

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

In the Matter of

BROOKDALE COMMUNITY COLLEGE,

Respondent,

-and-

NON-ACADEMIC STAFF ASSOCIATION
OF NEW JERSEY,

Docket No. CI-77-6

Respondent,

-and-

ROBERT LEONARD JONES,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint with respect to allegations that the public employer violated various unfair practice provisions of the New Jersey Employer-Employee Relations Act by discharging the charging party from employment and by failing to make arrangements for the arbitration of the charging party's grievance relating to the discharge. Without reaching the question as to whether the charging party's allegations, if true, might constitute a violation of the Act, the Director determines that the alleged activities of the public employer, construed in the most favorable light for the charging party, occurred prior to six months before the filing of the unfair practice charge. The Act provides that the Commission may not issue complaints where a charge has not been filed within six months of the alleged occurrence of an unfair practice.

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Appearances:

For the Respondent College, Messrs.
Murray, Meagher & Granello
(Mr. James P. Granello, of Counsel)

For the Respondent Association, Messrs.
Sterns, Herbert & Weinroth
(Mr. Michael Herbert, of Counsel)

For Robert Leonard Jones, pro se

DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by Robert Leonard Jones, on January 7, 1977 and amended on May 10, 1977, alleging that the Non-Academic Staff Association of New Jersey at Brookdale Community College (the "Association") and Brookdale Community College (the "College") 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"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) and N.J.S.A. 34:13A-5.4(b)(1).^{1/}

The Charge generally alleges that the College improperly discharged Mr. Jones, that the College improperly failed to process Mr. Jones' grievance related to the discharge to arbitration, and that the Association failed in its duty to process Mr. Jones' grievance in accordance with its contractual and statutory responsibilities.

Mr. Jones alleges that his employment was improperly terminated by the College on February 17, 1975. He further alleges that in pursuance of the grievance subsequently filed relating to the discharge the Association notified the College by letters dated March 18, 1975 and January 16, 1976 of its intention to pursue arbitration, and requested that the College make the necessary arrangements pursuant to the parties' collective negotiation agreement. Mr. Jones asserts that neither the College nor the Association submitted his grievance to arbitration.

The Association's letter of January 16, 1976 to the College's Director of Personnel Services, which is attached to and made part of the Charge, states that if the College did not act within ten days to request a date for arbitration from the permanent arbitrator the Association would make the request.

^{1/} Subsection (a) prohibits 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." Subsection (b) prohibits 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.

Mr. Jones claims that the College's decision to discharge him was improper under the contract and, hence, a violation of N.J.S.A. 34:13A-5.4(a)(1). He further states that the College's failure to process his grievance to arbitration, in claimed violation of the contract, violates N.J.S.A. 34:13A-5.4(a)(1), (3) and (5). Mr. Jones also alleges that the Association's failure to process his grievance to arbitration violates N.J.S.A. 34:13A-5.4(b)(1).

Preliminarily, the undersigned must consider the timeliness of the instant Unfair Practice Charge. N.J.S.A. 34:13A-5.4(c) provides that the Commission shall not issue an Unfair Practice Complaint, "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 date he was no longer prevented."

In In re New Jersey Turnpike Authority, P.E.R.C. No. 77-15, 2 NJPER 309 (1976), aff'd. App. Div. Docket No. A-745-76 (1977), petition for certif. granted July 12, 1977, an individual filed unfair practice charges against the Turnpike Authority and his union on April 3, 1976, alleging an improper discharge from employment and a refusal to submit a subsequently filed grievance to arbitration. The Commission, pursuant to N.J.S.A. 34:13A-5.4(c), found that the events alleged to constitute the unfair practices had not occurred within six months prior to the filing of the Charge. In determining that the charge was not timely, the Commission established that, "the final operative event constituting an alleged unfair practice, construed most favorably to the Charging Party, would have occurred on September 10, 1975 when Mr. Kaczmarek was notified by Local 194 [the union] of its refusal to proceed to arbitration." The Commission further noted that, "with respect to

the alleged conduct by the Authority the last operative event appears to have been even earlier, when the Executive Director of the Turnpike Authority is alleged to have approved the discharge." ^{2/}

Further, in In re State of New Jersey, P.E.R.C. No. 77-14, 2 NJPER 308 (1976), appeal pending, App. Div. Docket No. A-575-76, the Commission determined that the six month statute of limitations is not tolled during the time period in which an aggrieved party attempts to seek redress of alleged discriminatory action through the filing of a grievance.

On the basis of the allegations now placed before the Commission, the last operative event with respect to the allegations against the College construed most favorably to the Charging Party, would be the failure of the Respondent College to pursue arbitration in accordance with the Association's January 16, 1976 letter. This would be January 26, 1976, the deadline established by the Association for the College to make arrangements for arbitration.^{3/} As stated previously, the instant Charge was originally filed on January 7, 1977.

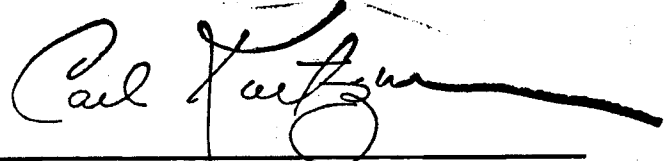
Therefore, for the reasons set forth above, the undersigned concludes that the instant Charge is not timely filed with respect to the allegations against the College under N.J.S.A. 34:13A-5.4(a)(1), (3) and (5), and the undersigned is hereby precluded from issuing a Complaint.

^{2/} 2 NJPER 309, at p. 310.

^{3/} With respect to the allegation of improper discharge, the earlier date of February 17, 1975 (date of discharge) is likely as the last operative event. As to the allegation of refusal to process Charging Party's grievance, the undersigned stresses that the January 26, 1976 operative date is the last possible date construed most favorably to the Charging Party in light of the Statement of Charge and argument presented therein. There is nothing in the Charge referring to any operative event as to the College occurring after January 26, 1976. Additionally, since the filing of the Charge in January, 1977 took place 12 months following the alleged refusal of the employer to process the Charging Party's grievance, it is unnecessary for the undersigned to determine whether the operative event of refusing to arrange for arbitration might, if true, constitute an unfair practice.

The undersigned, however, is satisfied that the allegation of N.J.S.A. 34:13A-5.4(b)(1) against the Respondent Association meets the Commission's standard for complaint issuance, and a Complaint limited thereto shall therefore issue.

BY ORDER OF THE DIRECTOR OF
UNFAIR PRACTICES

A handwritten signature in black ink, appearing to read "Carl Kurtzman", written over a horizontal line.

Carl Kurtzman, Director
of Unfair Practices

DATED: October 3, 1977
Trenton, New Jersey