

D.U.P. NO. 2002-7

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

In the Matter of

WILLINGBORO TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2000-242

WILLINGBORO EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices determines to issue a complaint on allegations that an employee was involuntarily transferred as a result of her grievances and other protected activities. However, the Director dismisses an amendment to the charge alleging the employee was then constructively discharged. The amendment was filed ten months after the discharge, and there was no showing that Charging Party was prevented from filing the amended charge within the six-month statute of limitations.

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Appearances:

For the Respondent,
Parker, McCay & Criscuolo, attorneys
(Joan Kane Josephson, of counsel)

For the Charging Party,
Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys
(Richard A. Friedman, of counsel)

DECISION

On February 17, 2000, the Willingboro Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission. An amended unfair practice charge was also filed on January 12, 2001. The Association charges that the Willingboro Board of Education violated N.J.S.A. 34:13A-5.4a(1) and (3)^{1/} by transferring employee Susan Perrotta to a less

^{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.

desirable work location on August 24, 1999 and constructively discharging her in March 2000, all in retaliation for Perrotta having filed grievances and engaging in other protected activity.

The Board denies violating the Act and asserts that both the original charge and the amendment are untimely. It asserts that Perrotta voluntarily initiated both her transfer to another school and her resignation from the district.

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. Based on the following, I find that amended charge does not meet the complaint issuance standard.

The Association's initial charge was filed February 17, 2000. It alleges that Perrotta was transferred to the Board's Adult School, a less desirable work location, after she pursued a grievances to arbitration and engaged in other protected activities. In its amended charge, the Association alleges that, following the transfer and harassment by certain supervisors, Perrotta was forced to resign her position with the district on approximately March 15, 2000. The Association argues that Perrotta's resignation amounted to a constructive discharge in retaliation for her protected activities. However, the amendment

alleging the discharge was not filed until January 12, 2001 - some ten months after Perrotta's resignation.


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 months of the occurrence of any unfair practice, unless the aggrieved person was prevented from filing the charge. See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (14026 1977). Here, the amendment alleging Perrotta's constructive discharge was not filed within six months of its occurrence in March 2000. Thus, on its face, this allegation is out of time. Accordingly, no complaint may issue on this allegation.

The allegations in the original charge appear to be within the six-month statute of limitations. I will issue a Complaint based upon the allegations in the original charge. The additional allegations in the January 12 amendment are dismissed.

ORDER

The allegations set forth in the January 12, 2001 amended unfair practice charge are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: November 29, 2001
Trenton, New Jersey