

D.U.P. No. 2007-9

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

In the Matter of

MONTCLAIR BOARD OF EDUCATION,

Respondent/Public Employer,

-and-

MONTCLAIR EDUCATION ASSOCIATION,

Docket No. CI-2006-036

Respondent/Majority Representative,

-and-

TAB COX,

Charging Party.

SYNOPSIS

The Director declines to issue a complaint on the allegations of an unfair practice charge filed by a teacher's assistant against his employer and his majority representative. The allegations in the charge were beyond the six-month statute of limitations and, thus, were untimely. None of the alleged facts suggested, nor did the Charging Party allege that he was prevented from filing the charge within the limitations period. Even if the allegations were timely, the Director found that the allegations do not concern activity protected by the Act, and are not within the Commission's jurisdiction.

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Appearances:

For the Respondent/Public Employer,
Genova, Burns and Vernoia, attorneys
(Yaacov Brisman, of counsel)

For the Respondent/Majority Representative,
Bucceri and Pincus, attorneys
(Gregory T. Syrek, of counsel)

For the Charging Party,
Tab Cox, pro se

REFUSAL TO ISSUE COMPLAINT

On February 23 and April 4, 2006, Tab Cox, a teacher's assistant employed by the Montclair Board of Education (Board) and a member of a negotiations unit represented by the Montclair Education Association (MEA), filed an unfair practice charge and an amended charge along with several attachments against the Board. Although Cox did not cite the MEA as a respondent, his

narrative of events alleges in part that the MEA failed to represent him. The respondents' conduct allegedly violates the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Cox did not allege specific subsections of N.J.S.A. 34:13A-5.4. On March 21, 2006, we requested that he identify the specific subsections of the Act he claims were violated. His response, filed as an amendment to the charge on April 4, 2006, did not contain any of the subsections of N.J.S.A. 34:13A-5.4 "Unfair Practices."

Cox alleges that in school year 2004-2005 and earlier, the Board and MEA, through certain supervisory employees and MEA representatives, conspired to have him frequently reassigned and transferred; assigned him to work with "difficult" parents and students, thereby placing him in harm's way; and neglected or refused to address his complaints. Cox also alleges that the Board retaliated against him for a workers' compensation lawsuit he filed in 2001, which was settled in 2004.

On May 5 and June 12, 2006, respectively, the MEA and Board filed letters denying the charges and requesting that the charge and amended charge be dismissed for failure to cite the required unfair practice subsections; failure to allege unfair practices within the meaning of the Act; and failure to file a timely charge. Both respondents sent copies of their letters to Cox. On October 10, 2006, Cox filed a letter together with several

attachments, concerning allegations of prior complaints in May and July 2005 and September 12, 2005.

Cox alleges six separate matters:

1. In 2001-2002, he received unwarranted negative remarks in his evaluation. He also alleges disparate treatment -- that he alone was told to call his supervisor at home if he planned to take a personal, sick or vacation day -- whereas other assistants could call the general-use phone number to report leave days.
2. In school year 2003-2004, while assigned to the Montclair High School, Mr. Cox was assigned "excessive" amounts of work and more clerical work than other teacher's assistants.
3. On August 23, 2004, the Board reassigned Mr. Cox from Montclair High School to the Watchung School to work with a special needs student. In October 2004, he and two resource teachers disagreed about the assignment. Mr. Cox complained to the Principal and was immediately reassigned.
4. In December 2004, the Board transferred Cox to the Glenfield School, where he remained until June 2005.
5. In May 2005, the Board notified Cox he was not recommended for renewal. Cox filed a response, and on an undisclosed date between May 5, 2005 and July 1, 2005, he was notified that his employment was renewed.
6. On September 5, 2005, in the presence of the entire staff, the acting principal of the Glenfield school welcomed him back to school. Mr. Cox alleges that on the same day, the vice principal and director of the child study team challenged his return to work, stating their belief that there was no position for him. (These remarks, however, appear to have had no consequence. From September 5, 2005, Mr. Cox has been steadily employed by the Board without interruption. His position requires assignment to specific special needs students, in the buildings where they attend school).

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. I find that the complaint issuance standard has not been met.

ANALYSIS

The Act provides a six-month statute of limitations for unfair practice charges to prevent the litigation of stale claims. N.J.S.A. 34:13A-5.4(c) states:

. . . no complaint shall issue based upon any unfair practice 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.

The statute of limitations period normally begins to run from the date(s) the alleged unfair practice occurred, provided the affected person is aware of the action. These dates are known as the "operative dates," and the six-month limitations period runs from these dates. To be timely, a charge must be filed within six months of the operative date(s). Two exceptions to the timeliness requirements are: (1) tolling of the limitations period, and (2) a demonstration that the charging party was "prevented" from filing the charge prior to the expiration of the period. Tolling the limitations period means extending the limitations period for equitable reasons other than having been prevented from filing.

The standard for evaluating statute of limitations issues was set forth in Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978). The Supreme Court explained that the statute of limitations was intended to prevent litigation of stale claims, but cautioned that it would look to equitable considerations in deciding whether a charging party slept on its rights.

Cox filed the charge on February 23, 2006. No alleged conduct occurred within six months before that date, *i.e.*, on or after August 23, 2005. Conduct occurring before August 23, 2005, falls beyond the statutory limit. All but one allegation concerning the Board's and MEA's conduct occurred before August 23, 2005. Cox has not cited any facts suggesting that he was prevented from filing his charge within the Act's six month statute of limitations.

The attachments filed by Mr. Cox on October 3, 2006, including a copy of a letter he sent on September 12, 2005, do not constitute allegations of unfair practice(s). Even if the attachments are considered part of the charge, the September 12 letter does not indicate facts to support any unfair practice, even if its contents are deemed true.

I also find that the allegations do not fall within the Act's jurisdiction. For example, Cox does not allege the Board's retaliatory conduct is related to any activity protected by the Act. He alleges that retaliation was related to his filing of a

worker's compensation claim in 2001, which was eventually settled. The filing of a worker's compensation claim is not conduct protected under our Act. Mt. Olive Tp., D.U.P. No. 85-11, 10 NJPER 603 (¶15281 1984), and events from 2001 are out of time. The charges against the MEA are not specific enough to indicate an alleged violation of the duty of fair representation.^{1/}

The Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.1, 2.2 and 2.3.


Arnold H. Zudick
Director

DATED: January 26, 2007
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 February 8, 2007.

^{1/} Accord, Newark Library and IUOE Local 68 (Herbert Shaw), D.U.P. No. 2005-6, 30 NJPER 494 (¶168 2004) (charge dismissed where allegations did not fall within Commission's jurisdiction, and for lack of specificity of allegations).