

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE VOCATIONAL
SCHOOL IN THE COUNTY OF CAMDEN; CAMDEN
VOCATIONAL TEACHERS ASSOCIATION,

Respondent,

-and-

Docket No. CI-81-1-72

MARY ALICE O'HARA,

Charging Party.

CAMDEN VOCATIONAL TEACHERS' ASSOCIATION,
PAUL WILLIAMS, PRESIDENT,

Respondent,

-and-

Docket No. CI-81-11-73

MARY O'HARA,

Charging Party.

SYNOPSIS

Two unfair practice charges were consolidated for hearing. A motion for dismissal was filed in each of these complaints. Each of these motions was on the basis of timeliness. The Hearing Examiner grants one motion and orders one of the complaints dismissed since the alleged unfair practices arose over a year prior to the filing of the charge. He recommends that the other motion be denied since it cannot be determined from the charge or any accompanying documents just when the six months' statute of limitation would have begun to run.

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Appearances:

For the Board of Education of the Vocational School in
the County of Camden, Davis & Reberkenny, Esqs.
(Robert F. Blomquist, Esq.)

For the Camden Vocational Teachers Association
Greenberg & Mellk, Esqs.
(William S. Greenberg, Esq.)

For the Charging Party, Parker, McCray & Criscuolo, Esqs.
(Stephen J. Mushinski, Esq.)

DECISIONS ON MOTIONS

The Charging Party, Mary Alice O'Hara, filed two Unfair Practice Charges with the Public Employment Relations Commission. One was filed on September 9, 1980, Docket No. CI-81-11, alleging that the Camden Vocational Teachers Association (Association) violated its duty of fair representation under the New Jersey Public

Employer-Employee Relations Act (Act) when it failed to file a grievance on her behalf. The other Charge, Docket No. CI-81-1, filed on July 8, 1980, alleged both the Association and the Board of Education of the Vocational School in the County of Camden (Board) committed unfair practices. It was alleged that the Board committed an unfair practice when it "failed to give timely and adequate notice of the terms and conditions of a new benefit (Article XIX, Tuition Reimbursement Plan)." It was alleged that the Association committed an unfair practice in its handling of O'Hara's proceeding before an arbitrator concerning the same Article XIX, Tuition Reimbursement Plan. It appearing that the allegations of these charges, if true, may constitute unfair practices within the meaning of the Act, two Complaints and Notices of Hearing and an Order Consolidating these cases were issued by the Director of Unfair Practices. Two Motions for Summary Judgment were submitted to the Chairman of the Commission. On July 8, 1981, these motions were transferred to the undersigned for disposition.

Docket No. CI-81-11

The Association's Motion for Summary Judgment is on the grounds that the alleged unfair practices of the September 9, 1980 charge took place more than six months before the filing of the charge and the Charging Party was not prevented from filing the charge within the six-month period of time.

The charge refers to a request for tuition reimbursement for a course, "Supervision of District Instructional Media Services," that was denied by the Board. Said denial is alleged to have taken

place on May 17, 1978. On September 9, 1979, O'Hara sent a letter to the President of the Association, Paul Williams, asking about the status of her grievance. ^{1/} Williams responded in a letter dated September 14, 1979, advising O'Hara that no grievance had been filed on her behalf regarding tuition reimbursement for that particular course. ^{2/}

The Association argued that the

"Charging Party has presented no allegations that any action taken by the respondent with regard to the claim for reimbursement for this course was within six months of the filing of the charge on September 1980. Nor has there been any indication of any reason why the charging party was prevented from filing the charge within six months of receipt of the September 14, 1979 letter that would excuse her failure to comply with the statutory time limitation."

The Charging Party submitted a memorandum in response to the Association's motion. It is alleged that subsequent to O'Hara's receipt of the Association's September 14, 1979 letter, O'Hara wrote to Williams on October 25, 1979, with proof that she took the course in question. In the letter she asked "why did you not grieve this denial of [t]uition [r]eimbursement," and following the letter a dialogue ensued between the parties. O'Hara alleged she was assured that a subsequent grievance would be filed. It is claimed that it was not until July of 1980 that O'Hara deemed that no further action would be taken by the Association.

^{1/} The letter contained a number of other requests but they are not relevant for the purposes of this discussion.

^{2/} A grievance for tuition reimbursement had been filed on her behalf concerning tuition reimbursement for a different course, "Fundamentals of Curriculum Development."

