

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY VOCATIONAL
SCHOOL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-81-10

MARY ALICE O'HARA,

Charging Party.

NEW JERSEY EDUCATION ASSOCIATION -
NATIONAL EDUCATION ASSOCIATION
UNI-SERV OFFICE,

Respondent,

-and-

Docket No. CI-81-16

MARY ALICE O'HARA,

Charging Party.

SYNOPSIS

The Commission, reviewing a decision of the Director of Unfair Practices refusing to issue complaints upon two unfair practice charges, sustains the Director's decision as to the unfair practice charge (Docket No. CI-81-10) filed by Mary Alice O'Hara against her employer, Camden County Vocational School Board of Education. The Commission reverses the Director's decision with respect to the Charging Party's claim against her majority representative as it appears that the Charging Party did, in a timely fashion, respond to the Director's invitation to submit an amended unfair practice charge. The amended charge, through no fault of the Charging Party, did not come to the attention of the Director of Unfair Practices prior to his refusal to issue a complaint. Hence, the Commission remands Docket No. CI-81-16 to the Director of Unfair Practices for the issuance of a Complaint and Notice of Hearing.

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Appearances:

For the Charging Party, Parker, McCay & Criscuolo
(Stephen J. Mushinski, of Counsel)
For Respondent, Camden County Vocational School
Board of Education, Davis & Reberkenny
(Robert F. Blomquist, of Counsel)
For Respondent, NJEA-NEA, Uni-Serv Office,
Greenberg & Mellk
(William A. Fead, of Counsel)

DECISION AND ORDER

By decision dated February 17, 1981, (D.U.P. No. 81-12,
7 NJPER ____ (¶ _____ 1981), the Director of Unfair Practices
refused to issue complaints upon two unfair practice charges
filed by Mary Alice O'Hara ("Charging Party") against her public
employer, the Camden County Vocational School Board of Education

("Board") (Docket No. CI-81-10), and against the New Jersey Education Association-National Education Association Uni-Serv Office ("Association") (Docket No. CI-81-16). The Director based his decision on the lack of any allegation in either charge that the conduct complained of occurred within the six-month limitations period contained in N.J.S.A. 34:13A-5.4(c).

In his decision, the Director noted that he had written to the Charging Party on January 12, 1981, calling the Charging Party's attention to the timeliness problem and advising that unless the charges were amended to provide the time and places of the events alleged to constitute the unfair practice charges, no further processing could take place. The decision states that no response to the Director's January 12, 1981 letter was received.

However, it appears that the Charging Party did respond to the Director's letter and in fact amended its charge against the Association on January 16, 1981. No amendment, however, was made with respect to the Charging Party's allegations against the Board. This information came to light when the Charging Party, on March 13, 1981, filed an appeal from the Director's decision pursuant to N.J.A.C. 19:14-2.3. Attached to the appeal was, inter alia, a letter from counsel for the Charging Party to the Director of Unfair Practices, dated January 14, 1981 responding to the Director's January 12, 1981 letter and transmitting copies of an amended unfair practice charge against the Association. A subsequent check of the case file in this matter

reveals that the Commission did in fact receive the original of this letter on January 16, 1981 together with the amended unfair practice charge. The letter also indicates service upon counsel for the Board and the Association in this matter.

Apparently, through inadvertence, the Charging Party's response and amended charge never reached the attention of the Director and both charges were dismissed in D.U.P. No. 81-12.

The Board and the Association filed statements in opposition to the Charging Party's appeal and the Charging Party has filed a response thereto. The opposition to the appeal is based upon Charging Party's failure to file the appeal within the 10-day time limit contained in N.J.A.C. 19:14-2.3. The Charging Party did acknowledge that the appeal was not filed in the prescribed period but asserted that good cause existed for an extension of time and submitted a supporting affidavit and documentation.

Notwithstanding the Board and Association's objections, we will consider the Charging Party's appeal since, given the unusual circumstances of this case, it appears that there may have been no need for this appeal at all had the amended charge received on January 16, 1981 reached the Director's desk prior to his refusal to issue complaints.

Significantly, neither the Board nor the Association denies receipt of the amended unfair practice charge nor do they assert that they are in any way prejudiced by our consideration

of this appeal. Unless we relax the timeliness requirement to appeal the Director's decision in this case, it is possible an injustice may result. See N.J.A.C. 19:10-3.1(b).

Initially, we note that the amendment does not in any way relate to the charge filed against the Board (CI-81-10) and accordingly the portion of the Director's decision refusing to issue a complaint on CI-81-10 is sustained. Upon examination of the amended charge filed against the Association, it appears that there is an allegation that the conduct alleged to constitute the unfair practice (the alleged failure of Association officials and attorneys to pursue administrative and judicial remedies relating to alleged sex discrimination by the Board against the Charging Party), was not made known to the Charging Party until April 9, 1980, exactly six months prior to the initial filing of the charge. Accordingly, we conclude that the allegations of the charge may meet the requirements of N.J.S.A. 34:13A-5.4(c) as it appears that the April 9, 1980 event represents the date on which the aggrieved person alleges she was no longer prevented from filing a charge. See, Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978). We note, however, that our decision is not to be construed as any prejudgment on the accuracy of Charging Party's allegations, nor does it relieve the Charging Party from the burden of proving her case by a preponderance of the evidence. N.J.A.C. 19:14-6.8.

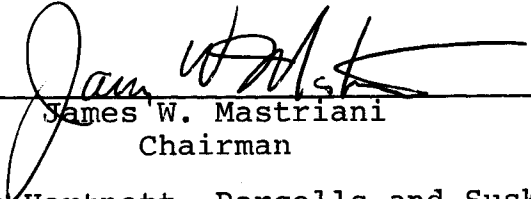
ORDER

IT IS HEREBY ORDERED that:

A. The refusal to issue a complaint in Docket No. CI-81-10 is affirmed.

B. The refusal to issue a Complaint in Docket No. CI-81-16 is reversed and the matter is remanded to the Director of Unfair Practices for the issuance of a Complaint and Notice of Hearing.^{1/}

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels and Suskin voted in favor of this decision. None opposed. Commissioners Hipp, Newbaker and Graves abstained.

DATED: Trenton, New Jersey
April 16, 1981
ISSUED: April 20, 1981

^{1/} We take administrative notice of the fact that there are already unfair practice proceedings pending before a Hearing Examiner of the Commission with respect to separate unfair practice charges filed by the Charging Party herein against the Association. The Director, in his discretion, may consolidate the instant charge with those on which complaints have previously issued if administrative convenience and efficiency would be served thereby.