

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

In the Matter of

NORTH WARREN REGIONAL BOARD
OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-77-300

NORTH WARREN REGIONAL EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint with respect to an Unfair Practice Charge alleging that the employer has discriminated against an employee pursuant to N.J.S.A. 34:13A-5.4(a)(4). The Commission is precluded from issuing complaints where the unfair practices alleged have not occurred within six months of the filing of the Unfair Practice Charge. The Charging Party has failed to amend its Charge to allege events within the six month limitation.

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Appearances:

For the Respondent

Grotta, Glassman and Hoffman, Esqs.
(Thomas Savage, Of Counsel)

For the Charging Party

Rothbard, Harris and Oxfeld, Esqs.
(Sanford R. Oxfeld, Of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on April 14, 1977 by the North Warren Regional Education Association (the "Association") against the North Warren Regional Board of Education (the "Board") alleging that the Board was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(4). ^{1/}

^{1/} This subsection prohibit 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."

It is alleged in the Charge that the Board has harassed Ms. Trudy Rudolf, an employee of the Board and member of the Association's negotiations unit. The Association contends that the harassment -- unusual and harsh evaluations, transfer of position and threats of dismissal -- was in reprisal for Ms. Rudolf's Association activities and for having given testimony under the provisions of the Act.

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. ^{2/} The Commission has delegated its authority to issue Complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This 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. ^{3/} The Commission's rules provide that the undersigned may decline to issue a Complaint. ^{4/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Commission's rules state that an unfair practice charge shall

^{2/} 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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1.

^{4/} N.J.A.C. 19:14-2.3.

contain inter alia:

"A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated." (Emphasis added). 5/

Further, N.J.S.A. 34:13A-5.4(c) precludes the issuance of a complaint where the unfair practice is alleged to have occurred prior to six months before the filing of a charge. 6/

Subsequent to the filing of the instant Unfair Practice Charge, by letter dated April 21, 1977, the undersigned informed the Association's representative that the Charge could not be processed further unless it was amended, pursuant to N.J.A.C. 19:14-1.5, to include the time and place of occurrence of the particular acts alleged to constitute the unfair practice. On May 16, 1977, the undersigned received a letter from the Association's representative setting forth the Association's position herein. In several telephone conversations between the Commission staff member assigned to this case and the Association's representative, the staff member indicated that the Charge could not be processed absent an amendment which included the above referred information. In a letter dated June 30, 1977 from the assigned staff member to the Association's representative, it was again indicated that the Charge could not be processed without an amendment to the Charge which

5/ N.J.A.C. 19:14-7.3.

6/ N.J.S.A. 34:13A-5.4(c) provides: "...provided that 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."

included more specific facts.

Subsequently, the staff member was informed that the Charge had been turned over to the Association's counsel. The Commission staff member then contacted the Association's counsel to indicate that the instant Charge could not be processed without an amendment which included further specification of facts in support of the allegations in the Charge. In response to these communications, the undersigned received a letter from the Association's counsel dated August 29, 1977.

Thereafter, in a letter to the Association's counsel dated October 19, 1977, the undersigned noted that the Charging Party had been provided with several opportunities to amend the instant Charge to include the dates, times, and places of the occurrences which are alleged to constitute the unfair practices alleged herein. It was further noted that the Association had been informed that the Charge could not be further processed absent such amendment. The undersigned stated that the August 29, 1977 letter from the Association's counsel did not set forth a date on which the alleged conduct constituting the unfair practices occurred. The undersigned also noted that pursuant to N.J.A.C. 19:14-1.5, the August 29, 1977 letter did not comply with the Commission's requirements for amendment of an unfair practice charge.

It was also noted in the undersigned's letter of October 19, 1977 that N.J.S.A. 34:13A-5.4(c) precludes the issuance of a Complaint based upon any unfair practice occurring more than six months prior to the filing of an Unfair Practice Charge. The undersigned stated that it was incumbent upon the Charging Party to allege the occurrence of unfair practices within this six month limitation period and in the absence of such allegations, the undersigned may not issue a Complaint. The undersigned has not received a response to the above letter.

Accordingly, as the Association has not included in its Charge the time and places of occurrence of the conduct alleged to constitute the unfair practice, the undersigned declines to issue a Complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Carl Kurtzman, Director

DATED: December 29, 1977
Trenton, New Jersey