

D.U.P. NO. 82-19

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

In the Matter of

CHERRY HILL BOARD OF FIRE
COMMISSIONERS, DISTRICT #4,

Respondent,

-and-

DOCKET NO. CO-81-370

LOCAL 2663, IAFF, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to certain portions of an unfair practice charge. There is no allegation that the claimed unfair practices occurred within the six month period preceding the filing of the charge.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 10, 1981, as amended August 6, 1981, by Local 2663, IAFF, AFL-CIO ("Local 2663") against the Board of Fire Commissioners, Fire District #4, Cherry Hill ("District 4") alleging that the District was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, specifically, N.J.S.A. 34:A-5.4(a)(3) and (5). ^{1/}

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to

^{1/} This subsection prohibits public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a 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. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met with respect to certain of the Charging Party's allegations.

Pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides: "provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... 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 served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented."

Further, the Commission's rules state that an unfair practice charge shall contain inter alia:

A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated. (Emphasis added) 5/

Accordingly, the undersigned has determined that 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 undersigned would decline to issue a complaint. See In re N. Warren Reg. Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶ 4026 1977).

The Charge filed on June 10, 1981 did not contain any reference to an operative date within the six month limitations period. Thus, subsequent to the initial filing of the Unfair Practice Charge, by letter dated June 15, 1981, the undersigned informed the Charging Party that the Charge could not be processed further unless it was amended, pursuant to N.J.A.C. 19:14-1.5, to include the dates of the acts alleged to constitute the unfair practice.

Additionally, the undersigned advised that a complaint would not issue if the Charging Party failed to allege the occurrence

of an unfair practice within the prescribed six month period.

Although the charge has been amended, the amendment refers to certain alleged unfair practices which occurred outside the six month period. Therefore, the undersigned shall not issue a complaint with respect to allegations embodied in paragraph 1, paragraph 2, and paragraph 6 of the amended charge. 6/

Accordingly, as these allegations do not contain the specific time of occurrence of the conduct alleged to constitute the unfair practice within the six month statutory limitation period, the undersigned declines to issue a complaint. 7/

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Carl Kurtzman, Director

DATED: January 6, 1982
Trenton, New Jersey

6/ Paragraphs 2 and 5 are also deemed withdrawn pursuant to charging party's letter to the Commission dated November 18, 1981.

7/ A complaint is issuing forthwith under separate cover as to paragraphs 3 and 4 of the amended charge.