

D.U.P. NO. 85-19

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

In the Matter of

CITY OF BAYONNE,

Respondent,

-and-

DOCKET NO. CI-84-91

ROBERT WOJCIK,

Charging Party.

A.F.S.C.M.E., LOCAL 2261,

Respondent,

-and-

DOCKET NO. CI-84-92

ROBERT WOJCIK,

Charging Party.

SYNOPSIS

Relying on N.J.S.A. 34:13A-5.4(c), the Commission Designee declines to issue a complaint where the unfair practice charges, which allege discriminatory recall practices and a breach of the duty of fair representation in processing a related grievance, do not set forth the dates on which the Charging Party became aware of the conduct.

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Appearances:

For the Respondent City of Bayonne
Apruzzese & McDermott
(Frederick T. Danser, III of counsel)

For the Respondent AFSCME, Local 2261
Michael Lanni, Director

For the Charging Party
Dugan, Hughes, Finnerty & Krause
(John J. Hughes of counsel)

REFUSAL TO ISSUE COMPLAINT

Unfair Practice charges were filed by Robert Wojcik ("Charging Party") with the Public Employment Relations Commission ("Commission") on June 21, 1984, and amended on July 9, 1984, against the City of Bayonne ("City") and AFSCME, Local 2261 ("Local 2261"). The Charging Party alleges that, subsequent to a layoff of sanitation truck drivers in June of 1983, the City has discriminatorily recalled employees without regard to seniority, and, contrary to a verbal promise, has assigned

truck driving responsibilities to laborers. The Charging Party also alleges that Local 2261 has failed to represent him in a related grievance.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that that 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. ^{1/} 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 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. ^{2/} The Commission's rules provide that I may decline to issue a complaint. ^{3/}

For the reasons stated below I have 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

^{1/} 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..."

^{2/} N.J.A.C. 19:14-2.1

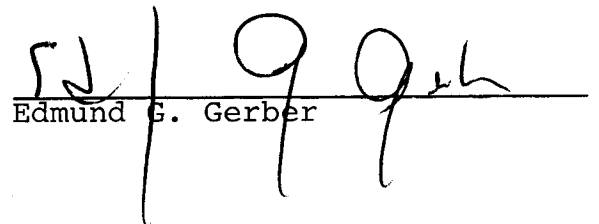
^{3/} N.J.A.C. 19:14-2.3

unfair practice. More specifically, N.J.S.A. 34:14A-5.4 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."

The charge, originally filed on June 21, 1984, relates to the City's recall policy after a layoff of sanitation truck drivers in June of 1983. The Charging Party has failed to allege the dates upon which he became aware of the City's recall practice or of Local 2261's refusal to process his related grievance. Despite requests made on June 26, 1984 by the Administrator of Unfair Practice Proceedings and on November 7, 1984 by the Commission Designee, the Charging Party has failed to amend his complaint to allege the dates on which the unfair practices occurred. In reading both the original and amended charges, I am unable to ascertain exactly, or even approximately, when the alleged unfair practices occurred.

Accordingly, for the reasons stated above, I decline to issue a complaint.

BY ORDER OF COMMISSION DESIGNEE


Edmund G. Gerber

DATED: January 4, 1985
Trenton, New Jersey