H.E. NO. 97-1

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MANASQUAN,

Respondent,

-and- Docket No. CO-H-95-113

MANASQUAN PBA LOCAL NO. 284,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission found that the Borough of Manasquan did not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by adopting a Personnel Policies and Procedures Manual. The Hearing Examiner found that there was insufficient evidence to prove that the 90 day retirement benefit contained within the Manual was different than the parties past practice. The Hearing Examiner also found that, notwithstanding the merits of the case, the charge was untimely filed, thus, he recommended the complaint be dismissed.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent, Sinn, Fitzsimmons, Cantoli, West & Pardes, attorneys (Kenneth Fitzsimmons, of counsel)

For the Charging Party, S.M. Bosco Associates (Dr. Simon M. Bosco, labor consultant)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On October 12, 1994, Manasquan PBA, Local No. 284 filed an unfair practice charge with the New Jersey Public Employment Relations Commission, amending it on February 22, 1995, alleging that the Borough of Manasquan violated subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.[1/] The PBA alleged in the original charge that

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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

Footnote Continued on Next Page

the Borough adopted a personnel manual wherein it unilaterally changed a practice by reducing a benefit [payment for sick leave upon retirement] by fifty percent. The PBA seeks to have the change rescinded and to have the benefit returned to the status quo.

In the amended charge, the PBA alleged that the personnel manual also unilaterally modified the payment method for the sick leave retirement benefit, limiting it to a lump sum payment rather than a choice between lump sum or bi-weekly payments.

A Complaint and Notice of Hearing was issued on May 23, 1995 (C-1). The Borough filed an Answer (C-2) on June 5, 1995, denying it unilaterally changed terms and conditions of employment.

A hearing was held on May 1, 1996. The parties were given the opportunity to file post-hearing briefs by June 21, 1996. No briefs were filed.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The PBA is the majority representative for certain police employees employed by the Borough, and was preceded in the

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1/ Footnote Continued From Previous Page

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."

1970's by the Manasquan Uniform Police Association (MUPA). On September 26, 1975, the Borough and MUPA signed a collective agreement (J-5), effective from January 1, 1974 through December 31, 1975. Article 11 of J-5 is entitled "Retirement and Pensions" and it provided monetary payment for earned vacation and holiday time and for accumulated overtime. There was no section in Article 11 of J-5 requiring payment for accumulated sick leave upon retirement, or for 90 days pay at retirement.

Article 20 of J-5 was a longevity clause which did not contain any provision for sick leave reimbursement.

On October 18, 1976, the Borough and MUPA signed an addendum to J-5 which added an extra year to the contract, making it effective from January 1, 1976 through December 31, 1977 (J-6). Article 3 of J-6, entitled "Retirement and Pensions," added a Section 3 to Article 11 of J-5 providing for a 90-day payment upon retirement, but states nothing about accumulated sick leave (T95). Section 3 provides:

> Each regular member employee of the Police Department of the Borough of Manasquan shall receive upon retirement from the Department, three (3) months base pay either in a lump sum or payable bi-weekly at the option of the individual officer.

Article 7 of J-6 entitled "Longevity," amended Article 20 of J-5, the Longevity article. At the end of the Longevity article in J-6, the following (including asteriks) appeared.

"****See Addenda following signature lines."

Following the signature lines in J-6 a paragraph was added, limiting payment for sick leave upon retirement. The addenda paragraph states:

> *** Addenda to Longevity schedule.
>
> During the term of this contract only, any employee who is 50 years of age or older and has been employed by the Manasquan Police Department for 25 years or more shall, in addition to the Longevity provided herein, be paid for any accumulated sick leave upon retirement up to a maximum of 90 days computed at the base pay of the retiring employee, payable in a lump sum or payable bi-weekly at the option of the individual employee.

Also on October 18, 1976, the Borough passed salary Ordinance No. 995 (J-8), to implement the salaries and benefits provided for in J-6 (T95-T96).

