

D.U.P. NO. 93-16

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

In the Matter of

DENNIS TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

DENNIS TOWNSHIP EDUCATION ASSOCIATION,

Docket Nos. CI-92-100
CI-92-101

Respondent,

-and-

SHARON COX,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses charges filed by Sharon Cox against the Dennis Township Board of Education and the Dennis Township Education Association. Both charges were filed outside the six-month statute of limitations pursuant to N.J.S.A. 34:13A-5.4(c).

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Appearances:

For the Respondent Board of Education
Cassetta, Taylor & Whalen, Consultants
(Bruce Taylor, consultant)

For the Respondent Education Association
Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

For the Charging Party
Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly, attorneys
(Gerald R. Spall, of counsel)

REFUSAL TO ISSUE COMPLAINT

On May 15, 1992, Sharon Cox filed unfair practice charges with the Public Employment Relations Commission against the Dennis Township Education Association and the Dennis Township Board of Education.

Cox alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,

specifically subsections 5.4(b)(1), (3) and (4)^{1/} when it refused to assist her in filing a grievance against the Board.

Additionally, she asserts that she was threatened by Association shop stewards sometime in Fall 1991, for pursuing her grievance.

The Association, in response to the charge, asserts that the charge is untimely. Further, the Association claims that it was responsive to Cox's requests for review of the problem and that she was not threatened by Association shop stewards.

Cox alleges that the Board violated subsections 5.4(a)(1), (3) and (7)^{2/} of the Act when, in October 1987, the Board implemented a policy which prohibited employees residing outside of Dennis Township from taking their school buses home. Additionally, Cox asserts that she received a layoff notice on April 27, 1992, because she exercised her protected rights under the Act to file a grievance.

1/ These subsections prohibit employee organizations, 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) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

2/ These subsections 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. (7) Violating any of the rules and regulations established by the commission."

The Board asserts that the charge is untimely, the policy was a managerial prerogative and that the layoff notice was sent to all Board employees due to the defeat of a school budget referendum. The Board contends that the layoff notice was unrelated to any protected activities in which Cox was engaged.

In 1987, the Board announced that school bus drivers residing outside Dennis Township could no longer take their buses home at night or between runs. This policy affected three bus drivers. The Board did not negotiate with the Association concerning the implementation or the impact of this policy on employees; however, the Board and the Association may have discussed this issue. When the policy was implemented, the Association did not formally challenge it.

For a period during 1988, Cox was permitted to take her bus home because a pupil on her route lived near Cox's home. In 1989, the Board again prohibited Cox from taking her bus home.

Cox asserts that although she has tried to address the bus policy since 1987 through discussions with Association and Board representatives, the policy has remained unchanged. She was told that the change was a Board policy and there was nothing that could be done about it. She also alleges that at a meeting in Fall 1991, two Association shop stewards threatened her about continuing with the grievance. However, at Cox's request, the Association provided a legal opinion to Cox dated October 31, 1991, about what, if anything, could be done concerning the bus policy. On March 12,

1992, Cox filed an individual grievance on this issue. On April 21, 1992, the Board denied the grievance because it was untimely. Cox is pursuing the grievance to arbitration.

Cox also asserts that the April 27, 1992 layoff notice was intended to pressure her to stop challenging the bus policy. It appears that all Board employees received this notice because a budget referendum was defeated. However, the layoffs have been rescinded and all employees were renewed for the 1992-93 school year.

The Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice unless a charging party has been prevented from filing an otherwise timely charge. N.J.S.A. 34:13A-5.4(c); City of Margate, P.E.R.C. No. 93-1, 18 NJPER 391 (¶23175 1992); UMDNJ, D.U.P. No. 92-22, 18 NJPER 321 (¶23137 1992); City of Bayonne, D.U.P. No. 89-8, 15 NJPER 102 (¶20048 1989); Bor. of Sayreville, D.U.P. No. 86-10, 12 NJPER 275 (¶17112 1986); Tp. of Ocean, D.U.P. No. 85-6, 10 NJPER 542 (¶15252 1984); State of N.J. and Council of N.J. State College Locals NJSFT, P.E.R.C. No. 77-14, 2 NJPER 308 (1976), aff'd 153 N.J. Super. 91 (App. Div. 1977).

The only timely action alleged in either charge relates to the April 27, 1992 layoff notice Cox received advising her of a possible non-renewal of her employment contract. However, all employees received the same notice due to the defeat of a budget

referendum. Cox and the other laid-off employees were reinstated after the Board reviewed and adjusted its budget for the 1992-93 school year. Because Cox received the layoff notice along with all other employees and because the layoff notices were rescinded, this allegation, without more, does not state a violation of the Act. See Union Cty. Coll., P.E.R.C. No. 88-136, 14 NJPER 453 (¶19188 1988); Hunterdon Cty., D.U.P. No. 85-7, 10 NJPER 544 (¶15253 1984).

The remaining allegations in both charges are untimely. The unilateral change from which the charges stem -- the prohibition against taking buses out of the Township -- occurred sometime in 1987. While the Board let her take the bus home for a period in 1988, it again stopped her from taking her bus home in 1989. It has been at least three years since the bus policy was implemented. Further, Cox never established when the meeting occurred in which she alleges she was threatened by shop stewards for pursuing her grievance. Finally, her attempts to internally resolve this matter are not reasons to toll the statute of limitations. Margate; Bayonne.

Furthermore, although the policy "continues," this case should not be considered a continuing violation exception to the six-month statute of limitations. The charges allege that a unilateral change was made; that event occurred outside the six-month statute of limitations period. See Salem Cty., P.E.R.C. No. 87-159, 13 NJPER 584 (¶18216 1987); City of Jersey City, D.U.P. No. 91-27, 17 NJPER 278 (¶22125 1991).

Based upon the foregoing, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations contained in either charge. Accordingly, these charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: December 8, 1992
Trenton, New Jersey