

D.U.P. NO. 87-9

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

In the Matter of

BERKELEY TOWNSHIP AND BERKELEY
TOWNSHIP SUPERVISORS ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-87-24

FRANK J. McCLINTIC,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint in a matter where the events alleged to be actionable occurred prior to the six month statute of limitations period.

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Appearances:

For the Respondent Township
Murray and Granello, Esqs.
(Robert E. Murray, of counsel)

For the Respondent Association
Oxford, Cohen and Blunda, Esqs.
(Mark J. Blunda, of counsel)

For the Charging Party
Laura Thompson, Esq.

REFUSAL TO ISSUE COMPLAINT

On October 14, 1986, Frank J. McClintic ("Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Township of Berkeley ("Township") miscalculated and wrongfully withheld from him unused sick day benefits following his resignation on May 4, 1984. He claims that the Township paid him for only 110.5 of the 120.5 unused sick days due him. He also claims that the Berkeley Township Supervisors Association ("Association") breached its duty of fair

representation by failing to file a related grievance. He asserts these actions constitute unfair practices within the meaning of 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) and 5.4(b)(1) and (5).^{1/}

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 the Director of Unfair Practices and has established a standard upon which unfair practice complaints shall be issued. The standard provides that the

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits 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."."

N.J.S.A. 34:13A-5.4(b) prohibits employee organizations, 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) Violating any of the rules and regulations established by the commission."

^{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..."

complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act^{3/} and the Commission's rules provide that the Director may decline to issue a complaint where appropriate.^{4/}

The instant charge is the second filed by the Charging Party relating to issues arising from his resignation on May 4, 1984. On November 16, 1984, the Charging Party filed a charge against the Township and the Association resulting in the eventual issuance of a decision, a Refusal To Issue Complaint, on August 1, 1985, [See, D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985)].^{5/} In that decision, we dealt with the issues raised again by the Charging Party in the instant charge. We determined that the six-month statute of limitations was a bar to his claims that the Township improperly reimbursed him for unused sick leave and the Association failed to responsibly represent him.^{6/}

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

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

^{5/} The substance of D.U.P. No. 86-2 is incorporated by reference herein.

^{6/} Because the Charging Party waited beyond the period of time provided by the contract to request Association representation in any claims against the employer, we also determined that the Association's decision to refuse to process the Charging Party's grievance on the basis of unequivocal contract language was not arbitrary, discriminatory or in bad faith and therefore not a breach of its duty to fairly represent him. [See, Jersey City Bd. of Ed., D.U.P. No. 81-13, 7 NJPER 180 (¶12079 1981)].

In the instant proceedings, the Charging Party is making the same claims he made two years ago. The recent charges follow a September 11, 1986 decision and order issued by the Honorable James Clyne of the Ocean County Superior Court, a portion of which determined that the Charging Party's claims for reimbursement for unused sick-day benefits and Association representation are matters within the exclusive jurisdiction of the Commission. The six-month statute of limitations is not, however, tolled by the Superior Court proceedings or by the Judge's recent decision.

In D.U.P. No. 86-2, we found, that on May 15, 1984, the Charging Party's attorney received a letter in which the Township disputed the Charging Party's sick leave claim and we concluded that the limitations period began to run on that date. N.J.S.A.

34:13A-5.4(c) provides:

...no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six month period shall be computed from the day he was no longer so prevented.

In the absence of an allegation of an unfair practice occurring within six months of the date of the filing of the charge, no complaint shall issue. See North Warren Board of Education, D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

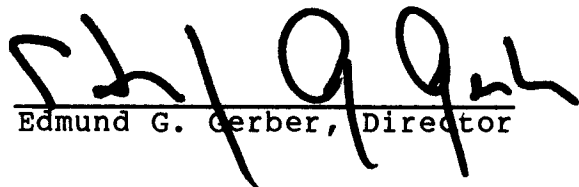
Similarly, the Charging Party is well beyond the six-month limitation period governing his request for Association representation. Thus, as we held in D.U.P. No. 86-21, no complaint

can issue against the Association for its alleged failure to represent the Charging Party.

On December 5, 1986, I advised the Charging Party of the deficiencies in his charge, and requested the submission of additional facts alleging unfair practices which would fall within the Act's cognizable limitations. The Charging Party has not provided any additional information in support of its allegations.

Accordingly, I decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 24, 1986
Trenton, New Jersey