

D.U.P. NO. 93-5

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

In the Matter of

TOWNSHIP OF OLD BRIDGE,

Respondent,

-and-

Docket No. CI-92-49

JAMES CARROLL,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an Old Bridge Township employee's charge alleging his employer failed to respond to his contractual grievance. The Director finds that the charge was filed beyond the six-month statute of limitations. The employee's belief that his employee representative was handling the matter on his behalf does not excuse the charging party's obligation to bring the charge in a timely manner.

Moreover, the Director finds that an employer's failure to respond to a grievance is not an unfair practice where the contract is self-executing and ends in binding arbitration.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert T. Clarke, of counsel)

For the Charging Party,
Yacker & Granata, attorneys
(Louis E. Granata, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 3, 1992, James Carroll filed an Unfair Practice Charge with the Public Employment Relations Commission against his employer, the Township of Old Bridge. The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically, subsections 5.4(a)(1), (3) and (5)^{1/} by failing to respond to his grievance

^{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 or any term or

filed on April 22, 1991, and by not paying him the contractual amount of sick leave pay for his 1989 injury on duty.

The Township contends that the charge is filed beyond the six-month statute of limitations and should be dismissed. It also argues that the allegations concerning Carroll's 1989 injury pay constitute a contractual dispute and should not be processed before this Commission.

Subsection 5.4(c) of the Act precludes the Commission from issuing a complaint where an unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice unless a charging party has been prevented from filing an otherwise timely charge. N.J.S.A. 34:13A-5.4(c) states:

...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 months period shall be computed from the day he was no longer so prevented.

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).

1/ Footnote Continued From Previous Page

condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; and, (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.

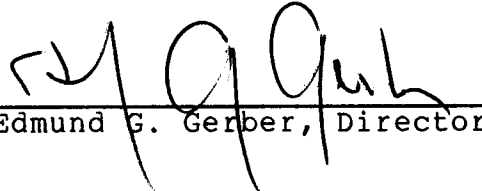
Carroll charged that the Township failed to properly compensate him for sick leave related to an on-duty injury which occurred in 1989. On April 22, 1991, Carroll filed a grievance alleging the Township failed to pay him the sick pay benefit pursuant to Article VI of the contract. The employer failed to respond to the grievances. Carroll contends that he was prevented from filing the charge within the six-month period specified by N.J.S.A. 34:13A-5.4(c). He believed his employee representative, the Old Bridge Municipal Employees Supervisors Association, was handling the matter on his behalf. However, this belief does not excuse the charging party's obligation to file the charge against the Township in a timely manner. See Kazmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1977). The charge was not filed within six-months of the unfair practice and is untimely.

Moreover, the Commission has repeatedly held that assertions of an employer's refusal to respond to a grievance, or its improper treatment of a grievance at an intermediate step of the grievance procedure, in and of itself, is not an unfair practice when the contract provides for a self-executing grievance procedure which culminates in binding arbitration. See New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986); Wayne Bd. of Ed., D.U.P. 92-9, 18 NJPER 105 (¶23050 1992); New Jersey Transit, D.U.P. No. 87-14, 13 NJPER 383 (¶18154 1987); City of Trenton, D.U.P. No. 87-7, 13 NJPER 99 (¶18044 1986); Tp. of Rockaway, D.U.P. No. 83-5, 8 NJPER 644 (¶13309 1982); Rutgers University, D.U.P. No. 82-28, 8 NJPER 237 (¶13101 1982).

Here, the contract between the Township and the Supervisors' Association is self-executing and culminates in binding arbitration. Each step provides that, if no written response is received, the grievance may then be submitted to the next step. The contract permits the grievant, if not satisfied with the result (or non-result) of any step of the grievance procedure, to simply proceed to the next step.

Based on the foregoing, I find that the Commission's complaint issuance standard has not been met and will not issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 6, 1992
Trenton, New Jersey