

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

TOWNSHIP OF OCEAN,

Respondent,

-and-

DOCKET NO. CO-84-146

P.B.A. LOCAL NO. 57 OF THE
OCEAN TOWNSHIP POLICE DEPARTMENT,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint, finding that a charge filed on December 1, 1983 by Ocean Township PBA Local 57 ("Local 57") against the Township of Ocean ("Township") is untimely under N.J.S.A. 34:13A-5.4(c). Local 57 alleged that the Township violated §§ 5.4(a)(5) and (6) by: (1) failing to accurately incorporate the salary provisions of a Memorandum of Understanding executed April 23, 1982 into the parties' collective negotiations agreement; and (2) failing to honor a verbal promise to administer the agreement consistent with original memorandum. Local 57 asserts that it was fraudulently induced to execute the agreement by the Township's promise, and that the Township has engaged in a continuing violation of rights duty to negotiate in good faith since January 1, 1983, the date it began implementing the collective negotiations agreement.

Rejecting the applicability of the continuing violation theory, the Administrator holds that the six-month limitation period convened on the date that Local 57 was aware of Township's intentions relative to the implementation of the contractual salary guides and that any action grounded in fraud began to run on the date that Local 57 discovered it.

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Appearances:

For the Respondent
David A. Wallace, attorney

For the Charging Party
Joseph N. Dempsey, attorney

REFUSAL TO ISSUE COMPLAINT

On December 1, 1983, P.B.A. Local No. 57 of the Ocean Township Police Department ("Local 57") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Township of Ocean ("Township") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically § 5.4(a)(5). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives or agents from: "(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."

The statement of the charge further described Local 57's claim as falling, as well, within the parameter of § 5.4(a)(c), i.e., "refusing to reduce a negotiated agreement to writing and to sign such agreement."

The factual allegations and claims of Local 57 are succinctly stated in the following passage of its brief dated March 26, 1984:

The parties reached agreement on a salary guide for 1982 and for 1983. These guides were hand-written in a Memorandum of Understanding dated April 23, 1982 and signed by the Charging Party and the Respondent. Respondent thereupon assumed responsibility for incorporating that agreement in the new contract. However, the new contract did not reflect the same salary at each step as the agreement. Respondent thereupon induced the charging party to sign the incorrect contract by saying the contract would be administered in accordance with the agreement. Such administration would mean that as of January 1, 1983, the salaries for each step were increased and, consequently, employees would receive that increase as of January 1, 1983.

However, on January 1, 1983, respondent failed to increase the salaries and claimed that no increases were due until the employees had reached the anniversary date of employment and had advanced another step...

Charging Party's brief further states the proffered theories of the alleged violations of the Act.

Notwithstanding their promise to administer the contract according to the agreement, respondent had a duty to incorporate the agreement terms in the written contract...

* * *

Respondent has also failed to negotiate in good faith. Respondent is not abiding by a signed Memorandum of Agreement which allegedly represents a meeting of the minds of the parties. Respondent has also failed to abide by their representation that the will act in accordance with the Memorandum of Understanding..." [sic]

Local 57 further states that "between January 14, 1983 and December 1, [1984] the parti[e]s herein attempted to resolve the

issues through arbitration." For unstated reasons, "no resolution was achieved." ^{2/} Local 57 thereafter filed the instant Charge.

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. ^{3/} 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. The 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 and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

In determining whether a complaint may issue, the undersigned must apply the Act's statutory limitations period. The

^{2/} It appears that the proceeding to which Local 57 refers was a rights arbitration matter. See Commission Docket No. AR-83-258.

^{3/} 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 charges and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

Commission, by the Act, 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 unless a charging party has been prevented from filing an otherwise timely charge.

N.J.S.A. 34:13A-5.4(c) provides 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.

