

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

In the Matter of

PASSAIC VALLEY BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-79-163

PASSAIC VALLEY EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that, eight months before the filing of the Charge, the Board committed unfair practices. The Charging Party contended that the statutory six month limitations period should not be strictly applied since the Charging Party had processed a grievance under its contract to advisory arbitration, which grievance was related to the subject matter of the Unfair Practice Charge. The Charging Party also contended that the filing of the Charge after the issuance of the advisory decision in its favor would have jeopardized the possibility of the Board's acceptance of the advisory decision. The Director determines, in accordance with the Commission's policy, that the filing of a grievance does not toll or relax the responsibility to file a timely unfair practice charge within the statutory limitations period.

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Appearances:

For the Respondent
Leon Consales, Esq.

For the Charging Party
Zazzali, Zazzali & Whipple
(James R. Zazzali, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 27, 1978 by the Passaic Valley Education Association (the "Association") against the Passaic Valley Board of Education (the "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. (the "Act"), specifically, N.J.S.A.

34:13A-5.4(a)(1), (3) and (5). ^{1/} More specifically, the Association claims that on April 19, 1978, the Board wrongfully issued a reprimand for alleged insubordination to Mr. Robert Sayegh for conducting a meeting of the Association prior to 8:30 a.m., the reporting time for pupils.

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. ^{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

^{1/} These subsections prohibit 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 of 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."

^{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

to issue a complaint. ^{4/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance 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 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."

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 Regional Board of Education, D.U.P. No. 78-7, 4 NJPER 55 (¶ 4026 1977).

The instant Unfair Practice Charge was filed on December 27, 1978 and alleged as an unfair practice an event occurring eight months before the date of filing. The undersigned on December 28, 1978, directed the Association's attention to the relevant six month limitation provision of N.J.S.A. 34:13A-5.4(c) and advised that a complaint would not issue if the Association failed to

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

allege the occurrence of an unfair practice within the prescribed six month limitation period.

By letter dated January 23, 1979, the Association concedes that the alleged unfair practice occurred outside the limitations period, and does not allege that the Board "prevented" it from filing a timely Charge. Rather, the Association explains that subsequent to the occurrence of the alleged unfair practice, which also constituted an alleged contract violation, it chose to grieve the Board's action through the contractual grievance procedure. The grievance was processed through advisory arbitration and an advisory decision issued on October 10, 1978, approximately one week before the expiration of the six month deadline for filing unfair practice charges. The Association states that it relied upon the representation of the Board's counsel on October 11 or 12 that he would recommend acceptance of the decision to the Board, and further states that it was the opinion of the Association that the filing of an unfair practice charge during the pendency of the Board's consideration of the arbitrator's advisory decision would jeopardize the acceptance by the Board of the advisory decision. On November 21, 1978, the Board met and on December 3, 1978, rejected the arbitrator's advisory decision. Three weeks later the Association filed the instant Charge. The Association's statement does not allege that the Board agreed, during the processing of the grievance, to waive any time restrictions for the filing of unfair practice charges, or that the Board's actions were calculated to prevent the Association from filing a timely Charge.

The Association argues that the six month unfair practice limitations provision should not be strictly applied when a charging party has previously filed a grievance related to the subject matter underlying the unfair practice charge. The Association states:

... in the future, in the event that this charge is not processed by PERC, NJEA representatives will have no meaningful alternative but to file an unfair practice charge each and every time a grievance occurs which is the type of grievance that is or may be cognizable under PERC's jurisdiction; such a process would work an impossible hardship upon the NJEA and upon PERC; and, finally, Flynn noted that the routine filing of unfair practice charges by an association, while simultaneously attempting to resolve such grievances in a formal or informal way, as in the case at bar, will only serve to exacerbate the given relationship and undermine the possibilities of a successful resolution of the grievance.

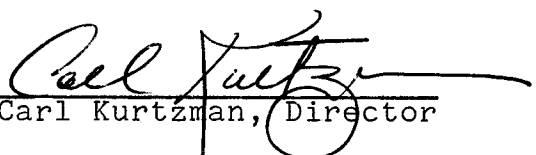
The Association further contends that, under the circumstances involved herein, the statutory limitations requirement should be construed in the spirit of Kaczmarek v. New Jersey Turnpike Authority et al., 77 N.J. 329 (1978), wherein the Supreme Court mandated, according to the Association, "that PERC interpret the statute liberally."

The undersigned observes that the circumstances and issues involved in the instant matter i.e., whether the filing and processing of a grievance related to the subject matter of an unfair practice charge should toll or relax the statutory six month limitation period, is controlled by State of New Jersey v.

Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO,
P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91
(1977), pet. for certif. den. 78 N.J. 326 (1978). In this matter
the Commission determined that the filing of a grievance does not
toll or relax the responsibility of a charging party to file an
unfair practice charge within six months of the occurrence of the
alleged unfair practice. ^{5/} In practical effect, the Commission's
decision instructs potential charging parties to place the charge
on file with the Commission. Under appropriate circumstances, the
Commission, in evaluating the unfair practice charge, may defer
the processing of the charge to the parties' grievance/arbitration
procedures.

Accordingly, since the instant Unfair Practice Charge
alleges as an unfair practice events occurring prior to the six
months immediately preceding the filing of the Charge, and since
the charging party does not allege conduct constituting unfair
practices within the six months statutory limitation period, the
undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: March 23, 1979
Trenton, New Jersey

^{5/} The undersigned observes that the Supreme Court denial of
certification in State of New Jersey, supra, occurred after
its decision in Kaczmarek, supra.