

P.E.R.C. NO. 2014-61

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK STATE-OPERATED  
SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CI-2013-011

NEWARK TEACHERS UNION,  
LOCAL 481, AFT, AFL-CIO

Respondent,

-and-

CHRISTINE GILLESPIE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by Christine Gillespie against the Newark State-Operated School District and the Newark Teachers Union, Local 481, AFT, AFL-CIO. The Commission holds that the charge is untimely under N.J.S.A. 34:13A-5.4(c) because no allegations in the charge or in Gillespie's appeal papers allege facts that, if true, would constitute unfair practices within six months of her filing date.

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, Newark State-Operated School  
District, Adams, Gutierrez & Lattiboudere, LLC,  
attorneys (Cheri L. Adams, of counsel)

For the Respondent Newark teachers Union, Local 481,  
AFT, AFL-CIO, Zazzali, Fagella, Nowak, Kleinbaum &  
Friedman, attorneys (Colin M. Lynch, of counsel)

For the Charging Party, Christine Gillespie, pro se.

DECISION

Christine Gillespie has appealed the decision of the  
Director of Unfair Practices refusing to issue a Complaint based  
on her unfair practice charge, as amended, filed against the  
Newark State-Operated School District and Newark Teachers Union,  
Local 481, AFT, AFL-CIO. D.U.P No. 2014-3, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_)

2013). We agree with the Director that the allegations are untimely and deny the appeal.

N.J.S.A. 34:13A-5.4(c) provides that no complaint shall issue based on any unfair practice occurring more than six months before the filing of an unfair practice charge. The August 30, 2012 charge, as amended, alleges that the District and NTU violated N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (7)<sup>1/</sup> and 5.4(b)(1)<sup>2/</sup> when the then District Superintendent certified tenure charges against Gillespie and the NTU failed to challenge the action.

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

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. ... (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. ... [and] (7) Violating any of the rules and regulations established by the commission."

2/ These provisions prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

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. State of New Jersey, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003).

Gillespie alleges she was prevented from filing a timely charge because of 1) Lack of notice of the filing requirements; 2) Lack of constructive knowledge of the filing requirements; 3) Diligence in pursuing her rights; and 4) an absence of prejudice to the Respondents as Gillespie has been in courts continuously in effort to invalidate agency ultra vires interpretive rules which lack force of law.

The Director's decision outlines the litigation history between Gillespie and Respondents. The core of Gillespie's allegations center around her displeasure with the State Superintendent certifying tenure charges against her rather than the Board of Education. That issue is not within this Agency's jurisdiction and has been decided by the Appellate Division.

Gillespie v. NJDOE et al., 397 N.J. Super. 545 (App. Div. 2008), certif. den. 195 N.J. 420 (2008). The remainder of Gillespie's allegations concern allegations as to the merits of the tenure charges and dissatisfaction with her workers' compensation case. These issues are within the exclusive jurisdiction of the Commissioner of Education<sup>3/</sup> and Workers' Compensation Court.

The tenure charges were filed in February 2003, however, no allegations in the charge or in Gillespie's appeal papers allege facts that, if true, would constitute unfair practices within six months of August 30, 2012 by either Respondent.

ORDER

The refusal to issue a Complaint is sustained. The unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: March 27, 2014

Trenton, New Jersey

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<sup>3/</sup> We note that Gillespie's tenure case is currently pending in the Office of Administrative Law.