

P.E.R.C. NO. 2014-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(JUVENILE JUSTICE),

Respondents,

Docket No. CI-2012-016

-and-

JUDY THORPE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Deputy Director of Unfair Practices, D.U.P. No. 2012-8, 40 NJPER 8 (¶4 2012), dismissing an unfair practice charge filed by Judy Thorpe against the State of New Jersey (Juvenile Justice Commission). The charge alleges the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 et seq., when it engaged in "abuse of process and spoliation of evidence" by prohibiting Thorpe from retrieving property after she was terminated in 2008 which included documents pertinent to a prior unfair practice case. The Commission sustains the Deputy Director's finding that Thorpe's charge was filed beyond the 90-day limitations period in the Act. The Commission further affirms the Deputy Director's finding that Thorpe was not a public employee as defined by the Act when she filed her charge in 2011.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(JUVENILE JUSTICE),

Respondents,

Docket No. CI-2012-016

-and-

JUDY THORPE,

Charging Party.

Appearances:

For the Respondent, State of New Jersey, John Jay Hoffman, Acting Attorney General (Brady Montalbano Connaughton, Deputy Attorney General)

For the Charging Party, Judy Thorpe, pro se

DECISION

On November 30, 2012, Judy Thorpe appealed a decision of the Deputy Director of Unfair Practices refusing to issue a complaint based on an unfair practice charge she filed with this agency.^{1/} D.U.P. 2013-2, 40 NJPER 8 (¶4 2012). On November 9, 2011 she filed a charge against the State of New Jersey/Juvenile Justice Commission ("JJC") asserting violations of 5.4a(1), (2), (3), (4), (5), (6) and (7)^{2/} of the Act of the New Jersey Employer-

^{1/} We deny Thorpe's request for oral argument. She has fully presented her issues on appeal.

^{2/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)

Employee Relations Act, N.J.S.A. 34:13A-1, et seq. ("Act").

Thorpe alleges that on May 9, 11, 12 and 13, 2011 and October 20 and November 7, 2011, the JJC engaged in "abuse of process and spoliation of evidence." Thorpe seeks the remedy of back pay, reinstatement, reopening the (arbitration) case, voiding the award, scheduling a new arbitration hearing, and employment action against two employees of JJC, among other things. We incorporate the comprehensive factual and procedural history set out in the Deputy Director's decision.

The Deputy Director dismissed Thorpe's unfair practice charge after he found that her charge was filed beyond the six month statutory period, and that she lacked standing to file the unfair practice charge since Thorpe was not a public employee after August 12, 2010.

2/ (...continued)
restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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; (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; (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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

Thorpe was terminated from her position with the JJC in August 2008. An arbitrator's award upholding her termination was issued on February 12, 2010. She appeals the Deputy Director's decision, asserting that she was prevented from retrieving property after she was terminated, including alleged pertinent files to her appeal of a previous unfair practice charge concerning her termination.^{3/}

The Act requires that an unfair practice charge be filed within six months of the date that the unfair practice occurred.^{4/} Under the facts of this matter, Thorpe was required to file her unfair practice charge by August 12, 2010 - six months after the issuance of the arbitration award. Charges that are 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. N.J.S.A. 34:13A-5.4c.
The Standards For Assessing Timelines

^{3/} Thorpe was provided her inventoried personal property on May 9, 2011, and she alleges that approximately ten boxes were missing.

^{4/} 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.

The Act does not rigidly bar relief on all causes of action arising more than six months before a charge was filed. A charge may still be filed if the charging party was "prevented" from filing a charge on time and the six month period will not begin to run until the charging party 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 v. New Jersey Turnpike Auth., 77 N.J. 329 (1978). 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. See, e.g., Kaczmarek; Wayne Tp. P.E.R.C. No. 2012-68, 39 NJPER 37 (¶12 2012); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003); City of Margate, P.E.R.C No. 94-40, 19 NJPER 572 (¶24270 1993); Hoboken Teachers Ass'n, P.E.R.C No. 91-110, 17 NJPER 331

(¶22145 1991); Barnard Engineering Co., 295 NLRB No. 30, 133 LRRM 1137 (1989); O'Neill Ltd., 288 NLRB No. 147, 129 LRRM 1315 (1988); Burgess Construction Corp., 227 NLRB No. 119, 95 LRRM 1135 (1977).

Additionally, unfair practice charges alleging violations of N.J.S.A. 34:13A-5.4 may only be filed by public employers, public employees, employee organizations, or their representatives. N.J.A.C. 19:14-1.1. N.J.S.A. 34:13A-3(d) defines a "public employee," in a relevant part, as ". . . any person holding a position, by appointment or contract, or employment in the service of a public employer." As correctly determined by the Deputy Director, Thorpe did not have standing to file an unfair practice charge as of August 12, 2010 - six months after the arbitration award upholding her termination was issued.

Thorpe claims that she was prevented from retrieving her property because the JJC had banned her from its facilities after her August 2008 termination. However, an email attached to Thorpe's unfair practice charge indicates that she personally retrieved her property from the JJC on May 9, 2011. Thorpe has not provided any evidence that she was prevented by the JJC from personally attempting to retrieve her property at a date earlier than August 12, 2010, where she would have had the ability to file a timely unfair practice charge or that she meets any of the

other factors that warrant an extension of the six month period as set forth above.

ORDER

The Deputy Director's refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: April 24, 2014

Trenton, New Jersey