P.E.R.C. NO. 87-159

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM COUNTY BOARD OF
CHOSEN FREEHOLDERS,

Respondent,

-and-

Docket No. CO-86-326-42

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a portion of a Complaint based on an unfair practice charge filed by the Communications Workers of America, AFL-CIO against the Salem County Board of Chosen Freeholders. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally reduced the paid lunch break of two employees at the County's nursing home. The Commission finds that the charge was not filed within six months after the alleged unfair practice occurred.

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COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Daniel A. Zehner, Esq.

For the Charging Party, Gabrielle Semel, Esq.

DECISION AND ORDER

On May 22, 1986, the Communications Workers of America, AFL-CIO ("CWA") filed an unfair practice charge against the Salem County Board of Chosen Freeholders ("County"). The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(5),[1/] when it unilaterally reduced the paid lunch break of two employees at the County's nursing home. On November 5, 1986 and

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1/ This subsection prohibits public employers, their representatives or agents from: "Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

February 5, 1987, CWA amended the charge to allege that the County violated the Act when it unilaterally required employees at certain departments of the nursing home to report to duty 15 minutes prior to their regular starting time.[2/]

On October 6, 1986, a Complaint and Notice of Hearing issued. Alan R. Howe was assigned to be the Hearing Examiner.

On October 14, 1986 and January 2, 1987, the County filed an Answer and amended Answer. It admits that it required certain employees to punch in 15 minutes before commencing work, but denies the Complaint's other allegations. As affirmative defenses, it contends the lunch break allegation is barred by the six month statute of limitations and that CWA consented to the change.

On January 5, 1987, the County moved for partial summary judgment. It seeks dismissal, on timeliness grounds, of the allegations concerning the lunch break. On February 4 and 13, 1987, CWA filed papers opposing the motion. It contends that the charge is timely because CWA has made repeated requests to negotiate the change and the County's repeated refusal amounts to a "continuing violation." On February 17, 1987, the County submitted a letter brief in support of the motion.

2/ CWA also amended the charge to allege that the County violated the Act when it required housekeeping employees at the nursing home to punch in 15 minutes before commencing work. CWA later withdrew this amendment.

On February 25, 1987, the Hearing Examiner granted partial summary judgment. H.E. No. 87-50, 13 NJPER 242 (¶18098 1987). He found that CWA did not file the charge within six months of the alleged unilateral change and the continuing violation theory was not applicable.

On April 7, 1987, CWA filed exceptions. It again contends the charge is timely because the lunch break change is continuing: "each paycheck is reduced by an amount equivalent to that of a daily paid lunch half hour for that pay period." It relies on Sevaco v. Anchor Motor Freight, 792 F.2d 570, 122 LRRM 3316 (6th Cir. 1986).

On April 20, 1987, the County filed a brief in reply to CWA's exceptions, urging adoption of the Hearing Examiner's decision. It relies on North Plainfield Ed. Ass'n v. North Plainfield Bd. of Ed., 96 N.J. 587 (1984); Kaczmarek v. New Jersey Turnpike Authority, 77 N.J. 329 (1978) and Local Lodge 1424 v. NLRB, 362 U.S. 411 (1960).

CWA's exceptions are interlocutory because the dismissal was not final as to all issues. Therefore, CWA does not have an automatic right to appeal at this juncture. Rather, the appropriate procedure would have been to request special permission to appeal. N.J.A.C. 19:14-4.6(a). We would normally not grant special permission to appeal an interlocutory decision because piecemeal review disrupts the entire case and wastes our resources. See Delbridge v. Jann Holding Co., 164 N.J. Super. 506 (App. Div. 1978); Frantzen v. Howard, 132 N.J. Super. 226 (App. Div. 1975). In this

case, however, we make a limited exception because the issue has been fully briefed and our resolution will not unduly delay the proceedings below. Accordingly, on our own motion, we have treated CWA's papers as a request for special permission to appeal. We grant that request and now consider the merits.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 5-6) are generally accurate. We adopt and incorporate them here with the following modification. The Hearing Examiner erroneously assumed at paragraph 7 that CWA was not advised of the change. It is undisputed, based on the County's unrebutted affidavit, that the changes were discussed with CWA before the County acted.

