

D.U.P. NO. 94-30

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

In the Matter of

CITY OF ASBURY PARK,

Respondent,

-and-

Docket No. CI-94-20

ROBERT BETZ,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses portions of an unfair practice charge and issues a Complaint and Notice of Hearing on one allegation in the charge filed by a public employee against his employer.

The Director determined that portions of the charge fall outside the six month statutory period or concern matters beyond the Commission's jurisdiction.

The Director issued a Complaint and Notice of Hearing on the allegation that the employer retaliated against the charging party for filing grievances.

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Appearances:

For the Respondent,  
Murray, Murray & Corrigan, attorneys  
(Karen A. Murray, of counsel)

For the Charging Party,  
Robert Betz, pro se

DECISION

On September 22 and November 1, 1993, Robert Betz filed an unfair practice charge and amended charge alleging that his employer, the City of Asbury Park, violated subsections 5.4(a)(1), (3) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Betz alleges that on April 23, 1993, the City filed a Preliminary Notice of Disciplinary Action against him

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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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

in retaliation for his "involvement in labor disputes...." Betz alleges that the disputes concern his (1) filing of a complaint with the Division of Workplace Standards (PEOSHA); (2) filing of grievance complaints; and (3) "perceived" involvement in a N.J. Department of Personnel Action. Betz attached copies of correspondence, reprimands and grievances.

On December 1, 1993, the City filed a letter, denying it engaged in any unfair practice. It asserts that Betz's allegations are untimely filed, pursuant to N.J.S.A. 34:13A-5.4(c). It also asserts that alleged retaliation for reporting safety violations is not an unfair practice, that alleged violations of "contractual rights" are not unfair practices, and that selective enforcement of residency requirements is not an unfair practice.

N.J.S.A. 34:13A-5.4(c) prohibits any complaint issuing on "any unfair practice occurring more than six months prior to the filing of the charge..." unless the person was "prevented" from filing a timely charge.

Documents attached to the amended charge show that on December 2, 1992, the N.J. Department of Labor notified the Mayor of Asbury Park of a complaint alleging unsafe working conditions in violation of the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A et seq. A copy of the complaint was included with the letter - Betz's name did not appear on either document. The complaint concerned fumes in the firehouse, the absence of a fire escape adjacent to the sleeping quarters, and the absence of safety bars on the "jump seats."

Also attached is a copy of a "written reprimand" of Betz dated March 10, 1993. The reprimand concerns Betz's alleged failure to report "an odor of kerosene" to his commanding officer. Betz instead contacted an off-duty dispatcher.

These incidents fall outside of the statutory time limitation for issuance of a Complaint. N.J.S.A. 34:13A-5.4(c). Accordingly, because the Commission's complaint issuance standard has not been met, I dismiss these two portions of the charge. N.J.A.C. 19:14-2.1.<sup>2/</sup>

Betz also alleges that the City acted against him for his "perceived involvement in a State of N.J. Department of Personnel Action." Betz alleges that the action concerned "violations of residency requirements."

Assuming that the allegation is true, I must also dismiss this portion of Betz's charge. The Commission has determined that allegations claiming retaliation for matters lodged with the Department of Personnel do not constitute protected rights under the Act. Camden Cty. Sheriff's Dept., D.U.P. No. 84-30, 10 NJPER 366 (¶15170 1984); Middlesex Cty. Health Dept., D.U.P. No. 84-33, 10 NJPER 405 (¶15187 1984). Accordingly, this allegation does not meet the Commission's complaint issuance standard.

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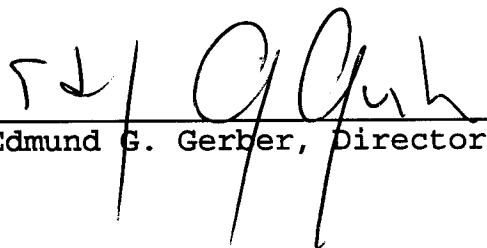
<sup>2/</sup> These incidents may have some background relevance to the timely filed allegations. Inasmuch as the Commission has not ruled on the precise issue, I cannot agree with the respondent that allegations of retaliation for the filing of a PEOSHA complaint are necessarily beyond this agency's jurisdiction. Cf. Ewing v. NLRB, 768 F.2d 51, 119 LRRM 3273 (2nd Cir. 1985).

Finally, Betz alleges that the April 23, 1993 employment action was in retaliation for his filing of grievances protesting perceived violations of the collective agreement. Betz enclosed copies of grievances dated March 29, March 31 and April 13, 1993.

The Commission has determined that the filing of grievances is conduct protected by the Act. See Trenton Bd. of Ed., P.E.R.C. No. 88-135, 14 NJPER 452 (¶19187 1988); Tp. of Pine Hill, P.E.R.C. No. 86-126, 12 NJPER 434 (¶17161 1986). Betz's allegation in this portion of the charge is timely filed. Accordingly, I issue a Complaint and Notice of Hearing on this allegation only, insofar as it may violate subsections 5.4(a)(1) and (a)(3) of the Act.

The remainder of the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: February 25, 1994  
Trenton, New Jersey