

D.U.P. NO. 96-11

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

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and-

Docket No. CI-96-7

JAMES FRANCIS MANCUSO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint and dismisses a charge filed by James Mancuso against the City of Hoboken. Mancuso alleges that the City violated the collective bargaining agreement when they refused to pay his retirement monies in one lump sum. He claims the City discriminated against him, but did not allege that the discrimination was taken in retaliation against him for participating in protected activity. The Director finds that this alleged breach in the contract does not rise to the level of an unfair practice. Additionally, he finds that the charge is untimely filed.

D.U.P. NO. 96-11

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

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and-

Docket No. CI-96-7

JAMES FRANCIS MANCUSO,

Charging Party.

Appearances:

For the Respondent,
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Charging Party,
James Francis Mancuso, pro se

REFUSAL TO ISSUE COMPLAINT

On August 11, 1995 and September 14, 1995, James Francis Mancuso filed an unfair practice charge and an amendment alleging that the City of Hoboken violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (3).^{1/} Mancuso alleges that when he retired on December 31, 1994 from his position as a sergeant, he was

^{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. (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."

contractually entitled to elect to receive his retirement monetary package from the City in either one lump sum or through partial payments over five years. On October 25, 1994, he requested to receive his entitlement in full upon retirement. He was notified on November 16, 1994 by George Crimmins, the City Business Administrator, of the City's intent to pay his retirement monetary package of \$43,973.31 in five installments and on January 4, 1995, he received \$8,794.61 or one-fifth of his entitlement. Mancuso claims that the City advised him that the Hoboken Police Superior Officers Association agreed to this amendment to the contract.^{2/} He also claims that the City treated him differently from another officer who received his retirement monetary package in one lump sum in July 1994.^{3/}

The City asserts that this charge should be dismissed because it is untimely filed and that the issues raised relate to an alleged breach of a collective bargaining agreement. Further, the City claims it has nothing to do with the PSOA's conduct in negotiations.

Mancuso claims discriminatory action was taken by his employer against him. However, he does not allege that this discrimination was taken in retaliation for participating in

^{2/} Mancuso did not file a charge against the Hoboken Police Superior Officers Association.

^{3/} It is unclear whether this officer was in the same negotiations unit as Mancuso.

protected activity. Additionally, Mancuso claims that the language in the January 1, 1991 - December 31, 1991 contract, as well as the January 1, 1992 - December 31, 1994, and January 1, 1995 - December 31, 1996 successor contracts govern how his retirement money package should be dispersed.^{4/} Mancuso has only alleged that the collective bargaining agreement has been breached; a mere breach of the contract does not rise to the level of an unfair practice. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).^{5/}

Furthermore, Mancuso knew as early as November 16, 1994 how the City intended to pay him his retirement monetary package. Mancuso received a payment of \$8,794.66 on January 4, 1995, representing one-fifth of the money owed to him from the City for his retirement package. However, Mancuso did not file his charge until August 11, 1995, over seven months later. The Act requires that, to be timely filed, a charge must be brought within six months of the alleged unfair practice. See N.J.S.A. 34:13A-5.4(c).^{6/}

^{4/} Execution of the 1992-94 and 1995-96 contracts were approved by the City Council in April 1995.

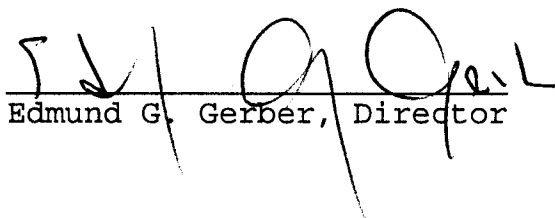
^{5/} There may be other forums in which to litigate an alleged contract violation.

^{6/} N.J.S.A. 34:13A-5.4(c) states, in part:

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

The Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of this charge.^{7/} The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: November 17, 1995
Trenton, New Jersey

6/ Footnote Continued From Previous Page

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; 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. (emphasis added)

7/ N.J.A.C. 19:14-2.3.