

D.U.P. NO. 91-14

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

In the Matter of

BOROUGH OF HARRINGTON PARK,

Respondent,

-and-

Docket No. CO-91-16

JOAN K. LENHART,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint and dismisses a charge filed more than eight months after the employee was terminated. The Director finds that neither the employee's filing an unemployment claim nor her preoccupation with family illness warrants the relaxation of the six-month statute of limitations.

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Appearances:

For the Respondent
Donald Horsey, Borough Clerk

For the Charging Party
Neil Deutsch, Esquire

REFUSAL TO ISSUE COMPLAINT

On October 5, 1990, Joan Lenhart ("Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Borough of Harrington Park ("Borough"), alleging that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 (a)(1), (2), (3), and (4) ("Act").^{1/} The charge was then amended on October 29, 1990, to clarify Charging Party's reasons for the delayed filing.

^{1/} 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; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discriminating in regard to

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{2/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which unfair practice complaints shall be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act ^{3/} and the Commission's rules provide that I may decline to issue a complaint where appropriate. ^{4/} For the reasons stated below, I am not inclined to issue a Complaint.

1/ Footnote Continued From Previous Page

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; and (4) discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

2/ N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

3/ N.J.A.C. 19:14-2.1.

4/ N.J.A.C. 19:14-2.3.

Lenhart alleges that the Borough discharged her on January 9, 1990. She asserts that she was discharged because she complained to her employer about certain hazardous working conditions and pressed the Borough for salary increases for herself and other non-union crossing guards.

Pursuant to N.J.S.A. 34:13A-5.4(c), 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. More specifically, subsection 5.4(c) provides:

that 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 months period shall be computed from the day he was no longer so prevented.

In Kaczmarek v. New Jersey Turnpike Authority, 77 N.J. 329 (1978), the Supreme Court interpreted subsection 5.4(c) as follows:

[T]he Legislature, by its very choice of expression, evinced a purpose to permit equitable considerations to be brought to bear. It did not couch the period of limitations in terms of a flat and absolute bar but instead stated expressly that the limitation of the action shall be tolled if the charging party is "prevented" from filing within the six-months period. N.J.S.A. 34:13A-5.4(c). The term "prevent" may in ordinary parlance connote that factors beyond the control of the complainant have disabled him from filing a timely complaint. Nevertheless, the fact that the Legislature has in this fashion recognized that there can be circumstances arising out of an individual's personal situation which may impede him in bringing his charge in time bespeaks a broader intent to invite inquiry into all

relevant considerations bearing upon fairness of imposing the statute of limitations. The question for decision becomes whether, under the circumstances of this case, the equitable considerations are such that appellant should be regarded as having been "prevented" from filing his charges with PERC in timely fashion. Id. at 339-40.

In Kaczmarek, the statute of limitations did not ultimately bar the filing of an action before the Commission. The Court noted that the Charging Party filed his claim in Superior Court within three months of the alleged violation of the Act. Observing that "[s]tatutes of limitations are primarily designed to assure fairness to defendants," Id. at 340, the Court pointed out that the Respondents were not in any way prejudiced by the Charging Party's late filing because they had timely notice of the matter as a result of the Superior Court action.

Here, Lenhart asserts that she was "prevented" from filing her charge within six months of her discharge because she was preoccupied with her unemployment insurance claim and the illness of her son. Charging Party argues therefore, that the statute of limitations should be relaxed under Kaczmarek. I do not agree that these reasons are sufficient to relax the statutory time limitation for complaint issuance. Charging Party's claim for unemployment benefits did not in any way put the Borough on notice of the alleged violation of this Act or her contention that the termination was discriminatory under our Act. Moreover, while Lenhart asserts that her son's illness preoccupied her, we are not convinced that preoccupation with personal problems constitutes "prevention" under Kaczmarek.

Based upon the foregoing, the Commission's complaint standard has not been met and I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: November 21, 1990
Trenton, New Jersey