

D.U.P. NO. 86-10

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

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

-and-

UNION COUNCIL #7,

DOCKET NO. CI-86-32

Respondent,

-and-

RONALD MALET,

Charging Party.

Synopsis

The Director of Unfair Practices declines to issue a complaint with respect to the Charging Party's allegations of underpayment under the terms of a collective negotiations agreement between the Borough of Sayreville and Union Council #7. The Director finds that the Charging Party failed to provide a statement of the portion or portions of the Act alleged to have been violated in accordance with N.J.A.C. 19:14-1.3(a)(3). Furthermore, the Director finds that the occurrences complained of occurred more than six (6) months prior to the filing of the charge. Under subsection 5.4(c) of the Act, no complaint can issue with respect to any unfair practice charges filed more than six (6) months after the occurrence of the claimed unfair practice.

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Appearances:

For the Respondent Borough  
Boehm & Campbell  
(Casper P. Boehm, Jr. of counsel

For the Respondent Union Council #7  
Dorothy Cieslarcezyk, President

For the Charging Party  
Ronald Malet, pro se

REFUSAL TO ISSUE COMPLAINT

On December 4, 1985, an Unfair Practice Charge was filed by Ronald Malet with the Public Employment Relations Commission ("Commission") alleging that the Borough of Sayreville ("Borough") and Union Council #7 ("Council 7") 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. <sup>1/</sup>

On March 11, 1986, I advised the charging party that its unfair practice charge appeared defective. Charging party was provided an opportunity to submit additional statements of position and factual proffers in support of its allegations that the Borough and the Council violated the Act. I have received no response.

For the reasons stated below, I have determined that the Commission's complaint issuance standard has not been met in this matter.<sup>2/</sup>

Subsection 5.4(c) of the Act provides that an unfair practice complaint shall not issue with respect to any unfair practice charges that are not filed within six (6) months of the claimed unfair practice. More specifically, subsection 5.4(c) states:

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<sup>1/</sup> The charging party failed to list the subsections allegedly violated. N.J.A.C. 19:14-1.3(a)(3) provides for a charge to contain "...a statement of the portion or portions of the act alleged to have been violated." Thus, the charge is defective in this regard.

<sup>2/</sup> 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. 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. 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 (N.J.A.C. 19:14-2.1). The Commission's rules provide that if the above standard is not met I may decline to issue a complaint (N.J.A.C. 19:14-2.3).

...provided that no complaint shall issue based upon any unfair practice occurring more than six (6) months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six (6) month period shall be computed from the date he was no longer prevented.

Substantively, Malet alleged in his charge that prior to beginning work for the Borough of Sayreville on April 16, 1984, he was advised by the Borough, during an interview, that he would be paid between \$7.45 and \$9.00 an hour; however, when he began work, he was paid at the rate of \$6.00 an hour. It was further alleged that Malet then contacted the Department of Civil Service about the change in salary<sup>3/</sup> and was advised that the salary originally indicated to him was the proper salary for the position. Malet requested that Union Council 7 process a grievance on his behalf, but that Council 7 failed to process his grievance.

The Borough defends its actions by indicating that a salary ordinance had been collectively negotiated with Council 7 prior to Malet's commencement of work and that he was advised of his proper salary at his interview. At the exploratory conference convened to investigate his charges, Malet acknowledged that that was true.

Council 7 has asserted that it investigated Malet's claims, determined that he was paid according to a properly negotiated salary ordinance and, accordingly, declined to process his grievance.

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<sup>3/</sup> It appears that the change in salary was tied into a change in title designation which occurred at approximately the same time.

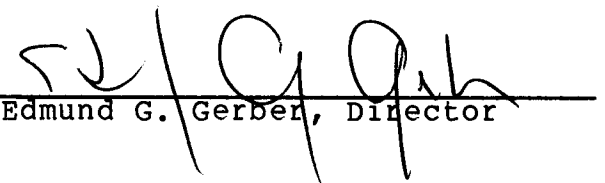
I do not believe that a complaint should issue here against either the Borough of Sayreville or Union Council 7.

The charge and its accompanying documentation rely primarily on events occurring more than six (6) months prior to the filing of the charge.

The series of events described above occurred during 1984; however, the charge was filed on December 4, 1985. All of the significant events set forth in the charge occurred approximately 18 months prior to the filing of the charge. Malet also alleged that he filed a grievance contesting the Borough's action concerning his compensation. However, the filing of a grievance cannot stop the running of the six-month statutory limitations period. See In re State of New Jersey and Council of New Jersey State College Locals, NJSFT, P.E.R.C. No. 77-14, 2 NJPER 308 (1976) aff'd 153 N.J. Super 91 (App. Div. 1977); In re Fair Lawn Board of Education, P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984). Based upon the foregoing, I cannot issue a complaint based upon the unfair practice charge.

Accordingly, as a matter of law, the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the basis of this charge against the Borough of Sayreville or Union Council #7.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: April 4, 1986  
Trenton, New Jersey