D.U.P. NO. 79-14

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

In the Matter of

MIDDLESEX COUNTY PARK POLICE,

Respondent,

-and-

DOCKET NOS. CO-79-85
CO-79-86
CO-79-87

PATROLMENS BENEVOLENT ASSOCIATION, LOCAL 156,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to three Unfair Practice Charges since the Charging Party did not allege that the claimed unfair practices arose within six months of the filing of its Charges. The New Jersey Employer-Employee Relations Act provides that an unfair practice charge shall be filed within six months of the occurrence of the unfair practice unless the charging party was prevented from filing the charge. The Charging Party has failed to amend its Charges to allege the occurrence of unfair practices within the six month limitation requirement.

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Charging Party.

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 12, 1978 by the Patrolmens Benevolent Association, Local 156

(the "Charging Party") against the Middlesex County Park Police

(the "Respondent") alleging that the Respondent was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended

(the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) and (7). 1/

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. 2/ The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. 3/ The Commission's rules provide that the undersigned may decline to issue a complaint. 4/

1/ These subsections prohibit employers, their representatives and 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. (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. (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. (7) Violating any of the rules and regulations established by the commission."

2/ N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... 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 and including a notice of hearing containing the date and place of hearing before the commission or any named designated agent thereof ..."

3/ N.J.A.C. 19:14-2.1.

4/ N.J.A.C. 19:14-2.3.

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

Pursuant to N.J.S.A. 34:13A-5.4(c) the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides: "...provided 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 months period shall be computed from the day he was no longer so prevented."

Further, the Commission's rules state that an unfair practice charge shall contain inter alia:

> A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated." (Emphasis added) 5/

Accordingly, the undersigned has determined that it is incumbent upon the Charging Party to allege the occurrence of unfair practices, within the six month limitation requirement, and that in the absence of such allegations, the undersigned would

5/ N.J.A.C. 19:14-1.3.

decline to issue a complaint. See In re North Warren Regional Board of Education, D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

Subsequent to the filing of the instant Unfair Practice Charge, by letter dated October 24, 1978, the undersigned informed the Charging Party that the Charge could not be processed further unless it was amended, pursuant to N.J.A.C. 19:14-1.5, to include the time and place of occurrence of the particular acts alleged to constitute the unfair practice. The undersigned directed the Charging Party's attention to the relevant six month limitation provision of N.J.S.A. 34:13A-5.4(c) and advised that a complaint would not issue if the Charging Party failed to allege the occurrence of an unfair practice within the prescribed six month limitation period. The undersigned has not received a reply to the October 24, 1978 letter, nor has the Charge been amended, as requested.

Accordingly, as the Charging Party has not included in its Charge the time of occurrence of the conduct alleged to constitute the unfair practice within the six month statutory limitation period, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Carl Kurtzman, Director

DATED: Trenton, New Jersey
December 19, 1978