

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT
OF HUMAN SERVICES, DIVISION OF
YOUTH AND FAMILY SERVICES,

Respondent,

-and-

Docket No. CO-84-220-127

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge that the Communications Workers of America, AFL-CIO filed against the State of New Jersey, Department of Human Services, Division of Youth and Family Services. The charge alleged that the State violated the New Jersey Employer-Employee Relations Act when it reprimanded a CWA shop steward. The Commission dismisses the charge pursuant to N.J.S.A. 34:13A-5.4(c) because it was filed more than six months after the date of the reprimand.

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Appearances:

For the Respondent, Hon. Irwin I. Kimmelman, Attorney
General of New Jersey (Michael L. Diller, Deputy
Attorney General)

For the Charging Party, Kathleen King, Staff Repre-
sentative, Communications Workers of America, AFL-CIO

DECISION AND ORDER

On March 6, 1984, the Communications Workers of America
AFL-CIO filed an unfair practice charge against the State of New
Jersey, Department of Human Services ("State") with the Public
Employment Relations Commission. The charge alleged that the
State violated subsections 5.4(a)(1), (2) and (3)^{1/} of the New
Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.
("Act") when it reprimanded a CWA shop steward.

On April 11, 1984, the Administrator of Unfair Practice

1/ These subsections prohibit public employers, their representa-
tives or agents from: "(1) Interfering with, restraining or
coercing employees in the exercise of the rights guaranteed
to them by this act; (2) Dominating or interfering with the
formation, existence or administration of any employee organi-
zation; and (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 guaran-
teed to them by this act."

Proceedings issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The State then filed an Answer denying that the reprimand was discriminatorily motivated or otherwise violated the Act. It also asserted, as a separate defense, that the charge was untimely under N.J.S.A. 34:13A-5.4(c)^{2/} since the reprimand was issued on August 25, 1983, rather than November 1, 1983 as alleged in the charge.

On June 20, 1984, the State filed a motion to dismiss the Complaint, together with a supporting brief and documentation. The documentation showed that the employee in question received a notice of official reprimand on August 17, 1983, and that he then filed an appeal through civil service procedures from this minor disciplinary action. On November 1, 1983, a Hearing Officer of the Department of Human Services issued a decision denying the appeal. The employee then filed an appeal with the Civil Service Commission. On January 25, 1984, the Civil Service Commission refused to entertain this appeal.^{3/}

^{2/} This subsection provides that: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that 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."

^{3/} Pursuant to N.J.A.C. 4:1-16.7, the Civil Service Commission has discretion, but is not obligated, to entertain appeals from minor disciplinary determinations. See Bergen County Law Enforcement Group v. Bergen Co. Bd. of Chosen Freeholders, 191 N.J. Super. 319 (App. Div. 1983); CWA v. City of E. Orange, 193 N.J. Super. 658 (App. Div. 1984).

On July 2, 1984, CWA filed a response to the State's motion. The response contends that the statute of limitations under N.J.S.A. 34:13A-5.4(c) started to run from the date -- November 1, 1983 -- the Department of Human Services upheld the reprimand.

On September 10, 1984, Hearing Examiner Judith E. Mollinger granted the State's motion to dismiss. H.E. No. 85-11, 10 NJPER ____ (¶ ____ 1984) (copy attached). She concluded that the six month statute of limitations started to run on the date -- August 25, 1983 -- the employee received notice of his reprimand.

On September 24, 1984, CWA filed a request for review pursuant to N.J.A.C. 19:14-4.7. It reasserts that the statute of limitations began to run on the date the reprimand was upheld. It also asserts that there were improprieties related to the departmental hearing and decision and that the State used anonymous material in violation of its contract.^{4/}

The State then filed a response reasserting that the statute of limitations began to run on the date the reprimand was issued. It also asserts that this Commission should not consider the allegations about improprieties in the appeal process and use of anonymous material since they are not mentioned in the charge, are not relevant to the charge's claim of discriminatory treatment, and are not supported or specifically described.