Exhibit J-8 had two parts. The first part was four pages consisting of fourteen separate paragraphs. The fourth page included the dates for first, second and final readings, the approval date, and the signatures of both the Mayor and Borough Clerk. The second part of J-8 was two pages with the words "Amended pages" written at the top. These two pages had enumerated paragraphs four through fifteen. A date was filled in for the first reading, but no date was entered for a second or final reading, none for approval, and no signatures were entered on any "amended" pages.

Paragraph 7(f) of the first part of J-8 provides for payment for accumulated sick leave upon retirement. Paragraph 7 of J-8 (first part) provided:

> In addition to the salaries and compensations hereinabove provided all regular employees of the Police Department of the Borough of Manasquan, irrespective of their rank or grade shall receive longevity pay as follows....

Subsection (f) of Paragraph 7 of J-8 (first part) provided:

> For the term commencing January 1, 1976 to December 31, 1977 only, an employee who is fifty years of age or older and has been employed by the Manasquan Police Department for twenty five (25) years or more shall, in addition to the longevity period provided hereinabove, be paid for any accumulated sick leave upon retirement up to a maximum of 90 days computed at the base pay of the retiring employee payable in a lump sum or payable bi-weekly at the option of the individual employee.

Paragraph 11 of J-8 (first part) provided:

> This ordinance amendment includes by reference all terms and amounts from prior salary ordinance provisions that are not inconsistent with the terms of this ordinance or that are not expressly repealed.

Paragraph 11 of the "amended" pages of J-8 provided:

> Upon retirement from the Police Department, each regular member of the Police Department of the Borough of Manasquan shall receive three (3) months Base pay either in a lump sum or payable bi-weekly at the option of the individual officer.

2. On November 1, 1976, three Borough police officers, Charles Preston, Raymond Johnston, and Edward Whitehead retired (J-9, J-17). In accordance with Article 3 Section 3 of J-6, or the addenda to Article 7 of J-6, they all received from 85 to 90 days

payment upon retirement, but there was no evidence on how many sick days they had accumulated (T41, T48, T114-T115, T130), and no showing whether their receipt of 85-90 days pay was based upon Article 3, Section 3 of J-6, or the addenda to Article 7 of J-6.

3. On December 5, 1977, the Borough and MUPA signed a new collective agreement (J-7) effective from January 1, 1978 through December 31, 1979. Exhibit J-7 was the predecessor agreement to J-5/J-6.

The "Retirement and Pensions" article in J-7, Article 12, was identical to the Retirement and Pensions article in J-5. There was no section three in Article 12 of J-7, and no provision for three months pay at retirement as set forth in the Retirement and Pensions article in J-6 (T66-T68).

Similarly, the "Longevity" clause in J-7, Article 21, like the longevity clause in Article 20 of J-5, did not contain any provision for sick leave reimbursement upon retirement as was provided for in the Longevity "addenda" set forth in J-6 (T68-T69, T93). In fact, since the expiration of J-6 in December 1977, none of the subsequent employment contracts covering Manasquan police employees, whether represented by the MUPA or the PBA, included language providing for payment upon retirement for accumulated sick leave, or for payment of three months (90 day) pay upon retirement (T70-T71, T78, T96-T97).

Finally, there was no maintenance of benefits clause in J-7.

4. Former Police Chief William Morton retired on January 1, 1980. He received 90 days pay upon retirement (T41, T48, T72, T86, T116, J-9, J-17), but there was no indication how many sick days he had accumulated by retirement, or if his 90 day payment was even related to sick leave (T53, T75, T116, T130).

5. On May 12 and June 22, 1982, interest arbitration hearings were conducted between the Borough and the PBA concerning a new collective agreement for 1982 and 1983 (T90). Exhibit J-9, a list of certain retired officers, was presented to the arbitrator (T85).

The PBA's final offer (J-16), sought the following retirement benefit, labeled a "non-monetary" item:

> 1) Retirement Benefits:
>
> Request the following addition be added to the Agreement:
>
> Article XII, Section 3.
>
> Payment by the borough to a retiring employee of any accumulated sick leave up to the maximum of ninety (90) days computed at the employee's annual gross pay for his last year worked. Further, this payment be made in a lump sum on or before the employee's retirement date.
>
> Substantiating factors for request:
>
> a) Past Practice:
>
> Since 1963 six (6) men have retired from the Police Department. Each of these six men have received the equivalent of ninety (90) days pay upon retirement.

