P.E.R.C. NO. 2005-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY EDUCATIONAL
SERVICES COMMISSION,

Respondent,

-and- Docket No. CO-2004-370

MIDDLESEX COUNTY EDUCATIONAL
SERVICES COMMISSION EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a Motion for Summary Judgment filed by the Middlesex County Educational Services Commission. The motion seeks dismissal of an unfair practice charge filed by the Middlesex County Educational Services Commission Education Association. The charge alleges that the employer terminated an instructional aide, who is the Association president, in retaliation for her activities on behalf of the Association. The Commission concludes that there is a factual dispute over the reason for the termination and that factual dispute precludes summary judgment. Dismissal of a separate complaint filed before the Division on Civil Rights does not require dismissal of the unfair practice charge.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

For the Respondent, Raymond A. Cassetta, Labor Relations Consultant

For the Charging Party, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Paul L. Kleinbaum, of counsel and on the brief; Joshua I. Savitz, on the brief)

DECISION

On January 27, 2005, the Middlesex County Educational Services Commission moved for summary judgment seeking dismissal of a May 21, 2004 unfair practice charge filed by the Middlesex County Educational Services Commission Education Association. The employer's motion was supported by a certification from its Director of Human Resources and accompanying documents.

Paula Siarkiewicz is the Association president. She began work as an instructional aide for the employer in February 1999 and suffered a work-related injury on March 12, 2003. On April 29, 2004, she was terminated. The Director of Human Resources

gave this reason for the termination: Siarkiewicz was physically unable to perform the basic functions of her position.

On May 20, 2004, the Association filed an unfair practice charge alleging that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (3),[1/] by terminating Siarkiewicz in retaliation for her activities on behalf of the Association. The charge alleges that Siarkiewicz was terminated because in March 2004, the Association conducted a job action and a demonstration to protest the slow pace of negotiations. The charge further alleges that the employer violated 5.4a(1) by failing to provide the Association with the names and addresses of negotiations unit employees. A Complaint and Notice of Hearing issued on August 3, 2004.

On June 23, 2004, Siarkiewicz filed a separate complaint before the New Jersey Division on Civil Rights ("DCR"). Her complaint alleged that she was discriminated against because of her perceived physical disability.

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 act."

On January 21, 2005, the employer filed an Answer denying that it violated the Act.

Based on the results of a DCR investigation, the DCR Director determined that there was no probable cause to credit the allegations in Siarkiewicz's complaint. See N.J.A.C. 13:4-6.1(d). The DCR investigation revealed that Siarkiewicz never recovered sufficiently to perform the essential functions of her position and that no other available permanent positions could accommodate her restrictions.

Claiming that the results of the DCR investigation bar further litigation over the motives for Siarkiewicz's termination, the employer has now moved for summary judgment in the instant unfair practice case. It argues that the doctrines of res judicata and collateral estoppel preclude relitigation of the DCR Director's determination that the termination was for legitimate nondiscriminatory reasons and that we should defer to that determination.

On March 14, 2005, the Association filed a response opposing summary judgment. Its response was supported by a certification from Siarkiewicz and accompanying documents. The Association disputes the employer's statement of facts. It asserts that Siarkiewicz could perform her job duties, in particular the light duty work that she had been assigned, and that she was terminated in retaliation for her Association activities. The Association

argues that res judicata and collateral estoppel do not apply because the causes of action, parties and issues are not identical. It further argues that deferral to the DCR Director's determination is not warranted because there was never a finding that the reason given for the termination was not a pretext cloaking anti-union animus. Finally, the Association argues that the motion should be denied because it also alleged that the employer failed to provide relevant information.[2/]

The doctrine of res judicata bars relitigation of a cause of action between the parties or their privies that has been finally determined on the merits by a tribunal having jurisdiction. Roberts v. Goldner, 79 N.J. 82, 85, (1979). The doctrine will not be invoked unless there is: a final judgment by a court of competent jurisdiction, identity of issues, identity of parties, and identity of the cause of action. Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 172-173 (App. Div. 2000).

Res judicata is inapplicable because the causes of action in the DCR complaint and the unfair practice charge are not identical. In her DCR complaint, Siarkiewicz alleged that she was discriminated against because of her perceived physical disability. In the unfair practice charge, the Association alleges that Siarkiewicz was terminated in retaliation for

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2/ On March 28, 2005, the Chairman referred the employer's motion to the full Commission for consideration. N.J.A.C. 19:14-4.8.

supporting the Association. There is no identity of cause of action: the DCR Director's disposition of the disability discrimination complaint was not a final determination on the unfair practice charge before us.

The doctrine of collateral estoppel, or issue preclusion, bars relitigation of any issue that was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action. State v. Gonzalez, 75 N.J. 181, 186 (1977). For the doctrine to apply, the issue to be precluded must be identical to the issue decided in the first proceeding. Hennessey v. Winslow Tp., 368 N.J. Super. 443 (App. Div. 2004), certif. granted 180 N.J. 455 (2004).

The DCR Director did not consider whether Siarkiewicz was terminated in retaliation for activity protected by our Act. The DCR investigation rejected her complaint that she was discharged on the basis of her disability, finding instead that she never recovered sufficiently to perform the essential functions of her position and that there were no other available permanent positions that could accommodate her restrictions. The separate unfair practice issue was not presented to or considered by DCR. Accordingly, the doctrine of collateral estoppel is inapplicable. Contrast Hackensack v. Winner, 82 N.J. 1 (1980) (applying collateral estoppel, court held that Commission should have deferred to determination of Civil Service Commission where Civil

Service had considered and rejected claim of anti-union animus in promotion denial); see also Perry v. Glen Rock Bor. Bd. of Ed., 1 N.J.A.R. 300 (Comm. of Ed. 1981) (DCR finding of no probable cause was not an adjudication on the merits, was not res judicata, and did not collaterally estop employee from litigating same claim before Commissioner of Education).

Finally, the employer argues that deferral to the DCR decision is appropriate because DCR fully considered the cause of the termination. As with our discussion of collateral estoppel, deferral to the DCR Director's decision is not appropriate because he did not consider and decide the unfair practice issue. Contrast Brookdale Comm. College, P.E.R.C. 83-131, 9 NJPER 266 (¶14122 1983) (deferral to a grievance arbitration award is appropriate when unfair practice issue is interrelated with an alleged breach of contract; arbitrator has considered contractual issue; arbitration proceedings were fair and regular; and result was not repugnant to the Act).

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). We are left in this case with a factual dispute over the reason for Siarkiewicz's termination. The Association claims that Siarkiewicz was

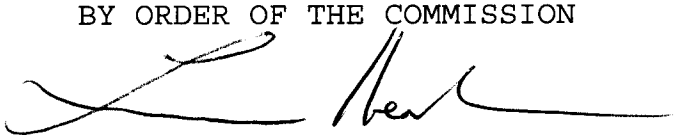
terminated for her protected activity and that she was discriminatorily denied the opportunity to continue to perform the tasks of a light duty assignment. The employer claims that Siarkiewicz was terminated because she was physically incapable of performing the essential functions of her job. That factual dispute precludes summary judgment.

Finally, the employer does not argue that DCR decided the issue involving the alleged failure to provide the Association with the names and addresses of negotiations unit employees. That issue must proceed to hearing.

ORDER

Summary judgment is denied.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: April 28, 2005
Trenton, New Jersey
ISSUED: April 28, 2005