

D.U.P. NO. 88-4

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

In the Matter of

STATE OF NEW JERSEY, OFFICE  
OF ADMINISTRATIVE LAW,

Respondent,

-and-

Docket No. CO-88-18

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint on an Unfair Practice Charge which was filed six months and one day after the alleged occurrence. The Director found that the Charging Party's belief that it was mailed within a reasonable time to be received and filed by the Commission in a timely manner was irrelevant. The dispositive fact was that the Charging Party was not prevented from filing the charge within six months.

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Appearances:

For the Respondent  
Maureen Adams, Deputy Attorney General

For the Charging Party  
John Loos, Staff Representative

REFUSAL TO ISSUE COMPLAINT

On July 14, 1987, the Communication Workers of America ("Charging Party" or "CWA") filed an Unfair Practice Charge against the State of New Jersey, Office of Administrative Law ("State") with the Public Employment Relations Commission ("Commission") alleging a violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections

5.4(a)(1) and (3).<sup>1/</sup> The CWA claims that one of its members, Anne Myernick, a Legal Secretary at the Office of Administrative Law, was interfered with, restrained and coerced in the exercise of her protected rights under the Act when she attempted to take advantage of her senior status in scheduling vacation time as provided in the collective bargaining agreement. The charge alleges that on January 13, 1987, Myernick's supervisor, Linda Taylor, told Myernick that if she was not going to cooperate in vacation scheduling, she (Taylor) would not cooperate in adjusting Myernick's allegedly excessive workload. The State denies it violated the Act.

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. The alleged unfair practice occurred on January 13, 1987. Accordingly, the charge here had to be filed by July 13, 1987. The Charge was filed on July 14, 1987, one day outside the period provided by the Act.

A representative of the CWA told our staff attorney that the charge was mailed on Friday, July 10, 1987 and that the Charging

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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."

Party's representative believed the charge would be received and filed with the Commission in a timely manner. Unfortunately, the charge was not received until Tuesday, July 14, 1987. At issue here is whether the charging party was thereby prevented from filing the charge within six months.

In Kaczmarek v. New Jersey Turnpike Authority, 77 N.J. 329 (1978) the New Jersey Supreme Court defined how one is prevented from filing within the meaning of the Act.

The term "prevent" may in ordinary parlance connote that factors beyond the control of the complainant have disabled him from filing a timely complaint. Nevertheless, the fact that the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all relevant considerations bearing upon the fairness of imposing the statute of limitations. Cf. Burnett v. N.Y. Cent. R.R., supra, 380 U.S. at 429, 85 S. Ct. at 1055, 13 L.Ed.2d at 946. The question for decision becomes whether, under the circumstances of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion.  
Kaczmarek, at 340.

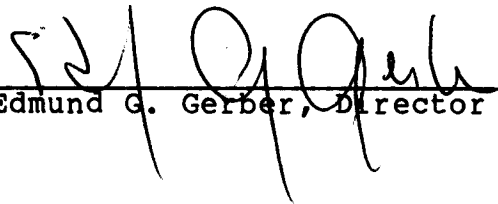
In Leake v. Bullock, 104 N.J. Super. 309 (App. Div. 1969) an automobile accident occurred on February 1, 1966. The end of the two year statute of limitation period was reached on February 1, 1968. The plaintiff mailed a complaint on Monday January 29, 1968. The complaint was received and stamped by the Clerk of the Court as filed on February 2, 1968, a Friday. The complaint was dismissed as untimely. The Court held that due diligence required the plaintiff to have personally delivered the complaint or made prompt inquiry

as to whether the complaint was received by the clerk. The Court held that the risk of a delay in mail delivery rested with the plaintiff.

Here, as in Leake, CWA was not prevented from filing the charge simply because mail delivery took longer than expected.

Accordingly, for all the reasons set forth above, we have determined that the Commission's complaint issuance standard has not been met and decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: September 23, 1987  
Trenton, New Jersey