

P.E.R.C. NO. 94-54

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 an appeal of D.U.P. No. 94-4, 19 NJPER 431 (¶24196 1993). In that decision, the Director of Unfair Practices refused to issue complaints based on two unfair practice charges filed by Kevin Miller against PBA Local 105. The Commission finds that the appeal is untimely.

P.E.R.C. NO. 94-54

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.

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 August 12, 1993, Kevin Miller filed an untimely appeal of D.U.P. No. 94-4, 19 NJPER 431 (¶24196 1993). In that decision, the Director of Unfair Practices refused to issue Complaints based on two unfair practice charges filed by Miller against PBA Local 105. The first charge alleges that the PBA breached its duty of fair representation when, at a union meeting, its president denied Miller's motion to have the PBA's membership vote on whether to appeal an interest arbitration award (CI-93-64). The second charge alleges that the PBA breached its duty of fair representation when, after entering into an agreement with the employer, it had an interest arbitrator issue the agreement as an award to circumvent the membership's right to have a contract ratification vote (CI-93-65).

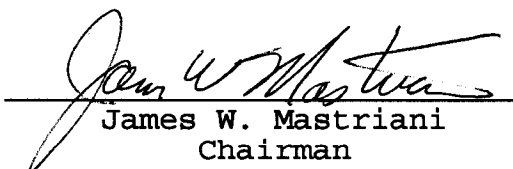
Miller asks that his appeal be considered timely filed because it was his understanding that an appeal was due within ten working days of the Director's decision, not ten calendar days. N.J.A.C. 19:14-3.1. The PBA urges that the appeal be dismissed as untimely.

The Director's decision issued on July 22, 1993 and Miller received it on July 26. Under N.J.A.C. 19:14-3.1, his appeal was due within ten days -- August 5. Even if that rule permitted Miller to file an appeal within ten working days, he would have had to do so by August 9. Miller's appeal was postmarked August 10 and received August 12. Under these circumstances, our rules require denying the appeal.

ORDER

The appeal of D.U.P. No. 94-4 is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: November 15, 1993
Trenton, New Jersey
ISSUED: November 16, 1993