

D.U.P. NO. 93-18

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

In the Matter of

STATE OF NEW JERSEY
and SEIU LOCAL 518,

Respondents,

-and-

Docket No. CI-92-99

LOUIS KISH, et al.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an charge filed by employees of New Jersey Division of Motor Vehicles, charging that the State of New Jersey and their union representative, SEIU Local 518 conspired to remove them from the collective negotiations unit as confidential employees. The Director finds that the unfair practice was filed beyond the Commission's six-month statute of limitations. The employees knew their positions were removed from the unit more than three years before the charge was filed. The fact that the employees were not told of the specific reason for their unit exclusion did not prevent them from filing a timely charge when they were removed from the unit.

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Appearances:

For the Respondent State of New Jersey
Robert J. DelTufo, Attorney General
(Michael L. Diller, Deputy Attorney General)

For the Respondent SEIU
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

For the Charging Party,
Louis Kish, pro se

REFUSAL TO ISSUE COMPLAINT

On May 11, 1992, Louis Kish, Gregory Pringle and Kirk Gilfillen, employees of the New Jersey State Division of Motor Vehicles, filed an unfair practice charge with the Public Employment Relations Commission. Charging parties allege that the State of New Jersey violated subsections 5.4(a)(1) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} and

^{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. (7) Violating any of the rules and regulations established by the commission."

that SEIU Local 518 violated subsections 5.4(b)(1) and (5) of the Act.^{2/}

Charging parties allege that the State and SEIU Local 518, the statutory majority representative of the State's Division of Motor Vehicle employees, conspired to remove charging parties from the collective negotiations unit represented by Local 518. They assert that, in 1988, the State and Local 518 improperly classified charging parties as "confidential employees" and excluded them from the collective negotiations unit. Both the State and Local 518 argue that the charge is untimely as it was filed outside the Commission's six-month statute of limitations period. N.J.S.A. 34:13A-5.4(c).

The employment positions held by Kish, Gilfillen and Pringle were removed from the unit in March 1988. Before the employees accepted the promotion into their present positions, Local 518 had agreed to the removal of these positions from the unit based upon the employees' responsibilities to perform internal investigations concerning other Division of Motor Vehicle employees. Subsequently, as a result of a reorganization in the Division, the titles of these employees were changed to Field Monitor I, effective October 1991. Charging parties then questioned

^{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. (5) Violating any of the rules and regulations established by the commission."

their existing confidential designations and discussed the issue with the State and Local 518. It was explained to charging parties that the confidential status of their positions was due to the investigatory nature of their job responsibilities. Accordingly, the employees' positions retained their confidential, non-unit status.

Based upon the allegations of the charge, I find that the instant unfair practice charge was not filed within the Commission's six-month statute of limitations period. Subsection 5.4(c) of the Act precludes the Commission from issuing a complaint where an unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice unless a charging party was otherwise prevented from filing a timely charge. N.J.S.A. 34:13A-5.4(c) states:

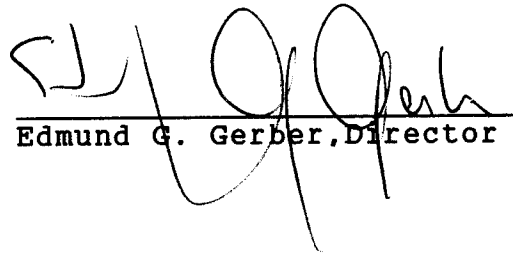
...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977). See also, N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

The operative event on which the charge is based is the 1988 removal of these employees' positions from the SEIU unit. Charging parties acknowledged that they were aware that their positions were removed from the SEIU unit in 1988. When their

titles were changed in October, 1991, the employees' confidential status continued. The fact that the subject employees were not aware of the State's specific justification for their confidential designation until sometime in 1992, without more, would not appear to have prevented them from filing a timely charge when their positions were originally removed from the unit. Because the charge was not filed within six months of the alleged unfair practice -- i.e., the removal of the subject employees' positions from the unit -- it is untimely. Accordingly, I decline to issue a complaint based upon the instant unfair practice charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 16, 1992
Trenton, New Jersey