

D.U.P. No. 2009-3

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

In the Matter of

SUSSEX COUNTY COMMUNITY COLLEGE,

Respondent,

-and-

SUSSEX COUNTY COMMUNITY COLLEGE
ADJUNCT FACULTY FEDERATION,

Docket No. CI-2009-001

Respondent,

-and-

JOAN STEPHENSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed against a public employer and public employee representative. The charging party alleged that in November 2003, her majority representative refused to file a grievance contesting her termination as an adjunct professor. The charging party specifically alleged that her representative refused to provide her a copy of a collective negotiations agreement. She also acknowledged that she was advised of our statute of limitations and of the Supreme Court decision, Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 32 (1978), more than six months before filing her charge.

The Director determined that the charge was untimely, writing that more than 5 years lapsed between the date Stephenson was terminated from employment and her representative refused to process a grievance on her behalf. N.J.S.A. 34:13A-5.4(c).

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Appearances:

For the Respondent - College,
McCarthy Jennerich, attorneys
(Thomas Keenan, of counsel)

For the Respondent - Federation,
Roth Horowitz, LLC
(Michael A. D'Aquanni, of counsel)

For the Charging Party,
Joan Stephenson, pro se

REFUSAL TO ISSUE COMPLAINT

On August 1 and 25, 2008, Joan Stephenson, formerly an adjunct professor at Sussex County Community College (College), filed an unfair practice charge and amended charge against the College and her majority representative, Sussex County Community College Adjunct Faculty Federation (Federation). The charge

alleges that in May 2003, Stephenson was unlawfully terminated and that in November 2003, the Federation refused to file a grievance on her behalf. Stephenson alleges that she filed a grievance and the College did not respond.

The amended charge also sets forth a chronology of events from a time before Stephenson's termination through the filing date. Stephenson alleges that between April and September 2004, she met with various attorneys who declined to represent her; that an unspecified court action was filed; and that she requested a copy of the collective agreement from the College and did not receive one. She alleges that between April and September 2005, she hired a named attorney, but ". . . couldn't get in touch with him for five months;" that the attorney asserted on her behalf that the union, ". . . had not provided [her] sufficient information"; that the attorney later "did nothing" and that she hired another attorney.

She alleges that between October 2006 and March 2007, she telephoned the Commission and ". . . was given a [case] citation of [Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 32 (1978)] [and] told that [she] could not apply to the Commission because of the six-month statute [of limitations]." She alleges that she was not told that the statute ". . . provides coverage . . . if a person has been prevented from filing within the first six months of the [unfair practice]."

She alleges that between April 2007 and March 2008, she answered and propounded interrogatories concerning an unspecified civil action; that she didn't learn why she was not provided a copy of the [respondents'] collective agreement; and that in March 2008, she received a copy of the agreement.

On August 12, 2008, counsel to the Federation filed a letter, seeking dismissal of the charge. The Federation asserts that the charge is untimely and that a civil action, recently dismissed, had alleged that "the union breached its duty of fair representation, by, among other things, failing to provide her a copy of the collective bargaining agreement." The Federation asserts that Stephenson's charge should be dismissed by application of res judicata and collateral estoppel and because she failed to exhaust administrative remedies.

The Federation filed a copy of the Superior Court's June 28, 2008 dismissal of Stephenson's civil action against the Federation, College and named individuals, upon a motion for summary judgment (Dkt. No. SSX-L-583-04). Stephenson filed seven amendments to her cause of action, claiming among other things, that the Federation failed to provide her a copy of the collective agreement and written information about it; failed to advise her of her "legal rights"; and failed to file appropriate grievances.

The Judge found that Stephenson "produced no evidence" demonstrating that she was denied the collective agreement or that she requested it. He found that Stephenson:

. . . did not demand that a grievance be filed until nearly a year after her contract expired [i.e., individual employment contract expired December 20, 2002], nor did she request that a grievance be filed on an appropriate issue under the agreement, as she was not terminated and there is no material fact in dispute as to whether it is the College's prerogative to offer or not offer positions to adjunct professors.
[Order at p. 5]

The Judge found that Stephenson had failed to provide sufficient evidence necessary to prove that the Federation breached its duty of fair representation. The summary judgment motion was granted and the civil action was dismissed.

On October 3, 2008, I wrote a letter to Stephenson advising that I was inclined to dismiss the charge as untimely unless she could demonstrate why our statute of limitations - N.J.S.A. 34:13A-5.4c - should be tolled.

On October 20, Stephenson filed a letter contending that the charge is timely. Stephenson contends that her majority representative refused to provide her a copy of the collective agreement; that the agreement was provided to her for the first time in April 2008; that the agreement provides on the front page that the Commission is "the guardian of the law"; and that she would have contacted the Commission "if [she] had the contract."

Stephenson also filed numerous documents, including copies of transcript pages.

Our Act requires that an unfair practice be filed within six months of the date that the unfair practice occurred. N.J.S.A. 34:13A-5.4c. Charges filed later than six months after the date of the unfair practice are untimely unless the charging party was prevented from filing within the statutory period.

In Kaczmarek, our Supreme Court explained that the statute of limitations was intended to stimulate litigants to pursue claims diligently and prevent the litigation of stale claims. The Court cautioned that it would look to equitable considerations in deciding whether a charging party slept on its rights. Id. at 337-338.

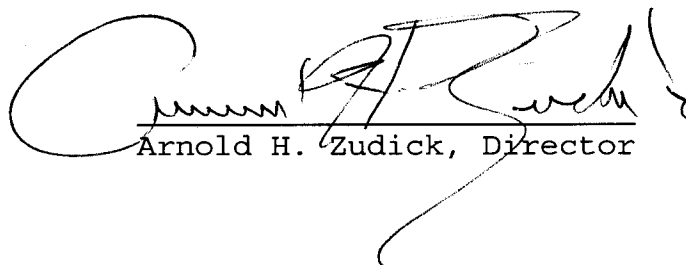
The charge is not timely filed. Stephenson alleges that she was terminated in May 2003 and that in November 2003 the Federation refused to file a grievance on her behalf. No alleged facts suggest why Stephenson waited about six months before demanding that a grievance be filed. Nor does the alleged chronology over nearly the next five years warrant a finding of equitable tolling under Kaczmarek. By her own admission, Stephenson hired more than one attorney between April and September 2005 to represent her regarding her employment at the College. No charge was filed. She was also apprised of the Kaczmarek decision sometime between October 2006 and March 2007,

about seventeen months before the charge was filed. Under these circumstances, the charge is dismissed.^{1/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: November 7, 2008
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 November 17, 2008.

^{1/} I do not have to decide whether the charge must also be dismissed by application of res judicata and collateral estoppel.