

D.U.P. NO. 89-17

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

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-89-74

P.B.A. LOCAL 11,

Charging Party.

SYNOPSIS

The Director refuses to issue a complaint on an unfair practice charge filed beyond the statutory six-month limitation. The Director finds that the allegations against the employer are based upon incidents occurring more than six months prior to the filing of the charge.

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Appearances:

For the Respondent  
Katz, Bitterman & Dougherty, Esqs.  
(Michael Bitterman, of counsel)

For the Charging Party  
Wills & O'Neill, Esqs.  
(G. Robert Wills, of counsel)

REFUSAL TO ISSUE COMPLAINT

Trenton PBA Local 11 ("PBA") filed an unfair practice charge alleging that the City of Trenton ("City") violated subsections 5.4 (a) (1) and (2)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The PBA alleges that the City based a decision to discipline two police officers on their submission of form letters requesting more definite descriptions of information requested by a superior officer.

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<sup>1/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization.

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 issue a complaint stating the unfair practice charged.<sup>2/</sup> The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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.<sup>3/</sup> The Commission's rules provide that I may decline to issue a complaint.<sup>4/</sup> For the reasons stated below, the Commission's complaint issuance standards have not been met.

In determining whether a complaint may issue, we must apply the Act's statutory timeliness requirement. 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 has been prevented from

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<sup>2/</sup> 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

<sup>3/</sup> N.J.A.C. 19:14-2.1.

<sup>4/</sup> N.J.A.C. 19:14-2.3.

filing an otherwise timely charge. 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 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.

We may not issue a complaint where a charging party fails to allege that the unfair practice(s) occurred within the six-month limitation period. No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977); N.J. Turnpike Employees Union Local 914, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

The alleged unfair practice arises from the following events. The City alleged that police officers Thomas Peck ("Peck") and Baron O'Bryan ("O'Bryan") responded improperly to a radio call for assistance on October 16, 1987. After the alleged incident, the officers were asked by Sargeant Terry Talley ("Talley") to return to the station and write their version of events. The officers refused and, on advice from the president of PBA Local 11, each submitted a signed form letter requesting more specific information about the request for a written statement. The day after the incident, Lieutenant Walsh told the officers that if they had complied with Talley's request to write out their version of the event, the matter would have been handled informally and they would have been given counselling slips. Walsh stated that since Peck and O'Bryan submitted form letters, the City would proceed with formal disciplinary charges.

Disciplinary charges were filed against Peck and O'Bryan on January 4, 1988 and served on January 7, 1988. Counsel for the PBA was provided with discovery by letter of January 25, 1988 from the City's counsel. The departmental disciplinary hearing was originally scheduled for February, but was postponed until September 16, 1988. Counsel for the PBA states that he did not discuss the charges with Peck and O'Bryan until June of 1988. He alleges that he became aware that the institution of charges resulted from the submission of the form letters in August of 1988. The instant unfair practice charge was filed on September 13, 1988. The PBA urges us to find that the charge was timely filed. If we decline to do so, it urges us to consider the charge for equitable reasons. The City contends that the charge is untimely and should be dismissed.

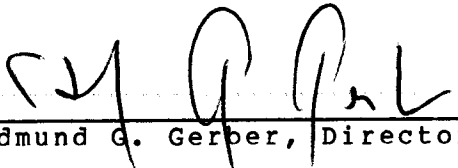
The PBA states that the unfair practice arises from Peck and O'Bryan's submission of form letters requesting more information about written statements they were requested to provide. It alleges that submission of the letters resulted in disciplinary charges, rather than referral of the officers to counselling. There are two possible dates from which the time for filing the charge can accrue - October 17, 1987, the date that the officers became aware that the institution of formal disciplinary proceedings was related to their written request for more information -- and January 7, 1988, the date that the officers were served with formal disciplinary charges. Regardless of the operative date used, the charge is not

timely. The filing date of September 13, 1988, is over six months from the latter date. The charge is untimely, and must be dismissed in accordance with N.J.S.A. 34:13A-5.4(c).

We also find that there is no support for the PBA's equity argument. The PBA states that its counsel did not talk with the officers until June of 1988 and that they did not inform him of the connection between the charges and the letters until August of 1988. However, the time period for filing a charge is not tolled because a client is not informed of the six-month statute of limitations. N.J. Memorial Home for Soldiers, D.U.P. No. 88-21, 14 NJPER 527 (¶19225 1988). The charging party has alleged no facts that prevented it from filing a timely charge and filed no other administrative or legal actions during the six month period. Cf. Kazmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1977).

Accordingly, the Commission's complaint issuance standard has not been met and we decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: May 26, 1989  
Trenton, New Jersey