Our Act requires that an unfair practice charge be filed within six months after the alleged unfair practice occurred unless the charging party was prevented from filing such charge. N.J.S.A. 34:13A-5.4(c). Here, the alleged unilateral change in lunch period occurred on March 4 and 18, 1985, after the County had discussed its contemplated changes with CWA. Nevertheless, this charge was not filed until May 22, 1986, over a year later. There is nothing in the record to show that CWA was prevented from filing the charge earlier. Compare Kaczmarek, 77 N.J. 329 (1978). Nor are we persuaded by CWA's "continuing violation" theory under this case's circumstances. The charge's allegations solely allege a unilateral change which occurred well outside the six month period. There have been no allegations concerning any unilateral changes within that

period nor does the record reveal any. Therefore, this charge was properly dismissed. See Local Lodge 1424. North Plainfield (continuing violation theory is not applicable where the claim is not based on a new violation, but rather, as here, on the effect of an earlier allegation). Neptune Tp. Bd. of Ed., P.E.R.C. No. 81-101, 7 NJPER 143 (¶12062 1981).[3/]

ORDER

Paragraphs 2, 3 and 4 of the Complaint are dismissed. The matter is remanded to the Hearing Examiner.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 17, 1987
ISSUED: June 18, 1987

3/ We do not believe Sevaco warrants a contrary result. In that case, the allegations pertained to repeated violations of a contractual bid procedure. Here, in contrast, the charge complains of one unilateral change which occurred outside the six month statute of limitations.

H.E. NO. 87-50

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM COUNTY BOARD OF CHOSEN FREEHOLDERS,

Respondent,

-and- Docket No. CO-86-326-42

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission grant the Respondent's Motion for Partial Summary Judgment, alleging that the initial Unfair Practice Charge filed by CWA be dismissed as untimely filed. The salient events occurred in March 1985 when the Respondent unilaterally and without negotiations with CWA changed the working conditions of two employees in its Nursing Home, namely, by eliminating a paid lunch period. CWA failed to file an unfair practice charge until May 22, 1986, more than 14 months after the event. The Hearing Examiner rejected the contention of CWA that there was a continuing violation, notwithstanding the fact that its representatives from time to time demanded negotiations, most recently on April 30, 1986, a month before the filing of the instant Unfair Practice Charge.

H.E. NO. 87-50

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM COUNTY BOARD OF CHOSEN FREEHOLDERS,

Respondent,

-and- Docket No. CO-86-326-42

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent
Daniel A. Zehner, Esq.

For the Charging Party
Gabrielle Semel, Esq.

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION ON RESPONDENT'S PARTIAL MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on May 22, 1986, by the Communications Workers of America, AFL-CIO (hereinafter the "Charging Party" or "CWA") alleging that the Salem County Board of Chosen Freeholders (hereinafter the "Respondent" or the "County") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent

unilaterally changed the practice of pay for lunch for two employees represented by CWA, Leonia McGowan and Mary C. Hyland, which is alleged as contrary to the past practice of a 15-minute paid lunch period for all of the Nursing Home employees; and that repeated attempts to resolve the matter resulted in a labor-management meeting being held on April 30, 1986, where the Respondent informed CWA that it would continue to deny equal compensation to the above two employees in alleged violation of past practice; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act.[1/]

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 6, 1986, scheduling a hearing for November 20, 1986, in Trenton, New Jersey. The matter was rescheduled thereafter several times at the request of the parties and, following the filing by the Respondent of a Motion for Partial Summary Judgment, infra, on January 5, 1987, the hearing was adjourned without date by the

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1/ This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

Hearing Examiner on February 11, 1987, pending the disposition of the Respondent's Motion.[2/]

