

H.E. NO. 2015-9

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

In the Matter of

SOMERSET HILLS BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2014-200

SOMERSET HILLS EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission denies the Board of Education's Motion for Summary Judgment which alleged that the unfair practice charge was not timely filed. The charge was filed within six months of the alleged adverse employment action, the triggering date for purposes of determining the statute of limitations.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent
Adams, Gutierrez & Lattiboudere, LLC
(Adam S. Herman, of counsel)

For the Charging Party
Zazzali, Fagella, Nowak, Kleinbaum & Friedman
(Kathleen Naprstek Cerisano, of counsel)

**HEARING EXAMINER'S DECISION ON
MOTION FOR SUMMARY JUDGMENT**

On February 28, 2014, the Somerset Hills Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission alleging that the Somerset Hills Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The charge alleges that in or around September 6, 2013, the Board reassigned Rosemary Rizzuto ("Rizzuto") to a position,

which had duties outside of her certification, in retaliation for protected activity in violation of 5.4a(1), (2), (3) and (5).^{1/}

A Complaint and Notice of Hearing was issued on September 24, 2014, on 5.4a(1) and (3). The Director declined to issue a complaint on the 5.4a(2) and (5) allegations. The Board filed an Answer to the Complaint on October 9, 2014. The Board denies that any assignment or reassignment of Rizzuto was based upon unlawful motives.

On January 28, 2015, the Board filed a Motion for Summary Judgment asserting that the Association's charge is untimely and should be dismissed. Hearing dates scheduled for February 4 and 5, 2015, were adjourned by mutual agreement pending a determination on the Board's Motion for Summary Judgment. On March 4, 2015, the motion was assigned to me for consideration pursuant to N.J.A.C. 19:14-4.8(a).

^{1/} These provisions 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (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."

I have reviewed both parties' briefs and supporting exhibits. From those submissions, the following facts are not in dispute. Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Board is a regionalized public school district located in Bernardsville, New Jersey. The Board is comprised of three schools: one elementary school, one middle school, and one high school.

2. The Association is the exclusive and sole representative for all teaching staff members employed by the Board.

3. The Board and the Association are parties to a three year Collective Negotiations Agreement ("CNA") with an expiration date of June 30, 2014.

4. Rizzuto is a teacher at the Bernardsville Middle School and has been employed by the Board since 2002.

5. During the 2012-2013 school year, Rizzuto was assigned to teach mathematics for grades five through eight at the Bernardsville Middle School.

6. On or about June 3, 2013, Rizzuto was advised by the principal of the Bernardsville Middle School that her teaching assignment for the 2013-2014 school year was to teach a course in digital tools for grades five through eight.

7. On June 5, 2013, Rizzuto sent an email to Jennifer Shouffler ("Shouffler"), the Board's Assistant Superintendent of Curriculum and Instruction, to discuss her new assignment.

8. Rizzuto commenced her new assignment on September 6, 2013.

9. On February 28, 2014, the Association filed the within Charge.

ANALYSIS

Summary judgment will be granted if

it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant . . . is entitled to its requested relief as a matter of law. N.J.A.C. 19:14-4.8(e)

In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court enunciated the standard to determine whether a genuine issue of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540. "While 'genuine' issues of material fact preclude the granting of summary judgment, . . . those that are 'of an insubstantial nature' do not." Id. at 530. If the disputed issue of fact can

be resolved in only one way, it is not a "genuine issue" of material fact. Id. at 540.

Nevertheless, a motion for summary judgment should be granted cautiously. The procedure should not be used as a substitute for plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981) and N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 594 (¶19297 1988).

The Act requires that an unfair practice charge be filed within six months of the date the unfair practice occurred. N.J.S.A. 34:13A-5.4c states, in relevant part 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-month period shall be computed from the day he was no longer so prevented.

The statute of limitations period begins to run from the date of some particular action, such as the date the alleged unfair practice occurred, provided the party affected is aware of the action. The date of the action could be the date a particular event is announced and/or the date the action is implemented. The action date is known as the "operative date," and the six-month limitations period runs from that date. Therefore, a charge must generally be filed within six months of the operative date to be timely, unless for some reason the limitation period was tolled or the charging party demonstrates

that it was prevented from filing the charge prior to the expiration of the period. Township of Maplewood and PBA, D.U.P. No. 2007-2, 32 NJPER 296 (¶123 2006).

The benchmark for evaluating statute of limitations issues was set forth in Kaczmarek v. New Jersey Turnpike Authority, 77 N.J. 323 (1978). The Supreme Court held that the statute of limitations was intended to encourage the litigants to promptly adjudicate disputes and to prevent litigation of stale claims; however, it did not apply the statute strictly without considering the individual circumstances of each case. Id. at 337-338.

In this case there is no claim that the Association was prevented from filing a charge. The issue is whether the operative event triggering the commencement of the six-month limitations period is the notification to Rizzuto of her reassignment on June 3, 2013, or whether it was Rizzuto's actual reassignment that took effect on September 6, 2013. The Commission has long held that the statute of limitations may run from the date a change is announced or it is implemented. Jamesburg Bd. of Ed., P.E.R.C. No. 80-56, 5 NJPER 496 (¶10253 1979); Warren Hills Regional Bd. of Ed., P.E.R.C. No. 78-69, 4 NJPER 188 (¶4094 1978). The Commission has more recently reiterated that the triggering date for purposes of the statute of limitations is the implementation of an adverse employment

action, not just notice of such action. Office of the Public Defender and CWA, P.E.R.C. No. 29009-32, 34 NJPER 439 (¶137 2008).

I find the appropriate operative date in this matter is September 6, 2013, the date Rizzuto began her new assignment. Although notice of Rizzuto's new assignment was given on June 3, 2013, September 6, 2013 is the date that the new assignment commenced, which was the actual date of alleged adverse employment action.

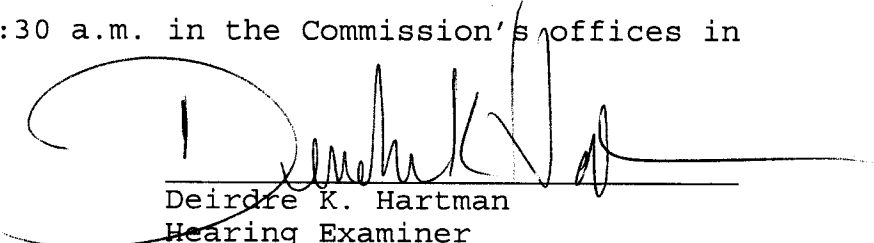
Accordingly, I find that September 6, 2013 is the operative date for purposes of calculating the statute of limitation in this case and hold that the Association's unfair practice charge is timely filed.

CONCLUSION

Accordingly, the Board's Motion for Summary Judgment is denied.

ORDER

I hereby ORDER that a plenary hearing commence in this matter on May 5, 2015 at 9:30 a.m. in the Commission's offices in Trenton, New Jersey.



Deirdre K. Hartman
Hearing Examiner

DATED: April 1, 2015
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-4.8(f), this ruling may only be appealed to the Commission by special permission in accordance with N.J.A.C. 19:14-4.6.

Any request for special permission to appeal is due by April 9, 2015.