

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY
and NEW JERSEY TURNPIKE EMPLOYEES
UNION, LOCAL 194, I.F.P.T.E., AFL-CIO,

Respondents,

Docket No. CI-79-31

-and-

JEFFREY BEALL,

Charging Party.

SYNOPSIS

In an appeal from a decision of the Director of Unfair Practices in which he refused to issue a complaint, the Commission affirms the action of the Director with respect to the alleged violations of N.J.S.A. 34:13A-5.4(a)(2), (3) and (4) and (b)(1) and (5). However, the Commission directs the Director to issue a complaint with respect to the alleged violations of N.J.S.A. 34:13A-5.4(a)(1) and (5) in order to permit these issues to be fully litigated. It should be emphasized that the issuance of a complaint does not constitute a determination by the Commission that the Act has been violated nor does it necessarily constitute a rejection of the Director's reasoning in initially refusing to issue a complaint with respect to those matters.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY
and NEW JERSEY TURNPIKE EMPLOYEES
UNION, LOCAL 194, I.F.P.T.E., AFL-CIO,

Respondents,

Docket No. CI-79-31

-and-

JEFFREY BEALL,

Charging Party.

Appearances:

For the Respondent Public Employer, Bernard Reilly, Esq.

For the Charging Party, Barbour & Costa, Esqs.
(Mr. John T. Barbour, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on November 24, 1978 by Jeffrey Beall (the "Charging Party") against the New Jersey Turnpike Authority (the "Authority") and New Jersey Turnpike Employees Union, Local 194, I.F.P.T.E., AFL-CIO ("Local 194") alleging that the Respondent Authority was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically, N.J.S.A. 34:13A-5.4(a) (1), (2), (3), (4) and (5) and that the Respondent Local 194 was engaging in conduct violative of N.J.S.A. 34:13A-5.4(b)(1) and (5).

In a written decision dated November 13, 1979, the Director of Unfair Practices refused to issue a complaint with respect to the entire charge. D.U.P. No. 80-10, NJPER (¶ 1979).

The Charging Party has appealed from the Director's determination pursuant to N.J.A.C. 19:14-2.3. Neither the Authority nor Local 194 has filed any statement or other document in response to the Charging Party's appeal.

The Director refused to issue a complaint with respect to the violations of subsections (b)(1) and (5) allegedly committed by Local 194 on the grounds that the charge was not filed within the six months period set forth in N.J.S.A. 34:13A-5.4(c). Analyzing the allegations, the Director determined that the significant event for timeliness purposes occurred on or about February 17, 1978, the date the Authority and Local 194 refused to submit to arbitration a claim that the Charging Party's December 27, 1977 termination was improper. An action arising out of this claim was commenced by Charging Party against the Authority in Superior Court, Law Division, Burlington County (Docket No. L-32285-77) in April 1978, but Local 194 was not named as a party or otherwise joined in that action. Thus, the Director concluded the filing of the charge against Local 194 on November 24, 1978 was more than six months from the occurrence of the alleged unfair practices committed by Local 194. However, since the action in Superior Court was commenced against the Authority within six months of the alleged unfair practices, the Director, applying the Supreme Court's Kaczmarek decision^{1/} and Court Rule R.1:33-4, found the allegations made against the

^{1/} N.J. Turnpike Authority and N.J. Turnpike Employees Union, Local 194, IFPTE, AFL-CIO v. Kaczmarek, 77 N.J. 329 (1978).

Authority were timely filed.^{2/}

We concur with the Director's resolution with respect to the timeliness of the allegations against Local 194 and affirm his determination not to issue a complaint with respect to the alleged violations of subsections (b)(1) and (5).