The procedural history of this matter since the filing by the Respondent of its Motion for Partial Summary Judgment on January 5, 1987, has been that the Chairman referred the Motion to the undersigned Hearing Examiner for disposition on January 14, 1987 pursuant to N.J.A.C. 19:14-4.8(a). The Respondent's Motion presented the legal issue as to whether or not the initial Unfair Practice Charge by CWA was timely filed within the meaning of §5.4(c) of the Act, which provides, inter alia, "...that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the date he was no

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2/ On November 5, 986, CWA filed its first amendment to the initial Unfair Practice Charge, alleging that on June 6, 1986, the Respondent unilaterally and without negotiations with CWA instructed its employees in the housekeeping department at the Nursing Home to punch in at a quarter to the hour (6:45 a.m.) instead of on the hour as had been the prior practice, which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act, supra. This amendment to the Charge was not the subject of the Respondent's Motion for Partial Summary Judgment, infra. Further, during the early part of February 1987, counsel for CWA advised the Hearing Examiner and the Respondent that CWA would be withdrawing the aforesaid amendment in due course. Finally, on February 5, 1987, CWA filed a second amendment to the initial Unfair Practice Charge, which was referred to the Hearing Examiner by the Director of Unfair Practices, the allowance of which is pending, and will not be acted upon by the Hearing Examiner until after the disposition of the instant Motion for Partial Summary Judgment.

longer so prevented..." The Respondent filed an affidavit in support of the Motion, alleging that the change in working hours of the two employees, McGowan and Hyland, occurred in March 1985; that both employees consented to the change and signed a Request for Personnel Action on March 18, 1985, and March 2, 1985, respectively; and that said changes in working hours were discussed by the affiant, Lee M. Munyon, the County Clerk, with representatives of CWA, who agreed to the changes. Thus, since the initial Unfair Practice Charge was not filed until May 22, 1986, it is time-barred by §5.4(c) of the Act, supra.

On February 4, 1987, counsel for CWA filed an Answer to the Respondent's Motion, which contained a Statement of Facts and Argument. CWA alleged that the change in hours of the two employees was made by the Respondent without communication to or negotiations with CWA's Local 1041. CWA stated further that it "...made numerous attempts to negotiate...regarding this unilateral change..." without specifying any dates on which such attempts were made. The only date supplied by CWA is that which appears in the Charge, namely, April 30, 1986, when a labor-management meeting was held between the parties and that among the issues discussed was the unilateral change with respect to Hyland and McGowan. Again, according to CWA, the County responded that it would discuss the matter no further and the initial Unfair Practice Charge was filed on May 22, 1986. The legal position of CWA is that the Charge was timely filed because the County's repeated refusal to negotiate constituted a "continuing violation."

The final written responses of the parties were received by the Hearing Examiner on February 17, 1987.

The parties having fully briefed their positions, which will be discussed in detail hereinafter, the Hearing Examiner makes the following Undisputed Findings of Fact, based upon the record papers filed to date:

UNDISPUTED FINDINGS OF FACT

1. The Salem County Board of Chosen Freeholders is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Communications Workers of America, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. On March 2, 1985, Hyland executed a Request for Personnel Action, which changed her working hours as of March 6 1986 (affidavit of Munyon ¶3 & Exhibit "A").

4. On March 18, 1985, McGowan executed a Request for Personnel Action, which changed her working hours in March 1985 (affidavit of Munyon ¶4 & Exhibit "B").

5. The changes in the working hours of Hyland and McGowan eliminated the daily paid 1/2-hour lunch period. Hyland and McGowan were the only two employees to lose the paid lunch period at the Nursing Home.

6. The changes in the payment of Hyland's and McGowan's lunch period was made unilaterally by Respondent. The Respondent

alleges that these changes in working hours were discussed in advance with representatives of CWA, who agreed to the changes. CWA alleges that these changes were not communicated to CWA nor negotiated, notwithstanding its demand to do so. The Hearing Examiner will assume that the changes were not communicated to CWA nor negotiated with it for purposes of this decision.