On August 20, 1982, the arbitrator issued his interest arbitration decision (J-15). He granted the Borough's economic offer and denied the PBA's non-economic offers. Commenting on the PBA's retirement benefit offer he held:

> The PBA argues that this provision merely reflects past practice in the Borough. Since 1963, six men have all received ninety days pay upon retirement....
>
> I am impelled to deny this proposal for the reason that it appears to be a solidly entrenched past practice covered by the maintenance of benefits clause in Article XXIV, Section 5 of the existing contract. The Borough would definitely appear to have a policy of granting this benefit upon retirement of its police officers and, I think, Article XXIV puts the issue to bed. Parenthetically, however, I would also question the non-economic character that the PBA ascribes to this item.

The PBA did not provide the contract or maintenance of benefits clause referred to in the arbitrator's decision. Nor did the arbitrator define the 90 day benefit.

The arbitrator's decision was based in part upon what the PBA had told him of the practice in the Borough. He was told that "everyone who had retired from the police department had received 90 days" (T82-T83). There was no showing the arbitrator was told there was a policy of paying the 90 days retirement benefit based upon a one for one basis with accumulated sick leave.

6. Between 1988 and 1992 four other police employees retired and received 90 days pay upon retirement (J-17). Former police chief, Paul LaVance, retired on June 15, 1988. He received

90 days pay at retirement paid on a biweekly basis, and had over 300 sick days at retirement (T41, T48, T135, J-17).[2/]

Former sergeant, Jack Malone, retired on November 15, 1989. He received 90 days pay at retirement, paid on a biweekly basis, and had 247 sick days (T48, T49, T72, T75, T103, T134, J-17).

Former police chief, William Rowan, retired on June 30, 1991. He received 90 days pay at retirement, paid in a lump sum, at the Borough's choosing, and had accumulated 268 sick days (T41, T48, T51, T107).

Former patrolman, Russell Howland, retired on August 31, 1992. He received 90 days pay at retirement, and had accumulated 178 sick days (T41, T48, T50, T140, J-17).

7. On October 26, 1992, the Borough passed an ordinance (J-2), adopting the Borough Personnel Policies and Procedures Manual (J-1) (T126). Policy #14 of the Manual concerning "Retirement Sick Time Benefits" provides:

> On retirement, Employees shall receive payment of 50% of accrued sick days with a cap of ninety (90) days.
>
> Procedure:
>
> 1. Payment will be made, in one lump sum on the employee's date of retirement.

2/ Certain witnesses testified that they were unsure how many accumulated sick days LaVance had at retirement (T51, T95, T106). But current Chief Trengrove testified that LaVance had over 300 sick days. I credit that testimony.

Exhibit J-2, the ordinance adopting J-1, was first introduced, read and passed at a public meeting on October 5, 1992. The "Notice" contained within J-2 provided public notice that the ordinance would be considered for final passage on October 26, and that all interested persons would be heard. The ordinance was read and approved on October 26, 1992.

The first page of J-1 provides as follows:

> The terms of any employment contract negotiated with the employee or Employment Unit will supersede provisions of this manual where there is a conflict.

The PBA does not have a collective agreement with the Borough that contains a clause that supersedes Policy #14 of J-1. In fact, since approximately 1978, there has not been a PBA agreement containing clauses that entitle retiring officers to 90 days pay, or for payment of accumulated sick leave upon retirement (T96-T97).

8. Patrolman Scott Clayton was PBA president from May, 1991 through May, 1994, which included the period in which J-1 and J-2 were adopted (T21). Clayton was unaware of J-1 until November 1993. The Borough did not inform him they were adopting a manual, but he asked Chief Trengrove for a copy in November 1993, and subsequently received a copy (T21-T24).

