

D.U.P. NO. 89-6

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

In the Matter of

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY
& SPORTS ARENA EMPLOYEES LOCAL 137, AFL-CIO,

Respondents,

-and-

Docket No. CI-89-37

CHIARINA RAGEN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint and Notice of Hearing on a charge filed more than one year after the six-month statutory period expired. The fact that the charging party was not apprised of the limitation period or of the existence of the Commission does not toll the statute of limitations.

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Appearances:

For the Respondent - New Jersey Sports & Exposition Authority
Grotta, Glassman & Hoffman
(Mark Tabakman, of counsel)

For the Respondent - Sports Arena Employees Local 137
Tomar, Seliger, Simonoff, Adourian & O'Brien, Esqs.
(David Seliger, of counsel)

For the Petitioner
Chiarina Ragen, pro se

REFUSAL TO ISSUE COMPLAINT

On November 14, 1988, Chiarina Ragen ("Ragen") filed an unfair practice charge alleging that the New Jersey Sports and Exposition Authority ("Authority") violated subsections 5.4(a)(1), (3), (7)^{1/} of the New Jersey Employer-Employee Relations Act,

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

N.J.S.A. 34:13A-1 et seq. ("Act"), when it discharged her. She also alleges that the Sports Arena Employees Local 137, AFL-CIO ("Local 137") violated subsection (b)(1)^{2/} when it failed to properly represent her. She alleges that the discharge was based on racial and sex discrimination. She also alleges that the Authority threatened her when she attempted to file a complaint against it and that Local 137, the employee organization that represents Authority employees, was unresponsive to her requests for assistance.

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

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission.

2/ This subsection prohibits employee organizations, their representatives or agents from: "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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 I may decline to issue a complaint.^{5/}

On November 16, 1988 we informed Ragen that the charge did not appear to be timely filed under N.J.S.A. 34:13A-5.4 (c). We provided Ragen with time to allege additional facts. On November 28, 1988 Ragen filed a statement asserting that the Equal Employment Opportunity Commission failed to advise her of this agency's six month filing requirement and that several lawyers advised her that the matter before the EEOC had to be resolved prior to filing in another forum.

In determining whether a complaint may issue, we must apply the Act's statutory limitations period. The Act precludes the Commission from issuing a complaint where the 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) provides that:

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

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

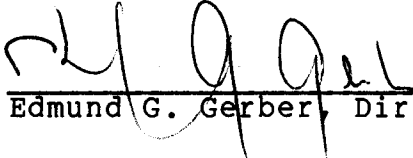
...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

We may not issue a complaint where a charging party fails to allege that the unfair practice(s) occurred within the six-month limitation period. No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977); N.J. Turnpike Employees Union Local 914, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

In this case, the unfair practices alleged arise from Ragen's termination by the Authority in the fall of 1987. The filing of her unfair practice charge in the fall of 1988 is well beyond the six-month statute of limitations period. The fact that an attorney does not advise a client of the six-month statute of limitations does not toll the time period for filing a charge. N.J. Memorial Home for Soldiers, D.U.P. No. 88-21, 14 NJPER 527 (¶19225 1988). A charging party's lack of knowledge of the existence of the Commission's jurisdiction is also insufficient to toll the six-month filing deadline. Burlington Cty. Spec. Serv. Sch. Dist., D.U.P. No. 85-3, 10 NJPER 478 (¶15214 1984) Although Ragen filed charges with the EEOC, it is a forum that does not have the power to transfer cases to the Commission. Filing with the EEOC therefore fails to toll the statute of limitations. cf. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1977).

Accordingly, the Commission's complaint issuance standard has not been met and we decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 7, 1988
Trenton, New Jersey