

D.U.P. NO. 89-14

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

In the Matter of

COUNTY OF ESSEX AND
PBA LOCAL 157,

Respondents,

-and-

Docket No. CI-89-50

ANTHONY J. SCHEPIGE,

Charging Party.

SYNOPSIS

The Director refuses to issue a Complaint on an individual's unfair practice charge filed beyond the statutory six-month limitation. The Director finds that the allegations against the employer and the majority representative are based upon incidents occurring more than six months prior to the filing of the charge.

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Appearances:

For the Respondent-County of Essex,
Lucille LaCosta-Davino, Assistant County Counsel

For the Respondent-PBA Local 157,
James Petrecca, First Vice-President

For the Charging Party,
Anthony Schepige

REFUSAL TO ISSUE COMPLAINT

On December 16, 1988, Anthony Schepige ("Schepige") filed an unfair practice charge alleging that the County of Essex ("County") and the Jail Annex shift commander Captain James Kearns ("Kearns") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by inequitably assigning and administering mandatory overtime. On February 22, 1989, Schepige

amended to the charge to also allege that PBA Local 157 ("PBA") violated the Act by its failure to file a grievance on his behalf. That amendment alleges that by their acts, the County and PBA violated N.J.S.A. 34:13A-5.4(a)(1)^{1/} and (b)(1).^{2/}

The Commission has delegated its authority to issue complaints to me 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.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

In determining whether a complaint may issue we must apply the Act's time limitations period. The Act precludes the Commission 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)

^{1/} This subsection prohibits 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.

^{2/} This subsection prohibits employee organizations, 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/} N.J.A.C. 19:14-2.1.

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

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.

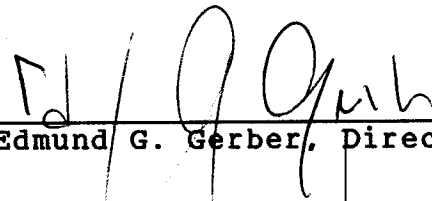
We may not issue a complaint where a charging party fails to allege that the unfair practice(s) occurred within the six-month limitation period. See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977). See also N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

Schepige's charge against the County stems from discipline it imposed on May 9, 1988, for his alleged refusal to work mandatory overtime. His charge against the PBA arises from its alleged refusal to accept a grievance he submitted on May 16, 1988, concerning the discipline he incurred. The charge against the County was filed on December 16, 1988. The charge against the PBA was filed on February 22, 1989. Neither charge falls within the six month limitation period specified by N.J.S.A. 34:13A-5.4(c), and Schepige does not allege reasons which prevented him from filing the charges. Cf. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1977).

On April 11, 1989, we advised all parties that it appeared the charge was filed outside the six-month statutory time limits, and that, absent amended allegations or a withdrawal, we were inclined

to dismiss the charge. No reply has been filed. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: April 28, 1989
Trenton, New Jersey