9. In response to Clayton's November request, Chief Trengrove also sent Clayton a memorandum on January 3, 1994 (J-10) detailing his knowledge of the Manual (T24). He noted that nine to

twelve months earlier he had made a copy of the manual available for the bargaining units, learned it might have been misplaced, and had only recently learned that Clayton was unaware that the Manual had been adopted.

On January 26, 1994, Clayton sent Borough Councilman Richard Fitzsimmons a memorandum regarding the Personnel Manual (J-11). Clayton informed him that Chief Trengrove had told him that the Manual had been adopted a year before, that the copy had been misplaced, and that neither the Chief, nor Borough Clerk, notified him of its adoption. Clayton also notified Fitzsimmons that he considered Policy #14 in J-1 to be a change of the prior practice regarding the 90 day retirement benefit. Clayton explained he considered the prior practice to be payment for all unused sick days with a 90 day cap. He sought a return to that practice.

On May 5, 1994, the Borough amended Policy #14 of J-1 by adding the following sentence after the first sentence:

> Retirement is defined as an employee whom is eligible to collect pension benefits from the Public Employee Retirement System (J-3).

In the summer of 1994, Patrolman Jacob Kleinknecht, Chairman of the PBA's negotiations committee, sent a memo to the Borough's attorney (J-12) asking for a response to Clayton's memo regarding the retirement benefit, and noted a charge would be filed if there was no response by September 7, 1994.

Chief Trengrove responded to J-12 on behalf of the Borough's attorney. By memorandum of September 13, 1994 (J-13), the

Chief asked Kleinknecht to provide him with certain information to enable the Mayor and Council to review the PBA's position regarding the retirement benefit. Kleinknecht provided the requested information (T34-T35).

By letter of September 26, 1994 (J-14), the Borough's attorney notified Kleinknecht that the Borough concluded that the retirement benefit policy established in J-1 would be applied to all employee bargaining units.

On February 8, 1995, the Borough amended Policy #14 again (J-4), by removing the sentence added by the first amendment (J-3), and substituting the following sentence:

> Retirement is defined as when an employee is eligible to collect pension benefits from the retirement system in which the employee is enrolled through the Municipality.

10. Since at least 1988, the Borough has not had a policy requiring payment upon retirement for accumulated sick days on a one for one basis up to a cap of 90 days (T123). Kleinknecht testified that the retirement benefit was not originally linked to sick time, but became linked "somewhere along the way" (T45). He did not, however, say the benefit was ever linked to a one for one exchange of accumulated sick time. In fact, when asked what the past practice had been Kleinknecht said it was "sketchy if it was even every sick day[s] that would even be concerned"(T32-T33). Rather, both he, and Joanne Madden, the Borough's Chief Financial Officer, testified that the practice had been to give 90 days pay upon

retirement to any employee who was a department head or supervisor or served 25 years with the Borough (T33; T44-T45; T109; T123). Since they corroborate each other on that point, I credit their testimonies.

Kleinknecht subsequently testified, however, that employees were paid the 90 days pay "for 90 days sick days" (T47). When asked on what he based that determination, Kleinknecht said it was J-17 and conversations with Madden (T47). However, I cannot rely on Kleinknecht's testimony that the 90 days retirement pay was for 90 sick days. Exhibit J-17 does not establish that 90 days pay was given for 90 accumulated sick days, and Madden's testimony does not support such a finding.

Madden was employed by the Borough in 1988 (T103). Prior to the issuance of J-1, Madden did not verify how many sick days an employee had before issuing a retirement check (T107). Having checked with a former Borough administrator, she believed the practice was to give 90 days pay to department heads or employees employed by the Borough for 25 years, and was not based upon accumulated sick time (T108-T109).

ANALYSIS

The Borough did not violate the Act by passing policy #14 of J-1. The PBA failed to establish that there had been an existing practice of paying employees a 90 day retirement benefit based upon accumulated sick leave on a one for one basis. The PBA's charge and

amended charge were also untimely filed and cannot support the finding of a violation.

