D.U.P. NO. 88-16

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

In the Matter of

WOODBINE DEVELOPMENTAL CENTER,

Respondent,

-and-

Docket No. CO-88-183

C.W.A, LOCAL 1040, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed outside the six-month limitation period.

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Appearances:

For the Respondent
Attorney General's Office
(Michael L. Diller, Deputy Attorney General)

For the Charging Party
George F. White, Jr., Staff Representative

REFUSAL TO ISSUE COMPLAINT

On January 11, 1988, Local 1040, Communications Workers of America, AFL-CIO ("CWA" or "Union") filed an unfair practice charge alleging that the Woodbine Developmental Center ("Employer") violated subsection 5.4(a)(5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:23A-1 et seq. ("Act") by unilaterally changing the work hours of speech therapists wihout

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1/ This subsection prohibits public employers, their representatives or agents from: "(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."

negotiations. On March 10, 1988, a Commission staff agent conducted an exploratory conference at which the parties presented their positions. The Union asserted that the change in work hours also violated the collective negotiations agreement for professional employees extending from July 1, 1986 to June 30, 1989. The Employer asserted that the charge is untimely filed. It also asserted that the charge alleges a mere breach of contract which should proceed through the parties' negotiated grievance procedure State of N.J. (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

On March 15, 1988, the Union filed an additional statement asserting that the charge is timely filed because the grievance protesting the change in work time was not ultimately decided until December 29, 1987. It also asserted a contractual justification for its charge.

N.J.S.A. 34:13A-5.4(c) provides:

> No complaint shall issue based on any unfair practice occurring more than six (6) months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such a charge in which event the six month period shall be computed from the day he was no longer so prevented.

Thus, in order to file a timely charge, any charging party must allege that unfair practices have occurred within the six month limitation period. See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977). See also N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

The Union maintains that although the change was effective July 6, 1987, the grievance process was not completed until December 29, 1987. The Commission has consistently held that the filing of a grievance concerning an unfair practice does not toll the six-month filing requirement. State of N.J. (Stockton State College), P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super 91 (App. Div. 1977), pet. for certif. den. 78 N.J. 326 (1978); State of N.J. (Dept. of Corrections), D.U.P. No. 84-31, 10 NJPER 387 (¶15178 1984). Further, the action was announced on June 26 and took effect on July 6, 1987. The charge was not filed until January 11, 1988 and is not within the allowable six-month period. Finally, the Union presented no reason for failing to file a timely charge. N.J. Turnpike Auth. v. Kaczmarek and Local No. 194, P.E.R.C. No. 77-15, 2 NJPER 309 (1976), aff'd App. Div. Dkt. No. A-745-76 (4/7/77), rev'd 77 N.J. 329 (1978). We therefore refuse to issue a complaint. No. Warren Bd. of Ed.; N.J. Turnpike Employees' Union.[2/]

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: May 27, 1988
Trenton, New Jersey

2/ Having dismissed the charge as untimely filed, we do not need to consider the employer's alternate defense that the charge should be dismissed under Human Services.