

D.U.P. NO. 99-11

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

In the Matter of

NEW JERSEY SPORTS & EXPOSITION  
AUTHORITY, and SPORTS ARENA  
EMPLOYEES UNION LOCAL 137,

Respondents,

-and-

Docket No. CI-98-80

WILLIAM T. MORAITES,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices dismisses a charge filed by a retired employee against his former employer and union on the grounds that the charge did not meet the procedural requirements of the Commission, was untimely as to the employer and failed to present any facts to support a 5.4a(7) or 5.4b(5) violation as alleged.

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Appearances:

For the Respondent - Authority,  
Grotta, Glassman & Hoffman, attorneys  
(Nancy Alyse Jacobson, of counsel)

For the Respondent - Local,  
Greitzer & Locks, attorneys  
(Karl N. McConnell, of counsel)

For the Charging Party,  
William T. Moraites, pro se

**REFUSAL TO ISSUE COMPLAINT**

On May 6, 1998, William T. Moraites filed an unfair practice charge alleging that his former employer, New Jersey Sports and Exposition Authority (Authority), violated N.J.S.A.

34:13A-5.4a(7)<sup>1/</sup>. The charge states:

See letter dated 9/16/97 for claim of unpaid wages for vacation days after 23 years of working under union contract.

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<sup>1/</sup> This provision prohibits public employers, their representatives or agents from: "(7) Violating any of the rules and regulations established by the commission."

Please refer to Union contract for the years 1992, 1993, 1994, 1995, 1996 and 1997 (see attached).

Attached to the charge is the September 16, 1997 letter from Mr. Moraites' attorney to the Authority asserting a claim for unpaid vacation days and bereavement leave pursuant to provisions of a labor contract. Though the charge refers to attached labor contracts for the years 1992-1997, no labor contracts were attached to the charge. Instead a single sheet was attached entitled "Monmouth Park Contract Ratification or Rejection" and appears to be a summary of terms and conditions of employment for the years 1994-1996. The charge does not contain any further narrative.

The charge also alleges a violation of N.J.S.A. 34:13A-5.4b(5)<sup>2/</sup>, but does not name an employee organization in the charge or allege any facts pertaining to an employee organization. In addition, no proof of service was provided as required by N.J.A.C. 19:14-1.4.

On May 21, 1998, Sports Arena Employees Union Local 137 (Local 137), the employee representative of the Authority's employees, provided us with certain documents from the Law Division, Special Civil Part. These documents show that Moraites filed small claims complaint, docket number SC 999-98, against the Authority, and docket number 998-98 against Local 137, claiming unpaid wages

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<sup>2/</sup> This provision prohibits employee organizations, their representatives or agents from: "(5) Violating any of the rules and regulations established by the commission."

for vacation time. In that matter, Judge Mark A. Sullivan, Jr., J.S.C., issued an order dated April 21, 1998, dismissing the complaint against the Authority with prejudice on the grounds that the Court "lacked subject matter jurisdiction over the matter due to plaintiff's failure to exhaust his remedies provided under the collective bargaining agreement between" the Authority and Local 137. Judge Sullivan issued a second order dated May 12, 1998, transferring the claim against Local 137 to the Commission "for such appropriate administration and handling pursuant to their legislative charge."

On May 28, 1998, Moraites amended his charge to add Local 137 as a co-respondent. However, the amendment contains no statement of alleged wrongdoing on the part of Local 137. Additionally, Moraites did not file proof of service of the amendment on the parties.

On June 3, 1998, I provided Moraites with a copy of the New Jersey Employer-Employee Relations Act, the Commission's Rules for pleading and practice of unfair practice charges and an unfair practice form. I indicated that Moraites needed to complete the charge form and submit it as soon as possible so that we could process his charge against Local 137.

On June 18 and July 20, 1998, Moraites filed two more amendments that were substantially the same as the amendment filed on May 28, 1998. Again, proof of service was not provided for either amendment. Nevertheless, by letter dated July 20, 1998, I

directed a staff agent to schedule a settlement conference and requested all parties to submit an executed copy of a contract and a 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 Respondent. Both the Authority and Local 137 submitted position statements in response to my letter.

In response, on July 28, 1998, Moraites forwarded pages of a contract appearing to cover the period of January 17, 1994 through January 17, 1997 and a copy of a grievance concerning a seniority list of January 23, 1995. On September 8, 1998, the Commission received correspondence, with attachments, from Moraites concerning a seniority roster that is allegedly in default since 1994-1995 and an incident that took place on August 22, 1997 between the manager of mutual operations John Grasty, and Local 137 business manager Robert Liguori. The connection between the seniority list, the August 22, 1997 incident and Moraites' charge, as amended, is unclear from his submissions and remains unexplained.

