

D.U.P. NO. 97-20

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

In the Matter of

IFPTE LOCAL 195 and
CWA LOCAL 1034,

Respondents,

-and-

Docket Nos. CI-96-76
CI-96-77

RALPH H. BITTER, III,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to reconsider the dismissal of two unfair practice charges filed by Ralph Bitter, III against IFPTE, Local 195, and CWA, Local 1034. Bitter alleged that the unions refused to appeal to civil service his layoff in June 1995 from a position in an IFPTE bargaining unit and subsequent rehire in July 1995 into a different position in a CWA bargaining unit.

The Director dismissed Bitter's unfair practice charges as untimely pursuant N.J.A.C. 19:14-1.5(d). Bitter filed a request for reconsideration, arguing that the statute of limitations did not begin to run until a decision on his civil service appeal had issued in May 1996. The Director finds that Bitter did not file his unfair practice charges within six months of his knowing that neither union would represent him. Absent allegations that he was prevented from filing in a timely fashion, the Director denies Bitter's motion to reconsider his decision to dismiss these charges.

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Appearances:

For the Respondent IFPTE,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

For the Charging Party,
Ralph H. Bitter, III, pro se

DENIAL OF MOTION

On June 28, 1996, Ralph H. Bitter, III, filed unfair practice charges against IFPTE, Local 195 and against CWA, Local 1034, alleging that IFPTE and CWA violated subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,^{1/} when they refused to represent him in a civil service appeal contesting his layoff and subsequent rehire into different civil service position.

^{1/} 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."

Bitter was an employee of the State Department of Environmental Protection and a member of IFPTE, Local 195's bargaining unit until his layoff in June 1994. After receiving his layoff notice, Bitter requested that IFPTE assist him in a civil service appeal contesting the action. Bitter's IFPTE representative advised him that his case was "not appealable." At Bitter's request, IFPTE submitted his case to its attorney for review, who concurred with the initial assessment and refused to take the appeal.

On July 8, 1994, Bitter was "transferred" to a title in the State Department of Labor represented by CWA, Local 1034. Bitter requested that CWA, as his current majority representative, take his civil service appeal. When CWA failed to respond, Bitter proceeded on his own behalf at the Department of Personnel, preparing and presenting his case at a hearing in September 1995. On June 28, 1996, Bitter filed these unfair practice charges against IFPTE and CWA.

On July 22, 1996, Bitter was informed that it appeared that the facts alleged in his charges had occurred outside the six month statute of limitations. See N.J.S.A. 34:13A-5.4(c). Bitter was given seven days to amend his allegations. When no response was received, I notified Bitter that his case was deemed withdrawn. See N.J.A.C. 19:14-1.5(d).

On August 13, 1996, Bitter filed a request for reconsideration alleging that he was on vacation and did not have an

opportunity to make a timely reply to my letter and arguing that the unfair practice charges were timely filed. He asserted that IFPTE and CWA were under a duty to represent him until May 16, 1996 when the administrative law judge issued a decision on his appeal.^{2/}

The Commission is precluded 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); Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978).

Bitter did not file his unfair practice charges within six months of his knowing that neither union would not help him pursue his civil service appeal. Rather, Bitter waited until his appeal at the Department of Personnel was completed before he filed this unfair practice charge. The charge was filed after the statute of limitations on filing an unfair practice charge had run. State of New Jersey (Div. on Civil Rights) and CWA and Maria Jones, P.E.R.C. No. 94-116, 20 NJPER 273 (¶25138 1994), aff'd 21 NJPER 319 (¶26204 App. Div. 1995), pet. for certif. pending.


Absent any allegation that Bitter was prevented from filing his initial unfair practice charge in a timely fashion, I find that Mr. Bitter has failed to demonstrate good cause as to why his charge

^{2/} On August 27, 1996, IFPTE, Local 195, filed a statement, urging that Bitter's motion be denied. It further denies that it failed to represent Bitter fairly and asserts that Bitter's charge against it was untimely.

should be reopened. The allegations in his unfair practice charge do not meet the Commission's complaint issuance standard.

Accordingly, the charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 29, 1996
Trenton, New Jersey