7. CWA alleges that it made "numerous attempts to negotiate with the County regarding this unilateral change." CWA also alleges that the County contended that the change was made with the consent of the two involved employees and that it would, therefore, not negotiate. On April 30, 1986, a Labor-Management meeting was held between representatives of the County and CWA where the unilateral changes in the working hours of Hyland and McGowan were discussed, among other issues, and the County continued to refuse to negotiate the changes. Thereafter, CWA filed its initial Unfair Practice Charge on May 22, 1986.

DISCUSSION AND ANALYSIS

Based on the foregoing Undisputed Findings of Fact, it is clear that the instant proceeding is ripe for disposition of the Respondent's Motion for Partial Summary Judgment: see analysis and discussion by the New Jersey Supreme Court in Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954) and the New Jersey Civil Practice Rules, 4:46-2. Under these authorities a motion for summary judgment may properly be granted when the record papers disclose that "...there is no genuine issue as to any

material fact...and that the moving party is entitled to a judgment or order as a matter of law..." (emphasis supplied). The Hearing Examiner is fully satisfied that the requisites for the granting of the Respondent's Motion for Partial Summary Judgment have been met since, aside from slight discrepancies, there are no genuine issues as to any material facts in the papers filed by the parties.

Based on the record papers and the legal memoranda submitted by counsel for the parties in support of their respective positions, the Hearing Examiner hereby grants the Respondent's Motion for Partial Summary Judgment for the following reasons:

* * * *

Plainly the issue here is whether or not §5.4(c) of the Act is to be applied to the initial Unfair Practice Charge by CWA, i.e. is the Charge time-barred under the circumstances of the changes in working conditions of Hyland and McGowan having occurred in March 1985 and the Unfair Practice Charge not having been filed until March 22, 1986? For purposes of this decision, the Hearing Examiner will assume that CWA from time to time between March 1985 and May 1986, particularly at the Labor-Management meeting on April 30, 1986, made a demand upon the Respondent to negotiate with respect to the unilateral changes in the hours of Hyland and McGowan in March 1985. The question then arises as to whether or not the refusal of the Respondent to negotiate over a 14-month period constituted a "continuing violation" of the Act. So stated, the Hearing Examiner is of the opinion that the various attempts by CWA to negotiate the

unilateral changes do not constitute a "continuing violation" of the Act.

In so concluding, the Hearing Examiner first examines the policy considerations pertinent to applying the Act's 6-months statute of limitations to the undisputed facts in the instant case. As the Respondent correctly points out, the decision of the New Jersey Supreme Court in Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978) states, inter alia.

> The reasons for a statutory limitation on actions must be examined in confronting the issue whether in this case the statutory period should be relaxed to permit the late filing of the unfair practices claim. It is acknowledged generally that the primary purpose behind statutes of limitations is to compel the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend...; another is to stimulate litigants to pursue their causes of action diligently and to prevent the litigation of stale claims...The prompt filing and expeditious processing of charges are especially important in the volatile field of employer-employee relations. In addition to preserving the immediacy of the record, administrative celerity stabilizes existing bargaining relationships...and inhibits the festering or aggravation of labor disputes...(77 N.J. at 337, 338).

Unlike Kaczmarek where the court determined that there was a justifiable excuse in Kaczmarek's delay in the filing of his unfair practice charge with the Commission, there are, in the opinion of this Hearing Examiner, no extenuating circumstances in the delay of CWA in filing the initial Unfair Practice Charge herein. This situation is to be compared with the facts in Kaczmarek, supra, where Kaczmarek was excused from the strictures of the Act's six-month limitation by not having "slept on his rights" but merely having elected to file his action in the wrong forum.

In the case at bar CWA decided, for whatever reasons, not to file an Unfair Practice Charge within six months of the unilateral changes by the Respondent in the working hours of Hyland and McGowan in March 1985 and instead made a series of demands upon the Respondent to negotiate the unilateral changes. This the CWA did at its peril on the theory that there was a "continuing violation" by the Respondent in its refusal to negotiate since March 1985.

