

D.U.P. NO. 78-12

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

In the Matter of

CITY OF WILDWOOD AND C.A.P.E.
LOCAL 1983,

Respondents,

-and-

DOCKET NO. CO-78-187

THE LIFEGUARD ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that an employer had wrongfully withheld negotiated salary increases and that the exclusive negotiations representative had mishandled negotiations of the matter. The Director notes that the alleged activities constituting the claimed unfair practice as to the employer occurred prior to six months of the filing of the Charge, and therefore, a complaint could not issue. The Director further determines that the Charging Party's allegation that the exclusive representative displayed a "lack of efficient and knowledgeable handling" in the negotiations would not, if true, constitute unfair practices under the Act.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Lifeguard Association (the "Association") on February 24, 1978, and amended on April 3, 1978, alleging that the City of Wildwood (the "City") violated the New Jersey Employer-Employee Relations Act N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7) ^{1/} and that C.A.P.E.

1/ These subsections prohibit 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. (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. (7) Violating any of the rules and regulations established by the commission."

Local 1983 (Local 1983), the exclusive collective negotiations representative of lifeguards, violated the Act, specifically N.J.S.A. 34:13A-5.4(b)(1), (3) and (5). ^{2/}

The Charge alleges that the City, without prior notification, deducted from the lifeguards' paychecks on August 19, 1977, a negotiated salary increase. The Association also charges Local 1983 with a "lack of efficient and knowledgeable handling of this matter..." More specifically, the Association alleges that during June, July and August 1977, the lifeguards met with Maynard Sullivan, a representative of Local 1983, to discuss demands and progress in contract negotiations with the City. The Association contends that the lifeguards agreed with Mr. Sullivan that a negotiated dollar per day increase retroactive to the beginning of the summer of 1977 was acceptable. The lifeguards and Mr. Sullivan also agreed to seek a higher monetary increase from the City for the succeeding three summers. On August 5, 1977, the lifeguards' paychecks included the one dollar per day increase but did not include any retroactive payment. Mr. Sullivan advised the lifeguards that they could expect the retroactive payments in the August 19 paychecks. On August 19, 1977, the paychecks did not include the dollar per day increase and, in fact, reflected

^{2/} These subsections prohibit 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

a deduction of an amount equal to the increase in the August 5 paycheck. Subsequently, the employees engaged in a sick-out, and further negotiations ensued through August 26; however, the matter was not resolved.

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. ^{3/} 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. This 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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

Preliminarily, the undersigned must consider the timeliness of the instant Unfair Practice Charge. N.J.S.A. 34:13A-

^{3/} 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 named designated agent thereof..."

^{4/} N.J.A.C. 19:14-2.1.

^{5/} N.J.A.C. 19:14-2.3.

5.4(c) provides that the Commission shall not issue an unfair practice complaint, "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 months period shall be computed from the date he was no long prevented."

In In re New Jersey Turnpike Authority, P.E.R.C. No. 77-15, 2 NJPER 309 (1976), aff'd. App. Div. Docket No. A-745-76 (1977), petition for certif. granted July 12, 1977, an individual filed unfair practice charges against the Turnpike Authority and his union on April 3, 1976, alleging improper discharge from employment and a refusal to submit a subsequently filed grievance to arbitration. The Commission, pursuant to N.J.S.A. 34:13A-5.4(c), found that the events alleged to constitute the unfair practices had not occurred within six months prior to the filing of the charge. In determining that the charge was not timely, the Commission established that, "the final operative event constituting an alleged unfair practice, construed most favorably to the charging party, would have occurred on September 10, 1975 when Mr. Kaczmarek was notified by Local 194 [the union] of its refusal to proceed to arbitration." The Commission further noted that, "with respect to the alleged conduct by the Authority the last operative event appears to have been even earlier, when the Executive Director of the Turnpike Authority is alleged to have approved the discharge."

Further, in In re State of New Jersey, (Stockton State College), P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (App. Div. 1977), petition for certif. filed Sup. Ct. Docket No. 15,052, the Commission determined that the six month statute of limitations is not tolled during the time period in which an aggrieved party attempts to seek redress of alleged discriminatory or unilateral employer action through the filing of a grievance.

On the basis of the allegations now placed before the Commission, the last operative event with respect to the allegations against the City, construed most favorably to the Charging Party, would be the deduction of the allegedly negotiated one dollar per day increase on August 19, 1977, the failure to pay the negotiated increase on August 19, and the failure to pay said increase retroactively on August 19. As stated previously, the instant Charge was first filed on February 24, 1978, which is more than six months from the final operative event of August 19, 1977. The Stockton principle, supra, which provides that the filing of a grievance does not toll the limitation period for filing unfair practice charges, also applies where the alleged unfair practice occurrence is followed by a period of negotiations regarding the same subject matter involved in the Charge.

As to the charges against Local 1983, the Association has failed to state allegations which, if true, might constitute an unfair practice. The Association simply charges that Local 1983 committed an unfair practice for the lack of efficient and

knowledgeable handling of the contract negotiations. As noted above (n. 2), §(b)(1) prohibits employee organizations from interfering with, restraining or coercing employees in the exercise of rights guaranteed under the Act, and §(b)(3) prohibits employee organizations from refusing to negotiate in good faith with a public employer. N.J.S.A. 34:13A-5.3 provides that a majority representative shall represent the interests of all unit employees without discrimination and without regard to employee organization membership. The Association does not assert that Local 1983 has discriminated against employees or that its activities have otherwise been arbitrary or in bad faith. Accordingly, the Association's allegations, which address solely the negotiations talents of Local 1983, do not state violations of responsibilities imposed upon an employee representative by §(b)(1) and (3). Additionally, the Association has not specified in support of its §(b)(5) allegation a Commission rule claimed to have been violated by Local 1983; nor can the undersigned determine which rule might apply.

Therefore, for the reasons set forth above, the undersigned concludes that the instant Charge is not timely filed with respect to the allegations against the City under N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7) and the undersigned is hereby precluded from issuing a complaint. 6/

In addition, for the reasons set forth above, the undersigned concludes that the instant Charge does not set forth allegations which constitute an unfair practice with respect to Local

6/ The undersigned, therefore, need not determine herein whether an individual or a minority organization may allege an §(a)(5) violation under the context here presented.

1983 under N.J.S.A. 34:13A-5.4(b)(3) and (5) and the undersigned is precluded from issuing a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: June 22, 1978
Trenton, New Jersey