

P.E.R.C. NO. 2008-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FMBA LOCAL 68,

Respondent,
-and-

Docket No. CI-2007-070

STEPHEN E. PETERSON,

Charging Party.

CITY OF LONG BRANCH,

Respondent,
-and-

Docket No. CI-2007-071

STEPHEN E. PETERSON,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices' refusal to issue Complaints based on unfair practice charges filed by Stephen E. Peterson against FMBA Local 68 and the City of Long Branch. The Director found that all allegations in the unfair practice charges except one were outside the six-month statute of limitations for unfair practice charges. The only possible timely allegation involved Peterson's April 17, 2007 termination for which the charging party was given ten days to amend his charges. Instead, Peterson filed an appeal of the Director's decision. The Commission holds that the unfair practice charges do not specify any actions within the six-month period before the charges were filed that might constitute an unfair practice; there were no circumstances that would warrant tolling the statute of limitations; and the charging party was given an opportunity to amend his charges to specify timely allegations of unfair practices surrounding his termination, but did not do so.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, FMBA Local 68, Fox & Fox, LLP,
attorneys (Benjamin Benson, of counsel)

For the Respondent, City of Long Branch, Apruzzese,
McDermott, Mastro & Murphy, attorneys (Arthur R.
Thibault, Jr., of counsel)

For the Charging Party, Law Offices of Edward Testino,
attorneys (Lawrence S. Grossman, of counsel)

DECISION

Stephen E. Peterson has appealed the refusal of the Director of Unfair Practices to issue Complaints based on unfair practices he filed against FMBA Local 68 and the City of Long Branch.

D.U.P. No. 2008-2, ___ NJPER ___ (¶ ___ 2007). We sustain that refusal.

The Director found that all allegations except one were outside the six-month statute of limitations for unfair practice charges. The only possible timely allegation involved Peterson's April 17, 2007 termination. The Director gave Peterson ten days to amend his charges to specify that he was fired for engaging in protected activity or that the employer violated a contract provision in terminating his employment or that the FMBA violated its duty of fair representation. Peterson did not file an amendment, but instead filed this appeal arguing that the Director's decision leaves him without a forum to address the complained-about practices.

Peterson alleges that the City violated the collective negotiations agreement by denying him wages and benefits for at least one year after his workers' compensation, disability and other benefits expired, and the FMBA violated its duty of fair representation by refusing to arbitrate a grievance seeking those benefits and by conspiring with the City to deny him the benefits. But the record makes clear that the union informed Peterson in July 2005 that it would not arbitrate the grievance. The unfair practice charges do not specify any actions within the six-month period before the charges were filed that might constitute an unfair practice, N.J.A.C. 19:14-2.1, nor do we find

any circumstances that would warrant tolling the statute of limitations. Contrast Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978) (employee filed court action within six months of alleged unfair practice). We also note that the Director gave the charging party an opportunity to amend his charges to specify timely allegations of unfair practices surrounding his April 2007 termination, but no amendment was filed. Under these circumstances, we sustain the refusal to issue Complaints.

ORDER

The decision refusing to issue Complaints is sustained.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan and Fuller voted in favor of this decision. Commissioner Watkins abstained from consideration. None opposed.

ISSUED: December 20, 2007

Trenton, New Jersey