

D.U.P. NO. 2003-4

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

In the Matter of

COUNTY OF MERCER &  
PBA LOCAL 617,

Respondents,

-and-

Docket No. CI-2002-37

RONALD COOKS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Ronald Cooks, alleging that Mercer County improperly terminated Cooks from his employment pursuant to a drug testing policy unilaterally implemented by the County, in violation of N.J.S.A. 34:13A-5.4a(1), (5) and (7). Cooks further alleged that the PBA failed to properly represent him in connection with his termination, in violation of N.J.S.A. 34:13A-5.4b(1). The Director found that the charge was filed outside the Commission's six-month statute of limitations and that no equitable considerations warranted relaxing the limitations period.

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Appearances:

For the Respondent - County  
Alfred B. Vuocolo, Jr., County Counsel  
(Ashley Bostic-Hutchinson, Assistant County Counsel)

For the Respondent - PBA  
Stuart J. Alterman, attorney

For the Charging Party  
Ronald Cooks, pro se

**REFUSAL TO ISSUE COMPLAINT**

On February 1, 2002 and February 26, 2002, Ronald Cooks, a former employee of Mercer County (County), filed an unfair practice charge and amended charge against Mercer County and PBA Local 167 (PBA), his former majority representative. Cooks alleges that he was terminated from his employment pursuant to a drug testing policy unilaterally implemented by the County, in violation of N.J.S.A.

34:13A-5.4a(1), (4), (5) and (7).<sup>1/</sup> Cooks further alleges that the PBA failed to properly represent him in connection with his termination, in violation of N.J.S.A. 34:13A-5.4b(1).<sup>2/</sup>

In the charge against the County, Cooks alleges that he was singled out for a drug test and, subsequently, removed from employment. He alleges that the drug test requirement represented the County's unilateral change in terms and conditions of employment. Cooks further alleges that the implementation of the drug testing policy was contrary to the parties' negotiated agreement, "contract law, federal labor law and PERC," and that the employer is governed "by its own set of rules."

In the charge against the PBA, Cooks alleges that there was "no (negotiated) policy in place at the County which would allow such a drug test". Cooks further alleges that the PBA failed to advise him of the limitations period for filing an unfair practice

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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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

<sup>2/</sup> 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."

charge, and did not provide him representation on the appeal of his termination.

The County denies engaging in unfair practices. It contends that the Commission is an inappropriate forum because the matter of Charging Party's termination has been fully litigated at the departmental level and before the Office of Administrative Law, and an appeal of the Merit Systems Board's final decision is pending. Moreover, the County contends that the charge is untimely as the alleged unfair practice occurred more than six months prior to the filing of the charge, and no circumstances existed to prevent Charging Party's timely filing.

The PBA denies engaging in unfair practices and responds that the charge was filed outside of the Commission's six month statute of limitations. N.J.S.A. 34:13A-5.4(c).

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 August 23, 2002, 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. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

In 1995, Mercer County issued a drug and alcohol free workplace policy. On October 1, 1998, the County amended the policy to require all employees absent from work for more than thirty calendar days to submit to a drug test and physical examination prior to returning to work.

Ronald Cooks was employed as a corrections officer by the Mercer County Department of Corrections. On October 6, 1998, prior to returning to work from a medical leave, Cooks was directed to submit to a drug test under the amended policy. The drug test produced a positive result. Cooks was terminated on charges of conduct unbecoming a public employee and violation of the County's drug and alcohol free workplace policy.

On November 12, 1998, the PBA filed a grievance asserting that the drug test required of Cooks, as well as the policy itself, changed employees' terms and conditions of employment. The PBA demanded that the policy be rescinded. On December 17, 1998, Lewis Goldstein, Chief of the County's Employee Relations Division, advised the PBA's counsel that on December 4, 1998, the County met with the PBA's representatives to discuss the return-to-work drug test policy. Goldstein stated that the then-PBA local president, Joe Bradley, was expected to poll the PBA local membership and get back to him prior to a follow-up meeting scheduled for January 8, 1999. The disposition of that grievance thereafter is unclear. Cooks alleges that no follow-up meeting or contact took place, and that the grievance was never heard.

