

D.U.P. NO. 79-9

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

In the Matter of

JERSEY CITY HOUSING AUTHORITY  
AND INTERNATIONAL SERVICE WORKERS  
OF AMERICA, LOCAL 101,

Respondents,

-and-

DOCKET NO. CI-79-2

REV. MITCHELL DRAUGHN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint with respect to an Unfair Practice Charge alleging that the employer has discriminated against an employee pursuant to N.J.S.A. 34:13A-5.4(a)(4). The Commission is precluded from issuing complaints where the unfair practices alleged have not occurred within six months of the filing of the Unfair Practice Charge. The Charging Party has failed to amend its Charge to allege events within the six month limitation.

D.U.P. NO. 79-9

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

In the Matter of

JERSEY CITY HOUSING AUTHORITY  
AND INTERNATIONAL SERVICE WORKERS  
OF AMERICA, LOCAL 101,

Respondents,

-and-

DOCKET NO. CI-79-2

REV. MITCHELL DRAUGHN,

Charging Party.

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on July 17, 1978, and amended on August 11, 1978 by Rev. Mitchell Draughn (the "Charging Party") against Jersey City Housing Authority and International Service Workers of America, Local 101 (the "Respondents"). The Charging Party alleges that the Respondents have engaged 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"). More specifically, the Charging Party asserts that the Respondent Housing Authority made "false accusations" against him due to his association with the Tenants Council Association, that Respondent Local 101 refused to provide him with a lawyer for a grievance hearing held on November 4,

1974, and that Local 101 refused to take court action on behalf of Charging Party with regard to the "false complaints" made against him.

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>1/</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 with the meaning of the Act. <sup>2/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>3/</sup>

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

<sup>1/</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 named designated agent thereof..."

<sup>2/</sup> N.J.A.C. 19:14-2.1.

<sup>3/</sup> 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, 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 of the charge in which event the 6 months period shall be computed from the day he was no longer so prevented."

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) 4/

Accordingly, the undersigned has determined that it is incumbent upon the charging party to allege the occurrence of unfair practices within the six month limitation requirement, and that in the absence of such allegations, the undersigned would decline to issue a complaint. See In re North Warren Regional Board of Education, D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

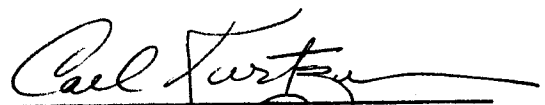
4/ N.J.A.C. 19:14-1.3.

The only date, contained in either the original or the amended Charge, which the undersigned can utilize for purposes of determining timeliness, is November 4, 1974, almost four years prior to the filing of this unfair practice.

Moreover, despite a request by the Commission that the Charge be amended to comply with N.J.A.C. 19:14-1.3(c), which requires that a charge must specify the subsections of the Act alleged to have been violated, Charging Party has failed to provide the requisite information.

Accordingly, since the Charging Party has not alleged the occurrence of an unfair practice within the six month statutory limitation and has failed to cite specific subsections of the Act, alleged to have been violated, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Carl Kurtzman, Director

DATED: Trenton, New Jersey  
November 8, 1978