

P.E.R.C. NO. 93-80

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 105,

Respondent,

-and-

STATE OF NEW JERSEY  
(DEPARTMENT OF CORRECTIONS),

Docket No. CI-93-29

Respondent,

-and-

JESSE J. AVERHART,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains a decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by Jesse J. Averhart against PBA Local 105 and the State of New Jersey (Department of Corrections). Averhart was discharged in 1989. His appeal to the Merit System Board was dismissed in April 1990. The Commission finds that any unfair practice charge challenging the employer's or Local 105's actions surrounding his discharge had to be filed within six months of those actions.

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STATE OF NEW JERSEY  
(DEPARTMENT OF CORRECTIONS),

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JESSE J. AVERHART,

Charging Party.

Appearances:

For the Respondent PBA Local 105, Zazzali, Zazzali, Fagella & Nowak, attorneys (Robert A. Fagella, of counsel)

For the Respondent State of New Jersey (Office of Employee Relations), Melvin L. Gelade, Director

For the Charging Party, Jesse J. Averhart, pro se

DECISION AND ORDER

On September 28, 1992, Jesse J. Averhart filed an unfair practice charge against PBA Local 105. The charge alleges that Local 105 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1), (3) and (5),<sup>1/</sup> when, in June and July 1992, it failed to respond to

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<sup>1/</sup> These subsections 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

his request for representation in a disciplinary dispute. On October 6, Averhart amended his charge to allege that Local 105 unfairly represented him during a February 1990 appeal of his discharge before the Office of Administrative Law. On October 21, Averhart amended his charge to include his former employer, the State of New Jersey (Department of Corrections),<sup>2/</sup> and to ask us to determine whether "the Department of Corrections and Local 105 negotiate[d] in good faith a viable agreement within the scope of collective bargaining." Averhart refers to a 1988 settlement agreement conditioning his continued employment on an improvement in his attendance record.

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1/ Footnote Continued From Previous Page

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."

2/ Averhart alleges that the State violated subsections 5.4(a)(1), (3), (5) and (7) of the Act. 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. (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."

On December 28, 1992, the Director of Unfair Practices advised Averhart that he was not inclined to issue a Complaint because the charge, as amended, was untimely. Averhart responded that he was unjustly discharged in 1989 and that Local 105 refused to represent him in 1990 and again in June and July 1992. He claimed that the Director should find a continuing violation exception to the six-month statute of limitations for filing a charge. See N.J.S.A. 34:13A-5.4(c).

On January 29, 1993, the Director refused to issue a Complaint. D.U.P. No. 93-28, \_\_ NJPER \_\_ (¶\_\_\_\_\_ 1993). The Director found that the allegations concern Local 105's representation of Averhart during his discharge in 1989 and his appeal of his discharge in 1990. The Director further found that Averhart's requests for assistance in 1992 relate back to the 1989-90 dispute over Local 105's representation. The Director concluded that the continuing violation theory is not applicable since the claim is not based on new alleged violations, but rather on the effect of an earlier alleged violation.

On February 11, 1993, Averhart appealed the Director's determination. He claims that his continuing violation argument is based on a later settlement agreement; there should be a full hearing with testimony before a decision is made; and Local 105 had no intention of advising him of his right to bring a complaint before us.

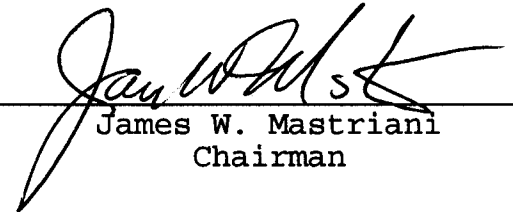
On February 26, 1993, Local 105 filed a statement in opposition to the appeal. It claims that the charge is untimely and that the allegations do not state a claim under the prevailing law.

We sustain the Director's determination that the charge, as amended, is untimely. Averhart was discharged in 1989. His appeal to the Merit System Board was dismissed in April 1990. Any unfair practice charge challenging the employer's or Local 105's actions surrounding his discharge had to be filed within six months of those actions. N.J.S.A. 34:13A-5.3(c). Asking Local 105 in 1992 to reopen the matter does not make timely now allegations that are based on events that took place in 1989 and 1990.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: March 29, 1993  
Trenton, New Jersey  
ISSUED: March 30, 1993