

P.E.R.C. NO. 2012-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WAYNE,

Respondent,

-and-

Docket No. CI-2011-052

JOSEPH SHENEKJI,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Director of Unfair Practices dismissing as untimely an unfair practice charge filed by Joseph Shenekji against the Township of Wayne. The Commission holds that Shenekji was not prevented from filing a timely 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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Appearances:

For the Respondent, John J. McKniff, Assistant Township Attorney, of counsel

For the Charging Party, Arleo, Donohue & Biancamano, attorneys (Frank Arleo, of counsel)

DECISION

Joseph Shenekji appeals the September 27, 2011 decision of the Director of Unfair Practices dismissing his amended unfair practice charge against the Township of Wayne. The Township has not opposed the appeal. We agree with the Director that the allegations are untimely and deny the appeal.

The initial charge was filed on June 27, 2011 and amended on July 22. The charge, as amended, alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(3) and (7)^{1/} by failing to pay Shenekji, a

^{1/} These provisions prohibit public employers, their representatives or agents from: "... (3) Discriminating in regard to hire or tenure of employment or any term or (continued...)

retired/disabled police officer, vacation, holiday pay, and compensation owed to him from November 2008 through February 2009. On June 30, the Township responded that the charge was untimely.

The Director found Shenekji's allegations to be untimely and that no circumstances justified a tolling of the statutory period. On appeal, Shenekji asserts that in July 2010, the Township admitted that certain monies were owed to Shenekji and forwarded a check to his counsel. In response, Shenekji's counsel forwarded a letter to the Township on July 16, 2010 indicating the amount paid was short and that it was considered only partial payment.^{2/} Despite Shenekji's counsel's written request to do so, the Township never responded to the letter. Another letter was sent on March 4, 2011, to which the Township never responded. Shenekji asserts that since he was never advised as to the Township's position regarding his request for additional monies, the statute of limitations was never tolled. Citing Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1978), he asserts that it would be inequitable and unfair to run

1/ (...continued)
condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. . . . [and] (7) Violating any of the rules and regulations established by the commission."

2/ Shenekji is now represented by different counsel.

the statute of limitations before he knew whether he had a claim to pursue.

N.J.S.A. 34:13A-5.4(c) provides that:

no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

In determining whether a party was "prevented" from filing an earlier charge, the Commission must conscientiously consider the circumstances of each case and assess the Legislature's objectives in prescribing the time limits as to a particular claim. 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. Kaczmarek. Relevant considerations include whether a charging party sought timely relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establishing an unfair practice; when a charging party knew or should have known the basis for its claim; and how long a time has passed between the contested action and the charge. State of New Jersey, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003).

We do not find that Shenekji was prevented from filing a timely unfair practice charge. He was aware in July 2010 that he

had a claim for unpaid compensation and certainly should have known when he received the check that was allegedly less than he was owed. Based on the documents provided, the operative date was at the latest July 16, 2010, causing the statute of limitations to run on January 16, 2011. The unfair practice charge was filed on June 27, 2011 - almost six months out of time. Our decision does not affect the contractual grievance filed by Shenekji or any other available remedy.

ORDER

The refusal to issue a complaint is sustained. The unfair practice case is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Wall was not present.

ISSUED: June 28, 2012

Trenton, New Jersey