

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CI-83-63

RAYMOND NAPOLITANO,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to the Charging Party's assertion that he was improperly dismissed from employment. It did not appear that the claimed unfair practice occurred within six months immediately prior to the filing of the unfair practice charge and, further, the facts do not suggest that the Charging Party's dismissal related to any exercise of protected rights under the Act.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on May 12, 1983, and amended November 16, 1983, by Raymond Napolitano ("Charging Party") against the Belleville Board of Education ("Board") alleging that the Board 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. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(3) and (4). ^{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 that it has the authority to issue a

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives or agents from: "(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. (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."

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 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 six months prior to the filing of the charge unless the person aggrieved

^{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 designated agent thereof..."


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

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

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 May 12, 1983, relates to the Charging Party's discharge from employment on June 30, 1982, while on disability leave, for "absenteeism." It has, therefore, been filed well outside the six month statutory limitations period. There is no claim that Charging Party was prevented from filing a timely charge. Further, although violations of §§ 5.4(a)(3) and (4) are alleged, there are no facts alleged suggestive of any claim that Charging Party was discharged for the exercise of protected rights. Accordingly, for the above reasons, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS



Joel G. Scharff, Administrator

DATED: December 9, 1983
Trenton, New Jersey