

D.U.P. NO. 91-21

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

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CI-91-41

JOSEPH N. MASTRANGELO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge brought by Joseph Mastrangelo, an individual, against the County of Essex. The charge alleges the County failed to pay Mastrangelo certain monies. However, as an individual, Mastrangelo has no standing to bring this charge. A charge concerning an alteration of terms and conditions of employment must be brought by the majority representative.

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Appearances:

For the Respondent,  
Anthony P. Sciarrillo, Acting County Counsel

For the Charging Party,  
Nardachone & Colavito, attorneys  
(William A. Colavito, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 30, 1991, Joseph Mastrangelo filed an unfair practice charge alleging that the Sheriff's Department of Essex County violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3 et seq. ("Act"). Mastrangelo alleges that he is entitled to certain salary adjustments that have never been paid.

Beginning in March 1959, Essex County changed to a system of issuing salary checks to its employees every other Friday. Mastrangelo alleges that because of this change, every eleventh year there would be 27 salary pay checks issued during that year (as

opposed to 26 checks during the first 10 years) and "in order to reserve the necessary funds for the twenty-seventh paycheck" each employee was paid one less days' pay for ten successive years. If in the eleventh year the employee remained on the payroll, he or she would receive the "twenty seventh paycheck". Although the most recent "twenty seventh paycheck" was due in 1987, it has not been paid.

The charge is both untimely and not actionable before the Public Employment Relations Commission.

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 (6) months of the occurrence of any unfair practice, unless the aggrieved person was prevented from filing the charge. See In re North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977). The charge fails to allege the occurrence of unfair practices within the six (6) month limitation requirement and on its face is out of time.

Mastrangelo claimed that a "twenty seventh paycheck" was due in 1987. Accordingly, if an unfair practice occurred, it occurred when the "twenty seventh paycheck" was due but unpaid. Therefore, this charge had to be filed within the first six months of 1988. However, the charge was not filed until January 30, 1991.

Mastrangelo claims that he first filed a civil action in this matter in New Jersey Superior Court. Although he fails to indicate when that action was filed, it is apparent by the terms of the civil complaint that it was filed in 1990, well outside the six month time limitations of the Act.

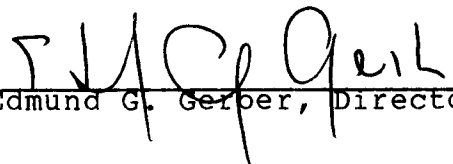
Further, the charge as written failed to state an unfair practice within the meaning of the Act. The Commission has no jurisdiction to regulate the relationship between an individual employee and an employer except that an employer may not act in a way which discourages the exercise of certain rights guaranteed by the Act; that is, participation or the refusal to participate in protected (e.g. union) activity. See N.J.S.A. 34:13A-5.4(a)(3). Elizabeth Housing Authority, D.U.P. No. 90-3, 15 NJPER 385 (¶20162 1989).

Mastrangelo does not allege that a collective negotiations contract provided for this disputed benefit. Assuming he did, such an allegation would not constitute an unfair practice.

An individual has no standing to bring a claim that a contractual term and condition of employment has been repudiated by an employer. Only a majority representative can bring such an action before the Commission. City of Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986); City of Atlantic City, 13 NJPER 805 (¶18308 1987).

Accordingly, in the absence of an allegation of an unfair practice, and in the absence of an allegation of an unfair practice occurring within six months of the date of the filing of either the charge with the Commission or the complaint in Superior Court, I hereby decline to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: March 4, 1991  
Trenton, New Jersey