The Merits

The premise of the original charge is that policy #14 of J-1 changed a past practice. The term "past practice" (or prior practice) refers to a practice between parties that concerns a term and condition of employment which does not appear in their collective agreement, but arises as implied from their mutual conduct. Caldwell-West Caldwell Bd. Ed., P.E.R.C. No. 80-64, 5 NJPER 536 (¶10276 1979), aff'd in pt., rev'd in pt., 180 N.J.Super. 440 (App. Div. 1981). Normally, when a collective agreement is silent on a particular negotiable issue, a past practice on that issue is entitled to the same status as a term and condition of employment defined by the parties collective agreement. County of Sussex, P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982); Watchung Borough, P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981). Generally, a public employer is obligated to negotiate with a majority representative before changing a past practice. Sussex.

In order to prove a violation here, the PBA had to establish that the Borough had a practice of paying retirees for accumulated sick leave on a one-for-one basis up to the 90 day cap. Failure to establish such a practice must result in dismissal of the charge. The burden of proof was on the PBA. The Borough was not required to prove that no such policy existed.

The PBA seemed to rely primarily upon Exhibits J-6 and J-15 to prove its case. But whether they were viewed together or separately, those documents were insufficient to establish the practice that existed in October 1992 when the Personnel Manual, J-1, was adopted.

Exhibit J-6 contained an inherent inconsistency. Article 3 Section 3 provided for a 90 day payment upon retirement. It was not connected to sick leave or to any other precondition. But the addenda to Article 7 of J-6 had three additional preconditions for an employee to receive 90 days pay upon retirement. The employee had to be 50 years of age or older; employed by the Borough for 25 years or more; and have accumulated sick leave. The addenda does not say that sick leave will be paid on a one for one basis, and there was no proof on how it was calculated. Article 3, Section 3, and Article 7 of J-6 either provided for two distinct 90 day benefits, or the Article 7 addenda was intended to modify Article 3, Section 3. I assume that the parties intended the addenda be considered additional preconditions to receiving the 90 day benefit in Article 3, Section 3 of J-6. But since there was no showing how sick leave was calculated pursuant to J-6, and since the addenda language, by its own terms, was limited to the life of J-6, that document did not satisfy the PBA's burden of proof. The parties' J-7 agreement, which did not contain either Article 3, Section 3 or the addenda language to J-6, was evidence that whatever retirement benefit existed in J-6, had expired.

Although former Chief Morton retired with an additional 90 days pay after J-6 expired, but before J-15 issued, there was no indication whether that benefit was tied to accumulated sick leave, and if it was, whether it was calculated on a one for one or two for one basis.

Exhibit J-15 was the 1982 arbitrator's decision rejecting the PBA's proposed 90 day retirement clause because it appeared that a 90 day retirement benefit was an "entrenched past practice." But that decision does not support a finding that the 90 day payment was calculated on a one for one basis with sick leave.

The PBA's proposed 90 day sick leave retirement clause (J-16) did not provide the days were calculated on a one for one or two for one basis with sick leave. The arbitrator was apparently told that all retirees received 90 days pay. Assuming that's what he was told it still does not explain whether the days were paid on a one for one or two for one basis.

In rejecting the PBA proposal, the arbitrator held "it appears to be a solidly entrenched past practice", and that the Borough had a policy "of granting this benefit upon retirement". But the arbitrator did not define what "it" and "this" meant. I can only assume that the arbitrator's use of "it" and "this" was referring to the PBA's proposal in J-16. But since that proposal was silent on the days/sick leave calculations method, neither J-15 nor J-16 satisfies the PBA's burden of proof.

Similarly, the evidence regarding the receipt of 90 days retirement pay for LaVance, Rowan, Malone and Howland cannot be relied upon to satisfy the PBA's burden of proof. In fact, evidence of their payments tends to support the Borough's argument that the retirement benefit was calculated at two sick days for each retirement benefit day. That calculation meant an employee needed 180 or more accumulated sick days to receive the 90 day retirement benefit. LaVance, Rowan and Malone each had over 200 accumulated sick days at retirement, easily qualifying for the full benefit. Howland had 178 days which actually entitled him to 89 days pursuant to the two for one calculation method. I accept the Borough's explanation, however, that Howland was simply given the extra day.

