

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

In the Matter of

STATE OF NEW JERSEY  
(TRENTON STATE PRISON)

Respondent,

-and-

DOCKET NO. CI-83-8

HOWARD DAVIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to unfair practice charges filed by an individual against his employer with respect to changed working hours. The charges were not filed within six months of the claimed date of the unfair practices, and the charging party's statement of facts does not support the claim that the alleged unfair practices arose in retaliation for his exercise of rights protected under the Employer-Employee Relations Act.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 4, 1982 by Howard Davis (the "Charging Party") against the State of New Jersey (Trenton State Prison) (the "State") alleging that the State was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. et seq., as amended, (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1) and (3). <sup>1/</sup>

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

<sup>1/</sup> N.J.S.A. 34:13A-5.4(a) prohibits public 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."

complaint stating the unfair practice charge. <sup>2/</sup> 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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

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."

<sup>2/</sup> 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 designated agent thereof..."

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

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

The Charging Party herein alleges that beginning January 9, 1982 he, as well as other supervisors, has been required to report to work early, without additional compensation. The date of the alleged unfair practice is beyond the six month period preceding the filing of the unfair practice charge.

Moreover, the Charging Party has not alleged facts indicating that the alleged change of his working hours was an act taken by the employer in retaliation for his exercise of rights under the Act. Thus, there is no factual basis to support his allegation that the State's conduct violates subsections 5.4(a)(1) and (3).

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: November 29, 1982  
Trenton, New Jersey