

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

In the Matter of

NEWARK STATE OPERATED SCHOOL DISTRICT,  
and NEWARK TEACHERS' UNION, LOCAL 481, AFT-CIO

Respondents,

-and-

Docket No. CI-2013-011

CHRISTINE GILLESPIE,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices (Director) dismisses an unfair practice charge filed by Christine Gillespie as untimely. Gillespie filed an unfair practice charge against the Newark State Operated School District and the Newark Teachers' Union, Local 481, AFT-CIO (NTU) alleging that on or about February 19, 2003, the District and the NTU violated sections 5.4(a)(1), (2), (5) and (7) and 5.4(b)(1) of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when the then District Superintendent certified tenure charges against Gillespie and the NTU failed to challenge the action. Gillespie first challenged the superintendent's action by filing a petition with the New Jersey Department of Education on April 4, 2006, more than three years after she became aware of the superintendent's decision to certify the tenure charges on February 20, 2003. 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 Gillespie was not prevented from filing the charge within that statute of limitations period.

D.U.P. NO. 2014-3

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

In the Matter of

NEWARK STATE OPERATED SCHOOL DISTRICT,  
and NEWARK TEACHERS' UNION, LOCAL 481, AFT-CIO

Respondents,

-and-

Docket No. CI-2013-011

CHRISTINE GILLESPIE,

Charging Party.

Appearances:

For the Newark State Operated School District  
Adams, Gutierrez & Lattiboudere, LLC  
(Cherie L. Adams, of Counsel)

For the Newark Teachers' Union, Local 481  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman  
(Colin M. Lynch, of Counsel)

For the Charging Party  
Christine Gillespie, pro se

**REFUSAL TO ISSUE COMPLAINT**

On August 30, 2012, October 2, 2012 and June 4, 2013,  
Christine Gillespie (Gillespie) filed an unfair practice charge  
and amended charges against the Newark State Operated School  
District (District) and the Newark Teachers Union Local 481, AFT,  
AFL-CIO (NTU). The charge, as amended, alleges that on or about  
February 19, 2003, the District and the NTU violated sections

5.4(a)(1), (2), (5) and (7)<sup>1/</sup> and 5.4(b)(1)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when the then District Superintendent certified tenure charges against Gillespie and the NTU failed to challenge the action.

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-5.4(c); 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). On August 29, 2013, I issued a letter to the parties advising them of my tentative findings and conclusions and inviting responses. No response was filed. Our review of the submissions reveals the following facts.

---

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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

2/ These provisions 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."

Gillespie is a tenured teacher in the District. She began her employment with the District on September 8, 1966 and worked in the District until September, 1998. In or around September 1998, Gillespie did not return to work for the alleged reason that she had sustained a work-related injury and was unable to return to work. She filed a workers compensation claim, which was dismissed on December 5, 2008. The District, believing she could return to work, repeatedly communicated with Gillespie, requesting that she return to work. Gillespie never returned.

On December 31, 2002, the District served tenure charges and supporting evidence on Gillespie contending that she was absent without leave and had abandoned her position. Gillespie filed a lengthy response to the tenure charges in January 2003. On or about February 19, 2003, the then-District Superintendent, Marion Bolden, certified the tenure charges, pursuant to N.J.A.C. 6A:3-5.1(b)(4) (certification regulation). The certification regulation allows the superintendent of a state operated school district, instead of the local board of education, to certify that probable cause exists to credit evidence in support of tenure charges and to certify that such charges are sufficient to warrant a tenured employee's dismissal or reduction in salary.

On February 20, 2003, the District issued a Personnel Action Notice informing Gillespie of Bolden's decision to certify the tenure charges against her. On February 27, 2003, the New Jersey

Department of Education (DOE) received the certified tenure charges and the case was transmitted to the Office of Administrative Law (OAL), where it was assigned to Administrative Law Judge Jeffrey A. Gerson (ALJ Gerson) for disposition.

