

P.E.R.C. NO. 94-72

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 105,

Respondent,

-and-

Docket Nos. CI-93-64 and  
CI-93-65

KEVIN MILLER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of P.E.R.C. No. 94-54, 19 NJPER 590 (124284 1993) filed by Kevin Miller. In that decision, the Commission found untimely his appeal of a decision of the Director of Unfair Practices' refusing to issue a Complaint based on Miller's unfair practice charges against PBA Local 105. The Commission finds no extraordinary circumstance warranting further review of this matter.

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Appearances:

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

For the Charging Party, Kevin Miller, pro se

DECISION AND ORDER

On December 9, 1993, Kevin Miller moved for reconsideration of P.E.R.C. No. 94-54, 19 NJPER 590 (¶24284 1993). In that decision, we found untimely his appeal of a decision of the Director of Unfair Practices refusing to issue a Complaint based on Miller's unfair practice charges against PBA Local 105.

Miller claims that he received a letter from the Special Assistant to the Chairman dated September 29, 1993 stating, in part, that "the Commission finds your procedural claims meritorious" and that this letter shows that the Commission accepted his appeal despite the late filing. Miller further claims that the Director made errors in applying N.J.A.C. 19:14-1.5, 1.6(a)(2) and 3.2 that require that his appeal be treated with some latitude.

The September 29, 1993 letter to Miller did not state that the Commission had found his procedural claims meritorious. Rather, it stated, in part:

In case the Commission finds your procedural claims meritorious, please submit by October 8, 1993, your position on the substantive issue of why Complaints should issue.

Such letters are sent to avoid the need for further submissions on substantive issues if, and only if, the Commission finds merit to an appellant's procedural claims.

As for the charging party's assertion that the Director violated the rules in processing his case, we reject that assertion. N.J.A.C. 19:14-1.6 provides that normally the Director will assign an unfair practice case to a staff member for processing and that all parties will be requested to submit a statement of position. The rules do not require, and we have never required, that a statement of position be requested in every case. The Director may refuse to issue a Complaint if the charge fails to meet the Complaint issuance standards set out in N.J.A.C. 19:14-1.3 and 2.1. If it is possible to cure any cited defects, a charging party may then make timely amendments. N.J.A.C. 19:14-1.5; see also South Plainfield Bd. of Ed., P.E.R.C. No. 94-71, 20 NJPER \_\_\_\_ (¶\_\_\_\_ 1993). N.J.A.C. 19:14-3.2 requires a respondent to file an Answer after a Complaint has issued. Since no Complaint issued in this case, no Answer from the respondent was required.

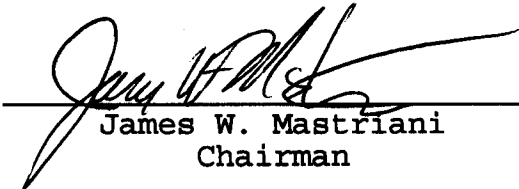
The charging party filed an untimely appeal and failed to show cause why an untimely appeal should be accepted. Absent any

extraordinary circumstances warranting further review of this matter, we deny the motion for reconsideration.

ORDER

Reconsideration of P.E.R.C. No. 94-54 is denied.

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: January 24, 1994  
Trenton, New Jersey  
ISSUED: January 25, 1994