

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

In the Matter of

MONMOUTH COUNTY SHERIFF'S
DEPARTMENT,

Respondent,

-and-

DOCKET NO. CI-81-72

P.B.A. LOCAL 240,

Respondent,

-and-

VIOLA ACCERA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge since the Charging Party did not assert that any of the claimed unfair practices occurred within six months of the filing of the Unfair Practice Charge.

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Appearances:

For the Respondents

Zager, Fuchs, Leckstein & Kauff, attorneys
(Norman B. Kauff of counsel)

Zazzali & Kroll, attorneys
(Dennis J. Alessi of counsel)

For the Charging Party

Viola Accera, pro se

REFUSAL TO ISSUE COMPLAINT

An unfair practice charge was filed with the Public Employment Relations Commission (the "Commission") on March 20, 1981 and amended on April 10, 1981, by Viola Accera (the "Charging Party") against the Monmouth County Sheriff's Department (the "County") and P.B.A. Local 240 (the "PBA") alleging the County and the PBA were engaging in unfair practices within the meaning

of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(6) ^{1/} and N.J.S.A. 34:13A-5.4(b)(4), respectively. ^{2/}

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. ^{3/} 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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

The Charging Party alleges that the County and the PBA reached an oral agreement to make premium payments to the employees

^{1/} This subsection prohibits public employers, their representatives or agents from: "(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

^{2/} This subsection prohibits employee organizations, their representatives or agents from: "(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

^{3/} 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 ... "

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

for overtime work performed beyond the normal duty hours. She further alleges that these payments were, in fact, made only to individuals who work the day shift and were not made to those employees who work on the other two shifts. The employees received the overtime payments in February 1980.

For the reasons set forth below, the undersigned determines that the Commission's issuance standards have not been met.

Pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing complaints 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 thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer prevented."

The Charging Party has indicated that she knew of the payments at the time the checks were issued in February 1980, and sought to resolve her questions in various forums, finally filing the instant Unfair Practice Charge in March 1981.

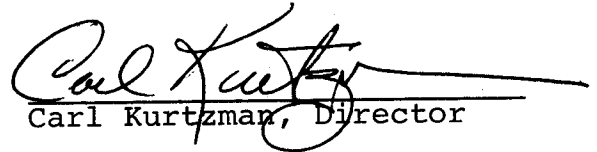
Even if one were to assume for the present purposes that the Charging Party herein has stated facts which may be cognizable as unfair practices within N.J.S.A. 34:13A-5.4(a)(6) and 5.4(b)(4), the Charging Party's allegations are nevertheless well beyond the six month limitation period established under the Act for the filing of an unfair practice charge.

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 Reg. Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶ 4026 1977).

Subsequent to the filing of the instant Unfair Practice Charge, by letter dated July 27, 1981, the undersigned requested the Charging Party to withdraw the unfair practice charge and that in the absence of such withdrawal or in the absence of the filing of an amended charge stating facts upon which a complaint could issue, the undersigned would decline to issue a complaint. The undersigned has not received a reply to the July 27, 1981 letter, nor has the Charge been amended as requested.

Accordingly, as the unfair practices alleged are not within the six month statutory limitation requirement, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: September 3, 1981
Trenton, New Jersey