

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

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

DOCKET NO. CI-79-13

JOSEPH M. DICEMBAINO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to allegations by an individual that his former employer refused to answer his grievances and declined to pay him salary in accordance with the collective negotiations agreement entered into by the employer and his majority representative. The Charging Party claimed that the employer's actions interfered with and discriminated against him in the exercise of rights guaranteed under the Act. The Director notes that the allegations concerning the employer's failure to respond to grievances referred to events well beyond the six months statutory limitations period set forth in the Act. The Director further notes that the Charging Party's facts do not contain a nexus between the employer's alleged improper holding of salary and the claim such actions interfered or discriminated against Charging Party in the exercise of rights guaranteed under the Act.

D.U.P. NO. 80-13

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Appearances:

For the Respondent
Louis J. Alfonso, Assistant County Counsel

For the Charging Party
Rinaldo & Rinaldo
(Fredric H. Pearson, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 25, 1978 and amended October 19, 1978, by Patrolman Joseph M. Dicembaino (the "Charging Party") against the County of Middlesex (the "County") 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), (3) and (7). ^{1/}

The Charging Party claims that the Respondent has not answered his grievances. Additionally, Charging Party claims that "the County of Middlesex has on their own passed a resolution not to pay me my salary which is against the contract we signed with them." ^{2/} This latter claim appears to relate to a determination by the County on April 26, 1978, to confirm the discharge of the Charging Party effective January 4, 1978.

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. ^{3/} 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

^{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 or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (7) Violating any of the rules established by the commission."

^{2/} Apparently, Charging Party is represented in a collective negotiations unit represented by PBA Local #156.

^{3/} 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 ... "

party, if true, may constitute an unfair practice within the meaning of the Act. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

Furthermore, pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing complaints 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."

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Charging Party has indicated that the grievances filed with the County were presented on December 16, 1974, April 21, 1977, and July 22, 1977. The Charging Party's allegations are well beyond the six months limitations period established under the Act for the filing of unfair practice charges. ^{6/}

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

^{6/} In view of the untimely nature of these claims, the undersigned need not determine whether the Charging Party's allegations might, if true, constitute unfair practices pursuant to §§ (a)(1), (3) and (7).

With regard to the Charging Party's claims relating to his discharge and the withholding of his salary, there is no nexus between the factual allegations and the claimed violation of §§ 5.4(a)(1) and (3). The facts presented do not support a claim that the Charging Party was discharged because he filed grievances, or was engaged in rights protected under the Act, or that the employer interfered with the exercise of protected rights, or that the employer discriminated against the Charging Party to encourage or discourage him in the exercise of protected rights.

Finally, the allegations of the Charging Party that the employer has violated the rules of the Commission are not supported by a specification of which rules may have been violated. Such a specification is required of the Charging Party. See In re Madison Township Board of Education, E. D. No. 76-8 (1978).

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

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: December 18, 1979
Trenton, New Jersey