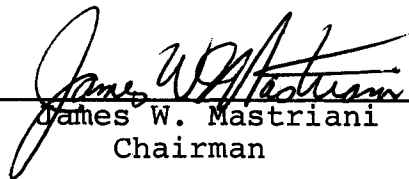
^{4/} The Hearing Officer for the Department of Human Services sustained the grievant's contention that anonymous material could not be used to support the reprimand. He nevertheless found the reprimand justified. We do not decide the merits of this determination.

We have reviewed the record. We agree with the Hearing Examiner, for the reasons stated in her report, that the charge was untimely because it was not filed until more than six months after the employee received a notice of official reprimand. See In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-14, 2 NJPER 308 (1975). We further agree with the State that CWA's generalized claim concerning improprieties in the appeal process and the use of anonymous material does not make its charge timely or establish that it was prevented from filing a timely charge. New Jersey Turnpike Authority v. Kaczmarek v. Local #194, 77 N.J. 329 (1978).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. Commissioner Graves was opposed.

DATED: Trenton, New Jersey
November 1, 1984
ISSUED: November 2, 1984

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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Docket No. CO-84-220-127

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner grants the Respondent's Motion to dismiss the unfair practice charge in its entirety as untimely.

The CWA alleged that the State had discriminatorily reprimanded a CWA Shop Steward in violation of Section 5.4(a)(1), (2) and (3) of the New Jersey Employer-Employee Relations Act. Section 5.4(c) of the Act requires that a charge of unfair practices must be filed within six months of occurrence unless the charging party was prevented from filing.

The Hearing Examiner found that the CWA had pursued a contractual grievance concerning the Steward's reprimand which he received on August 25, 1983. The grievance was denied on November 1, 1983. The Hearing Examiner found that August 25, 1983 was the operative event underlying the alleged unfair practice charge.

The Commission has determined that it is not necessary to exhaust an internal grievance procedure before filing a statutory claim. In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-14, 2 NJPER 308 (1976).

CWA filed the instant unfair practice charge on March 6, 1984, more than six months after the Steward's reprimand which occurred August 25, 1983.

The Charging Party may obtain a review of the Hearing Examiner's Decision by filing a request with the Commission pursuant to N.J.A.C. 19:14-4.7.

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Appearances:

For the Respondent

Hon. Irving I. Kimmelman, Attorney General
(Michael L. Diller, D.A.G.)

For the Charging Party

Kathleen King, Staff Representative, CWA

HEARING EXAMINER'S DECISION AND ORDER

This is a decision on the Respondent's motion to dismiss the unfair practice charge in its entirety.

On March 6, 1984, the Communications Workers of America, AFL-CIO ("CWA") filed an unfair practice charge against the State of New Jersey, Department of Human Services ("State"). The charge alleges that the State violated subsections 5.4(a)(1), (2) and (3) ^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). CWA alleges specifically that the State discriminantly reprimanded a CWA Shop Steward on November 1, 1983 for his

^{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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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."

alleged breach of working rules.

On April 11, 1984, the Administrator of Unfair Practice Proceedings issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. ^{2/} The Respondent filed its Answer on April 26, 1984 in which it denies that the official reprimand was issued on November 1, 1983, and asserts that, in fact, it was served on the employee August 25, 1983. Among its several defenses, the State maintains that the charge is untimely since N.J.S.A. 34:13A-5.4(c) requires that a charging party file its charge within six (6) months of the occurrence and therefore the complaint must be dismissed.

Subsequent to a prehearing conference held on May 10, 1984, the State filed its Motion to Dismiss accompanied by supporting documentation and a letter brief on June 20, 1984. This documentation includes 1) a notice of official reprimand dated August 17, 1983 and statements indicating its service on August 25, 1983; 2) a notice of "Appeal of Minor Disciplinary Action" signed September 7, 1983 by the reprimanded employee and the attached Departmental decision issued by Peter Yull, Hearing Officer, on November 1, 1983; 3) a letter from the Civil Service Commission dated January 25, 1984 denying the reprimanded employee's appeal; and 4) a certification that the documents submitted are true copies of personnel documents.