Counsel for CWA, has cited the cases of NLRB v. Strong Roofing & Insulating Co., 386 F.2d 924, 65 LRRM 3012 (9th Cir. 1967); McCready & Sons, Inc., 195 NLRB 28, 79 LRRM 1212 (1972); and Borough of Hawthorne, H.E. No. 86-49, 12 NJPER 271 (¶17110 1986).[3/] In Strong and McCready the NLRB held that there was a "continuing violation" of the NLRA where an employer refused to execute a collective bargaining agreement, notwithstanding that the first demand to do so was made outside of the six-month statute of limitations. The Hearing Examiner finds this proposition totally inapplicable to the facts in the instant case since there is no analogy to be made between a unilateral change in the working conditions of two employees a finite point in time with the clearly continuing obligation of an employer to execute a collective bargaining agreement, as to which an agreement had been reached.

3/ Affirmed by the Commission: P.E.R.C. No 87-8, 12 NJPER 607 (¶17229 1986).

Further, the citation by CWA of this Hearing Examiner's decision in Hawthorne is totally misplaced since he found that there was no continuing violation in the failure of the Mayor of Hawthorne to respond to the union's threat to file an unfair practice charge if a stipulation to a collective negotiations agreement was not executed.[4/]

In order to strengthen its contention that the initial Unfair Practice Charge of CWA was not timely, the Respondent has cited the case of Local Lodge No. 1424, IAM (Bryan Mfg. Co.) v. NLRB, 362 U.S. 411, 45 LRRM 3212 (1960). In that case the Supreme Court stated that where occurrences within the six-month limitation period may constitute unfair practices, earlier events may be utilized to shed light on the true character of the matters occurring within the limitations period. This is commonly referred to as "background" to the unfair labor practice, which is being litigated. The Supreme Court then went on to consider a "second situation" where conduct occurring within the limitations period can be charged to an unfair labor practice only through reliance on an earlier unfair labor practice. In this regard the Court said:

> ...There the use of the earlier unfair labor practice is not merely "evidentiary," since it does not simply lay bare a putative current unfair labor practice.

4/ Further, the defect in the failure of CWA to have filed a timely Unfair Practice Charge as to the unilateral changes in the working hours of Hyland and McGowan was in no way cured by the fact that a labor-management meeting occurred on April 30, 1986, where the CWA's representatives renewed their request for negotiations.

> Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time-barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice... (362 U.S. at 416, 417; 45 LRRM at 3215).

The Respondent correctly argues that the unfair practice in the instant case is of the second type, as delineated by the United States Supreme Court in Bryan Mfg. Co., supra, i.e., the alleged illegal conduct occurring within the six-month limitation period under our Act can only be charged to an unfair practice by reliance on the earlier unfair practice in March 1985. In other words, the refusal of the County to negotiate on April 30, 1986, does not, in and of itself, constitute a viable unfair practice since it is the change that occurred in March 1985, as to Hyland and McGowan, that is alleged to form the basis for the initial Unfair Practice Charge now before the Hearing Examiner. The Respondent argues correctly that to allow the April 1986 event to become the subject of the initial Unfair Practice Charge would permit the revival of "legally defunct" matter.

In response to the reliance of the Respondent on Bryan Mfg. Co., supra, CWA cites the case of Sevaco v. Anchor Motor Freight, Inc., 792 F.2d 570, 122 LRRM 3316 (6th Cir. 1986). In that case a "bid" procedure had been in effect from 1973 through 1983 wherein drivers with more seniority than "yard men" were awarded the "yard" jobs, which resulted in a systematic layoff of "yard men." The Court of Appeals held, in reversing the District Court, that "...where the conduct challenged by employees...involves a

continuing and allegedly improper practice that causes separate and concurring injuries to plaintiffs, the action is deemed to be 'in the nature of a continuing trespass'..." (122 LRRM at 3320). In reaching its decision, the Court cited several cases, which included situations where a union repeatedly charged certain union members excessive dues or where an employer paid certain groups of employees wages, which were less than required by the collective bargaining agreement.5/

The Hearing Examiner sees no relevant comparison between the facts in Sevaco and those in the case at bar. Notwithstanding that CWA argues that each pay period for which McGowan and Hyland did not receive pay for their unpaid lunch period on and after March 1985 constitutes a separate violation of our Act, this does not arise to a factual equivalent to Sevaco, supra. In Sevaco there was ongoing job-related discrimination between two distinct groups of employees where the group discriminated against was being laid off. In the instant case, McGowan and Hyland lost wages as a result of a unilateral change affecting only them, which could have been remedied by a timely contractual grievance or a timely unfair practice charge.