The Authority, while reserving its right to raise substantive objections, has raised a number of procedural objections to the processing of the charge. The Authority claims it has never been served by Moraites with the charge or any amendment as required by N.J.A.C. 19:14-1.4. The only charge it claims to have received is the amendment enclosed with my July 20th letter.

The Authority contends that the charge fails to allege a clear and concise statement of the facts that would support a

violation of N.J.S.A. 34:13A-5.4(a)(7). It also asserts that from the face of the charge, it appears to be filed out of time. The Authority argues that Judge Sullivan did not transfer to the Commission the small claims complaint against the Authority, but rather dismissed the complaint with prejudice. Finally, the Authority maintains that if Moraites is alleging a claim for unpaid vacation days under the contract, his claim is a mere breach of contract and does not constitute an unfair practice within the meaning of the Act under Commission case law. State of New Jersey (Dept. of Human Services), P.E.R.C.. No. 84-148, 10 NJPER 419 (¶15191 1984).

Local 137 raises many of the same objections as the Authority: it was never served with the charge or amendments; no clear and concise statement of facts that would support a violation of N.J.S.A. 34:13A-5.4b(5); the charge is filed out of time; and the charge only states a breach of contract claim. In addition, Local 137 asserts that the charge does not allege a breach of its duty of fair representation to its membership.

The parties were unable to resolve this matter at the September 14 settlement conference. Thereafter, on September 25, 1998, I again wrote to Moraites and outlined the defects in his charge, as amended, and gave him an opportunity to cure. I advised that the amended charge would not be processed until it complied with N.J.A.C. 19:14-1.3 and 1.4 and that from the face of the charge, it appeared that the occurrence complained of transpired

more than six (6) months from the filing of the charge, and hence, was beyond the statute of limitation contained in N.J.S.A.

34:13A-5.4c.

On October 5, 1998, Moraites submitted a reply. No proof of service of this or any other submission was provided. In his reply, Moraites alleges that pursuant to the contract covering the period of January 17, 1994 through January 17, 1997, he was due payment for 21 days for unused vacation time and 2 days for bereavement leave when he retired from the Authority. By letter dated September 16, 1997, Moraites' attorney requested payment for these days and the Authority refused to make payment. In addition, Moraites alleges that Local 137 refused to enforce his right to these benefits.

Moraites argues, that the charge is timely because he filed the matter in small claims court on February 20, 1998 and Judge Sullivan transferred the matter to the Commission.

In correspondence dated February 19, 1999, I wrote to the parties and summarized the facts as they appeared, and provided them with an opportunity to submit additional facts for our consideration or amend their pleadings and responses. All such submissions were to be received no later than March 2, 1999.

By letter dated March 3, 1999, received on March 5, 1999, Moraites reiterated his position contained in previous submissions that he was not properly paid for vacation time and adds his account of what transpired pursuant to the September 14, 1998 settlement

conference. Moraites continued to allege that his charge against Local 137 is timely.

On March 9, 1999, I received correspondence from counsel for the Authority objecting to our consideration of Moraites' March 3, 1999 submission on the grounds that it is untimely. In addition, the Authority contends that Moraites misstated the facts and procedural history, and raises irrelevant issues.

By letter dated March 9, 1999, received on March 11, 1999, counsel for Local 137 raises several procedural and substantive issues including the timeliness of Moraites' March 3 submission.

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission has delegated the authority to issue complaints to me. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

For the reasons discussed below, I decline to issue a complaint in this matter.<sup>3/</sup>

N.J.A.C. 19:14-1.3 provides in pertinent part that:

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<sup>3/</sup> As stated above, all parties were invited to submit additional facts and argument for my consideration by March 2, 1999. My decision is based on the materials and arguments received on or before March 2, 1999.



A 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.

N.J.A.C. 19:14-1.4 provides that:

The charging party shall file an original and nine copies of such charge, together with proof of service of a copy on all other parties. The Director of Unfair Practices will send a copy to the respondent, but the charging party will remain responsible for formal service of the charge.

N.J.A.C. 19:14-1.5 provides in pertinent part that:

Filing, service, and proof of service of an amended charge shall conform to the provisions of these rules relating to the original charge.

Despite being given numerous opportunities, the filed charge and amendments do not comply with the above-cited Commission Rules. Treating Moraites' October 5, 1998 submission as another amendment, the charge as amended does not specify the time and place of such material facts as (1) when Moraites retired from employment, (2) when he first learned that the Authority was not going to pay his claim for vacation and bereavement time, (3) when he asked Local 137 to enforce his rights, (4) whom he asked in the Local for assistance and (5) what he asked Local 137 to do on his behalf.

