

D.U.P. NO. 2020-13

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

In the Matter of

EAST ORANGE SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CI-2020-018

SHARONDA ALLEN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices (Director) dismisses an unfair practice charge filed by Sharonda Allen as untimely. Allen filed an unfair practice charge against the East Orange School District alleging that on June 11, 2019, the District violated sections 5.4a(1), (3), (4) and (7) of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when the Board, on the recommendation of Superintendent Dr. Kevin West, certified tenure charges against her. Allen filed an unfair practice charge challenging the District's action on January 6, 2020. The Director found that the charge was untimely since it was not filed within the six month statute of limitations under the Act and since Allen was not prevented from filing the charge within that statute of limitations period.

D.U.P. NO. 2020-13

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

In the Matter of

EAST ORANGE SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CI-2020-018

SHARONDA ALLEN,

Charging Party.

Appearances:

For the Respondent,
DeCotiis, Fitzpatrick, Cole and Giblin, LLP, attorneys
(George G. Frino, of counsel)

For the Charging Party,
(Sharonda Allen, pro se)

REFUSAL TO ISSUE COMPLAINT

On January 6, 2020, Sharonda Allen (Allen) filed an unfair practice charge against the East Orange School District (District or Board). The charge alleges that on June 11, 2019, the District violated sections 5.4a(1), (3), (4), and (7)^{1/} of the

^{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. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (7) Violating any of the rules and
(continued...)

New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it certified tenure charges against Allen in retaliation for her refusal to withdraw a Petition for Contested Transfer Determination that she filed with the Commission on March 7, 2019 (Docket. No. TO-2019-007).

The District did not file a formal position statement. Counsel for the District discussed this matter with a Commission staff agent on April 28, 2020. The District denies the allegations in the charge and also asserts that the charge is untimely. The Commission has authority to issue a complaint where it appears that a 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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

I find the following facts.

Allen was a tenured teacher and had been employed by the District since 2003. She worked as a social studies teacher at

1/ (...continued)
regulations established by the commission.”

Campus High School (CHS) since the 2011-12 school year. On December 5, 2018, Allen had a verbal altercation with a ninth grade student at a school assembly, the details of which are not relevant to this charge.

On February 1, 2019, after concluding an investigation of the incident, Dr. Kevin West, District Superintendent (West), presented Allen with a letter informing her that she was going to be suspended for two (2) weeks and transferred to a different school.

By letter dated February 5, 2019, Marissa McKenzie, Director of the District's Division of Labor Relations & Employment Services, informed Allen that effective February 20, she would be ". . . reassigned from Social Studies/History Teacher at East Orange Campus High School to Social Studies Teacher (Grades 6-8) at Patrick F. Healy Middle School." Allen reported to work at the middle school on February 20th as instructed, but took an extended medical leave beginning on March 1, 2019.

On March 7, 2019, the East Orange Education Association (Association) filed a Petitioned for Contested Transfer Determination on Allen's behalf with the Commission (Docket No. TO-2019-007). By letter dated March 18, 2019, Counsel for the Board notified Counsel for the Association that the District was currently investigating allegations made against Allen for conduct occurring after she served her suspension, and that the

outcome of the investigation could warrant the filing of tenure charges against her.

Allen alleges that shortly after April 4, 2019, West sent a memo to Allen stating that if she withdrew her petition for a contested transfer determination, the Board would not file tenure charges against her.^{2/} On May 9, Allen was served with a copy of the tenure charges. On June 11, 2019, the Board certified the charges against Allen and she was so notified on or about the same date.

On September 26, 2019, the Commission issued a decision on the contested transfer petition, finding that . . . (P.E.R.C. No. 2020-13). The decision ordered the Board to return Allen to her position at CHS.^{3/}

On December 27, 2019, an Arbitrator designated pursuant to N.J.S.A., 18A:6-16, as amended by *P.L. 2012, c. 26* and *P.L. 2015, c. 109* (TEACHNJ), upheld Allen's termination.

The assigned arbitrator's decision reveals that the tenure charges brought against Allen were based on circumstances unrelated to the contested transfer matter.

ANALYSIS

N.J.S.A. 34:13A-5.4(c) provides that:

2/ Allen asserts that she has misplaced this memo and is unable to provide the Commission with a copy.

3/ The Board did not return Allen back to CHS in light of the pending tenure charges.

[no] complaint shall issue based on any unfair practice charge 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.

Allen's January 6, 2020 charge alleges that tenure charges were unlawfully filed against her on June 11, 2019. She has not set forth any fact(s) or reason(s) why she was prevented from filing an unfair practice charge within the statutory period.

In determining whether a party was "prevented" from filing an earlier charge, the Commission conscientiously considers the circumstances of each case and assesses the Legislature's objectives in prescribing the time limits as to a particular claim. The word "prevent" ordinarily connotes factors beyond a complainant's control disabling him or her from filing a timely charge, but it includes all relevant considerations bearing upon the fairness of imposing the statute of limitations. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1978) (case transferred to Commission where employee filed court action within six months of alleged unfair practice). Relevant considerations include whether a charging party sought timely relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establishing an unfair practice; when a charging party knew or should have known the basis for its claim; and how long a time has passed between the

contested action and the charge. Sussex Cty. Com. Col., P.E.R.C. No. 2009-55, 35 NJPER 131 (¶46 2009); State of New Jersey, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003).

Allen's charge is untimely. No facts suggest that she sought timely relief for tenure charge in another forum; none indicated that the Board concealed the circumstances of its issuance of tenure charges against Allen on May 9, 2019, together with service of them upon her; Allen implicitly acknowledges that the District, more specifically, West, repudiated or broke his alleged promise to her on May 9th, and more than six months passed before she filed this charge (using the June 11, 2019 certification of tenure charge date).

Accordingly, I find that Allen's unfair practice charge is untimely.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: May 15, 2020
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3.**

Any appeal is due by May 26, 2020.