

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

In the Matter of

CITY OF CAMDEN, et al.,

Respondent,

-and-

DOCKET NO. CI-79-17

JOSEPH A. GFRORER,

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 allege that the claimed unfair practices arose within six months of the filing of its Charge. The New Jersey Employer-Employee Relations Act provides that an unfair practice charge shall be filed within six months of the occurrence of the unfair practice unless the charging party was prevented from filing the charge. The Charging Party has failed to amend its Charges to allege the occurrence of unfair practices within the six month limitation requirement.

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Appearances:

For the Respondent
Patricia Prunty, Assistant City Attorney

For the Charging Party
Joseph A. Gfrorer

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on November 15, 1978 by Joseph A. Gfrorer (the "Charging Party") against the City of Camden, Mayor and Business Administrator (the "Respondent") 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)(3). ^{1/}

1/ This subsection prohibits employers, their representatives or agents from: "(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."

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, N.J.S.A. 34:13A-5.4(c) provides: " ... provided that no complaint shall issue based upon any

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 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 named designated agent thereof ... "

3/ N.J.A.C. 19:14-2.1

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

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."

Further, the Commission's rules state that an unfair practice charge shall contain inter alia:

A clear and concise statement of facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portions of the Act alleged to have been violated."
(Emphasis added) 5/

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).

Subsequent to the filing of the instant Unfair Practice Charge, by letter dated January 18, 1978, the Charging Party was informed that the Charge could not be processed further unless it was amended, pursuant to N.J.A.C. 19:14-1.5, to include the time and place of occurrence of the particular acts alleged to constitute the unfair practice. The undersigned's letter was prompted by a review of the allegations of the Charge, which indicated that

5/ N.J.A.C. 19:14-1.3

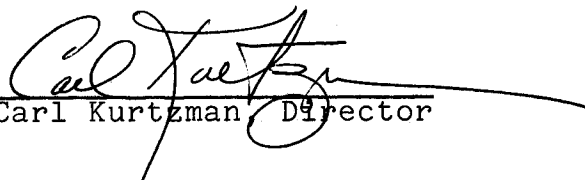
the Charging Party was alleging unfair practices concerning events occurring between 1973 and 1975, and alleging a knowledge of the events as early as 1974. The undersigned directed the Charging Party's attention to the relevant six month limitation provision of N.J.S.A. 34:13A-5.4(c) and advised that a complaint would not issue if the Charging Party failed to allege the occurrence of an unfair practice within the prescribed six month limitation period.

On January 30, 1978, the Commission received a letter from the Charging Party amending the instant Charge. The amendment does not refer to another action constituting an alleged unfair practice, but rather, refers to the Charging Party's contacts with the Respondent in August 1978 concerning this longstanding matter, the subject matter of the original Charge. Thus, the date and the events set forth by the Charging Party in the aforementioned letter do not have the affect of placing the operative date of the alleged unfair practice within six months of the filing of the Charge, nor does Charging Party claim the existence of any events which prevented him from filing the instant Unfair Practice Charge in a timely fashion. Charging Party's filing of a grievance in 1974 does not toll the filing period for alleging unfair practices. See In re State of New Jersey v. Council of N.J. State College Locals, NJSFT, AFT, AFL-CIO, P.E.R.C. No. 77-14, 2 NJPER 308 (1976), affmd 153 N.J. Super. 91 (1977), pet. for certif. denied 78 N.J. 326 (1978).

Accordingly, as the Charging Party has not included in its Charge a time of occurrence of the conduct which would constitute an unfair practice within the six month statutory limitation

period, the undersigned declines to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: March 6, 1979
Trenton, New Jersey