On July 2, 1984, CWA filed its Answer to the State's Motion to Dismiss. In it, CWA asserts that, as a matter of record, the

2/ 19:14-2.1 Contents; service

(a) After a charge has been filed and processed, if it appears to the director of unfair practices that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the director of unfair practices shall issue and cause to be served on all parties a formal complaint including a notice of hearing before a hearing examiner at a stated time and place..."

official reprimand at issue was received by the employee on August 25, 1983. However, CWA argues, the six-month filing period under the Act should run from the date on which the State Department of Human Services officially upheld the steward's discipline, that is from November 1, 1983.

On July 16, 1984, the hearings in this matter were continued pending a decision on the State's Motion to Dismiss.

II

The issue in this matter is

Must the unfair practice charge be dismissed because it is untimely filed - beyond the six-month limitation of subsection 5.4(c) of the Act?

III

On August 25, 1984, the State served a written reprimand on a CWA shop steward. This reprimand was appealed by the employee to the Department of Human Services and to the Civil Service Commission. Both appeals were denied; November 1, 1983 and January 25, 1984 respectively. Subsequently, on March 6, 1984, CWA filed the instant unfair practice charge alleging that its shop steward was discriminatorily reprimanded on November 1, 1983.

However, in its Answer to the State's motion, CWA acknowledged that as a matter of record the steward received notice of the official reprimand on August 25, 1983. That reprimand, now in question, was grieved and that grievance was subsequently denied by the State, on November 1, 1983.

In Borough of Bogota, P.E.R.C. No. 76-22, 2 NJPER 70, 71

(1976) the Commission upheld a Hearing Examiner's determination that an attorney's statement on the record "may be construed as a judicial admission." See also, Winn v. Wiggin, 47 N.J. Super. 215 (App. Div. 1957), Muller Fuel Oil v. Insurance Co. of North America, 95 N.J. Super. 564 (App. Div. 1967).

In light of the foregoing facts and since the propriety of the reprimand itself is at issue in this charge, I find that the operative date of the alleged unfair practice is August 25, 1983, the date on which the steward received notice of his reprimand.

Subsection 5.4(c) of the Act provides:

...that 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.

The Commission has repeatedly held that the filing of a grievance concerning the unfair practice does not toll the Act's six-month filing requirement. In re State of New Jersey (Department of Corrections), D.U.P. No. 84-31, 10 NJPER 387 (¶15178 1984); In re State of New Jersey (Stockton State College) ("Stockton"), 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).

CWA does not allege facts to substantiate any viable claim that it was prevented from filing a timely charge. It alleges only that it filed a timely grievance and that the six-month time limit should start from the date that grievance was denied. The Commission has determined that it is not necessary to exhaust the internal grievance procedure before filing a statutory claim. Stockton.

In this case CWA could have filed a timely charge as late as February 26, 1984. Clearly, CWA could have preserved its unfair practice claims while pursuing its grievance. See, Stockton. However, in fact, the instant charge was not filed until March 6, 1984, nine days beyond the six-month statutory limit.

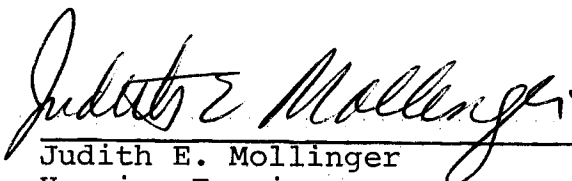
I have fully examined the parties' pleadings in this matter and based on the foregoing facts and law, I conclude that the unfair practice charge was not timely filed.

V

The Hearing Examiner finds that the State did not violate N.J.S.A. 34:13A-5.4(a)(1), (2) and (3) since CWA failed to file a timely charge pursuant to N.J.S.A. 34:13A-5.4(c).

ORDER

It is hereby ordered that the Complaint be dismissed in its entirety.



Judith E. Mollinger
Hearing Examiner

Dated: September 10, 1984
Trenton, New Jersey