An original and nine copies of the October 5, 1998 amendment have never been received by the Commission nor has proof of service been provided for the original charge or any subsequent amendments. Only a telefaxed copy of the October 5, 1998 amendment

has been received by the Commission. Consequently, I dismiss Moraites' unfair practice charge, as amended, for failure to conform to the rule provisions cited above.

N.J.S.A. 34:13A-5.4c precludes the Commission from issuing a complaint where an unfair practice charge has not been filed within 6 months of the occurrence of any unfair practice unless the aggrieved person was prevented from filing the charge. In re North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

Treating Moraites' amended charge as perfected for the sake of analysis, by September 16, 1997 Moraites knew that the Authority was unwilling to pay him for the days claimed or he would not have sought out the services of an attorney. Therefore, using September 16, 1997 as the operative date, Moraites would have had to file a charge with the Commission on or before March 17, 1998 to be timely. However, his original charge naming only the Authority as a respondent was not filed with the Commission until May 6, 1998. It was not until the May 28, 1998 amendment that he named Local 137 as a party to the charge. Therefore, on its face, the amended charge appears to have been filed outside the six-month statute of limitations and is, thus, untimely unless Moraites was prevented from filing the charge.

Equitable considerations are relevant when determining if a person has been prevented from filing a timely charge under N.J.S.A. 34:13A-5c and should be weighed against the Legislature's objectives in imposing a limitations period. Kaczmarek v. N.J. Turnpike Auth.,

77 N.J. 329, 339 (1978). In Kaczmarek, the diligent pursuit and timely filing of a charge, although in an inappropriate forum (superior court), justified the tolling of the statute of limitations. Id. at 341.

Here, Moraites argues that he made a timely filing in small claims court on February 20, 1998 and Judge Sullivan transferred the case to the Commission. Moraites contends that his diligent pursuit of his claim, albeit in the wrong forum, should toll the statute of limitations.

Judge Sullivan only transferred to the Commission Moraites' claim against Local 137. Judge Sullivan specifically dismissed Moraites' claim against the Authority with prejudice on the grounds that he failed to exhaust his remedies provided under the collective agreement. Thus, giving the benefit of the doubt to Moraites and based on the Superior Court filing, I assume arguendo, without formally finding, that Moraites' charge against Local 137 is timely.

With regard to Moraites' charge against the Authority, I find that it is untimely. Many of the factors thought to be important by the Supreme Court in Kaczmarek, which justified the tolling of the statute of limitations there, are absent from Moraites' case as against the Authority. In Kaczmarek, the Supreme Court found important, among other things, the Commission's jurisdiction over part of the claim was unclear because the statute granting the Commission jurisdiction was relatively new and

unexplored in judicial decisions at the time of the filing of the complaint. Id. at 342. Moreover, the Court also found as to the filing of the entire charge, that the charging party may have been given incorrect information by Commission staff members concerning where to appropriately file the charge. Id. at 341.<sup>4/</sup> The Supreme Court also found to be a mitigating circumstance the failure of the superior court to transfer the case to the Commission once it determined it did not have subject matter jurisdiction. Id. at 344.

Here, some twenty years after Kaczmarek, the Commission's jurisdiction over unfair practice charges is clear. Moraites had consulted an attorney over this matter and there is no evidence that he was misled by Commission staff members concerning where to file his charge. Judge Sullivan was aware of the Commission's jurisdiction and he transferred that part of the case to the Commission which he thought to be appropriate. Judge Sullivan consciously did not transfer the part of the case against the Authority and instead dismissed it with prejudice. Under these circumstances, I cannot say that Moraites was prevented from filing a timely charge against the Authority.

Thus, assuming that the charge against the Authority is timely, to establish a violation of 5.4a(7) of the Act, the charging party must state which Commission rule the employer has been

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<sup>4/</sup> The convergence of these two factors made the filing of the complaint in superior court an "understandable mistake." Id. at 343.

violated. Burlington Tp. Bd. of Ed., D.U.P No. 97-31, 23 NJPER 152 (¶28073 1997). Similarly, to maintain a violation of subsection b(5) against Local 137, the charging party must allege what specific Commission rule or regulation the employee organization has violated. Oakcrest-Absegami Teachers Assn., D.U.P. No. 97-35, 23 NJPER 261 (¶28125 1997). Here, Moraites has failed to state which Commission rules either of the respondents have violated nor has he presented any facts to support his 5.4a(7) or 5.4b(5) allegations.


Finally, based on the limited information provided by the charging party, the dispute with the Authority over payment of unused vacation days and bereavement leave upon retirement appears to be one of contract interpretation. A mere breach of contract does not necessarily rise to the level of an unfair practice. State of New Jersey (Dept. of Human Services).

For all of the foregoing reasons, I decline to issue a complaint based on the allegations of this charge as amended.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: March 16, 1999  
Trenton, New Jersey