

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-82-13

TEAMSTERS LOCAL NO. 286,

Respondent,

-and-

MARY ELLA PURVIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to certain allegations of a Charging Party against University of Medicine and Dentistry of New Jersey because the actions complained of did not occur within six months prior to the filing of the Charge. Additionally, in the absence of a claim that she was engaged in any protected activity, the Director refuses to issue a complaint with respect to the Charging Party's claim that she was physically accosted by a "union man".

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 23, 1981 and amended on October 21, 1981, by Mary Ella Purvis (the "Charging Party") against the University of Medicine and Dentistry of New Jersey (the "University") alleging that the Respondent 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), (2) and (4). ^{1/}

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act."

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. ^{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 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 the section provides:

"provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge,

^{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

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

unless the person aggrieved thereby was prevented from filing such charge in which event the six month 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 an unfair practice 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 Bd. of Ed., D.U.P. No. 78-7 4 NJPER 55 (¶ 4026 1977).

The charge filed September 23, 1981, alleged the occurrence of acts on October 9 and 11, 1980, some eleven months before the filing of the charge. Subsequent to the initial filing of the Unfair Practice Charge, by letter dated September 29, 1981, the undersigned informed the charging party that the charge could not be processed further unless it was amended pursuant to N.J.A.C. 19:14-1.5, to correct the deficiencies related to its apparent untimely filing.

The Charging Party subsequently amended the charge to allege that the University miscalculated her terminal pay. In addition, the Charging Party included her majority representative, Teamsters Local No. 286, as a respondent to the charge. In this regard, Charging Party alleges that on July 16, 1981, a "union man" physically accosted her because she asked for "(her) money a day before pay day." The Charging Party alleges that Local 286 is in violation of N.J.S.A. 34:13A-5.4(b)(1), (3) and (5). ^{5/}

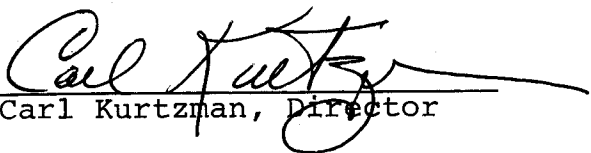
^{5/} These subsections prohibits public employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the Commission."

Since the Charging Party has failed to state the occurrence of an activity related to the allegations of her original charge against the University within the six month statutory limitations period, the undersigned may not issue a complaint as to these allegations. Additionally, Charging Party does not allege that the miscalculation of her final pay by the University is related to her exercise of any protected activity under the Act. The alleged miscalculation of pay is not of itself an unfair practice. Thus, the undersigned declines to issue a complaint as to this aspect of the charge against the University.

Lastly, the alleged actions of a Local 286 representative do not fall within the ambit of the statutory unfair practice provisions. Again, the Charging Party has not alleged a connection between these actions and her exercise of any protected rights under the Act. The undersigned has reviewed all allegations contained in the "Statement of Charge" and cannot discern a nexus between the factual allegations and any violation of the Act as enumerated in the subsections of N.J.S.A. 34:13A-5.4(a) or (b).

Accordingly, for the above reasons, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: April 8, 1982
Trenton, New Jersey