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D.U.P. NO. 80-22

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

In the Matter of

BOROUGH OF PITMAN,

Respondent,

-and-

DOCKET NO. CI-80-11

FRANCIS J. HADRY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge since the Charge was not filed within six months of the employer's alleged unfair practice. The Director determines that the Charging Party was not prevented from filing the Charge.

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Appearances:

For the Respondent  
Cresse & Carr, attorneys  
(Warren H. Carr of counsel)

For the Charging Party  
Camden Regional Legal Services, Inc.  
(Brian S. O'Malley & Albert M. Bender of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 11, 1979 by Francis J. Hadry (the "Charging Party") against the Borough of Pitman (the "Borough") 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.

(the "Act"), specifically, N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4) and (7). <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 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>

<sup>1/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

<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

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."

The Unfair Practice Charge herein, filed October 11, 1979, relates to the Charging Party's discharge from employment by the Borough in April 1978 and is well beyond the above limitations period. However, the Charging Party has provided a memorandum of law and an affidavit setting forth argument as to why a complaint should nonetheless issue.

The Charging Party states that he was terminated on April 13, 1978 because he attempted to organize fellow employees to seek union representation by AFSCME. AFSCME filed an unfair practice charge on his behalf <sup>5/</sup> with the Commission. Pursuant to a settlement agreement with AFSCME entered into on June 13, 1978, the Borough agreed to rehire the Charging Party under a

5/ Commission Docket No. CO-78-258, filed April 25, 1978.

CETA grant and agreed to offer the Charging Party reemployment in any open permanent position for which he was qualified. On the basis of this agreement, AFSCME withdrew its charge. From September through November 1978, when he was again discharged, the Charging Party was employed in a CETA position.

Charging Party states that at the June 13, 1978 settlement conference he rejected an initial offer of an existing CETA position since he knew that funding would cease in November. Charging Party alleges that he continued to seek the assistance of AFSCME before and after his September-November CETA employment, was advised that the matter would be investigated, but was never contacted by AFSCME. In June 1979, after having been unsuccessful in retaining legal counsel, Charging Party individually contacted the Commission and was provided with unfair practice forms and Commission rules. Charging Party states that he was unable to complete the forms and eventually secured assistance in filing this Charge through legal services counsel. In urging the Commission to consider the Charge, the Charging Party states that from November 1978 through September 1979, he was under great strain and financial uncertainty and did not know whom to turn to for aid. He urges that the six month limitations period did not commence to run until June 1979, when he first contacted the Commission.

The undersigned has carefully considered the circumstances described by the Charging Party. Notwithstanding the

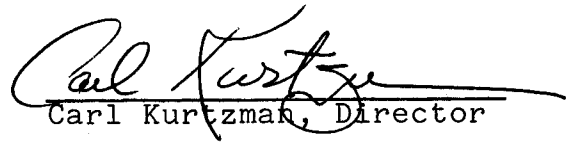
the Charging Party's disagreement with AFSCME's settlement of the Charge against the Borough, and the alleged failure of AFSCME thereafter to satisfactorily resolve the Charging Party's complaints, the unfair practice which is charged herein is the Borough's termination of the Charging Party in April 1978, allegedly for discriminatory reasons. The Borough was charged with unfair practice conduct by AFSCME almost immediately, and Charging Party attended the Commission conference. The settlement did not satisfy the Charging Party; however, a year passed before the Charging Party contacted the Commission.

Under the circumstances presented herein, it cannot be concluded that the Charging Party was prevented from filing a timely charge against the Borough. Therefore, the undersigned cannot accept the Charging Party's urging that the tolling period for filing the Charge commenced in June 1979, when the Commission was first contacted. Lastly, notwithstanding the urging of the Charging Party, Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978) is not applicable herein. In Kaczmarek the Charging Party had initially proceeded in an action before the superior court at a time when the Commission's jurisdiction was in question. Thus, the time spent in the judicial forum without a Commission filing was not lost. In the instant matter, an Unfair Practice Charge against the employer was filed. Charging Party was aware that his representative and the employer settled the Charge and chose not to contact the Commission about his dissatisfaction thereafter

in a timely manner.

Accordingly, for the above reasons, the undersigned concludes that the Charge has not been timely filed and hereby declines to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: April 7, 1980  
Trenton, New Jersey