

H.E. NO. 2014-15

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WESTFIELD,

Respondent,

-and-

Docket No. CI-2012-046

BARRON CHAMBLISS,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission found that the charge was untimely filed; that the Charging Party was not prevented from filing charge; and, that the independent investigation by the Prosecutor's Office of Charging Party's allegations against the Chief of Police did not toll the six month statute of limitations set forth at N.J.S.A. 34:13A-5.4c. The Hearing Examiner, therefore, recommends that the Complaint be dismissed.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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BARRON CHAMBLISS,

Charging Party.

Appearances:

For the Respondent,  
Apruzzese, McDermott, Mastro and Murphy, attorneys  
(Robert J. Merryman, of counsel)

For the Charging Party,  
Mets, Schiro and McGovern, LLP attorneys  
(Peter Paris, of counsel)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On May 21, 2012, Barron Chambliss ("Chambliss" or "charging party") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") which was amended on August 10, 2012, against the Town of Westfield ("Town" or "respondent") (C-1; R-1).<sup>1/</sup> Chambliss alleges that the town

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<sup>1/</sup> Exhibits received in evidence marked as "C" refer to Commission exhibits, those marked "CP" refer to the Charging Party's exhibits, those marked "J" refer to exhibits jointly submitted by the parties, and those marked "R" refer to the Respondent's exhibits. Charging party's exhibits admitted into evidence were CP-1, CP-3, 4, 5, 6, 7, and 10. (2cT21). Using R. 2:6-8 as guidance, transcript citations are  
(continued...)

violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. Chambliss specifically contends that the Town violated N.J.S.A. 34:13A-5.4a(1) and (3)<sup>2/</sup> when Chief Parizeau did not provide an original recording of a grievance meeting, when he was untruthful while under oath at a grievance hearing, and when he made threatening and retaliatory remarks regarding CHAMBLISS and other union members. Chambliss additionally contends that the Town's investigation regarding Chambliss's untruthfulness was incomplete because it was motivated by anti-union animus towards him. Chambliss also contends that two secretaries in the records bureau of the police department overheard a conversation among the Chief and some SOA [Superior

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1/ (...continued)  
designated with a "T." There were two days of hearing; the number before a "T" corresponds to a particular hearing date. "1aT" refers to the transcript for April 9, 2014, regarding the testimony of Detective Chambliss; "1bT" refers to the transcript regarding the testimony of Ms. Claiborne; and, "1cT" refers to the transcript regarding the testimony of Chief Wayman. "2aT" refers to the transcript for April 10, 2014, regarding the testimony of John Parizeau; "2bT" refers to transcript regarding the testimony of Scott Rodger; and, "2cT" refers to the transcript regarding the testimony of James Gildea. The number after the "T" refers to the page number of the transcript.

2/ N.J.S.A. 34:13A-5.4a(1) prohibits public employers from "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this [Act]." N.J.S.A. 34:13A-5.4a(3) prohibits public employers from "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 act."

Officers Association] subordinates to have Chambliss demoted and removed from the detective bureau due to his union activity. Chambliss seeks an order directing the Town to thoroughly investigate complaints against Parizeau, to cease retaliating against Chambliss, to direct Parizeau to cease engaging in behavior which interferes with, restrains, coerces, and intimidates Chambliss, and directing the Town to post a notice of its unlawful conduct (C-1).

On September 27, 2012, the Director of Unfair Practices issued a complaint and notice of hearing regarding N.J.S.A. 34:13A-5.4a(1); she did not issue a complaint regarding subsection a(3). N.J.A.C. 19:14-2.1; N.J.A.C. 19:14-2.3.<sup>3/</sup> On November 6, 2012, the Town filed its answer and affirmative defenses (C-2). The Town denies any anti-union animus, denies that the conversation allegedly overheard by two secretaries occurred, and denies that Parizeau engaged in any action that

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3/ N.J.A.C. 19:14-2.1 states, in part: "if it appears that the allegations of the charge, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Director shall issue and serve a formal complaint... The complaint...shall contain: 1. The allegations of the charge and a statement of the subsection(s) of the Act alleged to have been violated...." N.J.A.C. 19:14-2.3 states that the Director may refuse to issue a complaint in whole or in part. Here, the Director did not issue a complaint for a subsection (a) (3) cause of action; however, the factual allegations of the entire charge remained for hearing on an (a) (1) cause of action.

violates N.J.S.A. 34:13A-5.4a(1). (C-1). As affirmative defenses, the Town asserts that it did not violate the Act, that Chambliss failed to state a claim upon which relief may be granted, and that no adverse action has been taken against Chambliss (C-1).

