

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH FREE PUBLIC LIBRARY,

Respondent,

-and-

Docket No. CO-81-344-20

AFSCME, COUNCIL 52, LOCAL 2253,

Charging Party.

SYNOPSIS

In an unfair practice case, the Commission denies the appeal filed by the Charging Party which sought review of a Hearing Examiner's dismissal of the Complaint in the case. The Charging Party sought reconsideration of the Hearing Examiner's ruling, but failed to do so within the period allowed for review of the grant of a motion to dismiss. The Commission therefore finds Charging Party's appeal to be untimely.

P.E.R.C. NO. 82-60

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Appearances:

For the Respondent, Murray, Granello & Kenney, Esqs.  
(James P. Granello, of Counsel)

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.  
(Arnold S. Cohen, of Counsel)

DECISION AND ORDER

The Unfair Practice Charge in this matter was filed by the American Federation of State, County and Municipal Employees, Council 52, Local 2253 ("AFSCME") on May 7, 1981 and contained allegations of violations of several provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by the Respondent Elizabeth Free Public Library. A Complaint and Notice of Hearing in the matter was issued by the Commission's Director of Unfair Practices on August 4, 1981. Hearings in the matter were conducted on October 15 and 16, 1981 before Hearing Examiner Edmund G. Gerber, wherein AFSCME had the burden of proving its unfair practice allegations. At the close of AFSCME's case, the Respondent made a motion to dismiss the Complaint. The Hearing Examiner granted the motion on the record on October 16, 1981.

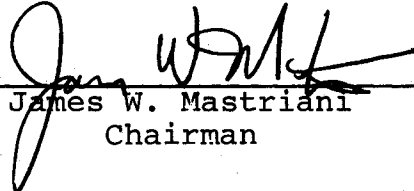
Motions to Dismiss are governed by N.J.A.C. 19:14-4.7. Under that rule, AFSCME was entitled to obtain a review of the Hearing Examiner's decision by filing a Request for Review with the Commission within ten (10) days of the ordered dismissal. The rule further provides "[u]nless such request for review is filed within ten days from the date of the ordered dismissal, the case shall be closed."

AFSCME did not file an appeal with the Commission within ten days of the Hearing Examiner's ruling. Instead, on November 13, 1981, AFSCME filed a Motion for Reconsideration with the Hearing Examiner, requesting that the Hearing Examiner reconsider and deny the original motion to dismiss. By letter of November 17, 1981, the Hearing Examiner denied the motion for reconsideration. On November 30, 1981, AFSCME filed a letter brief with the Commission arguing that we reverse the determination of the Hearing Examiner to dismiss the unfair practice complaint.

When AFSCME did not seek to appeal the Hearing Examiner's determination on the motion to dismiss to the Commission within ten days of that determination, AFSCME waived its right to further consideration of the Unfair Practice Charge. While an application to a Hearing Examiner for reconsideration of a motion can be appropriate under certain circumstances and may toll the running of certain time periods, such a motion is inappropriate when filed after the time period for review has elapsed. AFSCME cannot cure the untimeliness of the instant application by its untimely request for reconsideration.

For the foregoing reasons, the undersigned hereby denies the appeal herein by AFSCME.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels, Suskin and Newbaker voted for this decision. Commissioner Graves voted against this decision.

DATED: December 15, 1981  
Trenton, New Jersey  
ISSUED: December 17, 1981