

D.U.P. NO. 2000-4

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

In the Matter of

LUMBERTON TOWNSHIP POLICE
OFFICERS ASSOCIATION,

Respondent,

TOWNSHIP OF LUMBERTON,

Docket Nos. CI-99-15
CI-99-21

Respondent,

-and-

RICHARD RUFO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint on two untimely charges. The charges were filed more than six months after the alleged unfair practices were committed and there was no evidence to indicate that the aggrieved party was prevented from filing the charges on time.

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Appearances:

For the Respondent, Township
Barron & Gillespie, attorneys
(John C. Gillespie, of counsel)

For the Respondent, Association
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(Sidney H. Lehmann, of counsel)

For the Charging Party
Pellettieri, Rabstein & Altman, attorneys
(Daniel S. Sweetser, of counsel)

REFUSAL TO ISSUE COMPLAINT

On September 23, 1998, Richard Rufo, a former police officer of the Lumberton Township Police Department, filed an unfair practice charge (CI-99-15) against the Lumberton Township Police Officer's Association (Association) alleging that the Association breached its duty of fair representation when it refused to help him in a dispute with the police department. On October 9, 1998, Rufo

amended his charge to specifically allege a 5.4b(1)^{1/} violation of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.

Also filed on October 9, 1998 was a charge (CI-99-21) against Lumberton Township (Township) alleging a violation of 5.4a(1)^{2/} of the Act. Both charges arise out of the same occurrence and contain many of the same allegations and operative facts.

Taken collectively, the charges allege that Rufo was forced to resign from the police department on November 24, 1997, or face criminal charges for filing a false police report. One week later, after consulting with an attorney, Rufo attempted to rescind his resignation, but the Township's police chief refused to accept the recision claiming the department had already filled Rufo's position.

Also, the charge (CI-99-15) alleges that in the weeks following his resignation, Rufo requested assistance from the Association President on at least two occasions. Rufo contends that he refused to help. CI-99-21 alleges that the Township violated various sections of the collective negotiations agreement between

^{1/} This provision prohibits 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."

^{2/} This provision prohibits 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."

the Township and the Association in the process of obtaining Rufo's resignation.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. In correspondence dated July 30, 1999, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. None of the parties filed a response. Based upon the following, I find that the Complaint issuance standard has not been met.

N.J.S.A. 34:13A-5.6 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-month period shall be computed from the day he was no longer so prevented.

Here, the face of the charge against the Township makes it clear that the Township refused to rescind Rufo's resignation, consequently, he knew that he was not getting his job back within one week of his resignation, or no later than December 1, 1997. The charge against the Association specifically alleges that in the weeks following Rufo's resignation he was unequivocally told by the

Association President that the Association was not going to provide assistance. Thus, not later than December 31, 1997, Rufo knew that the Association was not going to help him. Therefore, to be timely against the Township, Rufo would have had to file a charge with the Commission by June 1, 1998. As noted above, a charge was not filed against the Township until October 9, 1998. Regarding the Association, Rufo would have had to file a charge with the Commission no later than June 30, 1998 to be timely. The charge against the Association was not filed until September 23, 1998 and not perfected until October 9, 1998.

I note that at all relevant times, Rufo was represented by legal counsel. I also note that there is no allegation that Rufo was prevented from filing his charges within the time period allowed by the Act.

Rufo contends that his charge against the Association is timely because under the grievance procedure the Association had up to six months to file a grievance on his behalf, or in this case, until May 24, 1998. Rufo argues that his charge against the Association was filed within six months of May 24, 1998 and is therefore timely.

Rufo's cause of action, however, accrued when he first learned that the Association was not going to assist him, which was some time in December 1997. See State of New Jersey (Division of Civil Rights), P.E.R.C. No. 94-116, 20 NJPER 273 (¶25138 1994) and IFPTE (Bitter), D.U.P. No. 97-20, 22 NJPER 3 (¶28003 1996).

For the foregoing reasons, I find that the charges filed by Rufo are untimely and that he was not prevented from filing his charges within six months of their occurrence. Accordingly, I dismiss the charges.

I note in passing that the allegations against the Township are essentially breach of contract claims and do not support a finding of an independent 5.4a(1) violation. Standing alone, I would dismiss the allegations under State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).


Similarly, even if the charges were timely, I would not find a breach of the Association's duty of fair representation and dismiss the allegations against the Association. The grievance procedure in the collective agreement allows an aggrieved employee to file a grievance on his own and there is no allegation here that the Association misled Rufo or otherwise prevented him from access to the grievance procedure. See Carteret Education Association (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390 (¶28177 1997).

Based upon all of the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of these two charges.^{3/}

ORDER

The unfair practice charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNEFAIR PRACTICES


Stuart Reichman, Director

DATED: August 13, 1999
Trenton, New Jersey