On October 10, 2013, the Town filed a motion for summary judgment in accordance with N.J.A.C. 19:14-4.8. On October 21, 2013, Chambliss filed a brief opposing the motion. On November 12, 2013, the motion for summary judgment was denied. The Town's request for special permission to appeal was denied on December 2, 2013.

A hearing was held on April 9 and 10, 2014, at which the parties examined witnesses and presented exhibits.

On June 2, 2014, each of the parties submitted post-hearing briefs. In its post-hearing brief, the charging party contends that the alteration of the detective schedule was due to anti-union animus, that Chief Parizeau lied under oath, and that Parizeau threatened the charging party with adverse employment action. In its post-hearing brief, the respondent contends that the only allegation that complies with the six month statute of limitations is the alleged inquiry about the charging party's performance reviews, which comment is based on hearsay, and asserts that even if such a comment was made it is a reasonable and legitimate business inquiry. For the reasons set forth

below, the allegations should be dismissed because they did not occur within six months prior to the filing of the charge.

N.J.S.A. 34:13A-5.4c.

Based on the record, I make the following:

**FINDINGS OF FACT**<sup>4/</sup>

1. The Town's police department employs approximately 59 officers. (1a29). Of those officers, currently four of them are detectives, which is down from a high of ten detectives. (1a29; 1aT116). The size of the detective bureau and assignments to the bureau are at the Chief's discretion. (1a27; 1a29-30).

Detectives and patrol officers have the same rank. (1aT24-25).

2. On January 29, 1992, Chambliss began his employment as a police officer in the Town. (1aT20-21). In 2002, he was promoted to plain clothes detective, then second grade detective. (1aT22; 1aT27). In or about June 2009, Chambliss became president of the PBA local. (1aT30).

3. John Parizeau ("Parizeau") became Chief of Police on January 1, 2006 and retired on or about April 1, 2012 after 31 1/2 years of service as a police officer. (2aT8). He was the in the union in the 1980s and was a union member until he became Chief. (2aT10-11).

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<sup>4/</sup> I refer to allegations relating back to more than six months before the date of the charge. These allegations are included for the sake of a full and complete record.

No date provided - Change in Schedule

4. Chambliss testified that he complained to Parizeau about his implementation of a new schedule for detectives. (1a73). There was no testimony from Chambliss regarding the date of this allegation.

5. Parizeau recalled that Chambliss had complained about the schedule change. (2aT35). Parizeau testified that he changed the schedule

because we [had] been going through...the biggest reduction of police officers in the history of the town of Westfield because of the State funding cut. I lost 15 percent of my force. I had another two to three percent out in sick time. [M]y overtime budget was cut. And we were in the position where I had to make changes to try to deal with that. I mean, we had no detectives working weekends and I was told I had to cut down in overtime and I could no longer have detectives come in and work overtime when I had the right to schedule them to work. (2aT38).

6. Rodger said that the detectives were unhappy with the schedule change, but did not pursue any action against it. (2bT31-33). Rodger also said that scheduling is a managerial prerogative. (2bT33; CNA<sup>5/</sup> Art. 4 and Art. 7). There are no facts regarding the date of the change in schedule; therefore, I cannot determine whether this allegation meets the statute of

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<sup>5/</sup> "CNA" means the collective negotiations agreement between the Town and the New Jersey State PBA Local No. 90, for the period January 1, 2010 through December 31, 2014.

limitations for the filing of a charge. As such, this allegation should be dismissed.

