

D.U.P. NO. 94-37

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

In the Matter of

STATE OF NEW JERSEY,
(DEPARTMENT OF TREASURY),

Respondent,

-and-

Docket No. CO-94-193

COMMUNICATIONS WORKERS OF AMERICA
AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint where the charge was not received within the six-month time period established by N.J.S.A. 34:13A-5.4(c). Although the charging party claims that it mailed the charge in a timely way and it was the fault of the post office that it was not received on time, the risk of delay in mail delivery rests with the charging party.

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Appearances:

For the Respondent,
Philip Whitcomb, Deputy Director

For the Charging Party,
Alan Kaufman, Representative

REFUSAL TO ISSUE COMPLAINT

On December 21, 1993, the Communications Workers of America, AFL-CIO filed an unfair practice charge with the Public Employment Relations Commission alleging that the State of New Jersey committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3), (4) and (7)^{1/} when on June 18, 1993 Mr.

^{1/} 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

Footnote Continued on Next Page

Louis Langelotti was served with a written reprimand for insubordination. The alleged insubordination occurred when a supervisor asked for a written summary of an informal grievance brought by Langelotti but Langelotti did not do so.

On January 5, 1994, I wrote to the CWA stating the charge did not appear to be timely filed. 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.

By letter dated January 28, 1994, CWA responded. It alleges that the charge was mailed on December 16, 1993 and it was anticipated that the Commission would have received the charge within the six-month statute of limitations time period.

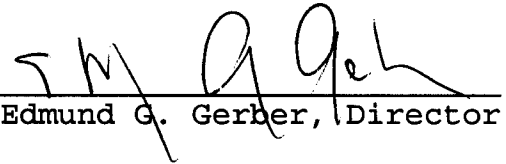
However, where a charge is mailed to the Commission near the end of the statutory six-month period, the risk of delay in mail delivery rests with the charging party. State of New Jersey (Office of Administrative Law), D.U.P. No. 88-4, 13 NJPER 767 (¶18292 1987), aff'd P.E.R.C. No. 88-65, 14 NJPER 127 (¶19048 1988).

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

The unfair practice charge does not allege facts which occurred within six months of the filing of the unfair practice charge. The Commission's complaint issuance standard has not been met. The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 5, 1994
Trenton, New Jersey