

D.U.P. NO. 96-6

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

In the Matter of

CITY OF PATERSON AND
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 3474,

Respondents,

-and-

Docket No. CI-95-79

LEONARD JACOBS,

Charging Party.

SYNOPSIS

Individual's unfair practice charge alleging that the employer unlawfully terminated him and that the union failed to adequately represent him, was dismissed as untimely.

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Appearances:

For the Charging Party,
Leonard Jacobs, pro se

REFUSAL TO ISSUE COMPLAINT

On June 8, 1995, Leonard Jacobs filed an unfair practice charge alleging that the City of Paterson violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically, subsections 5.4(a)(3) and (5)^{1/} when it terminated Jacobs. Jacobs also alleges that the American Federation of State,

^{1/} These subsections 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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

County and Municipal Employees Local 3474 (AFSCME) violated subsection 5.4(b) ((3)^{2/} of the Act by failing to adequately represent him. Jacobs also asserts violations of his first amendment and equal protection rights.

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

The Commission is precluded from issuing a complaint when a charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides, in part:

c. ...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.

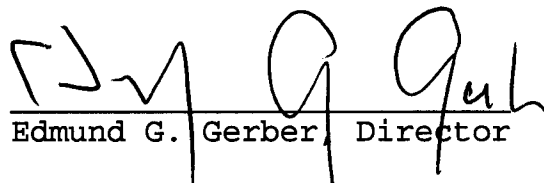
This charge was filed on June 8, 1995. Thus, we cannot issue a complaint concerning conduct which occurred before December 8, 1994.

^{2/} This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

Jacobs alleges than on November 10, 1994, the City of Paterson gave him a notice of termination through improper procedures. Further, Jacobs alleges that AFSCME refused to represent him in this matter and was fully aware of his termination as of November 10, 1994. Since the alleged actions took place on November 10, 1994, and this charge was not filed until June 8, 1995, this charge is untimely. Therefore, I refuse to issue a complaint with regard to this charge.

Accordingly, the allegation of the unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 2, 1995
Trenton, New Jersey