

D.U.P. No. 2011-13

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-2011-022

EDWARD LEVI-DEROSA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Edward Levi-DeRosa. The charge alleges that the University violated 5.4a(1), (3), (4), and (5) of the New Jersey Employer-Employee Relations Act when it terminated his employment on March 26, 2010. The charge further alleges that on June 30, 2010, he was denied a promotion and merit increase allegedly in retaliation for becoming a member of the Rutgers Council of AAUP Chapters, AFT, AFL-CIO Executive Board in the spring of 2009 and partaking in recruitment efforts.

The Director found Levi-DeRosa's charge to be untimely because it was filed on November 17, 2010, more than six months after he was terminated on March 26, 2010. The Director rejected Levi-DeRosa's assertion that he was prevented from filing the charge until June 30, 2010 because the University threatened that if he complained about mistreatment by the Educational Testing Service again he would be immediately terminated. The Director found that since Levi-DeRosa was terminated on March 26, 2010, he could not have been concerned about the threat of termination after that date.

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Appearances:

For the Respondent,
Sarah A. Luke, Assistant General Counsel

For the Charging Party,
Edward Levi-DeRosa, pro se

REFUSAL TO ISSUE COMPLAINT

On November 17, 2010 Edward Levi-DeRosa filed an unfair practice charge against Rutgers University. Levi-DeRosa is a former University employee who worked as an assistant instructor in the School of Arts and Sciences Department of English Writing Program. The charge, as amended, alleges that the University violated 5.4a(1), (3), (4), and (5)^{1/} of the New Jersey Employer-

^{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
(continued...)

Employee Relations Act (Act) when it terminated his employment on March 26, 2010. It further alleges that on June 30, 2010, the University did not promote him to the title of assistant director of the writing program and denied him a merit increase. The merit increase was denied allegedly in retaliation for becoming a member of the Rutgers Council of AAUP Chapters, AFT, AFL-CIO Executive Board in the spring of 2009 and partaking in recruitment efforts. The charge also alleges that the University refused to respond to his letter seeking to "engage in grievance or law suit procedures" regarding the refusal to promote him.

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. The following pertinent facts appear.

1/ (...continued)
act; (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; and, (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."

The University hired Levi-DeRosa for the 2009-2010 academic year as a full-time assistant instructor. He was responsible for teaching four sections of technical undergraduate writing. On March 29, 2010, the University notified Levi-DeRosa that his employment had been terminated effective March 26, 2010 for failing to return to work after his benefits under the Family and Medical Leave Act expired on the previous day.

ANALYSIS

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

. . . 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 of some particular action, such as the date the alleged unfair practice occurred, provided that the person(s) affected are aware of the action. The date of action is known as the "operative date," and the six-month limitations period runs from that date. To be timely, a charge must ordinarily be filed within six months of the operative date. Two exceptions to timeliness requirements are (1) tolling of the limitations period and (2) a demonstration by the charging party that it was

"prevented" from filing the charge prior to the expiration of the period.

In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), our Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent the litigation of stale claims, and cautioned that it would consider the circumstances of individual cases. Id. at 337-338. The Court noted that it would look to equitable considerations in deciding whether a charging party slept on its rights.

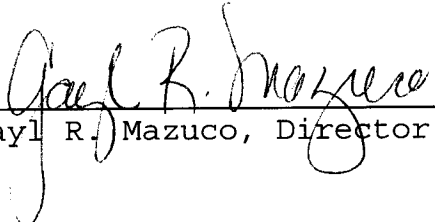
Levi-DeRosa was terminated on March 26, 2010 and was issued a letter to that effect on March 29. I assume that March 26, 2010 is the operative date which commenced the six month limitations period in this case. Levi-DeRosa filed his charge on November 17, 2010, more than six months after he was terminated.

Levi-DeRosa asserts that he was prevented from filing this charge until June 30, 2010 because the University threatened that if he complained about mistreatment by the Educational Testing Service again he would be immediately terminated. Since Levi-DeRosa was terminated on March 26, 2010, he could not have been concerned about the threat of termination after that date. Under these circumstances, I find that the charge was not filed within our statute of limitations.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Gayl R. Mazuco, Director

DATED: June 30, 2011
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 July 11, 2011.