

P.E.R.C. NO. 87-100

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERKELEY TOWNSHIP AND BERKELEY  
TOWNSHIP SUPERVISORS ASSOCIATION,

Respondents,

-and-

DOCKET NO. CI-87-24

FRANK J. McCLINTIC,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the Director of Unfair Practices' refusal to issue a complaint based on a charge filed by Frank J. McClintic against Berkeley Township and Berkeley Township Supervisors Association. The charge alleged the Township violated the Act by miscalculating and wrongfully withholding from the charging party unused sick day benefits. The charge alleged the Association violated the Act by failing to respond to a request that it file a grievance for the amount demanded by the charging party. The Commission finds the charge to be untimely.

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Appearances:

For the Respondent Township, Murray and Granello, Esqs.  
(Robert E. Murray, of counsel)

For the Respondent Association, Oxfeld, Cohen and  
Blunda, Esqs. (Mark J. Blunda, of counsel)

For the Charging Party, Richard S. Haines, P.C.  
(Laura Thompson, of counsel)

DECISION AND ORDER

On October 14, 1986, Frank J. McClintic ("Charging Party")  
filed an unfair practice charge against Berkeley Township  
("Township") and the Berkeley Township Supervisors Association  
("Association"). The charge alleges the Township violated the New  
Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,  
specifically subsection 5.4(a),<sup>1/</sup> by miscalculating and wrongfully

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<sup>1/</sup> This subsection prohibits public employers, their  
representatives or agents from: "(1) Interfering with,  
restraining or coercing employees in the exercise of the

withholding from the charging party unused sick day benefits. It claims the Honorable James Clyne of the Superior Court ordered the charging party to seek the Commission's assistance concerning the disputed portion of his claim. The charge further alleges that the Association violated subsection 5.4(b)<sup>2/</sup> by failing to respond to a request that it file a new grievance for the amount demanded by the charging party and not ordered by Judge Clyne to be paid.

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1/ Footnote Continued From Previous Page

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 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."

2/ This subsection prohibits 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; (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; (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; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (5) Violating any of the rules and regulations established by the commission."

To understand this charge, it is necessary to understand an earlier charge filed on November 16, 1984 (CI-85-75) and a court suit which followed the dismissal of that charge. That charge also alleged the Township failed to pay the charging party unused sick pay and the Association refused to file a grievance. On August 1, 1985, the Director of Unfair Practices refused to issue a Complaint on that charge. D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985). He found: (1) the charging party failed to establish any nexus between the Township's failure to pay the claimed amount and the exercise of any rights guaranteed under the Act; (2) the charge alleged a mere breach of contract not warranting a Complaint under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984); (3) an individual employee has no standing before the Commission to challenge the interpretation of a good faith agreement between the employer and majority representative; and (4) the charge was untimely since it was not filed within six months of the alleged unfair practice. He also found that the allegation against the Association for refusing to file a grievance was untimely or, if timely, did not warrant a Complaint because the facts alleged, even if true, would not have established that the refusal was arbitrary, discriminatory or in bad faith.

The charging party then filed suit in the Superior Court against the Township seeking reimbursement for the unpaid sick days. On September 11, 1986, Judge Clyne ordered the Township to pay the charging party the undisputed portion of the sick day

benefits. In his opinion letter, Judge Clyne concluded that the claim for any disputed amount must be dismissed for lack of original subject matter jurisdiction. He stated that the Commission has exclusive statutory unfair practice jurisdiction. Judge Clyne also concluded that if the charging party was dissatisfied with the Director's original decision, he could have appealed; if he was aggrieved by the Association's failure to represent him, he could file suit; and if there was a failure to perform any duty by any other person or entity, he may have a cause of action against such person or entity.

The charging party then filed his second unfair practice charge. On December 24, 1986, the Director refused to issue a Complaint on that charge. D.U.P. No. 87-9, 12 NJPER \_\_\_\_ (¶ 1986). He reiterated his earlier decision finding that the six-month statute of limitations barred the charging party's claims and found that the limitations period was not tolled by the Superior Court proceedings or Judge Clyne's decision.

On January 7, 1987, the charging party appealed from the Director's decision. He claims the original unfair practice was timely and that he is entitled to additional unused sick pay beyond that ordered by Judge Clyne.

On January 12, 1987, the Township filed a statement in opposition to the appeal. It claims there is no basis to dispute the Director's original finding of untimeliness and that any appeal should have been from the original decision. It further claims the statute of limitations was not tolled by the filing of a lawsuit.

On January 12, 1987, the Association filed a statement urging that the Commission sustain the Director's decision.

We now examine whether the Director properly refused to issue a Complaint on the second charge. We agree he did.

N.J.A.C. 19:14-2.3 provides for review of the Director's refusal to issue a Complaint. It states, in part:

The charging party may obtain a review of such action by the director of unfair practices, if any, by filing an original and nine copies of an appeal with the commission within 10 days from service of the notice of such refusal to issue.  
[Emphasis added]

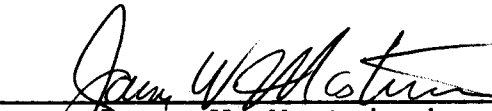
The charging party did not appeal from the Director's August 1, 1985 decision. Instead, he has filed a new charge making essentially the same allegations. We cannot treat this new charge as an appeal of the 1985 decision. Such an appeal is over one year late.

The new charge, standing alone, fails to allege an unfair practice occurring within six months of its filing. Accordingly, we affirm the Director's refusal to issue a Complaint.

ORDER

The refusal to issue a Complaint is affirmed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
February 6, 1987  
ISSUED: February 9, 1987