

D.U.P. No. 2006-10

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

In the Matter of

NEWARK CITY HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CI-2006-014

REGINALD MYRICK,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge because it failed to meet the complaint issuance standard. The Charging Party failed to allege that any of the actions complained of were taken in reaction to the exercise of protected conduct. Most of the events complained of were beyond the six-month statute of limitations, and for any events that were timely, the Charging Party's charge did not allege clear and concise facts.

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Appearances:

For the Respondent,  
Dorf & Dorf, attorneys  
(Gerald Dorf, of counsel)

For the Charging Party,  
Reginald Myrick, pro se

REFUSAL TO ISSUE COMPLAINT

On November 22 and December 5, 2005, Reginald Myrick (Myrick or Charging Party) filed an unfair practice charge and an amended charge, respectively, against his employer, the Housing Authority of the City of Newark (Authority). The charge alleges that the Authority violated 5.4a(3) and (4)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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."

The original charge was accompanied by a multiple page letter of November 11, 2005 discussing a variety of events involving Myrick.

After the original charge was filed on November 22, 2005, the Charging Party was advised by letter of November 29, 2005 of defects to his charge. He was specifically advised that the charge did not include a "clear and concise" statement of the facts and a statement of the relief he was requesting both of which are required by N.J.A.C. 19:14-1.3. Also, he was told he could not rely on attachments to the charge, instead of describing facts in the charge.

The original charge first referred to three statements and a prior charge Myrick filed with the Commission on November 24 and amended December 12, 2004, Docket No. CI-2005-022, which alleged a variety of information without dates, but of events that occurred prior to the filing of that charge. The charge in CI-2005-022 was withdrawn, and all of the information contained therein occurred more than six months prior to the filing of the instant charge. Thus, that information cannot form the basis of the instant charge since it is outside the Commission's six month statute of limitations. N.J.S.A. 34:13A-5.3(c).

The original charge also contained a narrative generally complaining of harassment by the Authority in October 2004, and asked that we investigate an attempt to suspend the Charging

Party as of December 6, 2005 without the proper step procedure. The original charge was neither clear nor concise, nor did Myrick ask for a particular remedy.

The amended charge filed on December 5, 2005 included a lengthy narrative with numerous dates. Events complained of in 2003 and 2004 were outside the six month statute of limitations and therefore not complaintable. Events complained of in the latter half of 2005 included 1) suspending Myrick allegedly without the proper step progression and absent his presence at hearings for charges regarding theft of services, and 2) the Assistant Personnel Director pushing discipline for Myrick because of complaints filed with the Newark Housing Authority Administration in 2004 and 2005.

The remedy Myrick set forth in his amended charge seeks: 1) that 12 disciplinary write-ups he considers unmerited be permanently removed from his personnel file; 2) an investigation be conducted of those charges in his personnel file which he never had the opportunity to contest; 3) an investigation be conducted of attempts to suspend him, including the legitimacy of a December 6, 2005 hearing, without adhering to the proper step procedure; and, 4) advising him how to file for protection under the Conscientious Employee and Whistleblower Acts.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may

constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated May 10, 2006, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

All of Myrick's allegations essentially involve disciplinary actions taken against him by the Authority, whether those actions had merit, and whether or not the Authority adhered to the proper grievance and disciplinary procedures when processing the disciplinary charges and placing them in his personnel file. However, none of these allegations were tied to activity protected under our Act. While Myrick alleges that these disciplinary actions were retaliation by the Authority for "complaints" he made to Authority Administration about issues such as corruption within the Authority, such complaints are not protected activity under our Act. We have no jurisdiction to hear claims that an employer retaliated against an employee for "whistleblower" claims arising out of the Conscientious Employee

Protection Act. Rights under that Act are protected through Superior Court.

Moreover, Myrick's allegation concerning the Authority's June 7, 2004 disregard for his grievance based on a wrongful shift change fails to meet the six-month statute of limitations required by the Act. N.J.S.A. 34:13A-5.4c provides 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-month period shall be computed from the day he was no longer so prevented.”

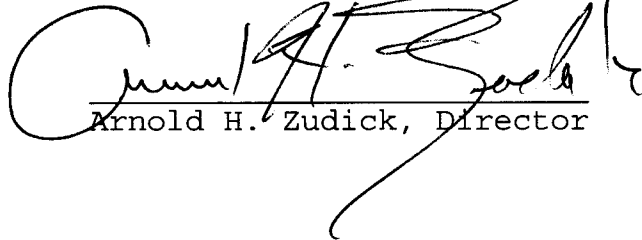
Any disciplinary charges against Myrick which he was aware of that occurred more than 6 months prior to the original filing of his unfair practice charge on November 22, 2005, are barred by the statute of limitations. For those charges he was unaware of until September 2005, Myrick failed to allege sufficient clear and concise facts to show that he was discriminated against for the exercise of protected conduct, and he did not allege facts to support an allegation that he was retaliated against for the filing of the charge in CI-2005-022.

Accordingly, I find that the Commission's complaint issuance standard has not been met, and I decline to issue a complaint on the allegations of this charge.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: May 25, 2006  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to  
N.J.A.C. 19:14-2.3.

Any appeal is due by June 7, 2006.