Cooks appealed his termination to the Merit System Board, and a hearing was conducted before the Office of Administrative Law on February 27 and May 16, 2001. On July 19, 2001, an administrative law judge issued an initial decision upholding Cooks' termination. The initial decision was adopted by the Merit System Board on November 16, 2001. An appeal before the Appellate Division is pending.<sup>3/</sup>

Cooks alleges that he was "singled out" for the return-to-work drug examination because of his "past activities vis-a-vis the County." The nature of the "activities" Cooks describes is unclear.

#### ANALYSIS

The Act requires that an unfair practice charge be filed within six months of the date the unfair practice occurred.

N.J.S.A. 34:13A-5.4c states, in relevant part:

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.

The statute of limitations normally begins from the date the alleged unfair labor practice occurred, provided the person(s)

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<sup>3/</sup> According to documents Cooks provided in support of his charge, on March 20, 2002, the PBA apparently issued Cooks a check for \$2500 in reimbursement of a retainer fee Cooks had paid to defend his appeal.

affected are aware of the action. The date of the action is known as the "operative date," and the six-month limitations period runs from that date. Therefore, in order to be timely, a charge must be filed within six months of the operative date. Charges filed after that date are generally untimely unless the Charging Party demonstrates that it was "prevented" from filing the charge prior to the expiration of the limitations period.

The standard for evaluating statute of limitations issues was set forth in Kaczmarek vs. N.J. Turnpike Auth., 77 N.J. 329 (1978). The Supreme Court explained that the statute of limitations was intended to stimulate litigants to pursue their litigation diligently and to prevent the litigation of stale claims, but it did not want to apply the statute strictly without considering the circumstances of individual cases. Id. at 337-338. The Court noted it would look to equitable considerations in deciding whether a charging party slept on its rights. But the Court still expected charging parties to diligently pursue their claims.

Cooks' charges were filed with the Commission on February 1, 2002--more than three years after October 6, 1998, the date of the drug test alleged to form the basis of the unfair practice charged herein. Moreover, Cooks' termination occurred in 1998 and his administrative hearing before the OAL was conducted in May 2001. Therefore, any claims that he was illegally terminated or that the PBA failed to represent him before the OAL should have been filed within six months of those actions. All of the allegations

here are outside the Commission's six-month period for filing an unfair practice charge. Charging Party has not demonstrated that he was in any way prevented from filing the charge. See Kaczmarek, supra.

Although Cooks filed a timely appeal before the Merit Systems Board, filing with another administrative agency does not toll the statute of limitations for filing unfair practice charges with the Commission. Kaczmarek; Atlantic City Special Improvement Dist. (Postal), D.U.P. No. 99-14, 25 NJPER 272 (¶30115 1999); N.J. Sports and Expo. Auth. (Ragen), D.U.P. No. 89-6, 15 NJPER 58 (¶20021 1988). Other than alleging that the PBA failed to advise him of the limitations period, Cooks offers no explanation concerning why he did not file a timely charge with the Commission after the drug test on October 6, 1998.

Instead, Cooks waited until after the Merit System Board's final decision issued on November 16, 2001 before he initiated an action with this Commission. The Merit System Board found that the County had cause to terminate Cooks. This Commission cannot now afford Cooks "a second bite at the apple" by effectively permitting him to relitigate his termination here. County of Hudson Department of Corrections (Dowling), D.U.P. No. 2001-12, 27 NJPER 64 (¶32028 2000).

Based upon the foregoing, I find that Cooks' allegations against both the County and the PBA are outside of the Commission's statute of limitations. Therefore, no complaint may issue on those



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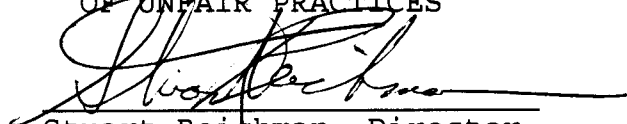
allegations and I dismiss the charge. N.J.S.A. 34:13A-5.4(c).

Kaczmarek; No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (14026  
1977).

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: September 10, 2002  
Trenton, New Jersey

