

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

In the Matter of

BERGEN COUNTY BOARD OF FREEHOLDERS,

Respondent,

-and-

Docket No. CI-77-15

PASQUALE SALIMONE,

Charging Party.

SYNOPSIS

The Director of Unfair Practice Proceedings refuses to issue a Complaint upon the Unfair Practice Charge filed against the Public Employer. The Charging Party alleged as unfair practices events that occurred prior to 6 months before the filing of the unfair practice charge. The Charging Party also indicated that he had exhausted contractual grievance procedures with respect to the matters. The Director notes in dismissing the Charge that the Commission has previously decided that the 6 month time period for filing unfair practice charges is not tolled during the period in which a grievance is being processed.

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PASQUALE SALIMONE,<sup>1/</sup>

Charging Party.

Appearances:

For the Bergen County Board of Freeholders  
Leon B. Savetsky, Esq.

For Pasquale Salimone  
Joseph Ferriero, Vice-President  
F.O.P. Lodge No. 33

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 28, 1977, by Pasquale Salimone against the Bergen County Board of Freeholders (the "County") alleging that the County was in violation of the unfair practice provisions of the New Jersey Employer-Employee Relations Act (the "Act") N.J.S.A. 34:13A-1.1 et seq., by not compensating the Charging Party in accordance with a collective negotiations agreement for work performed pursuant to a change in a tour of duty schedule.<sup>2/</sup>

<sup>1/</sup> This matter was originally docketed in the matter of Bergen County Board of Freeholders and Fraternal Order of Police, Lodge No. 33, Docket No. CO-77-207. Subsequently, correspondence and conversations with Mr. Salimone and Lodge No. 33 has confirmed that the Charge is intended to be filed by Mr. Salimone as an individual charge with Lodge No. 33 in a representative capacity. Consequently, the Charge has been re-docketed to reflect this fact.

<sup>2/</sup> The Charge was amended on February 18, 1977 to specify N.J.S.A. 34:13A-5.4(a)(5) as the subsection claimed to have been violated. This subsection prevents public employers from "(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."

Mr. Salimone's charge states in part: "As per contract we have exhausted our grievance procedure, therefore request a hearing officer be assigned to hear our appeal." Attached to the Charge and made a part thereof is a letter addressed from Mr. Salimone to Sheriff Joseph F. Job which sets forth the dates upon which Mr. Salimone claims he worked without pay commensurate with the time and a half provisions of the Agreement claimed to be applicable to the circumstances in which Mr. Salimone performed his duties.

N.J.S.A. 34:13A-5.4(c) provides as follows:

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. 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 charge and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that no complaint shall issue based upon any unfair practice charge 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 date he was no longer so prevented. (emphasis added)

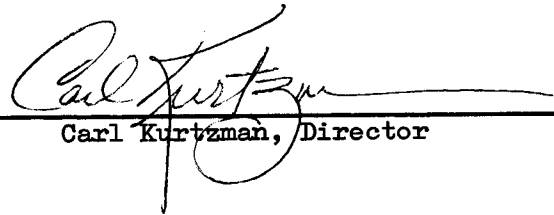
In a previous decision issued by the Commission, In re State of New Jersey and Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO, P.E.R.C. No. 77-14, 2 NJPER 308, (1976), Appeal Pending, App. Div. Docket No. A-57576, the Commission determined that in the absence of any allegation that the charging party has been prevented from filing an unfair practice charge the running of the 6 month period commences with the occurrence of the unfair practice charge. The Commission also stated

that the time period for the filing of a Charge is not tolled during the period in which the charging party seeks redress under a grievance procedure contained in a collective negotiations agreement.

In the instant matter the acts alleged to have constituted an unfair practice refer to 15 separate occasions during the period commencing April 17, 1974 and terminating November 21, 1975. All these acts occurred over a year prior to the filing of the instant unfair practice charge. Pursuant to the aforecited provision of the Act, the Commission is precluded from issuing a Complaint even if it were assumed that the allegations of the charge would support the issuance of a Complaint.<sup>3/</sup> Consequently, the undersigned shall refuse to issue a Complaint herein.

Accordingly, the undersigned refuses to issue a Complaint and the instant case is hereby closed.

BY ORDER OF THE DIRECTOR OF  
UNFAIR PRACTICE PROCEEDINGS

  
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Carl Kurtzman, Director

DATED: March 23, 1977  
Trenton, New Jersey

3/ No such determination is made herein.