DENNIS GROGAN
& JOHN BERBICK,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices determines that three almost identical unfair practice charges were filed beyond the six month statutory limit. Accordingly, the charges were dismissed.

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Appearances:

For the Respondent

Apruzzese, McDermot, Mastro & Murphy, Esqs.
(Maurice J. Nelligan, of counsel)

For the Charging Parties

Hughes & Finnerty, Esqs.
(William J. Finnerty, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 11, 1988, James Roesinger, Dennis Grogan and John Berberick ("Charging Parties"), filed unfair practice charges against the City of Bayonne ("City"). The charges are almost identical and allege that since June 21, 1985, the charging parties, firefighters employed by the City, have not been paid their appropriate salaries. The charges state that before their appointments as firefighters in 1985, Roesinger had been a City police officer since 1978; Grogan and Berberick had been police officers since 1974. The charges allege that the City induced them to become firefighters by promising that their salaries as firefighters would be the same as their salaries as police

officers. The charging parties were allegedly paid only base salaries as firefighters.

On October 13, 1988, we advised counsel for the charging parties that the charges fail to allege unfair practices within the six-month limitation period in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(c) ("Act"). On October 25, Charging Parties filed amendments asserting that the City failed to abide by a November 18, 1986 settlement agreement and stipulated order of settlement. The charging parties' reliance on the agreement purportedly caused the delay in filing.

On December 20, 1988, we again advised the parties that the charges did not appear to be timely filed. We requested that any additional facts be submitted by December 30. On that date, counsel for charging parties submitted a letter, asserting that the delay in filing was caused by the charging parties' reliance on the City's promise to "institute the grievance procedure." It also asserted that the City "responded to the attempt" to file a grievance on December 9, 1987.

On January 9, the City filed a letter urging that the charges be dismissed because they are untimely filed.

Our Act requires that an unfair practice charged be filed within six months of the occurrence of the alleged unfair practice unless the charging party was prevented from filing a charge. N.J.S.A. 34:13A-5.4(c). In Kaczmarek v. N.J Turnpike Authority, 77 N.J. 329 (1978), the New Jersey Supreme Court described how one is "prevented" from filing a charge:

The term "prevent" may in ordinary parlance connote that factors beyond the control of the

complainant have disabled him from filing a timely complaint. Nevertheless, the fact that the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all relevant considerations bearing upon the fairness of imposing the statute of limitations. Cf. Burnett v. N.Y. Cent. R.R., supra, 380 U.S. at 429, 85 S. Ct. at 1055, 13 L.Ed.2d at 946. The question for decision becomes whether, under the circumstances of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion. Kaczmarek at 340.

If the City's alleged refusal to abide by the November 18, 1986 settlement agreement begins the six-month period, the charging parties had until May 18, 1987 to file a charge. These charges were not filed until almost one and one-half years later. Even if the six-month period began on December 9, 1987, when the City refused to process their grievance, the charge is still untimely filed. Further, no facts suggest that any other action was filed in an appropriate forum which could toll the statute, or that the charging parties were otherwise prevented from timely filing a charge. Under these circumstances, we refuse to issue a complaint. No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977).

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director
of Unfair Practices

DATED: January 12, 1989
Trenton, New Jersey