The charge filed herein contains five separate counts against the Authority and Local 194 which, summarizing the allegations, states that: (1) Charging Party's termination was "unreasonable, capricious and in violation of the charging party's contractual rights"; (2) the Respondents refused to submit the issues of his discharge to binding arbitration; (3) the Authority has harassed and imposed excessive discipline on the Charging Party because he informed the suthority several years prior of the allegedly wrongful activities of a supervisor and Local 194 has improperly represented him for the same reason; (4) Respondents have prevented the Charging Party from processing the discharge grievance to arbitration and have refused to permit Charging Party to utilize counsel of his own choice; and (5) the Authority exerted improper influence on Local 194 not to take the Charging Party's case to arbitration and Local 194 acceded to such pressure.

The above allegations were alleged by the Charging Party to amount to violations by the Authority of subsections (a)(1), (2), (3), (4) and (5) of N.J.S.A. 34:13A-5.4 and of subsections (b)(1)

^{2/} Charging Party's action in Superior Court was transferred to the Commission by Order dated September 18, 1978 which stated inter alia that the Authority did not waive any defenses it may have regarding timeliness or the failure to join an indispensable party.

and (5) by Local 194. As discussed supra., the alleged violations by Local 194 cannot be litigated because they are time-barred.

Although the charge against the Authority is timely, the Director has refused to issue a complaint with respect to the alleged violations by the Authority because in his view the allegations, even if true, could not constitute a violation of any of the subsections cited in the charge.

After reviewing the Director's decision and the allegations contained in the charge, we affirm his decision not to issue a complaint with respect to the alleged violations of N.J.S.A. 34:13A-5.4(a)(2), (3) and (4), essentially for the reasons stated in his written decision. Charging Party has not stated that his alleged excessive discipline or harassment was exacted in retaliation for his exercise of protected activity or was intended to discourage such activity (subsection (a)(3)), nor does he allege that he had given any testimony or made any filing with the Commission prior to his discharge or the refusal to process his grievance (subsection (a)(4)). We also agree that the facts as alleged could not support a finding that the Authority has violated subsection (a)(2) which prohibits domination or interference with an employee organization.^{3/}

The Director refused to issue a complaint with respect to a subsection (a)(5) violation, stating that an individual may not make such a charge unless the Charging Party is simultaneously

^{3/} We do not, however, adopt or pass upon the Director's alternative ground for refusing to issue a complaint with respect to the subsection (a)(2) violation. See D.U.P. No. 80-10 at p. 7, footnote 6.

maintaining an action against the majority representative for breach of its duty of fair representation.^{4/} Since, the Director reasoned, the Charging Party's claim against the union herein is time-barred, it is impossible to maintain an action for breach of the duty of fair representation and thus the subsection (a)(5) charge also may not be maintained.

This reasoning may be overly technical and not in accord with both the letter and spirit of the Act. The Charging Party, as a result of the Director's reasoning herein, finds himself in a "Catch-22". He has filed a timely charge against his employer, but is told in order to obtain relief against the employer he must also show his union acted improperly. His charge does contain allegations which state that the union acted improperly but because he cannot obtain relief from the union (because his charge against it is untimely), he is barred from presenting proofs which could support his charge against the employer, which is timely.

The major problem in the Director's analysis is a misapplication of the effect and nature of a statute or period of limitations. The lapse of the limitations period does not mean that a violation of law has not occurred or has been undone; it merely means that relief for the violation cannot be obtained from the party who has not been charged within the limitations period. That party, not having been called to account for its alleged transgression

^{4/} The Director's reasoning is based upon the holding and certain dicta contained in Offutt v. Montgomery County Bd. of Ed., et. al., 404 A. 2d. 281, 101 LRRM 3035 (Md. Ct. Apps. 1979).

within a reasonable period of time, should not be haunted at a later time by a stale claim.