**2010 - Conversation Overheard by Secretaries**

7. Chambliss testified that on January 6, 2010, at 2:18 p.m., two secretaries told him about a conversation they overheard. (1a81; 1aT96; 1aT121; R-2)). He said:

I was faxing something to the Prosecutor's office. I walked into an area of the records bureau and I was approached by Ms. Claiborne who's a civilian employee and Ms. D[i]Fabio who works, another civilian employee, and they told me that I better watch my back because the Chief, Parizeau, a captain by the name of Wayman who is now current chief and a lieutenant, Scott Rodger, who [has] been promoted to captain were in there talking about me and having me removed from the detective bureau and other members of the detective bureau. Me in particular. Captain Wayman made a comment that, 'Maybe he should be put back in patrol with his butt buddy O'Keefe.' And then Chief Parizeau questioning, 'What do his evaluations looked like,' is what was said to me. (1aT89; R-2).

This allegation, even if true, should be dismissed because it did not occur within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4c.

8. Even if this allegation was timely, it is not supported by sufficient, competent, and credible evidence in the record.<sup>6/</sup>

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<sup>6/</sup> Although hearsay is admissible in administrative hearings, "a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in  
(continued...)



On cross-examination, Chambliss testified that Claiborne told him that

She had heard the Chief at the time, Captain Wayman and at the time Lieutenant Rodger talking about me and I should watch my back because they were trying to get me out. [T]hat that wasn't the first time that she had heard them talking about me. And then she said, 'It's you and O'Keefe.' And she said, 'They mentioned about evaluations and putting them back in patrol with his butt buddy O'Keefe.' (1aT122-126).

9. According to Chambliss, the secretaries also mentioned that Detective Lieberman would be reassigned. (1aT124).

Chambliss does not mention Lieberman in either the notes he took after he spoke with the secretaries nor in his answers to interrogatories propounded by the Town. (1aT126). I find that Chambliss's testimony is based on hearsay, and is consequently not credible.

10. Vanita Claiborne ("Claiborne") is a police clerk [secretary] in the police department's records bureau. (1bT6). Claiborne testified that on January 6, 2010, she and Debbie DiFabio ("DiFabio"), another secretary, overheard a conversation among Parizeau, Wayman, and Rodger, and told Chambliss about it

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6/ (...continued)  
the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it." Weston v. State, 60 N.J. 36, 51 (1972).

the same afternoon or the next day when he came in. (1bT7-9; 1bT13). Claiborne testified that

Their conversation was mostly about Barron, but they were talking about, you know, his evaluations, did he get - they were asking someone if he got a good evaluation. That he needs to be working nights with ... O'Keefe. That how poorly he was handling the union and the funds and a few other things they were talking about.

I know some of it was about him being the PBA president and just that he was doing a poor job or he was costing them money. I wasn't sure what they were talking about as far as the money.

[A]nd I felt like they were trying to do something to get even with him or do something to him. So just to warn him that he should watch himself. (1bT7-8).

11. On cross-examination, Claiborne testified that she overheard the conversation on January 6, 2010, around 11:00 a.m. or 11:30 a.m., that the conversation lasted about 15 to 20 minutes, and that she took lunch that day. (1bT14; 1bT18). She claims that she and DiFabio spoke to Chambliss in a hallway about what they overheard. (1bT19-20). DiFabio did not testify and thus Claiborne's testimony is not corroborated.

12. Neither Parizeau nor Rodger were scheduled to work on Friday, January 6, 2010. (2aT11-12; R-3; 2bT15; R-5). I find that Parizeau's and Rodger's testimony are consistent with their time sheets and therefore credible. I also find that they were not at work at the time of the alleged conversation and therefore

were not engaged in the conversation that Claiborne then reported to Chambliss. As such, I do not credit Claiborne's testimony. Chambliss's testimony is based on what Claiborne allegedly overheard and I therefore cannot credit his testimony.

13. In January 2010, Wayman was a captain. (1cT8). Wayman testified that he did not speak with Parizeau and Rodger in the records bureau regarding Chambliss and his assignment. (1cT8-9). He also said that he would not speak with Rodger about personnel matters because Rodger did not report to him. (1cT9). Additionally, Parizeau and Wayman had enclosed offices and would not discuss any personnel matters in the records bureau. (1cT9). I find Wayman's testimony to make sense and is therefore credible.

