

D.U.P. NO. 91-11

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

In the Matter of

STATE OF NEW JERSEY and P.B.A., LOCAL 326
and COMMUNICATIONS WORKERS OF AMERICA,

Respondents,

-and-

Docket No. CI-90-15

KENNETH MASON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed against the New Jersey State Bureau of Parole, P.B.A. Local 326, and Communications Workers of America filed by Parole Officer Kenneth Mason. The Director finds that the charging party failed to allege conduct occurring within the Act's six-month statute of limitations; that he failed to notify the two union respondents of the charge; and that a union's decision not to provide legal counsel is an internal matter over which the Commission does not have jurisdiction.

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Appearances:

For the Respondent State,
Frank Mason, Office of Employee Relations

For the Respondent PBA, Local 326,
Vern Cox, President

For the Respondent CWA
Robert Pursell

For the Charging Party,
Patella & Plaia, attorneys
(Thomas S. Plaia, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 24, 1989, Kenneth Mason filed unfair practice charges with the Public Employment Relations Commission ("Commission") against the New Jersey State Bureau of Parole ("State"); PBA Local 326; and the Communications Workers of America ("CWA"). The charge alleges that the State violated subsection

5.4(a)(1)^{1/} and that both unions violated subsection 5.4(b)(1)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act").

In the portion of the charge filed against the State, Mason alleges:

"A grievance was filed in early 1988 based upon seniority for a position. Severe harassment followed. (1) Mr. Lobue wanting to put alcohol incident in personnel file. Alcohol was found in state car and I knew nothing about it. I wanted a CWA attorney at this time. (2) Destruction of state property charge: I was not asked about it; only when I was told charge was being filed. (3) Theft of state property: same thing, a false charge with no opportunity to discuss it prior to charge. (4) Below Average rating: in the job 14 years, I never had one. Informed this was a conspiracy."

Mason also alleges that both unions denied Mason's requests for an attorney. CWA was the majority representative of the unit of employees to which Mason belonged until April 1989. At that time, PBA Local 326 became the unit's majority representative.

Mason also alleged that an employee named Paparozzi brought charges against Mr. Mason at a time when Paparozzi was president of PBA Local 326, which Mason argues, creates a conflict of interest. The charge further alleges that Senior Parole Officer Couillard

^{1/} This subsection prohibits 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/} This subsection 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.

advised Mason that "if he continued to fight, file grievances, he would be considered the enemy and everyday fight for his job." It is not clear in the charge whether this senior parole officer was then acting as an agent of the State or of one of the unions in making this statement.

On October 18, 1989 and on March 13, 1990, we wrote to Mason informing him of certain deficiencies in his charge. We requested that he clarify his allegations and provide additional information to the Commission. His replies did not fully comply with the request.

On August 17, 1990 we wrote to the parties indicating our intention to dismiss the charge. On August 24, 1990 Mr. Mason's attorney requested and was granted additional time to reply to our letter. On September 7, 1990 the Charging Party responded that the thrust of the charge is the conflict of interest inherent in the institution of disciplinary charges against Mason by the President of P.B.A. Local 326, Mason's majority representative. This response did not address the defects identified in our August 17th letter. Specifically, no proof of service upon the P.B.A. or C.W.A. has been supplied. No dates were given indicating when the PBA Local 326 President initiated disciplinary action against Mason. Finally, the charge that Senior Parole Officer Couillard threatened Mason did not state or otherwise indicate whether Couillard made these statements as an agent or representative of the State or of one of the two respondent unions.

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 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/}

For the reasons stated below, I find that the Commission's complaint issuance standard has not been met.

As to the charges against his employer, N.J.A.C. 19:14-1.4 requires that the charge provide the time and place of the events constituting the alleged unfair practice. In his original charge, Mason did not state when the events constituting the alleged

^{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...."

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

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

employer unfair practice occurred. It is not clear that the alleged conduct occurred within six months of the filing of the charge. Although we informed Mr. Mason, by letter dated August 18, 1989, that he was required to submit proof of service on all respondents, we have only received the proof of service on the employer; we have not received proof of service on the two respondent unions. These defects have not been corrected.

N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a complaint where an unfair practice charge has not been filed within six months of the occurrence of any unfair practice, unless the aggrieved person was prevented from filing the charge. See, North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977) Since the charge fails to allege the occurrence of unfair practices by the employer within the six-month period, I decline to issue a complaint and dismiss the charge against the employer.


One aspect of the charge against both the CWA and PBA Local 326 is that they failed to provide Mason with legal counsel. It appears that the only supportable basis for Mason's unfair practice charge is that the unions breached their duty of fair representation. However, the Commission has held that the determination of whether to provide counsel or payment for legal fees is an internal union matter that generally does not involve the duty of fair representation. Bergen Comm. Coll. Fac. Assn. (Shaw), P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984). The Act's conferral of unfair practice jurisdiction does not empower the

Commission to resolve intra-union disputes. Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982).

As to the allegation that a union official brought charges against Mason, charging party Mason failed to state when the alleged conduct of the union official occurred; thus, it is not clear that such conduct occurred within six months of the filing of the charge. Finally, Mason never provided the Commission with proof of service indicating that he had served a copy of the charge upon Respondents, CWA and PBA Local 326.

Based upon the foregoing, I conclude that Mason's unfair practice charge against the respondent unions does not meet the Commission's complaint issuance standard. Accordingly, I decline to issue a complaint and dismiss the unfair practice charge against these respondents.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 5, 1990
Trenton, New Jersey