

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

In the Matter of

CALDWELL-WEST CALDWELL  
BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-80-305

CALDWELL-WEST CALDWELL  
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to allegations of unfair practices filed against the Board by the Association. The Director determines that the Unfair Practice Charge was filed more than six months after the occurrence of the alleged unfair practice. The Charging Party alleged that the Board unilaterally changed terms and conditions of employment and indicated that the parties engaged in unsuccessful negotiations concerning the subject after the change. The Director concludes that ensuing negotiations do not extend the statutory limitations period for the filing of an unfair practice charge.

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

In the Matter of

CALDWELL-WEST CALDWELL  
BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-80-305

CALDWELL-WEST CALDWELL  
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent  
Metzler Associates  
(Stanley C. Gerrard, Consultant)

For the Charging Party  
Goldberg & Simon, attorneys  
(Gerald M. Goldberg, of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 3, 1980 by the Caldwell-West Caldwell Education Association (the "Association") against the Caldwell-West Caldwell Board of Education (the "Board") alleging that the Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically

N.J.S.A. 34:13A-5.4(a)(1) and (5). <sup>1/</sup>

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 charge. <sup>2/</sup> The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This 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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

<sup>1/</sup> These subsections prohibit employers, their representatives and 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."

<sup>2/</sup> 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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof ... "

<sup>3/</sup> N.J.A.C. 19:14-2.1

<sup>4/</sup> N.J.A.C. 19:14-2.3

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

Pursuant to N.J.S.A. 34:13A-5.4(c) the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides: "... provided 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 Association alleges that the Board unilaterally changed the workload of high school physical education teachers at the start of the 1979-80 school year without prior negotiations. According to the Association, prior to the 1979-80 school year, these teachers were given daily schedules consisting of five classroom teaching periods and one nonteaching "cover" period. Commencing with the 1979-80 school year, these teachers were assigned to six classroom teaching periods and were not assigned a cover period.

The Association states that it was engaged in negotiations toward a collective negotiations agreement with the Board when the increase in workload took place, that the issue was

raised in negotiations and that the issue was withdrawn by the Association when a negotiations agreement was reached on October 2, 1979. In a separate agreement with the Board, the parties agreed that the withdrawal of the issue was not to be construed as a resolution of the workload issue. The Association states that "the workload issue did not become fixed until the signing of the agreement on October 2, 1979."


Although the Association does not state in its Charge exactly when the 1979-80 school year commenced, the undersigned takes note of the well established practice that public schools begin the school year in early September. Accordingly, the undersigned takes administrative notice that the alleged unfair practice occurred in early September 1979 when the Board implemented the alleged change in workload of physical education teachers. The instant Unfair Practice Charge was not filed until April 3, 1980, approximately seven months after the alleged unfair practice occurred.

The Commission has previously held that the statutory limitation period commences with the implementation of the claimed unilateral change of terms and conditions of employment without prior negotiations. The Commission has rejected arguments that the filing and processing of a grievance related to an alleged unilateral change tolls or relaxes the statutory six month limitation period. See State of New Jersey v. Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO, P.E.R.C. No. 77-14,

2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (1977) Pet. for certif. denied 78 N.J. 326 (1973); In re Passaic Cty. Bd. of Ed., D.U.P. No. 79-22, 5 NJPER 132 (¶ 10078 1979). Similarly, the allegation herein that the parties engaged in negotiations subsequent to the unilateral change in an attempt to resolve their dispute over workload does not alter the fact that more than six months elapsed between the operative event and the filing of an Unfair Practice Charge. The undersigned notes that there is no allegation by the Association that it was prevented from filing a timely unfair practice charge.

Accordingly, for the reasons stated above, the undersigned determines that the instant Unfair Practice Charge has not been filed within the six months statutory limitation period and, therefore, the undersigned declines to issue a complaint herein.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: July 10, 1980  
Trenton, New Jersey