

P.E.R.C. NO. 94-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEW BRUNSWICK,

Respondent,

-and-

Docket No. CI-94-7

CHARLES H. KOCH,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices' refusal to issue a Complaint on an unfair practice charge filed by Charles H. Koch against the City of New Brunswick. D.U.P. No. 94-23, 20 NJPER _____ (_____ 1994). The charge alleged that the City violated the New Jersey Employer-Employee Relations Act by: not properly posting or advertising vacant positions and by discriminating in filling a vacant position; violating certain provisions of its collective negotiations agreement with the Municipal Employees Association and failing to properly address grievances and complaints already filed; violating certain State and federal constitutional provisions; violating, along with the Association, Civil Service statutes concerning provisional employees, and terminating Koch in violation of the Conscientious Employee Protection Act; and mismanaging and misappropriating public funds. N.J.A.C. 19:14-2.3 requires that any appeal of a decision not to issue a Complaint must be filed within ten days from the service of the notice of such refusal to issue. Koch's appeal was untimely.

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Appearances:

For the Respondent, DeMaria, Ellis, Hunt, Salsberg & Friedman, attorneys (Brian Flynn, of counsel)

For the Charging Party, Charles H. Koch, pro se

DECISION AND ORDER

On August 11, 1993, Charles H. Koch filed an unfair practice charge against the City of New Brunswick. The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (4), (5), (6) and (7),^{1/} by (1) not properly posting or advertising vacant positions and by discriminating in filling a vacant position; (2) violating certain provisions of its collective negotiations agreement with the Municipal Employees

^{1/} These subsections prohibit public 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. (3) Discriminating in regard to

Association and failing to properly address grievances and complaints already filed; (3) violating certain State and federal constitutional provisions; (4) violating, along with the Association, Civil Service statutes concerning provisional employees and terminating Koch in violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. ("CEPA"); and (5) mismanaging and misappropriating public funds.

On January 25, 1994, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 94-23, 20 NJPER ____ (¶____ 1994). He found that: Koch's allegations that the City violated its collective negotiations agreement with the Association raise, at best, contract violations that would not constitute unfair practices; we have no jurisdiction over Koch's constitutional, Civil Service and CEPA claims; and an individual employee has no standing to challenge the legitimacy of the composition of a negotiations unit in this context.

1/ Footnote Continued From Previous Page

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. (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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

Copies of the Director's decision were served on both parties by certified mail. Both parties received their copies on January 31, 1994.

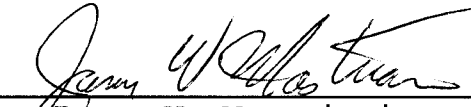
On February 16, 1994, Koch filed what appears to be an appeal of the Director's decision. On February 18, the City filed a response urging dismissal of the appeal as untimely filed and without merit.

N.J.A.C. 19:14-2.3 requires that any appeal of a decision not to issue a Complaint must be filed within ten days from the service of the notice of such refusal to issue. The parties received the Director's decision on January 31, 1994. Any appeal was due February 10. Koch's appeal was not mailed until February 11 and not received until February 16. Under these circumstances, our rules require denying the appeal. See PBA Local 105, P.E.R.C. No. 94-54, 19 NJPER 590 (¶24284 1993), recon. den. P.E.R.C. No. 94-72, 20 NJPER 64 (¶25026 1994).

ORDER

The appeal of D.U.P. 94-23 is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino was not present.

DATED: March 29, 1994
Trenton, New Jersey
ISSUED: March 30, 1994