

P.E.R.C. NO. 2009-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY COMMUNITY COLLEGE,

Respondent,

-and-

Docket No. CI-2009-001

SUSSEX COUNTY COMMUNITY COLLEGE
ADJUNCT FACULTY FEDERATION,

Respondent,

-and-

JOAN STEPHENSON,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices' refusal to issue a complaint based on an unfair practice charge filed by Joan Stephenson against Sussex County Community College and the Sussex County Community College Adjunct Faculty Federation. The Director found that the allegations in the unfair practice charge were outside the six-month statute of limitations for unfair practice charges. Stephenson argued on appeal that her charge should be accepted because she filed a timely Superior Court complaint against the respondents. The Commission holds that Stephenson did not file a timely charge in the wrong forum since she filed her Superior Court lawsuit more than six months after the alleged unfair practice.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Charging Party, Joan Stephenson, pro se.

DECISION

Joan Stephenson has appealed the decision of the Director of Unfair Practices refusing to issue a Complaint based on her unfair practice charge filed against Sussex County Community College and the Sussex County Community College Adjunct Faculty Federation. D.U.P. No. 2009-3, ___ NJPER ___ (¶ ___ 2008).^{1/} The College and Federation have not opposed the appeal. We agree

^{1/} The appeal was timely filed on November 14, 2008, but the entire facsimile was not received by the Commission. When the error was discovered, Stephenson re-filed her appeal on January 30, 2009.

with the Director that the allegations are untimely and deny the appeal.^{2/}

Stephenson's charge and documents submitted to the Director reveal the following factual allegations. Between November 2002 and May 2003, Stephenson met with her union representative five times to discuss problems she was having with the College. Stephenson requested a copy of the collective negotiations agreement at the first meeting and was told that copies needed to be made. In May 2003, Stephenson's individual employment contract was not renewed by the College^{3/}. She then requested that the Federation file a grievance on her behalf. In October 2003, she made a second request to the Federation after she allegedly discovered a conspiracy against her. On December 4, 2003, she filed an individual grievance that was rejected by the College's human resources director.

On October 21, 2004, Stephenson filed a Superior Court lawsuit against the College and Federation alleging, among other claims, that the Federation breached its duty of fair representation when it refused to file her grievance and failed to provide her with a copy of the collective negotiations agreement despite her numerous requests for one. Stephenson

^{2/} We deny Stephenson's request for oral argument.

^{3/} We note that she has not given precise dates, but has filled out her charge stating the months that events happened.

incorrectly filed her breach of the duty of fair representation claims against the National Federation of Teachers. The lawsuit against the National was dismissed without prejudice on January 28, 2005. At some point that is not specified in the documents, Stephenson re-filed her lawsuit to name the Sussex County Community College Adjunct Faculty Federation as a defendant. The lawsuit was dismissed against all parties on the merits by way of a summary judgment motion in June 2008.

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

no complaint shall issue based on any unfair practice charge occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six-month period shall be computed from the day he was no longer so prevented.

Stephenson's August 25, 2008 unfair practice charge alleges that the College unlawfully terminated her in May 2003. It also alleges that the Federation did not fairly represent her because it did not file a grievance regarding her problems in November 2002 and when it did not challenge her termination in May 2003. Stephenson alleges that she was prevented from filing a charge because she was involved in a lawsuit against the respondents and only became aware of the Commission's jurisdiction in April 2008 when she received a copy of the collective negotiations agreement, which she had first requested from the Federation in

November 2002.^{4/} Stephenson argues that she did not sit on her rights because she was involved in court litigation and should be permitted to proceed with her charge under 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).

In determining whether a party was "prevented" from filing an earlier charge, the Commission must conscientiously consider the circumstances of each case and assess 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. 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. State of New Jersey, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003).

^{4/} Elsewhere in her charge, Stephenson states that she spoke to a Commission representative in 2006.

Stephenson was aware of her duty of fair representation claims against the Federation when it allegedly failed to give her a copy of the contract in November 2002 and refused to file her grievance in October 2003. She was aware of her claims against the College at the time of her termination in May 2003 and again when it allegedly failed to accept her individual grievance on December 4, 2003. Giving Stephenson every benefit of the doubt, in order for us to find that she filed a timely charge in the wrong forum, she would have had to have filed her Superior Court lawsuit within six months of December 4, 2003, which is June 4, 2004. Her lawsuit was filed over three months later on October 21, 2004. She has not provided any further evidence to establish that she was prevented from filing a timely charge.

ORDER

The Order refusing to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Colligan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Branigan was not present.

ISSUED: April 30, 2009

Trenton, New Jersey