

D.U.P. NO. 86-8

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

In the Matter of

PASSAIC TOWNSHIP,

Respondent,

-and-

Docket No. CI-86-64

CARLO SINAGRA,

Charging Party.

Synopsis

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed against Passaic Township. The charge alleges that the Township discharged the Charging Party to prohibit him from exercising protected rights. The charge was untimely filed, more than eight months after the alleged unfair practice. The Director determines that the Charging Party failed to present facts sufficient to justify the delay.

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Appearances:

For the Respondent
Mattson, Madden & Polito, Esqs.
(John R. Pigeon, Township Attorney)

For the Charging Party
Pro se

REFUSAL TO ISSUE COMPLAINT

On February 28, 1986, Carlo Sinagra ("Charging Party") filed an unfair practice charge against the Township of Passaic ("Township"). The charge alleges that the Township violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (3) and (4),^{1/}

^{1/} These subsections prohibit 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; (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; and (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."

by discharging the Charging Party to prohibit him from exercising his right to take sick time and to file grievances.

N.J.S.A. 34:13A-5.4(c) provides 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 specific unfair practice charge.^{2/} The Commission has delegated to me its authority to issue complaints 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/} If however this standard is not met, I may decline to issue a complaint.^{4/}

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

^{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 charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof...."

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

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

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, subsection 5.4(c) provides "that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented."

In Kaczmarek v. New Jersey Turnpike Authority, 77 N.J. 329 (1978), the Supreme Court interpreted that subsection.

[T]he Legislature, by its very choice of expression, evinced a purpose to permit equitable considerations to be brought to bear. It did not couch the period of limitations in terms of a flat and absolute bar but instead stated expressly that the limitation of the action shall be tolled if the charging party is "prevented" from filing within the six-months period. N.J.S.A. 34:13A-5.4(c). The term "prevent" may in ordinary parlance connote that factors beyond the control of the complainant have disabled him from filing a timely complaint. Nevertheless, the fact that the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all relevant considerations bearing upon fairness of imposing the statute of limitations. The question for decision becomes whether, under the circumstances of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion. Id. at 339-40.

In Kaczmarek, the statute of limitations did not ultimately bar the filing of an action before the Commission. The Court noted that the Charging Party filed in Superior Court within three months of the alleged violation of the Act. Observing that "[s]tatutes of limitations are primarily designed to assure fairness to defendants," id. at 340, the Court pointed out that the Respondents were not in any way prejudiced by the Charging Party's late filing because they had timely notice as a result of the Superior Court action. In addition, had the trial judge transferred the case to the Commission, rather dismissing it, the charge would have been timely filed. Under all the circumstances, the Court ordered that the charge proceed.


In this case, the Charging Party alleges that the Township discharged him in June 1985. He did not file a charge until February 28, 1986, more than eight months after his discharge. By letter dated March 11, 1986, the assigned staff agent 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 allege the occurrence of unfair practices within the six (6) month limitation requirement.

On March 14, 1986, the Charging Party came to our Trenton offices and met with the assigned staff agent. The charging party explained that his inability to express himself in English and his failure to find someone to fill out the appropriate form precluded him from filing a timely charge. A review of Commission records

reveals that the Charging Party came to our Trenton office and was given an unfair practice charge form and copies of the applicable statute and rules on June 25, 1985. More than eight months then passed before the Charging Party ultimately filed his charge. While the Charging Party may have needed some time to get help filing the charge, I cannot accept the contention that the Charging Party needed eight months to get assistance. In addition, none of the mitigating circumstances of Kaczmarek are present in this case.

Thus, the charging party has not included in his charge allegations of any unfair practice occurring less than 6 months prior to the filing of the charge, has not amended his charge to include such allegations, nor has he presented facts sufficient to justify the delay in bringing this charge. Accordingly, I decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber
Director

DATED: March 27, 1986
Trenton, New Jersey