

P.E.R.C. NO. 2018-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE-OPERATED
SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-2016-197

PATERSON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by the District seeking to dismiss the Association's amended unfair practice charge on grounds of untimeliness. The Association's original and amended charge allege that the District violated N.J.S.A. 34:13A-5.4a(1) and (3) by transferring a unit member in retaliation for her exercise of protected activity and her activity as Association delegate. The Commission finds that the action challenged in the amended unfair practice charge remains the same as the action challenged in the original charge and that the amendment merely provides additional factual background about the protected activity alleged. The Commission also finds that the amendment should be considered timely since the District did not demonstrate that it was prejudiced by the amendment or that the amendment would be futile.

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, Robert E. Murray, LLC,
attorneys (Robert E. Murray, of counsel)

For the Charging Party, Oxfeld Cohen, P.C.,
attorneys (William P. Hannan, of counsel)

DECISION

This case comes to us by way of a motion for summary judgment filed by Paterson State-Operated School District (District) in an unfair practice case filed by Paterson Education Association (Association). The unfair practice charge alleges that the District violated subsections 5.4a(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

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."

seq. (Act), when it transferred Kathy Rogers (Rogers) in retaliation for her exercise of protected activity and her activity as Association delegate.

PROCEDURAL HISTORY

On March 28, 2016, the Association filed the underlying unfair practice charge. On September 22, the Director of Unfair Practices (Director) issued a complaint and notice of pre-hearing conference with respect to the Association's allegations. On October 14, the District filed an answer but did not raise the statute of limitations as an affirmative defense. On November 16, the Hearing Examiner scheduled a hearing for February 22, 24, 28 and March 16, 2017.

On February 7, 2017, the Association filed an amended unfair practice charge. On February 14, the Hearing Examiner scheduled a telephone conference call for February 15 and subsequently rescheduled the hearing to May 10, 19, and 24, 2017. On February 21, the District filed an amended answer and raised the statute of limitations as an affirmative defense with respect to the Association's new allegations. On February 23, the Hearing Examiner sent correspondence to the parties indicating that she was amending the complaint to include the allegations specified in the Association's amended unfair practice charge based upon her finding that the amendment was timely filed and sufficiently related to existing allegations.

On April 24, 2017, the District filed a motion to dismiss the amended unfair practice charge supported by a brief, exhibits, and the certification of its General Counsel, Robert E. Murray (Murray). On April 28, the Hearing Examiner sent correspondence to the parties indicating that she was treating the District's filing as a motion for summary judgment and forwarding it to the Commission for processing. On May 1, the Commission Case Administrator sent correspondence to the parties establishing a briefing schedule and adjourning the hearing. On May 2, the Association sent correspondence to the Commission Case Administrator indicating that the parties had agreed that the motion for summary judgment would be limited to the issue of whether the amended unfair practice charge was timely filed.

On May 24, 2017, in response to the District's motion for summary judgment, the Association filed an opposition brief, exhibits, and the certification of its counsel, William P. Hannan (Hannan). On July 5, the District's motion for summary judgment was referred to the Commission for a decision pursuant to N.J.A.C. 19:14-4.8(a).

FACTS

Rogers is employed by the District as a school social worker. She was assigned to Eastside High School (Eastside) at the beginning of the 2015-2016 school year and served as the building's Association delegate. The Association is the majority

representative for all personnel employed by the District including, but not limited to, instructional and education services certificated positions. The District and the Association were parties to a collective negotiations agreement (CNA) in effect from July 1, 2014 through June 30, 2017.

The Association's original unfair practice charge, filed on March 28, 2016, alleged violations of subsections 5.4a(1) and (3) of the Act based upon the following allegations:

As of March 7, 2016, Rogers was a newly-elected building delegate for the Association at Eastside;

On March 7, 2016, the Association filed a grievance on Rogers' behalf challenging a letter of reprimand issued by her supervisor;

On March 10, 2016, Rogers received a letter indicating that she was transferred from Eastside and assigned to split time between School Nos. 7 and 29;

Rogers' transfer was in retaliation for her exercise of protected activity and her activity as an Association delegate.