Finally, neither Clayton nor Kleinknecht provided any reliable evidence that the 90 day benefit was based upon a one for one basis with sick leave.

The Retirement Benefit Distribution

The evidence supports the PBA's contention that employees had the option of receiving the retirement benefit in a lump sum or bi-weekly distribution. But the charge making that allegation was untimely filed, and must, therefore, be dismissed.

Statute of Limitations

The Act at subsection 5.4(c) established a 6 month statute of limitations providing that:

> ...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 month period shall be computed from the day he was no longer so prevented.

The Director of Unfair Practices cannot issue a complaint if it appears that the charge is based upon an event occurring more than 6 months prior to the filing of the charge. But if it appears to the Director that the allegations, if true, including the alleged dates, may constitute an unfair practice, he is obligated to issue complaint, N.J.A.C. 19:14-2.1(a).

Here, the Director properly issued a complaint. Generally, he cannot look behind the allegation in the charge to determine its validity. The PBA alleged that on September 26, 1994 (J-14), the Borough notified it that the Policy Manual would be applied to its negotiations unit. The PBA filed the charge several weeks later; thus, it appeared that the charge was filed within 6 months of an alleged violation.

But complaint issuance does not end or foreclose the examination into the timeliness of a charge. The 6 months limitation is a statutory, not discretionary, requirement. If after a plenary hearing the facts show that the charge was not timely filed, the complaint must be dismissed. Such is the result here.

The limitations period began to run on October 26, 1992, when J-1 was adopted at a public meeting. But, even giving the PBA the benefit of the doubt, the operative date that began the running

of the statute in this case was no later than January 26, 1994, when Clayton, in J-11, admitted knowledge of policy #14, alleged it was a change in past practice, and requested a return to what he claimed was the prior practice. The issuance of J-14 on September 26 was not the operative event. The PBA clearly knew of the effect of policy #14 on January 26, and never alleged or demonstrated that it was prevented from filing a charge after January 26. Thus, the charge, and amended charge, had to be filed by July 26, 1994. Since they were not, they must be dismissed.

In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329, 340 (1978), the New Jersey Supreme Court described how someone is prevented from filing a charge:

> 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 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.]

Having considered all of the circumstances, I find insufficient equitable considerations to support a finding of

prevention. There were no factors beyond the PBA's control that "disabled" it from filing a timely charge.

The mere fact that it chose to wait for the Borough to respond to its requests in J-11 and J-12 does not establish that it was prevented from filing a charge.

The PBA's voluntary delay does not constitute "prevention" or disablement. The PBA could have filed the charge after January 26, 1994, while it sought final word from the Borough. Its failure to do so was not initiated or encouraged by the Borough. The Commission has held that the statute of limitations begins to run when the alleged violation occurs, or at least "when the charging party initially learns of the alleged violation." Hunterdon Central H.S. Bd. Ed., P.E.R.C. No. 87-138, 13 NJPER 481 (¶18176 1987), adopting H.E. No. 87-55, 13 NJPER 305, 307 (¶18128 1987); see also State of New Jersey, P.E.R.C. No. 77-14, 2 NJPER 308, 309 (1976), aff'd 153 N.J.Super. 91 (App. Div. 1977), certif. den. 78 N.J. 326 (1978); Burlington County Special Services School Dist., D.U.P. No. 85-3, 10 NJPER 478 (¶15214 1984).

Since the PBA knew of the alleged change by January 26 and did not file the charge until October 12, 1994, and the amended charge until February 22, 1995, the complaint must be dismissed.

The Borough's amendments to policy #14 in May 1994, and February 1995, were not material or relevant to the issues here, and did not constitute a basis to restart the tolling of the statute.

Accordingly, based upon the above findings and analysis I make the following:

Conclusion of Law

The Borough did not violate the Act by adopting its Personnel Policies and Procedures Manual.

Recommendation

I recommend the complaint be dismissed.

Arnold H. Zudick
Hearing Examiner

Dated: July 10, 1996
Trenton, New Jersey