

P.E.R.C. NO. 2008-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH CALDWELL,

Respondent,

-and-

Docket No. CI-2007-013

WILLIAM McDANIEL,

Charging Party.

TEAMSTERS LOCAL NO. 469,

Respondent,

-and-

Docket No. CI-2007-012

WILLIAM McDANIEL,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands to the Director of Unfair Practices for further proceedings two unfair practice charges filed by William McDaniel against Teamsters Local No. 469 and the Borough of North Caldwell. The Director refused to issue Complaints and dismissed the charges. D.U.P. 2008-4. McDaniel appealed the Director's decision. The Commission holds that under N.J.S.A. 34:13A-5.4(c), the unfair practice charges are untimely on their face. However, the Commission finds that if the charging party can prove that the delay was caused by Local 469's breach of the duty of fair representation, he might be able to overcome the timeliness bar.

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, Borough of North Caldwell,
Piro, Zinna, Cifelli, Paris & Gentitempo, attorneys
(David M. Paris, of counsel)

For the Respondent, Teamsters Local No. 469,
Timothy R. Hott, P.C., attorney

For the Charging Party, William McDaniel, pro se

DECISION

On January 22, 2008, William McDaniel appealed the decision of the Director of Unfair Practices refusing to issue Complaints based on unfair practice charges McDaniel filed against Teamsters Local No. 469 and the Borough of North Caldwell. D.U.P. No. 2008-4, 34 NJPER 1 (¶1 2008). Neither the Borough nor Local 469

responded to the appeal. We reverse the Director's decision and remand the case for further processing.

On October 2, 2006, McDaniel filed a charge alleging that the Borough discriminated against him for filing Equal Employment Opportunity Commission ("EEOC"), union, civil rights, Department of Labor and Occupational Safety and Health Administration ("OSHA") complaints against two supervisors. He also alleged that he was fired without being interviewed by the Borough.

McDaniel also filed a charge against Local 469 alleging that it acted with bias against him when it told him that he had to accept being harassed by the Borough after prevailing in a grievance arbitration hearing. He also alleged that Local 469 decided not to arbitrate a second grievance he filed against the Borough.

On October 5, 2006, the Deputy Director of Unfair Practices notified McDaniel that his charge needed to include the subsections of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., alleged to have been violated; the dates of the alleged unfair practices; and that he needed to serve a copy of his charges and any amendments on the respondents.

On October 16, 2006, McDaniel filed amendments. He alleges that he was terminated on December 5, 2005 in part because of complaints he filed against the Borough including his OSHA

complaints. He also alleges that his charge against the employer was not filed on time because Local 469 delayed from December 5, 2005 to July 7, 2006 to tell him that it was not pursuing his grievance to arbitration; and a job injury limited his movement from November 30, 2005 to February 10, 2006 and to the present date. He further alleges that Local 469 discriminated against him, on the basis of payment of union fees, by not taking his grievance to arbitration and by not telling him of that fact for seven months, thereby preventing him from filing a timely charge. All this is alleged to violate N.J.S.A. 34:13A-5.4a(1) and (4)^{1/} and b(1) and (3).^{2/}

Both respondents submitted position statements asserting facts not in the charge. Local 469's statement was not served on McDaniel.

1/ These provisions 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. . . . (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."

2/ These provisions prohibit 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. . . . (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."

The Director found several of McDaniel's allegations to be untimely and that no circumstances justified a tolling of the statutory period. He further found McDaniel's allegations that the Borough discriminated against him for filing various complaints with the Department of Labor, the Borough police department and the Equal Employment Opportunity Commission to be outside this Commission's jurisdiction. Finally, the Director found that McDaniel failed to set forth any facts showing that Local 469's investigation of McDaniel's grievance challenging his termination and its ultimate decision not to pursue it to arbitration was arbitrary, discriminatory or in bad faith, or that it discriminated against him on the basis of payment of union dues. The Director dismissed the 5.4b(3) allegation because McDaniel had not asserted any facts supporting the claim that Local 469 refused to negotiate in good faith with the Borough.

Unfair practice charges must be filed within six months of the alleged unfair practice, unless the charging party was prevented from filing a timely charge. N.J.S.A. 34:13A-5.4(c). McDaniel's allegations against the Borough are untimely on their face. However, if he can prove that the delay was caused by Local 469's breach of the duty of fair representation, he might be able to overcome the timeliness bar.

In determining whether a party was "prevented" from filing an earlier charge, the Commission must conscientiously consider the circumstances of each case and assess the Legislature's objectives in prescribing the time limits as to a particular claim. The word "prevent" ordinarily connotes factors beyond a complainant's control disabling him or her from filing a timely charge, but it includes all relevant considerations bearing upon the fairness of imposing the statute of limitations. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1978). Relevant considerations include whether a charging party sought timely relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establishing an unfair practice; when a charging party knew or should have known the basis for its claim; and how long a time has passed between the contested action and the charge. State of New Jersey, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003). Under these circumstances, we remand this matter to the Director to afford McDaniel an opportunity to address any concerns the Director might have that the charge does not provide sufficient details about the alleged discrimination in retaliation for filing complaints against the Borough. See West Deptford Tp. Bd. of Ed., P.E.R.C. No. 99-68,

25 NJPER 99 (¶30043 1999) (discrimination for filing safety complaints within Commission's unfair practice jurisdiction).^{3/}

State of New Jersey (Stockton State College), P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (App. Div. 1977), certif. den. 78 N.J. 326 (1978), a case cited by the Director, is distinguishable. There, after a complaint had issued and after considering all of the facts presented in a motion for summary judgment, we held that the filing of a grievance by a union did not toll the union's obligation to file a timely charge. Here, we are reviewing a complaint issuance determination where we consider only the charging parties' assertion that the union's alleged breach of its duty of fair representation prevented him from filing a charge against his employer.

As for his claim against Local 469, an allegation that it did not take his case to arbitration because he was a representation fee payer, if true, might constitute an unfair practice. N.J.A.C. 19:14-2.1 (complaint will ordinarily issue where timely allegations, if true, might constitute an unfair practice); N.J.S.A. 34:13A-5.3 (majority representative must represent the interests of all unit members without

^{3/} Without more details, we cannot decide whether the allegations about the complaints to the Department of Labor, the police department, and the EEOC might constitute an unfair practice. It depends on whether the complaints involved terms and conditions of employment.

discrimination and without regard to employee organization membership). If the Director has concerns that the allegations against Local 469 are not specific enough, he should afford McDaniel an opportunity to address those concerns as well.

We remand this case to the Director for further processing.^{4/}

ORDER

The unfair practice charges are remanded to the Director of Unfair Practices for further processing consistent with this opinion.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: March 27, 2008

Trenton, New Jersey

^{4/} We agree with the Director that McDaniel has not alleged any facts that would support a violation of 5.4b(3).