

D.U.P. NO. 96-1

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

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CI-95-67

JAMES HOLLOWAY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by an inspector alleging his employer, the City of Newark, discriminatorily suspended him without a full investigation and delayed his disciplinary hearing. The Director finds that the charge does not allege facts which implicate any employee rights protected by the New Jersey Employer-Employee Relations Act. Further, the Director determines that the charge was filed outside the Commission's statute of limitations.

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Appearances:

For the Respondent,
Michelle Hollar-Gregory, Corp Counsel
(Wendy Young, Asst Corp Counsel)

For the Charging Party,
James Holloway, pro se

REFUSAL TO ISSUE COMPLAINT

On April 10, 1995, James Holloway, a sanitary inspector employed by the City of Newark, filed an unfair practice charge alleging that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4, subsections (a)(3), (4), (6) and (7).^{1/} Holloway alleges that the City suspended him effective

^{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; (4) Discharging or otherwise discriminating against any employee

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September 24, 1994 for assaulting his supervisor. He charges that the suspension was handled prejudicially and without a full investigation. He also contends that the suspension was discriminatory because both parties to the physical conflict were not suspended. Further, Holloway alleges that the City and his employee representative AFSCME Council 52, failed to grant him an expedient hearing on the discipline.^{2/} He attaches to his charge a letter from an AFSCME staff representative asking the City to postpone the disciplinary hearing until pending criminal charges against Holloway arising out of the same assault incident were resolved. The disciplinary hearing was eventually held in April, 1995.

Based upon the allegations set forth in the charge, I find that the charge must be dismissed. Public employers are prohibited from "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 rights guaranteed them by this act" (my emphasis). Among those rights is,

The right, freely and without fear of penalty or reprimand, to form, join and assist any

1/ Footnote Continued From Previous Page

because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

2/ Holloway did not name AFSCME as a Respondent in the charge.

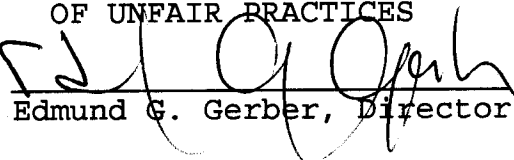
employee organization or to refrain from any such activity.... [N.J.S.A. 34:13A-5.3].

See Bridgewater Tp., 95 N.J. 235 (1984).

Holloway has alleged no facts suggesting that he was discriminated against based upon any activity protected by the Act; rather, he claims that he was treated disparately as compared with the supervisor involved in the altercation.

Finally, Holloway claims that the City and his union slowed his disciplinary hearing process. Regardless of its merits, this allegation is untimely. 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. See North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977). Holloway was advised on October 4, 1994 that the union was requesting that his disciplinary hearing be delayed pending disposition of his criminal charges. Thus, Holloway knew on October 4 that the union had asked to delay his hearing. Thus, the charge is filed outside of the Commission's statute of limitations. N.J.S.A. 34:13A-5.4(c).

Accordingly, I find that the Commission's complaint issuance standards have not been met and I refuse to issue a complaint. N.J.A.C. 19:14-1.5 and 2.1. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: July 5, 1995
Trenton, New Jersey