

D.U.P. NO. 91-27

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

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CI-91-57

THOMAS FITZPATRICK, et al.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint in a matter brought by Thomas Fitzpatrick and other individuals. These individuals claimed they were forced to either work without receiving certain benefits or be terminated. However, these individuals stopped working in April 1990. Accordingly, this charge had to be brought within six months of April 1990 or no later than November 1990. The charge was not brought until March 12, 1991. Therefore, the Statute requirement that a charge must be brought within six (6) months was not met.

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Appearances:

For the Respondent
Paul Mackey, attorney

For the Charging Party
Feintuch & Porwich, attorneys
(Philip P. Feintuch, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 12, 1991, Thomas Fitzpatrick, Edward Healy, Chester Major and William Luck filed an unfair practice charge with the Public Employment Relations Commission ("PERC") alleging that the City of Jersey City ("City") violated N.J.S.A. 34:13A-5.1 et seq., specifically subsection 5.4(a)(1), (2), (3) and (4)^{1/} when in October 1988 the

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of

charging parties were advised by the City that they were being terminated pursuant to certain rules of the State Pension Commission and if they wished to continue working they had to waive certain contractual benefits. It is alleged that they were coerced into waiving certain benefits. Consequently, they worked for approximately 18 months without receiving benefits to which they were entitled under the existing contract. The charging parties seek retroactive reimbursement of these benefits for the 18 months.

On March 20, 1991, I wrote to the charging parties stating:

N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a Complaint where an unfair practice charge has not been filed within six (6) months of the occurrence of any unfair practice, unless the aggrieved person was prevented from filing the charge. See In re North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977). Your charge fails to allege the occurrence of unfair practices within the six (6) month limitation requirement and on its face seems to be out of time.

On March 21, 1991, the charging parties amended their unfair practice charge to state that the unfair practice continued until January 3, 1991 when the business administrator of the City ordered that the affected employees not receive the disputed benefits. That


1/ Footnote Continued From Previous Page

employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

is, the allegations constitute a continuing violation.^{2/} However, the charging parties alleged that the 18 months they worked without receiving contract benefits began in October 1988. This 18 month period apparently ended in April 1990. Assuming the alleged denial of benefits constituted a continuing violation, this charge had to be brought within six months of April 1990 or no later than November 1990. The January 3, 1991 statement from the City business administrator does not extend the six-month statutory period.

Based upon the foregoing, I find that the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 26, 1991
Trenton, New Jersey

^{2/} See New Jersey Department of Veterans Affairs and Defense (Menlo Park) and AFSCME Council 1, P.E.R.C. No. 89-76, 15 NJPER 90 (¶20240 1989).