

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF LABOR & INDUSTRY),

Respondent,

-and-

DOCKET NO. CI-81-67

BARBARA SACHAU,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with regard to an allegation that Charging Party was denied a salary increment due to her exercise of protected activity under the Act. The Administrator determines that the charge was not filed within six months of the alleged unfair practice. While the Charging Party suggested that the charge was timely based upon its filing within six months of the processing of a related grievance, the Administrator finds that the processing of a related grievance does not toll the running of the statutory limitations period.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF LABOR & INDUSTRY),

Respondent,

-and-

DOCKET NO. CI-81-67

BARBARA SACHAU,

Charging Party.

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on March 5, 1981, by Barbara Sachau ("Charging Party") against the State of New Jersey (Department of Labor & Industry) ("State") alleging that the State was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(1) and (3). ^{1/} The Charging Party alleges that she was denied a salary increment in April 1980 due to her exercise of protected activity under the Act.

^{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. (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."

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 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. 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 and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standards have not been met.

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

^{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

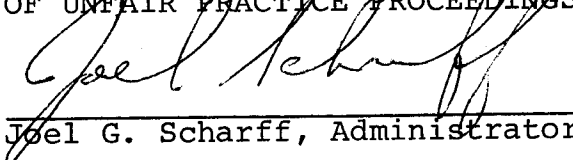
the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides "... that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six month period shall be computed from the day he was no longer so prevented."

Accordingly, it has been 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 must decline to issue a complaint. See In re North Warren Reg. Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶ 4026 1977).

By letter of November 15, 1981, Charging Party suggested that the charge is timely based upon the fact that it was filed within six months of the processing of a related grievance. However, in this case the unfair practice arose when allegedly, the Charging Party was denied an increment due to her exercise of protected rights. The processing of the related grievance does not toll the Commission's statute of limitations. State of New Jersey v. Council of New Jersey State College Locals, P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (1977).

Accordingly, the undersigned is compelled to decline the issuance of a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: April 5, 1984
Trenton, New Jersey