

P.E.R.C. NO. 2000-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CI-99-56

FRED M. MONTGOMERY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the Director of Unfair Practice's dismissal of an unfair practice charge filed by Fred M. Montgomery against the City of Newark. The Commission finds that, even assuming the charging party was prevented from filing a timely charge, the charge alleged a mere breach of contract that does not rise to the level of an unfair practice.

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, Phillip Dowdell, Assistant
Corporation Counsel

For the Charging Party, Fred M. Montgomery, pro se

DECISION

On February 1 and 16, 1999, Fred M. Montgomery filed an unfair practice charge and amended charge against the City of Newark. The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (7),^{1/} by failing to pay him certain longevity benefits in accordance with his union contract. The City contended that the charge was untimely.

On August 19, 1999, the Director of Unfair Practices dismissed the unfair practice charge. D.U.P. No. 2000-5, 25 NJPER 392 (¶30169 1999). He found that the charge was untimely and that

^{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; (7) Violating any of the rules and regulations established by the commission."

it alleged a mere breach of contract that would not rise to the level of an unfair practice.

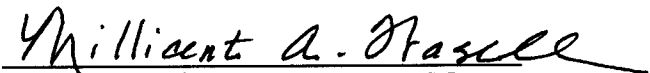
By letter dated September 2, 1999, the charging party filed an appeal. That appeal was perfected by letter dated October 18. The charging party asserts that he was denied contractual longevity benefits. He further asserts that his charge was not filed within six months of the date benefits became due because he was misled by his union.

Even assuming the charging party was prevented from filing a timely charge, see N.J.S.A. 34:13A-5.4c, we affirm the Director's decision to dismiss the charge. The denial of contractual benefits to an individual employee is generally a breach of contract that does not rise to the level of an unfair practice. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The charging party would have to pursue any breach of contract claim in another forum.

ORDER

The order in D.U.P. No. 2000-5 is affirmed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: January 27, 2000
Trenton, New Jersey
ISSUED: January 28, 2000