

D.U.P. NO. 96-14

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

In the Matter of

WILDWOOD CREST BOARD OF EDUCATION and  
WILDWOOD CREST EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-96-8

THERESA M. CASTAGLIUOLO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint against the Wildwood Crest Education Association because the Charging Party failed to allege an act or omission which occurred within the six month statutory limitation period. The Director will issue a Complaint and Notice of Hearing against the Wildwood Crest Board of Education for allegedly violating the terms of a settlement agreement and harassing the Charging Party for exercising her rights under the Act.

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Appearances:

For the Respondent - Board of Education,  
Cooper, Perskie, April, Niedelman, Wagenheim  
& Levenson, attorneys  
(Russell L. Lichtenstein, of counsel)

For the Respondent - Education Association,  
Selikoff & Cohen, attorneys  
(Steven R. Cohen, of counsel)

For the Charging Party,  
Press & Long, attorneys  
(Richard L. Press, of counsel)

DECISION

On August 15, 1995, Theresa M. Castagliuolo filed an unfair practice charge against the Wildwood Crest Board of Education alleging violations of N.J.S.A. 34:13A-5.4(a), subsections (1), (3)

and (4)<sup>1/</sup> and against the Wildwood Crest Education Association alleging violations of N.J.S.A. 34:13A-5.4(b), subsections (1) and (3)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Charging Party alleges that the Board has failed to abide by the terms of a settlement agreement and has harassed and retaliated against the Charging Party for exercising her rights under the Act. Also, the Charging Party asserts that the Association has failed to process grievances on her behalf.<sup>3/</sup>

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- 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. (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."
- 2/ These subsections prohibit 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."
- 3/ On August 18, 1995, I wrote to the parties requesting, among other things, that they submit a written statement of position explaining why the allegations contained in the charge, if true, would or would not constitute unfair practices on the part of the Respondents. In addition, on September 28, 1995, I wrote to counsel for the Charging Party that the filed charge did not meet the requirements of N.J.A.C. 19:14-1.3 and provided Charging Party an opportunity to amend its charge to

The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice 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, then a complaint shall issue.<sup>4/</sup> The Commission's rules provide that I may decline to issue a complaint.<sup>5/</sup>

For the reasons stated below, I have determined that the Commission's complaint issuance standard has not been met regarding the charges filed against the Association.

The Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of

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3/ Footnote Continued From Previous Page

provide a clear and concise statement of facts.

On October 10, 1995, the attorney for the Charging Party requested an extension of time to file an amended charge and statement of facts. By correspondence dated October 19, 1995, I granted the requested extension and again emphasized that each violation of the Act alleged must be supported by a clear statement of facts in accordance with N.J.A.C. 19:14-1.3.

Counsel for the Association filed a written statement of position on August 30, 1995.

Counsel for the Board submitted a written response to the charge on September 8, 1995, specifically denying each and every allegation contained in the charge and proffered affirmative defenses.

4/ N.J.A.C. 19:14-2.1.

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

the occurrence of the alleged unfair practice.<sup>6/</sup> Further, the Commission's rules state that an unfair practice charge shall contain "a clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the time and place the alleged acts occurred, the names of the persons alleged to have committed such acts and the subsection(s) of the Act alleged to have been violated." (Emphasis supplied)<sup>7/</sup>

It is incumbent upon the Charging Party to allege the occurrence of unfair practices, within the six-month limitation requirement, and that in the absence of such allegations, the Commission would decline to issue a complaint. See City of East Orange, D.U.P. No. 79-15, 5 NJPER 34 (¶10023 1979); Newark Board of Education, D.U.P. No. 78-8, 4 NJPER 112 (¶4092 1978) and North Warren Regional Board of Education, D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

The eight page statement of facts submitted by the Charging Party fails to mention facts involving the Association which occurred during the six month period immediately preceding the filing of the charge. The Charging Party has merely asserted conclusionary statements.

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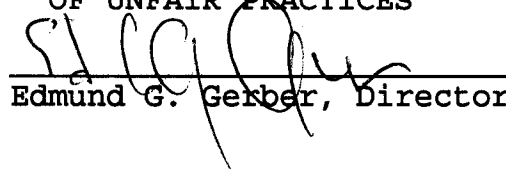
<sup>6/</sup> N.J.S.A. 34:13A-5.4(c) provides: "...that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge..."

<sup>7/</sup> N.J.A.C. 19:14-1.3.

Accordingly, as the Charging Party has not included in its charge the time of occurrence of the conduct alleged to have violated N.J.S.A. 34:13A-5.4(b)(1) and (3) within the six-month statutory limitation period, I decline to issue a complaint on the charges filed against the Association.

There is a dispute over material facts concerning the allegations directed at the Board. Therefore, a Complaint and Notice of Hearing will be issued as to these allegations.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Edmund G. Gerber, Director

DATED: January 26, 1996  
Trenton, New Jersey