Local 57 concedes that in January 1983, it was made aware of the Township's position as to the manner it would apply the salary provisions of the contract. In fact, in January 1983, the Township proceeded to implement the contract provisions at issue. Local 57 does not allege that it was prevented from filing its unfair practice charge within six months thereof. Nor does it allege that the six month period should be tolled during the time period during which the dispute was grieved and submitted to arbitration. ^{6/}

Local 57, rather, argues that a complaint should be issued because the claimed unfair practices are allegedly continuing in nature. It states: Charging Party contends that the unfair practice is the continuing failure of respondent to abide by the Memorandum. The failure to abide by the Memorandum stems from the failure to negotiate in good faith. This failure to negotiate in good faith continued throughout the arbitration efforts."

^{6/} See In re State of New Jersey (Stockton State College), P.E.R.C. No 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (1977), pet. for certif. den. 78 N.J. 326 (1978).

It appears to the undersigned for the following reasons that the continuing violation theory is not applicable under the instant facts.

If the Township failed to negotiate in good faith with Local 57 during the course of negotiations toward the 1982-1983 successor contract, an unfair practice charge should have been filed within six months of the occurrence of the improper conduct or within six months of the alleged discovery thereof in January, 1983. The Township's legal obligation to negotiate otherwise ceased with the execution of a final, formal collective negotiations agreement on May 17, 1982. ^{7/} The Township's obligation with respect to Local 57's grievance filed in or about February, 1983 was to process the grievance in accordance with the parties' grievance procedure. The PBA has not presented any factual claims suggesting that the Township did not process Local 57's grievance, nor has Local 57 submitted any factual allegation suggesting that the Township agreed to assume any responsibility to engage in negotiations in return for the grievance being dropped at the arbitration level. ^{8/}

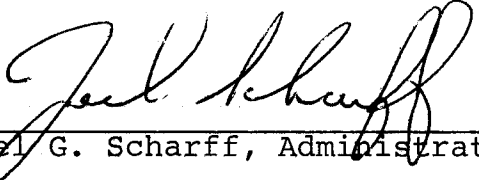
^{7/} The charging party's claims of fraudulent inducement in the execution of the contract are included within this analysis. The alleged act of fraud was a single event, and was actionable, within the six month limitations period, from the date of its discovery. Cf. 18, Limitation of Actions, N.J. Digest, §100. The continued administration of the contract pursuant to lawful terms is not actionable as an unfair practice notwithstanding the claimed illegality, beyond the six months limitations period, under which the contract was allegedly secured. Compare Local Lodge 1424 v. NLRB (Bryan Mfg. Co.), 362 U.S. 411 (1960).

^{8/} Furthermore, it appears that Local 57 was not and is not now seeking continued negotiations over the salary step issue. The purpose of the instant Charge, it appears, is to require written formalization of its asserted interpretation of a meeting of the minds in negotiations which is not reflected in the formal contract.

The intervening execution of a formal collective negotiations agreement also cannot be ignored in the context of evaluating Local 57's claims that there is a continuing failure by the Township to reduce the negotiated Memorandum of Agreement to a writing consistent with the terms of the Memorandum. In the absence of an actionable claim of fraud, it must be concluded in this matter that the Township has complied with its obligation to reduce a negotiated agreement to writing. ^{9/}

Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: September 18, 1984
Trenton, New Jersey

^{9/} The undersigned has thoroughly reviewed the cases cited in Charging Party's brief and does not find them supportive of its position concerning the continuing violation claim. In In re Manchester Township, P.E.R.C. No. 83-161, 9 NJPER 392 (¶ 14178 1903), the Township failed, for more than six months, to implement the salary and benefit payments required in the second year of a collective negotiations agreement. However, the union's charge was filed within the six month limitations period and the decision does not address the theory of continuing violation. Additionally, charging party cites North Plainfield Ed. Assn. v. Bd. of Ed. of the Borough of North Plainfield, App. Div. Docket No. A-4583-8173. The Supreme Court has reversed the Appellate Division, 96 N.J. 587 (1984) including, inter alia, the holding concerning the continuing violation theory.