14. Chambliss was never told by Parizeau of Wayman that he would be reassigned or transferred from the detective bureau. (1aT90; 1aT93-94; 1cT8). He conceded that in considering transfers, it is appropriate to review evaluations of officers. (1cT7; 1aT90).

15. Chambliss did not speak with Parizeau, Wayman, or Rodger about the alleged conversation overheard by the secretaries. (1aT90; 1aT96-97). Parizeau testified that he did not speak with Wayman or Rodger about moving Chambliss out of the detective bureau. (2aT9). The reliable evidence shows that Parizeau, Wayman, and Rodger did not have the alleged

conversation about Chambliss. Consequently, even if timely, the allegation about the overheard conversation should be dismissed because that conversation never occurred.

#### 2010 - Time Clock Requirement

16. Chambliss was involved in a grievance regarding a sergeant who violated a time clock requirement. (1a71). He asked Parizeau about adding a step to the time requirement before an officer was disciplined. (1a71). According to Chambliss, Parizeau accused him of being "adversarial." (1a72; CP-3). In Chambliss' memo dated September 1, 2010 to Gildea he wrote that the date of the alleged comment was August 11, 2010. (CP-3). There was no testimony regarding the date of these allegations, nor testimony corroborating the incident. Even if the allegations are true, they should be dismissed because they did not occur within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4c.

#### 2011 - Patrol Sergeant's Grievance Hearing Conversation

17. Chambliss testified that in or about June or July 2011, he represented a patrol sergeant in a grievance hearing. (1aT76-78). Chambliss testified that the sergeant told him that Parizeau said he "had it in for those guys in the detective bureau." (1aT79; CP-3). Chambliss did not file a grievance regarding the issue. (1aT81). There is no testimony corroborating the conversation. I find that this statement is

hearsay, and is therefore unreliable. Even if the allegation is true, it should be dismissed because it did not occur within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4c.

**2010 - Change in Work Schedule**

18. On October 6, 2010, Chambliss completed an "Employee Complaint Form" alleging that as a result of his complaint of September 14, 2010, Parizeau changed the detectives' work schedule. (CP-5). There was no testimony about the contents of the form. These allegations relate to 2010 and should be dismissed because they did not occur within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4c.

**2010 - Tape of O'Keefe's Grievance Meeting**

19. On January 20, 2010, Chambliss attended a grievance meeting with Officer Kevin O'Keefe regarding O'Keefe's request from Parizeau for a detective stipend. (1aT32). Parizeau asked whether he could record the meeting; both O'Keefe and Chambliss consented. (1aT37; 1aT117). According to Chambliss, Parizeau told him that he would give them copies of the recording. (1aT37; CP-3). Chambliss also contends that Parizeau said "[w]hen I give people gold badges, they tend to fall asleep." (1aT37; 1aT51; 1aT143-145).

20. Chambliss said that Parizeau made an offer of settlement to O'Keefe; the matter did not settle and O'Keefe was subsequently transferred out of the detective bureau. (1aT50).

Parizeau denies that he ever said "Once I give out gold badges people tend to fall asleep." (2aT26). Parizeau testified that he offered O'Keefe a \$500 stipend, but O'Keefe refused it, and filed a grievance because he wanted to be made first grade detective right away. (2aT25).

21. Parizeau testified that Chambliss and O'Keefe, with their attorney, came to his office, listened to the tape, and were offered the tape but "they did not want it." (2aT28; 2aT32; 2aT52-53). Chambliss listened to a tape, but believes it was not complete. (1aT61). Chambliss testified that the original recording was done on a digital recorder, but the version he heard was on a small micro cassette. (1aT110; 1aT141). Chambliss twice requested the original recording, but it was not provided to him. (1aT52).

22. On August 22, 2010, an arbitrator heard O'Keefe's grievance. (1aT51; 1aT117; CP-3). Chambliss believes that Parizeau's testimony at the arbitration was not truthful. (1aT61; 1aT109; 1aT143-144).

23. O'Keefe also heard the tape at his arbitration hearing. (1aT111; 1aT114; 1aT150). He did not file a charge, or any other action, alleging that the recording was not authentic. (1aT150).

