

D.U.P. NO. 93-23

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

In the Matter of

JERSEY CITY EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-93-13

JOANNE GROMPONE,

Charging Party.

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-93-35

JOANNE GROMPONE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue complaints on charges filed by Joanne Grompone against the Jersey City Education Association and the Jersey City Board of Education. Both charges were filed over one year after her June 1991 retirement and therefore, are untimely filed. Additionally, the facts in the charge against the Board allege a mere breach of contract and must be dismissed pursuant to State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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Appearances:

For the Respondent Education Association
Feintuch, Prowich & Feintuch, attorneys
(Philip P. Feintuch, of counsel)

For the Respondent Board of Education
Dr. Elena Scambio, Superintendent

For the Charging Party,
Joanne Grompone, pro se

REFUSAL TO ISSUE COMPLAINT

On July 31, 1992, Joanne Grompone filed an unfair practice charge (Docket No. CI-93-13) with the Public Employment Relations Commission against the Jersey City Education Association. The charge alleges that the Association violated subsections 5.4(b)(1)

and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by refusing to respond to Grompone's requests for information about a grievance against the Jersey City Board of Education. The grievance involved payment to Grompone for accumulated sick leave at the time of her June 30, 1991 resignation/retirement pursuant to a clause in the collective bargaining agreement^{2/} between the Board and the Association.

The Association asserts that the charge is untimely and that it did not breach its duty of fair representation to Grompone.

On October 26, 1992, Grompone filed an unfair practice charge CI-93-35 against the Board alleging that the Board violated subsections 5.4(a)(4) and (7)^{3/} of the Act. The charge alleges that Grompone has been owed money for over a year pursuant to the accumulated sick leave incentive plan clause in the collective bargaining agreement between the Board and the Association.

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- 1/ 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. (5) Violating any of the rules and regulations established by the commission."
- 2/ Article 31 - Accumulated sick leave incentive plan includes language providing for partial payment of accumulated sick leave upon retirement for time accumulated in their personal illness leave bank.
- 3/ These subsections prohibit public employers, their representatives or agents from: "(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. (7) Violating any of the rules and regulations established by the commission."

The Commission is precluded from issuing a complaint where an unfair practice charge has not been filed within six months of the alleged unfair practice event unless a charging party was prevented from filing an otherwise timely charge. See N.J.S.A. 34:13A-5.4(c); Asbury Park Bd. of Ed., D.U.P. No. 92-11, 18 NJPER 210 (¶23092 1992); N.J. Memorial Home for Soldiers, D.U.P. No. 88-21, 14 NJPER 527 (¶19225 1988); Camden Cty. Bd. of Chosen Freeholders, D.U.P. No. 88-15, 14 NJPER 389 (¶19152 1988); N.J. Transit, D.U.P. No. 88-5, 13 NJPER 804 (¶18307 1987); Bor. of Pitman, P.E.R.C. No. 81-9, 6 NJPER 375 (¶11193 1980); No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

In a December 23, 1992 letter, I advised Grompone that I was inclined to dismiss the charge against the Association because it was untimely filed. I also advised her of my intent to dismiss the charge against the Board because it alleges facts indicating that the dispute here is contractually based. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

In response to my letter, Grompone amended both charges on January 4, 1993. She asserts that the Association has acted in bad faith by continually refusing to provide her with information about her grievance. She first asked the union about her grievance on December 31, 1991. She did not receive a reply. She again asked on January 15, 1992 and again received no reply. She wrote again on February 8, 1992. Additionally, she asserts that the Board acted in

bad faith by miscalculating monies paid to her in October 1992 and for subsequently refusing to respond to her further inquiries.

The original charges against the Association and the Board, and the January 4, 1993 amendments, are untimely filed. Grompone's employment with the Board ended when she resigned/retired effective June 30, 1991. The statute of limitations period for filing a charge is tolled from this event. Grompone has not provided any reasons why she was prevented from filing timely charges within six months of her June 30, 1991 resignation/retirement date. N.J.S.A. 34:13A-5.4(c).

Similarly, Grompone's allegations in her January 2 amendment that the Association failed to provide her with information is also untimely. She became aware of this failure to provide information no later than January 15, 1992, the date of her second inquiry. This is also more than 6 months prior to July 31, 1992, the date her charge was filed.

Furthermore, Grompone alleges that the Board failed to abide by a clause in the collective bargaining agreement. In State of N.J. (Dept. of Human Serv.), the Commission held that a mere breach of contract is not an unfair practice and that such disputes must be resolved through the parties' collectively negotiated grievance procedure. Because the charge against the Board is based upon a dispute arising from the parties' collective negotiations agreement, it must be dismissed.

Based upon the foregoing, I find that the Commission's complaint issuance standard has not been met and I decline to issue complaints on the allegations contained in either charge.^{4/} Accordingly, these charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Genber, Director

DATED: January 15, 1993
Trenton, New Jersey