

D.U.P. NO. 2001-5

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

In the Matter of

NEWARK FREE PUBLIC LIBRARY and,
I.U.O.E. LOCAL 68,

Respondents,

-and-

Docket No. CI-2000-35

HERBERT H. SHAW,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge as untimely filed. Even if it were timely filed, the Director finds the claimed right of an individual to require a tape recording of grievance conferences is not supported by established labor law and any constitutional right to tape record grievance conferences should be addressed to the courts.

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Appearances:

For the Respondent, Library
Gerald Fitzhugh, Assistant Director

For the Respondent, IUOE
Mary Moriarty, attorney

For the Charging Party
Herbert H. Shaw, pro se

REFUSAL TO ISSUE COMPLAINT

On March 17, 2000, Herbert Shaw filed an unfair practice charge alleging that his employer, the Newark Free Public Library, and his majority representative, I.U.O.E. Local 68, respectively

violated sections 5.4a(1), (3) and (5)^{1/} and 5.4b(1) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. (Act) when they refused to allow him to tape record a grievance meeting.

Local 68 responds that the charge was not timely filed pursuant to N.J.S.A. 34:13A-5.4c. It further maintains that its internal union policy not to record grievance meetings has been uniformly applied to all members, and is not subject to Commission review. The Library takes no position.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. I find the following facts.

1/ These provisions 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. (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."

2/ These provisions prohibit 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. (5) Violating any of the rules and regulations established by the commission."

Sometime in June 1999, representatives of Local 68 and the Library convened a meeting to discuss and attempt to resolve a safety issue concerning Shaw's footwear while on duty.^{3/} At the meeting, Shaw sought to record the parties' discussion. Library and Local 68 representatives objected to recording their discussions and, thereafter, Shaw left the meeting.

It appears that the footwear issue was resolved by July 7, 1999; the tape recording issue remains unresolved. By letter dated August 4, 1999, Local 68's attorney advised Shaw that it was the union's policy not to permit grievance meetings to be tape recorded and declined to make an exception in Shaw's case.

The Library's and Local 68's collective agreement contains a six-step grievance procedure culminating in binding arbitration. It is silent with respect to recording any step of the procedure.

ANALYSIS

Local 68 argues that Shaw's charge was filed beyond the statute of limitations. The Act requires that an unfair practice charge must be brought within six months of the alleged unfair practice. N.J.S.A. 34:13A-5.4c states, in relevant part:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person

^{3/} Apparently, Shaw suffers from a skin condition which he maintains requires him to wear open-toed shoes. The Library, apparently concerned about health and safety issues, required him to wear closed-toed shoes.

aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

See also, City of Newark (Montgomery), P.E.R.C. No. 2000-57, 26 NJPER 91 (¶31036 2000), aff'g D.U.P. No. 2000-5, 25 NJPER 392 (¶30169 1999); N.J. Sports & Exposition Auth. (Moraites), D.U.P. No. 99-11, 25 NJPER 145 (¶30066 1999); City of Hoboken (Mancuso), D.U.P. No. 96-11, 22 NJPER 2 (¶27002 1995).

In application, the statute of limitations period normally begins to run from the date of some particular action, such as the date the alleged unfair labor practice occurred, provided the person(s) affected thereby are aware of the action. The date of the action is known as the "operative date", and the six-month limitations period runs from that date. Therefore, in order to be timely, a charge must be filed within six months of the operative date. Charges and amendments filed past that date are generally untimely. Two exceptions to timeliness requirements are (1) tolling of the limitations period and (2) a demonstration by the Charging Party that it was "prevented" from filing the charge prior to the expiration of the period.

The standard for evaluating statute of limitations issues was set forth in Kaczmarek vs. N.J. Turnpike Auth., 77 N.J. 329 (1978). The Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent litigation of stale claims, but it did not want to apply the statute strictly without considering the circumstances of individual cases. Id. at 337-338.

The Court noted it would look to equitable considerations in deciding whether a charging party slept on his rights. But the Court still expected charging parties to diligently pursue their claims.

Shaw charges that he was denied the ability to tape record a grievance meeting in June 1999. To be timely filed, his charge would have had to been filed by December 1999. Even if the time period began running as of August 4, 1999 (the date Local 68 advised him in writing it would not permit recording grievance meetings), to be timely, he would have had to file the charge by February 2000. It was filed March 17, 2000. Shaw offers no explanation for why he failed to file his charge within six months of the operative date.

Moreover, Shaw offers no facts to suggest that he was prevented from timely filing the charge. Compare Kaczmarek; N.J. Turnpike Auth. (Beall), D.U.P. No. 80-10, 5 NJPER 518 (¶10268 1979), rev'd. in part, P.E.R.C. No. 80-106, 6 NJPER 106 (¶11055 1980); N.J. Transit Bus Operations (Chimbumu), D.U.P. No. 95-23, 21 NJPER 54 (¶26038 1995) (charge timely where action initiated in court within six months of alleged illegal conduct, then refiled with the Commission);. See also, N.J. Institute of Technology (Giegold), P.E.R.C. No. 97-123, 23 NJPER 296 (¶28134 1997).

Based on the foregoing, I find that the charge was not timely filed.

Even if the charge had been timely filed, Shaw's claim does not meet the Commission's Complaint issuance standards. In Newark Bd. of Ed., P.E.R.C. No. 83-156, 9 NJPER 368, 369 (¶14167 1983), the Commission found that "established labor relations law does not permit one party to impose [a tape recording] precondition on the processing of grievances." The Commission relied upon the following cases in support of its conclusion: Morton-Norwich Products, Inc., 94 LRRM 1696 (1977) (union violates federal Labor/Management Relations Act when it insists upon tape-recording grievance proceedings in absence of contractual provision or past practice allowing tape-recording.); City of Reading, 12 PPER 180 (¶12182 1981) (PLRB holds that employer cannot insist upon tape-recording grievance sessions); and, Bartlett-Collins Co., 99 LRRM 1034 (1978), aff'd 639 F.2d 652, 106 LRRM 2272 (10th Cir. 1981) (tape-recording negotiations session is not mandatorily negotiable subject). If an employee representative cannot insist on recording negotiations or grievance conferences, it follows then that it cannot violate the Act by denying the employee grievant the opportunity to record such a proceeding.

Accordingly, I find that Local 68 did not violate its duty to fairly represent Shaw by declining his request to record the grievance conference. Any argument that an employee has a constitutional right to tape record grievance conferences should be addressed to the courts, not this Commission. Newark Bd. of Ed.

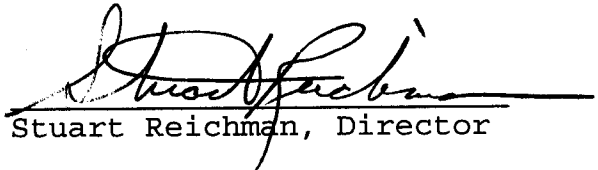
Shaw alleges that the Library also violated the Act by refusing to permit him to record the session. On the basis of the same rationale expressed above, this allegation is not timely and there are no facts pled in the charge which would constitute a violation on the part of the Library.

For all the foregoing reasons, I do not believe that the Commission's Complaint issuance standard has been met and I decline to issue a Complaint on the allegations of this charge.^{4/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: August 22, 2000
Trenton, New Jersey