On January 26, 2004, ALJ Gerson placed Gillespie's tenure charge case on the inactive list pending adjudication of her workers compensation claim. Two years and three months later, on April 4, 2006, Gillespie filed a petition with the DOE challenging the legality of the certification regulation. Specifically, Gillespie contended that the certification regulation must be amended to allow only the local board of education in a state operated school district to certify tenure charges. Moreover, Gillespie asserted the DOE did not have jurisdiction to adopt a regulation that would allow a school superintendent to certify tenure charges.

On July 3, 2006, the DOE determined no amendment to the certification regulation was warranted and dismissed Gillespie's petition. Gillespie appealed the DOE decision and argued the certification regulation denies tenured teachers in state operated school districts due process of law and is inconsistent with N.J.S.A. 18A:6-11, which requires boards of education to make probable cause determinations. In a comprehensive opinion, the Appellate Division of the New Jersey Superior Court affirmed the DOE's decision and dismissed all of Gillespie's claims. See

Gillespie v. NJDOE et al., 397 N.J.Super. 545 (App. Div. 2008). Gillespie filed a petition for certification seeking to appeal the Appellate Division's decision, which was denied by the New Jersey Supreme Court on April 17, 2008. Gillespie v. NJDOE et al., 195 N.J. 420 (2008).

On February 26, 2009, Gillespie filed a complaint with the United States District Court of New Jersey alleging federal constitutional and statutory violations based upon the District Superintendent's certification of tenure charges. The District Court dismissed the complaint on March 5, 2010. See Gillespie v. Janey et al., 2010 U.S. Dist. LEXIS 20041. Gillespie appealed the dismissal to the United States Third Circuit Court of Appeals. The Third Circuit affirmed the District Court's dismissal on August 16, 2011. Gillespie v. Janey et al., 2011 U.S.App. LEXIS 17062 (3<sup>rd</sup> Cir. 2011). On May 4 and November 5, 2012, Gillespie filed and then withdrew a complaint with the Law Division of the New Jersey Superior Court.<sup>3/</sup> The complaint named the District and several other District employees and representatives involved in the certification of tenures against her.

It appears that tenure charges preferred against Gillespie remain on the inactive list and are pending before the OAL.

---

<sup>3/</sup> Gillespie apparently filed a Notice of Voluntary Dismissal of the Law Division complaint after the Respondent sought removal of the complaint to the federal district court.

ANALYSIS

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

[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.

Gillespie's August 30, 2012 charge and subsequent amendments allege that tenure charges were unlawfully filed against her in February 2003. It also alleges that the NTU, her majority representative, unlawfully failed to challenge that action. She has not set forth any reasons why she was prevented from filing a timely unfair practice charge.

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).

Gillespie's charge is untimely. No facts suggest that she was prevented from filing the charge within the six month statutory period. District Superintendent Bolden certified tenure charges against Gillespie on February 19, 2003. Gillespie became aware of those charges the next day, February 20, 2003, when she received the Personnel Action Notice from the District. Gillespie did not file her unfair practice charge until August 30, 2012, more than nine (9) years later. Gillespie was also aware that the NTU took no action to challenge the District's interpretation and implementation of the certification regulation.

Other factors also militate against finding the charge timely. Gillespie did not challenge the Superintendent's certification of the tenure charges until two years and three months after she was served with notice of that certification on February 20, 2003. Unlike the charging party in Kaczmarek, Gillespie did not seek relief in any other forum for the alleged



unfair practice within the six month statutory period. It is also apparent that only after Gillespie exhausted all avenues for relief through the DOE, state and federal court systems that an unfair practice charge was filed with the Commission alleging the same claims that were dismissed by the DOE, state and federal courts.

For all of these reasons, I find that Gillespie's unfair practice charge is untimely.

**ORDER**

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Gayl R. Mazuco

DATED: September 17, 2013  
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 September 27, 2013.