

D.U.P. NO. 92-22

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

In the Matter of

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-92-22

ESSIE L. ARMSTRONG,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the University of Medicine and Dentistry violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by requiring the charging party to perform out-of-title work, failing to notify her of appeal rights, failing to permit her to file a grievance and discharging her. The Director finds that all of the operative events underlying the charge appeared to have occurred outside of the Act's six-month statute of limitations. Accordingly, the Director determines that the charge was untimely filed.

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Appearances:

For the Respondent,
Robert J. DelTufo, Attorney General
(Barbara A. Harned, Deputy Attorney General)

For the Charging Party,
Pearson & Shapiro, attorneys
(Fredric H. Pearson, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 23, 1991, Essie L. Armstrong ("Armstrong") filed an unfair practice charge alleging that the University of Medicine and Dentistry of New Jersey ("UMDNJ") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by requiring her to perform out-of-title work, failing to notify her of appeal rights, failing to permit her to file a grievance and

terminating her. The charge alleges that by these acts, UMDNJ violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (7).^{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 complaint stating the unfair practice charged.^{2/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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/}

1/ These subsections 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; and, (7) Violating any of the rules and regulations established by the Commission."

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 charged 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.

The Commission's rules provide that I may decline to issue a complaint.^{4/}

Subsection 5.4(c) of the Act precludes the Commission from issuing a complaint where an unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice unless a charging party has been prevented from filing an otherwise timely charge. N.J.S.A. 34:13A-5.4(c) states:

...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 such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977). See also, N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

Armstrong's charge against UMDNJ stems from her termination before the end of her probationary period, UMDNJ's assigning out-of-title work to Armstrong, the employer's failure to notify her of appeal rights and the employer's failure to permit her to file a grievance. Although Armstrong's charge does not give the specific dates upon which these acts occurred, her termination occurred on March 26, 1991.^{5/} The charge was filed on October 23, 1991; thus, the facts alleged in the charge do not fall within the six-month

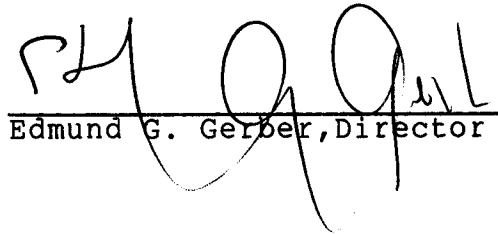
^{4/} N.J.A.C. 19:14-2.3.

^{5/} The charge states: "The dates of all of the foregoing are from 9/21/90 (date of hire) thru the present."

limitation period specified by N.J.S.A. 34:13A-5.4(c). Nor does Armstrong allege any reasons that prevented her from filing the charge within the six-month period. Cf. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1977).

Accordingly, I find the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge. The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 3, 1992
Trenton, New Jersey