

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON BOARD OF EDUCATION AND
PATERSON EDUCATION ASSOCIATION,

Respondents,

Docket No. CI-79-20

-and-

MAJORIE D. HILLIARD,

Charging Party.

SYNOPSIS

In an appeal from the Director of Unfair Practices' refusal to issue a complaint, the Commission affirms the decision of the Director. The Commission agrees with the Director that the charge against the Association was not filed within the statutory six-month period and that the charge against the Board could not constitute a refusal to negotiate because there is no obligation under N.J.S.A. 34:13A-5.4(a)(5) for the employer to respond to grievances presented by individuals.

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Appearances:

For the Respondent Board, Neil Chessin, Esquire

For the Charging Party, Robert T. Tessaro, Esquire

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on November 17, 1978^{1/} by Majorie D. Hilliard alleging that her employer, the Paterson Board of Education, had violated N.J.S.A. 34:13A-5.4(a)(5) by refusing to process a grievance she had filed in June 1978 concerning her denial of a promotion.

An amendment to the charge was filed on October 1, 1979 alleging that the Paterson Education Association had violated N.J.S.A. 34:13A-5.4(b)(1), (2) and (3) by failing to take any action on Ms. Hilliard's grievance against the Board.

In a written decision issued December 4, 1979, the Director of Unfair Practices declined to issue a Complaint on the charge

^{1/} The charge against the Board was originally filed on October 26, 1978, but failed to specify the portion(s) of the Act which were alleged to have been violated.

filed by Ms. Hilliard. D.U.P. No. 80-12, ___ NJPER ___ (¶ ___ 1979). Pursuant to N.J.A.C. 19:14-2.3, the Charging Party appealed from the Director's decision. A statement in opposition to the appeal has been filed by the Respondent Board. No appearance had been entered on behalf of the Association.

In agreement with the Director, we find the charge against the Association was not filed within the six month period specified in N.J.S.A. 34:13A-5.4(c) nor was the Charging Party prevented from making a timely filing. We affirm his refusal to issue a Complaint with respect to the allegations that the Association violated N.J.S.A. 34:13A-5.4(b)(1), (2), and (3). We do not regard as valid the Charging Party's objections that the timeliness issue was raised by the Director rather than the Association. The language of N.J.S.A. 34:13A-5.4(c) requires that no complaint shall be issued on an untimely charge. Additionally, the Appellate Division has held that the limitations period in N.J.S.A. 34:13A-5.4(c) should be viewed as jurisdictional. State v. Council of N.J. State College Locals, 153 N.J. Super. 91 (App. Div. 1977), certif. den. 78 N.J. 326 (1978).

We also affirm the Director's refusal to issue a complaint with respect to the allegation that the Board violated N.J.S.A. 34:13A-5.4(a)(5). However, in so doing we do not completely adopt his reasoning.

The sole basis for the Charging Party's unfair practice claim against the Board is that it refused to process her grievance concerning the denial of her promotion. As noted by the Director,

the Supreme Court, in Red Bank Reg. Ed. Ass'n. v. Red Bank Reg. H.S. Bd. of Ed., held that an employer does not violate N.J.S.A. 34:13A-5.4(a)(5) when it refuses to process a grievance filed by anyone other than the majority representative. However, as noted by the Charging Party, the Court in Red Bank did not reach the issue of whether there is an obligation on an employer to respond to or process individual grievances:

Since we are not faced with any limitation on the ability of the employees to present or process grievances personally, we again intimate no view on the exclusivity question and shall assume without deciding that N.J.S.A. 34:13A-5.3 permits unit employees to enjoy at least a concurrent right with their majority representative with respect to the presentation of grievances.
78 N.J. at 135, emphasis added

Thus, the Director's statement at page 4 of his decision that "where there is an exclusive representative the employer is under no obligation to respond to grievances presented by individuals", is accurate in the context of N.J.S.A. 34:13A-5.4(a)(5). However, given the statements of the Supreme Court in Red Bank, it is possible to argue that an employer's refusal to respond to an individual's grievance could amount to interference with an employee right guaranteed by the Act (N.J.S.A. 34:13A-5.3) in violation of N.J.S.A. 34:13A-5.4(a)(1).

Since the only allegation made against the Board herein was that its refusal to process a grievance violated N.J.S.A. 34:13A-5.4(a)(5), we conclude that the Director was correct in refusing to issue a complaint and that this result is mandated by Red Bank, supra. Since the above reasoning provides an adequate ground for

the Director's action, it was unnecessary for him to discuss issues relating to an individual's standing to file a subsection (a)(5) charge or to construe the parties' agreement with respect to an individual's ability to seek arbitration thereunder. See D.U.P. No. 80-12 at p. 3. Accordingly, those comments are not adopted by us and we intimate no view with respect thereto.

ORDER

The decision of the Director of Unfair Practices in refusing to issue a Complaint in this matter is affirmed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves and Parcels voted for this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Hartnett was not present.

DATED: Trenton, New Jersey
February 19, 1980
ISSUED: February 21, 1980