Finally, both parties commented on a decision raised by the Hearing Examiner, North Plainfield Ed. Ass'n v. Board of Education,

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5/ NLRB v. Actors' Equity Association, 644 F.2d 939, 106 LRRM 2817 (2nd Cir. 1981) and Angulo v. Levy Co., 568 F.Supp. 1209, 114 LRRM 2335 (N.D. Ill. 1983).

96 N.J. 587 (1984). In that case two teachers were held to be time-barred by a 90-day limitation period set forth in a regulation issued by the Commissioner of Education. The two teachers, who were aware that they had not been advanced on the salary scale when they received their first pay check for a given school year, did not file a petition protesting this fact for more than a year and nine months after the expiration of the 90-day limitation period. The Court concluded that the withholding of an increment did not constitute a continuing violation.

CWA seeks to distinguish North Plainfield on the ground that the increment involved was in the "nature of a reward for meritorious service" and that the evaluation of that service "...is a management prerogative essential to the discharge of the duties of a school board..." (96 N.J. at 593). CWA then argues that the instant Respondent's action are not a prerogative of management but a violation of the contract and therefore recurring in nature. Finally, CWA points out that in North Plainfield the Court, in holding that the withholding of an increment does not constitute a continuing violation, stated that "Such a claim, which is associated with the assertion of discrimination in employment, has no relevance to this case..." (96 N.J. at 595).

The Respondent, in arguing that North Plainfield, supra, supports its position herein, cogently argues that the failure of Hyland and McGowan to receive a paid lunch period each workday is not due to a new violation each week by the Respondent but rather to

an "administrative decision," which occurred in March of 1985. Respondent further contends that just as the plaintiffs in North Plainfield were aware of a denial of their increment when they received their first pay check during the 1979-1980 school year, so, too, did Hyland and McGowan, as well as CWA through its representatives, become aware of the change in terms and conditions of employment of Hyland and McGowan in March 1985.

In summary, the Hearing Examiner is fully persuaded that the correct disposition of the Respondent's Motion for Partial Summary Judgment in this case is to grant it and to dismiss the initial Unfair Practice Charge on the ground that the facts set forth within it are time-barred under §5.4(c) of the Act. If the position of CWA was to be sustained on the facts of this case, then there would appear to be very few cases where the six-month statute of limitations under the Act would apply. Under the theory of the Charging Party herein if it continued to make a demand from time to time to negotiate then an unfair practice charge would always be timely even if we were to proceed into year 3, year 4 and/or year 5. All that would have to be done is to make a demand to negotiate and ergo a timely charge could be filed the next day. Under this theory our Act would become a shambles amidst stale claims.

Accordingly, the Hearing Examiner will recommend the granting of the Respondent's Motion for Partial Summary Judgment and the dismissal of the Charging Party's initial Unfair Practice Charge, alleging a violation of N.J.S.A. 34:13A-5.4(a)(5).

* * * *

Upon the foregoing, and upon the undisputed factual record in this case the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent's Motion for Partial Summary Judgment as to the initial Unfair Practice Charge is granted.

2. The Charging Party's initial Unfair Practice Charge, alleging a violation by the Respondent of N.J.S.A. 34:13A-5.4(a)(5), is dismissed.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

1. That the Respondent's Motion for Partial Summary Judgment as to the initial Unfair Practice Charge be granted.

2. That the Charging Party's initial Unfair Practice Charge, alleging a violation by the Respondent of N.J.S.A. 34:13A-5.4(a)(5), be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

Dated: February 25, 1987
Trenton, New Jersey