In the instant case, the Authority was on notice that the Charging Party was seeking relief for an alleged violation of N.J.S.A. 34:13A-5.4(a)(5). Such relief is obtainable, according to the Director's theory, if the Charging Party can show that the Authority violated its contractual obligations and Local 194 improperly failed to fulfill its duty to fairly represent its employees. The Charging Party has made allegations which, if true, could show that Local 194 has breached its duty and the Authority has breached its contract. If the Charging Party can sustain his burden of proof and show wrongdoing by both parties, there is nothing in the Act which forces us to release both parties from accounting for their violations because one party is beyond our jurisdiction as a result of the limitations period.

The limitations period would not prevent the Charging Party from putting on proofs of a breach of Local 194's duty of fair representation as a means of establishing the Authority's violation of N.J.S.A. 34:13A-5.4(a)(5). The U.S. Supreme Court has held that events occurring outside the limitations period (in this case the alleged breach of the duty of fair representation) can be admitted to shed light on events occurring within the six-months period, provided that the events occurring within the period constitute an unfair practice. Local Lodge No. 1424 v. NLRB, 362 U.S. 411, 45 LRRM 3213 (1960).

Before proceeding any further we wish to point out that while we have addressed this issue utilizing the Director's theory

that an individual may maintain a subsection (a)(5) only while also alleging a breach of the duty of fair representation, we are in no way either accepting or rejecting such an analysis. At this point in the proceedings we have concluded that the Director should have issued a complaint with respect to the allegation that the Authority violated subsection (a)(5). A hearing on this, and any other unfair practice complaint, will normally involve not only factual proofs, but also whether or not the facts adduced, as a matter of law, amount to a violation(s) of the Act as charged. However, even accepting the theory of the case as framed by the Director, we are unable to conclude that the allegations of the charge, if true, could not amount to a violation of N.J.S.A. 34:13A-5.4(a)(5). Hence, a complaint should have been issued with respect to this subsection.

The one remaining issue concerns whether or not the allegations would support an independent violation of N.J.S.A. 34:13A-5.4(a)(1). In discussing allegations relating to N.J.S.A. 34:13A-5.4(a)(5), the Director, citing the Supreme Court's decision in Red Bank Reg. Ed. Ass'n. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978) noted that case held that an employer does not violate subsection (a)(5) when it refused to process a grievance presented by a person or party who is not the exclusive majority representative. D.U.P. No. 80-10 at 12-13 citing Red Bank, supra., 78 N.J. at 139-140. However, as we have noted today in In re Paterson Bd. of Ed., P.E.R.C. No. 80- at p. 3, the Supreme Court has left open the possibility that the Act (N.J.S.A. 34:13A-5.3) guarantees individuals the right

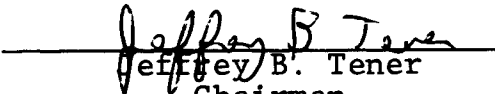
to present or process their own grievances. Thus, it is arguable that an employer refusal to hear a grievance filed by an individual could amount to interference, restraint or coercion of employee rights in violation of N.J.S.A. 34:13A-5.4(a)(1). Since the instant charge makes several allegations with respect to the presentation and processing of a grievance by an individual, we deem it appropriate to cause a complaint to be issued with respect to subsection (a)(1). As with our discussion of subsection (a)(5), we express no view on the viability of this legal theory. Since the Supreme Court has indicated that it is at least an open question, adherence to pertinent judicial decisions would mandate that a forum be open in which to test this theory. We cannot at this point say that a violation of subsection (a)(1) could not be based upon the Charging Party's allegations.

ORDER

The decision of the Director of Unfair Practices in refusing to issue a Complaint with respect to the alleged violations of N.J.S.A. 34:13A-5.4(a)(2), (3), (4) and (b)(1) and (5) is affirmed.

The Director of Unfair Practices is directed to issue a Complaint with respect to the alleged violations of N.J.S.A. 34:13A-5.4 (a)(1) and (5).

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

*Commissioner Newbaker was opposed to the issuance of a complaint regarding the (a)(1) portion of the charge.

DATED: Trenton, New Jersey

February 19, 1980

ISSUED: February 21, 1980