24. The arbitrator ruled against the union and O'Keefe pursued the matter to the Superior Court; Chambliss testified that he knew nothing about O'Keefe appealing the arbitrator's

decision. (1aT117-118; 1aT151). At the time, Chambliss was president of the union. (1aT151).

25. Chambliss submitted into evidence Parizeau's policy regarding electronic monitoring; the effective date of the policy was April 14, 2009. (1aT49; CP-1). Parizeau testified that he wrote the electronic monitoring policy for the police department and that he could discipline his staff for violating it. (2aT31; CP-1). He testified that the policy does not apply to him since he created it for officers. (2aT31-32). I find that the Chief of Police is the arbiter of violations of his policy. I additionally find that Chief Parizeau could not take disciplinary action against himself for violating his policy.

26. Chambliss complained to Town Administrator Gildea ("Gildea") about not receiving the original recording and told him that Parizeau had lied under oath. (1aT70; 1aT118-119). Chambliss acknowledged that his complaint to Gildea was not a PBA matter. (1aT118). I infer that Chambliss did not file a grievance or attempt to obtain a copy of the recording on behalf of the union. There was no testimony from Chambliss regarding the date of these allegations.

27. On September 1, 2010, Chambliss wrote to Gildea listing his concerns regarding events occurring on January 20, 2010, August 20, 2010, July 7, 2010, and August 10, 2010. (CP-3).

28. On September 2, 2010, Chambliss completed an "Employee Complaint Form" which refers to "attached report addressed to Mr. Jame[s] Gildea" regarding incidents reported on July 7, 2010 and August 11, 2010. (CP-4). There was no testimony regarding the "attached report."

29. Gildea testified that he forwarded Chambliss' complaint, attachments, and disc of the recorded O'Keefe conversation to the Prosecutor because he was not authorized to investigate the Chief. (2aT28; 2cT11-14; CP-3; CP-4).

30. On October 22, 2010, Parizeau sent a memo to Chambliss informing him that his request for a copy of the tape was denied because it "is currently part of the internal affairs complaint you initiated against me and is currently in the possession of the Union County Prosecutors Office. Please contact that authority on their policy in releasing such items." (2aT41; 2aT44; 2aT54; CP-2). Chambliss was aware that the recording had been forwarded to the Prosecutor's office. (1aT112-114; 1aT141-144; CP-2). Nevertheless, on February 9, 2011, Chambliss wrote to Gildea requesting a certified copy of the recorded conversation that took place on January 20, 2010. (CP-6).

31. On April 4, 2011, Chambliss wrote to Gildea stating that he wanted to file a grievance on behalf of himself and two other officers regarding his complaint of October 6, 2010 and refers to the "Whistle Blower" law. (CP-7). There was no



testimony about whether this document relates to the request for the tape, or whether Chambliss in fact filed a grievance or "Whistle Blower" action. I, thus, cannot credit the statements in the document. Additionally, this allegation relates to issues in 2010 and should be dismissed because they did not occur within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4c.

32. On March 19, 2012, Gildea wrote to Chambliss to notify him that he had received the "independent investigation report concerning the employee complaints regarding Chief Parizeau." (1aT132-133; CP-10). Gildea stated that the employee complaints filed on September 2 and October 6, 2010 were independently investigated in accordance with the Town's employee handbook. (CP-10). He also informed Chambliss that the investigator also "concluded that the Chief did not engage in retaliation by changing the work schedule as he acted within his statutory and local police ordinance powers," nor had he violated the parties' collective negotiations agreement. (CP-10). Finally, Gildea informed Chambliss that the investigator concluded "There is no evidence presented that can substantiate a violation of a departmental charge for lying under oath or similar charge of officer misconduct. The finding from the Union County Prosecutor's Office that no charge could be presented criminally

is similarly affirmed here for any administrative charges by the Town of Westfield." (CP-10).

33. Chambliss testified that he does not believe that the Prosecutor's office conducted a thorough investigation of Parizeau's alleged untruthful testimony. (1aT115). The investigation was conducted by Chief Robert Lucid.<sup>2/</sup> (2a44-45). Chambliss acknowledged that he was interviewed by the investigator, but nevertheless questions the investigator's independence. (1aT131-132). I find no basis for Chambliss's belief that Chief Lucid did not conduct a thorough and independent investigation of Chambliss's allegations against Parizeau. I, therefore, do not credit his testimony.