It is noted that under the collective negotiations contract between the Association and the Board a grievance must be filed within five days after an issue is discussed informally between a teacher and the administration.

N.J.S.A. 34:13A-5.4(c) provides that

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

The gravamen of this unfair practice charge is that O'Hara was denied her rights by the failure of the Association to file a grievance regarding her request for tuition reimbursement for a course which she attended in the spring of 1978. She requested tuition reimbursement from the Board on May 15, 1978, and the request was denied by answering letter May 17, 1978. Assuming O'Hara did request that the Association file a grievance on her behalf, and, pursuant to the contract, a grievance had to be within five days of May 17, 1978, O'Hara waited over one year, until September 9, 1979, to inquire as to the status of her grievance. By answering letter of September 14, 1979, O'Hara was advised that no grievance was filed and it took O'Hara one year from the date of this inquiry to bring the instant charge. At the very least, September 14, 1979, has to mark the running of the statute. Under the terms of the contract, any grievance brought on her behalf in September, 1979, would be sixteen months out of time and O'Hara knew or should have

known at that time that the Association had violated its duty of fair representation.

The Association's alleged representation that they will attempt to revive the grievance did not prevent O'Hara from filing a timely unfair practice charge. In Kasczmarek v. New Jersey Turnpike Authority, 77 N.J. 329 (1978), the Supreme Court held that one need not have been "fettered by factors totally beyond his control" before it can be found that one was prevented from bringing an unfair practice charge. But this exception applies to situations where one diligently pursues one's rights in a state court of competent jurisdiction. See also In re State of New Jersey (Stockton College), P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (1977); Jersey City Bd/Ed and Sarah Martinez, D.U.P. 81-73, 7 NJPER 180 (#12079, 1981).

Accordingly, the Association's Motion for Summary Judgment is granted and the Complaint, Docket No. CI-81-11, is dismissed.

Docket No. CI-81-1

In the July 8, 1980 Unfair Practice Charge, O'Hara alleged that the Superintendent of the Board, Donald Springle, testified in an arbitration proceeding that the movement of teachers on the contract's salary guide upon the achievement of an advanced degree is prospective only.

On February 22, 1980, O'Hara reviewed the minutes of Board meetings and discovered that the Board moved teachers who had attained advanced degrees on the salary guide retroactively. The Charging Party alleged that the Board failed to give to its

employees timely and adequate notice of terms and conditions of a new benefit (Article XIX, Tuition Reimbursement Plan During the First Year of the Established Effective Date).

The Board submitted a Motion for summary judgment arguing that the operative date of "O'Hara's charge occurred more than six months prior to the filing of the unfair practice charge." The contract which contains Article XIX became effective July 1, 1977, and the agreement was executed April 19, 1978. The Board argues that the operative date here is April 19, 1978. This same issue of the effective date of tuition reimbursement was the subject of an arbitration proceeding in which an arbitrator rendered a decision in February of 1980. In addition O'Hara brought an action in the Camden County District Court concerning this matter on August 8, 1979. On September 8, 1980, that action was dismissed for cause. 3/

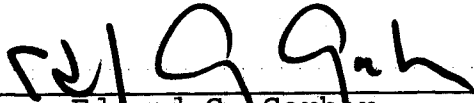
In response to the Board's motion O'Hara submitted an affidavit in which she claims that the delay in bringing the instant action was due to her inability to review Board minutes until February 27, 1980. She maintains that the Board continually refused to allow the Charging Party access to these documents.

It is her position that the Board's action, as revealed in the minutes, is contrary to Springle's testimony in the arbitration proceeding.

The charge in this matter is not artfully drafted and it is not clear whether O'Hara is claiming that the inconsistency between Springle's testimony at the arbitration hearing and the

3/ No reason for the dismissal is stated on the order.

Board's earlier actions constituted an unfair practice or whether the alleged failure of the Board to comply with the terms of Article XIX is the unfair practice or, whether her theory links the two incidents together. In any event, the Respondent has not moved for the Charging Party to clarify her pleadings. I cannot say with certainty just what the operative event is in this matter. It may very well be that the six-month time period did not begin to run until February 22nd and the complaint would not be time barred. Given that all inferences must be resolved in favor of the Charging Party at this stage of these proceedings, I must deny the Motion for Summary Judgment. The Board's motion is hereby denied.



Edmund G. Gerber
Hearing Examiner

DATED: September 10, 1981
Trenton, New Jersey