

D.U.P. NO. 86-13

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

In the Matter of

MONMOUTH COUNTY SHERIFF'S
DEPARTMENT,

Respondent,

-and-

DOCKET NO. CI-84-7

VIOLA ACERRA,

Charging Party.

Synopsis

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed against Monmouth County Sheriff's Department and the P.B.A., Local 240. Most of the charge pertained to violations which occurred more than six (6) months prior to filing therefore it was filed untimely in part.

The balance of the charge was disposed of by way of a settlement agreement between the parties even though Acerra did not follow through on the agreement. The Director determined that the Charging Party failed to present facts sufficient to warrant the issuance of a complaint.

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Appearances:

For the Respondent,
Robert J. Hrebek, Esquire

For the Charging Party,
Viola Acerra, pro se

REFUSAL TO ISSUE COMPLAINT

On August 11, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") against the Monmouth County Sheriff's Department ("County") and P.B.A. Local 240 ("PBA"). On August 26, 1983, the charge was amended to allege that both Respondents had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. It alleged that the County

violated §§ 5.4(a)(3), (5) and (7) and that the PBA violated §§5.4(b)(3), (5) and (7). 1/

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

1/ N.J.S.A. 34:13A-5.4(a) prohibits public 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; (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; (7) Violating any of the rules and regulations established by the commission."

N.J.S.A. 34:13A-5.4(b) prohibits employee organizations, their representatives of agents from: "(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."

There is no subsection 5.4(b)(7) in the New Jersey Employer-Employee Relations Act.

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..."

has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The 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. The Commission's rules provide that where this standard has not been met, the Director may decline to issue a complaint. ^{3/}

The unfair practice charge asserts that the County violated the Act when it failed to provide Acerra the proper amount of both vacation time for 1982 and 1983 and sick time for 1976 to 1982; ignored Acerra's request for a schedule change based upon seniority; and denied her an appointment to the position of Sheriff's Officer after passing the appropriate Civil Service examinations.

The County has denied that it violated the Act. It contends that the allegations set forth in the charge fail to state a cognizable claim under this Act, that the conduct cited as constituting the charge is untimely filed under the New Jersey Employer-Employee Relations Act and that in any event the matter should be deferred to the parties' contractual grievance-binding arbitration mechanism.

From the materials and amendments accompanying the charge, and for the reasons stated below I have determined that the Commission's complaint issuance standards have not been met.

^{3/} N.J.A.C. 19:14.2 et seq.

Several of the events listed in the unfair practice charge occurred as early as 1976. Only two events listed in the charge occurred within six months of the date of filing the original unfair practice charge (August 11, 1983).

The allegations pertaining to vacation time for 1982, sick time for 1976-1982, the County's denial of an appointment to the Sheriff's Officer position in early 1982, and the County's refusal to grant a request for schedule change all appear untimely for they did not occur within six (6) months of the date of filing of the charge.

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, no complaint may issue as to these allegations.

On April 16, 1984, the PBA and the Sheriff's Department agreed to arbitrate a grievance concerning reimbursement for certain travel expenses.^{4/} Additionally, the County agreed to review

^{4/} The Commission has adopted a policy of deferring the resolution of unfair practice charges to the parties' contractual grievance/arbitration mechanism where it is reasonably probable that the dispute underlying the alleged unfair practice will be resolved in the parties' contractual dispute resolution forum. See Board of Education of East Windsor and Hightstown Education Association, E.D. No. 76-6, 1

payroll records regarding vacation and sick leave entitlements and to make adjustments as warranted.^{5/} In exchange the charge was to be withdrawn. However, the Charging Party failed to resubmit the grievances either to the County or the PBA.^{6/} Nor did the Charging Party arrange an appointment to review the payroll

4/ Footnote Continued From Previous Page

NJPER 59 (1975); City of Trenton and Trenton P.B.A. Local #11, P.E.R.C. No. 76-10, 1 NJPER 58 (1975); and State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977).

5/ On November 10, 1983, we deferred this unfair practice charge to the contractual grievance arbitration procedures because the County and the PBA agreed to have the grievances processed and submitted to binding arbitration. However, the PBA initially indicated that it was changing its position as to this agreement. On April 16, 1984, a PERC staff agent conducted a conference which resulted in the settlement agreement.

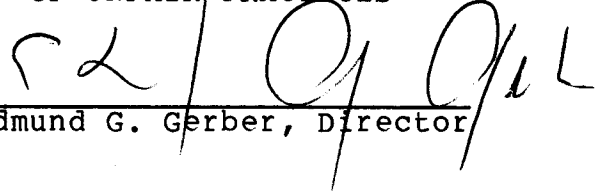
6/ The Commission found in In re Middlesex County (Mackaronis), P.E.R.C. No. 81-62, 6 NJPER 555, 557 (¶11282 1980) that, "In the instant case, there is absolutely no evidence that the council was hostile to Mackaronis, that it acted in bad faith, or that it discriminated against him in any fashion. Mackaronis' charge against the council reduces itself to his belief that the council acted negligently in failing to process his grievance in a timely and proper manner. However, the evidence shows that the council posted notices throughout the building where Mackaronis worked specifying that employees with grievances must fill out and sign proper grievance forms which could be obtained from a shop steward or member of the grievance committee...Nevertheless, Mackaronis did not do so, but instead erroneously continued to presume that he had properly presented his grievance. The erroneous presumption

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records. The Commission will not continue to retain jurisdiction when matters have been settled. Acerra's failure to pursue the settlement will not vitiate the settlement agreement. ^{7/}

Thus, the Charging Party has not included in her charge a sufficient basis to find an unfair practice within the meaning of the Act and has not amended the charge to include any factual material sufficient to justify the allegations as set forth. Accordingly, I decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 30, 1986
Trenton, New Jersey

6/ Footnote Continued From Previous Page

ultimately resulted in the barring of Mackaronis' claim against the board as the mandatory ten day period for presenting grievances to the employer had expired.

We believe employee organizations can establish reasonable procedures for employees to utilize in bringing grievances they want processed to the attention of their representative..." Similarly, in our case, Bayliss failed to present her grievance to representatives of the PBA which had agreed in settlement of the instant charge, to process the grievances through the contract grievance arbitration procedure. She also erroneously presumed that she had presented her grievances to the PBA, persisted in this assumption even after agreeing to resubmit the grievances for processing.

7/ Further, the travel, pension and leave time claims appear to be essentially contractual disputes. This Commission has concluded that mere breach of contract claims do not state a cause of action under §5.4(a)(5) which may be litigated in an unfair practice forum See In re State of New Jersey, (Dept. of Human Services), D.U.P. No. 84-11, 9 NJPER 681 (¶14299 1983), aff'd P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).