34. With respect to receipt of the 2010 tape, Chambliss knew in 2010 that the original tape was not going to be provided to him. He had an opportunity to file a timely charge, but chose not to do so. This allegation should be dismissed because it did not occur within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4c. With respect to Chambliss's allegation that Parizeau lied under oath in August 22, 2010, that accusation was sent to the Prosecutor's office for investigation. There is no evidence that the Prosecutor's office mishandled the

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<sup>2/</sup> I take notice that Lucid retired as Summit's Chief of Police on July 29, 2011, after serving for 36 years as an officer. [http://www.nj.com/independentpress/index.ssf/2011/07/police\\_chief\\_lucid\\_to\\_leave\\_su.html](http://www.nj.com/independentpress/index.ssf/2011/07/police_chief_lucid_to_leave_su.html)

investigation. More to the point, this allegation should be dismissed because it did not occur within six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4c.

#### ANALYSIS

With regard to N.J.S.A. 34:13A-5.4(a)(1), the Commission has determined that: "It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification." New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978); New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 2 550, 551 note 1 (¶10285 1979). In Commercial Tp. Bd. Ed. and Commercial Tp. Support Staff Assn. and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd, 10 NJPER 78 (¶15043 App. Div. 1983), the Commission held that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to prove an independent N.J.S.A. 34:13A-5.4a(1) violation. The tendency to interfere is sufficient. Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). A violation of N.J.S.A. 34:13A-5.4a(1) requires an examination of the totality of the circumstances. See, State of NJ, P.E.R.C. 2012-024, 38 NJPER 205, 206 (¶70 2011); State of NJ (Dept. Of

Human Services), P.E.R.C. No 82-83, 8 NJPER 209, 215 (¶13088 1982).

The Act requires that a charge be filed within six months after the alleged unfair practice occurred, unless the charging party was prevented from filing such charge. N.J.S.A. 34:13A-5.4c. Here, Chambliss filed his initial charge on May 21, 2012, and submitted an amended charge on August 10, 2012. (C-1; R-1). Any alleged unfair practices occurring six months before May 21, 2012 are outside of the six months statute of limitations and should be dismissed. N.J.S.A. 34:13A-5.4c.

All of the determinations made by the Town were made in 2010. Any complaints Chambliss made to Gildea about Parizeau do not toll a charging party's obligation to file a timely charge. See, Bridgewater-Raritan Reg. Bd. Of Ed., P.E.R.C. No. 201043, 35 NJPER 455, 457 (¶150 2009); FMBA Local 68, D.U.P. No. 2008-2, 33 NJPER 296, 297 (¶113 2007); State of NJ (Human Services), P.E.R.C. 2003-56, 29 NJPER 93, 95 (¶26 2003).

In determining whether a party was prevented from filing a timely charge, "we must conscientiously consider the circumstances of each case and assess the Legislature's objectives in prescribing the time limits as to a particular claim." Bridgewater-Raritan Reg. Bd. Of Ed., ibid., 35 NJPER at 457; State of NJ (Human Services), ibid., 29 NJPER at 95.

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. Relevant consideration include whether a charging party sought timely relief in another forum; whether the respondent fraudulently relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establish an unfair practice; when a charging party knew or should have know the basis for its claim; and how long a time has passed between the contested action and the charge. State of NJ (Human Services), *ibid.*, citing, *Kaczmarek v. New Jersey Turnpike Auth.*, 77 N.J. 329, 340 (1978) (other citations ommitted).


Here, Chambliss submitted complaint forms to the Town and filed grievances. No facts were presented to show that Chambliss was prevented from filing a timely charge. Accordingly, the a(1) allegation should be dismissed.

The a(1) allegation should be dismissed for the reasons above.

Based upon the above facts and analysis, I make the following:

**RECOMMENDATION**

I recommend that the Complaint be dismissed.

  
Daisy B. Barreto  
Hearing Examiner

Dated: June 9, 2014  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by June 19, 2014.