

D.U.P. NO. 79-6

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

In the Matter of

TOWNSHIP OF PENNSAUKEN,

Respondent,

-and-

DOCKET NO. CO-78-92

AFSCME, COUNCIL 71, AFL-CIO
LOCAL 2278,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge since the Charging Party did not allege that the claimed unfair practices arose within six months of the filing of its Charge. The New Jersey Employer-Employee Relations Act provides that an unfair practice charge shall be filed within six months of the occurrence of the unfair practice unless the charging party was prevented from filing the charge. The Director finds that the allegations stated in the Charge did not establish circumstances under which the Charging Party was prevented from filing its Charge.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 28, 1977, by AFSCME, Council 71, AFL-CIO, Local 2278 (the "Charging Party") against the Township of Pennsauken, (the "Respondent") 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., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3) and (5).^{1/}

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

^{1/} These subsections prohibit 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 any employee in the exercise of the rights guaranteed to them by this Act. (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."

that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} 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. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

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."

It is the obligation of the charging party to allege the occurrence of unfair practices within the six month limitation set forth in the Act.

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

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

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

Further, the Commission's rules state that an unfair practice charge shall contain, inter alia:

"A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated." (Emphasis added) 5/

Despite its ambiguity, the instant Charge seemingly contains two possible unfair practices. First, the Charging Party appears to allege that the Respondent charged employees with a sick day when they took days off due to work related illnesses in violation of the collective negotiations agreement covering unit employees. Second, the Charging Party seems to imply that a settlement was reached with regard to this matter; however, it is maintained that as of the date the Charge was filed the Respondent had not yet complied with the terms of the agreement.

While the two aforementioned allegations might, if true, constitute unfair practices, the Charging Party has failed to place the occurrence of the alleged violations within the mandatory six month period.^{6/} The only dates set forth in the Charge pertain to the period between January 10, 1977 and February 14, 1977, during which time the acts which gave rise to the claimed unfair practice allegedly occurred. Thus, over eight months transpired between the latter

5/ N.J.A.C. 19:14-1.3.

6/ For the purposes of identifying the six month statutory limitation period, the date of the claimed unfair practice arising from the deduction of the sick day would be the date when the employer deducted the sick day or when the employees were no longer prevented from discovering the deduction. The date, for purposes of the limitations period, of the unfair practice which is claimed to have arisen from a noncompliance with a grievance settlement, would be the date when employees were no longer prevented from discovering noncompliance.

date and the filing of the instant Unfair Practice Charge. Despite two requests by the undersigned, contained in letters dated November 3, 1977 and May 5, 1978, that the Charge be amended to conform with the requirements of the Act, the Charging Party has not come forward with a date which would satisfy the six month limitation. Thus, the Charge continues to suffer from a lack of specificity and untimeliness. The Commission cannot assume that a charge has been filed within the requisite six month period. In re North Warren Regional Board of Education, D.U.P. No. 78-7, 4 NJPER 55 (¶14026 1977). If a charge on its face is out of time, and the party who filed it neglects to make the necessary amendments, after having been given appropriate notice and ample opportunity to do so, a complaint will not be issued.

In the instant matter a copy of the grievance which the union originally filed in reference to this matter, was attached to the Charge.^{7/} The filing of a grievance, however, does not excuse the failure of a charging party to file its charge within six months of the occurrence of the unfair practice. The Commission's policy in this regard is clear: the filing and processing of a grievance related to the subject matter involved in the unfair practice charge does not toll the Act's statute of limitations. In State of New Jersey and Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO, P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (1977), pet. for certif. pending, Supreme Court Docket No. 15,052, the Commission stated:

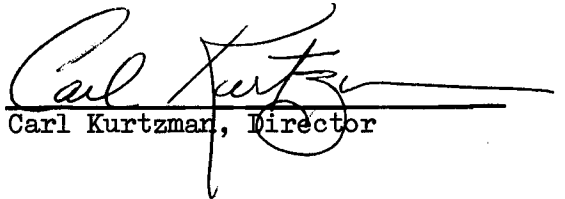
While it is true that the Commission has a policy of deferring to voluntarily agreed upon procedures for resolving disputes in a fashion that is compatible with the policies and purposes of the Act, we do retain jurisdiction over these cases and the charge must be filed in a timely fashion. Where

^{7/} The grievance is outdated and the Commission is unable to determine when it had originally been filed practices which are limited to the issuance of complaints to events occurring within six months of the filing of

jurisdiction over these cases and the charge must be filed in a timely fashion. Where the Legislature has given us exclusive power to prevent unfair practices but has limited the issuance of complaints to events occurring within six months of the filing of charges, we cannot assert jurisdiction over an event which occurred more than six months before the charge was filed even when the charging party is attempting to resolve the matter through other means. Had the Legislature intended otherwise, it would have qualified the six month limitation.

Since the Charging Party has failed to satisfy the six month statutory limitation, and given the lack of extenuating circumstances ^{8/} which might justify a relaxation of this six month filing period, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: October 5, 1978
Trenton, New Jersey

^{8/} See Kaczmarek v. N.J. Turnpike Authority and N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO and P.E.R.C. ___ N.J. ___ (1978) wherein the New Jersey Supreme Court noted that the legislature did not couch the period of limitation 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 month period. However, there are no circumstances arising in the instant matter which are similar to those described in Kaczmarek and which may have impeded the union from bringing its charge within the six month period.