

D.U.P. NO. 2000-7

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

WOODBINE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-98-440

WOODBINE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Woodbine Education Association against the Woodbine Board of Education. The Director found that the majority of the allegations in the charge were filed beyond the Act's six-month statute of limitations and must be dismissed. N.J.S.A. 34:13A-5.4(c). The Director will issue a Complaint on the sole timely allegation: that a child study team position was reduced to two days per week in retaliation against Dannelle Connolly because of her protected activity on behalf of the Association.

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Appearances:

For the Respondent,  
William J. Yanonis

For the Charging Party,  
Waltman, Reilly & Rogovoy  
(Ned P. Rogovoy, of counsel)

DECISION

On June 2, 1998, the Woodbine Education Association (WEA) and Danelle Connolly filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the Woodbine Board of Education (Board). The Charging Parties allege that the Board violated 5.4a(1) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).<sup>1/</sup>

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<sup>1/</sup> These sections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and, (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. In correspondence dated July 30, 1999, I advised the parties that I was inclined to issue a complaint on only a portion of the issues raised in the unfair practice charge and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the Complaint issuance standard has not been met with respect to several issues raised in the charge.

The Board and Association are parties to a series of collective negotiations agreements, the most recent of which is effective from July 1, 1997 through June 30, 2001. The Association's unit includes all teachers, nurses, school psychologist, learning disability specialist and the social worker. Danelle Connolly was employed as a child study team chairperson, social worker and guidance counselor since 1988. Connolly was a member of the Association's negotiations team during Spring 1997 negotiations.

The Board and Association were involved in negotiations for a successor agreement in the Spring 1997. A successor agreement was

signed on January 20, 1998. Count One of the charge alleges that on or about March 24, 1997, the chief school administrator requested that Connolly leave the Association's unit to become a member of the new administrators' unit. Two days later, a principal repeated the request that Connolly leave the Association and join the administrators' unit. On about March 26, 1997, during collective negotiations, the Board proposed reducing Connolly's workyear from 12 to 10 months. In June 1997, the Board allegedly extended Connolly's summer hours from 5 hours to 6 1/2 hours per day. Also in June 1997, the Board notified Connolly that the child study team chair was reduced from a 12-month to a 10-month position, effective June 1997. In September 1997, it allegedly pressed Connolly to take two months of leave. On March 18, 1998, the Board notified Connolly that the child study team chairperson position, a stipend position, would be abolished and she would be offered part-time employment at two days per week as part of a reorganization and reduction in force. The charge alleges that all of these actions were taken "as soon as Connolly refused to withdraw from the WEA."

In Count Two of the charge, Charging Parties allege that Connolly was never paid a \$1,018 stipend for her role as child study team chairperson for the 1997-98 school year. Since 1988, Connolly had received a stipend for every year she served as chairperson. The parties' agreement at Article IX, Schedule B, provides that "for school year 1997-98 the child study team chair is entitled to \$1108 extra service pay." Article III provides for a three step grievance

procedure ending in binding arbitration over: "grievances involving the meaning, application or interpretation of the terms of this Agreement." There is no indication in the charge as to whether the payment of the stipend was grieved and/or arbitrated.

Finally, in Count Three, the charge alleges that a school nurse's position was privatized in retaliation for having filed grievances in the 1997-98 school year. According to the Charging Party, Count Three is background, and not intended to constitute an independent charge. The charge states: "[the nurse] has an independent case, but this is also evidence of anti-union animus."

#### ANALYSIS

The majority of the allegations in this charge were filed beyond the Act's six-month statute of limitations and must be dismissed. N.J.S.A. 34:13A-5.4(c) states 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 day he was no longer so prevented.<sup>2/</sup>

The Legislature provided a six-month statute of limitations for unfair practice charges to prevent the litigation of stale claims. The Legislature included only one exception to the statute,

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<sup>2/</sup> Cases interpreting this subsection included Piscataway Township Teachers Association (Abbamont), D.U.P. No. 90-10, 16 NJPER 162 (¶21066 1990); N.J. Turnpike Employees Union Local 914, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977).

which is where a party is prevented from filing a charge. City of Margate, P.E.R.C. No. 94-40, 19 NJPER 572 (¶24270 1993). In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), the New Jersey Supreme Court stated:

The term "prevent" may in ordinary parlance connote that factors beyond the control of the complainant have disabled him from filing a timely complaint. Nevertheless, the fact that the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all relevant considerations bearing upon fairness of imposing the statute of limitations. Cf. Burnett v. N.Y. Cent. R.R., supra, 380 U.S. at 429, 85 S. Ct. at 1055, 13 L.Ed.2d at 946. The question for decision becomes whether, under the circumstances of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion. [Id. at 340.]

Here, there are no allegations that Connolly or the Association was prevented from timely filing this charge. The charge was filed June 2, 1998, and thus, the only actions which could be found to be timely are those falling between December 1, 1997 and June 2, 1998. The following allegations are untimely:<sup>3/</sup> the Board's statements in March 1997 regarding Connolly's unit status; its negotiations proposal concerning the reduction of the child study team chairperson to 10-months per year; the Board's reduction of the child study team chairperson from 12 to 10 months

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<sup>3/</sup> I make no finding that such Board actions constitute unfair practices. Assuming arguendo that they are, such allegations are time barred.

per year effective June 1997; the Board's alleged change in Connolly's summer hours during the summer 1997; its alleged pressuring of Connolly to take two months off in the summer of 1997 and the cutoff of the department chairperson's stipend at the beginning of the 1997-1998 school year.

Accordingly, the Commission's complaint issuance standard has not been met and these allegations are dismissed.<sup>4/</sup>

#### The Stipend Issue

No specific date was assigned to the Board's alleged refusal to pay Connolly the negotiated stipend for acting as child study team chair. A charge must have specific dates which attach to each allegation. In the absence of specific dates, we will not assume that a charge is timely. Here, the allegation refers generally to an entire school year. N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a Complaint where an unfair practice charge has not been filed within six (6) months of the occurrence of any unfair practice, unless the aggrieved person was prevented from filing the charge. See In re North Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (14026 1977). The charge fails to allege that the Board unilaterally discontinued Connolly's stipend within the six (6) month limitation requirement, thus, on its face, that allegation is out of time. Accordingly, this allegation is also dismissed.

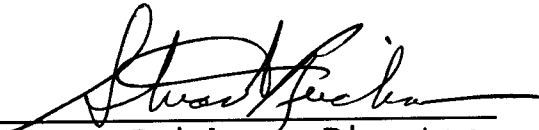
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<sup>4/</sup> N.J.A.C. 19:14-2.3.

The Reduction to 2 Days Per Week

The sole timely allegation is that on March 18, 1998, the Board allegedly notified Connolly that her child study team position would be reduced to two days per week as the result of a reduction in force. It is alleged that this action was discriminatory and taken for anti-union reasons. Accordingly, I will issue a Complaint and Notice of Hearing on this allegation only.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: August 19, 1999  
Trenton, New Jersey