The Association's amended unfair practice charge, filed on February 7, 2017, alleged the same violations but added the following allegations:

Rogers was a building delegate for the Association at Eastside for the 2015-2016 school year;

On multiple occasions dating back to December 2015, Rogers had discussions with her supervisors on behalf of herself and other members of the child study team concerning working conditions and expressed her concerns

regarding heavy case loads, staffing, and possible violations of school board policy and/or regulations;

On February 24 and March 7, 2016, the Association filed grievances on behalf of Rogers and other members of the child study team challenging the issuance of a February 17, 2016 letter of reprimand to Rogers and other members of the child study team;

On March 8, 2016, Rogers received a letter indicating that she was transferred from Eastside to School No. 7 effective March 9, 2016;

On March 10, 2016, Rogers received a letter indicating that she was transferred from Eastside and assigned to split time between School Nos. 7 and 29 effective March 9, 2016.

The amendment repeated the Association's original claim - that Rogers was transferred in retaliation for her exercise of protected activity and her activity as an Association delegate.

LEGAL ARGUMENTS

The District maintains that the amended unfair practice charge asserts separate and distinct protected activities (i.e., advocacy concerning heavy case loads and staffing, whistleblowing regarding policy and/or regulatory violations, and a February 24 grievance) as the basis for the alleged retaliatory transfer. The District argues that these new allegations do not relate back to the original unfair practice charge and are barred by the six-month statute of limitations and that amending the charge just nine business days before the hearing was unduly prejudicial.

The Association argues that the unfair practice that forms the basis for both the original and amended charge is Rogers' transfer. The Association maintains that the amended charge does not allege any additional unfair practices; it merely provides further specificity and detail concerning Rogers' protected activity and her activity as Association delegate. Noting that the hearing in this matter was adjourned, the Association asserts that the amendment does not prejudice the District.

STANDARD OF REVIEW

We note that 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. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); see also, Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).^{2/} In determining whether summary judgment is appropriate, we must ascertain "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a

2/ N.J.A.C. 19:14-4.8(e) provides:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 523. "Although summary judgment serves the valid purpose in our judicial system of protecting against groundless claims and frivolous defenses, it is not a substitute for a full plenary trial" and "should be denied unless the right thereto appears so clearly as to leave no room for controversy." Saldana v. DiMedio, 275 N.J. Super. 488, 495 (App. Div. 1995); see also, UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶6 2006).

Commission regulations related to the amendment of unfair practice charges are similar, but not identical, to other New Jersey forums.^{3/} N.J.A.C. 19:14-1.5(a) provides that "[a]fter a complaint issues, any proposed amendment shall be filed with the hearing examiner." N.J.A.C. 19:14-2.2(a) provides that "[a]ny

^{3/} See, e.g., R. 4:9-1 (after a responsive pleading has been served, "a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice"); R. 4:9-2 ("amendment of the pleadings and pretrial order as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment"); R. 4:9-3 ("[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading"); N.J.A.C. 1:1-6.2 ("[u]nless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice").

complaint may be amended by the hearing examiner to conform to the allegations set forth in any amended charge filed pursuant to N.J.A.C. 19:14-1.5(a)." N.J.A.C. 19:14-6.3(a)(8) provides that a hearing examiner has the authority to "[d]ispose of procedural requests, motions, or similar matters, including motions . . . to amend pleadings."

Commission regulations related to pleading requirements are also similar, but not identical, to other New Jersey forums.^{4/} N.J.A.C. 19:14-1.3(a)(3) requires that an unfair practice charge include "[a] clear and concise statement of the facts constituting the alleged unfair practice . . . specify[ing] the date and place the alleged acts occurred"

N.J.S.A. 34:13A-5.4(c), which establishes the statute of limitations for unfair practice charges, provides in pertinent part:

Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that no

^{4/} See, e.g., R. 4:5-2 ("a pleading . . . shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief"); R. 4:5-7 ("[e]ach allegation of a pleading shall be simple, concise and direct" and "[a]ll pleadings shall be liberally construed in the interest of justice").

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-month period shall be computed from the day he was no longer so prevented.

ANALYSIS

It is undisputed that the original unfair practice charge, alleging that the District transferred Rogers in March 2016 in retaliation for her exercise of protected activity and her activity as an Association delegate, was timely filed. It is also undisputed that the amended unfair practice charge was filed in February 2017, more than six months after the alleged retaliatory transfer. See, N.J.S.A. 34:13A-5.4(c).

The Commission has held that pursuant to New Jersey Court rules and case law, untimely allegations set forth in an amended unfair practice charge may be considered timely if "the action challenged . . . was challenged in the original timely charge." Ocean Tp., P.E.R.C. No. 2007-44, 33 NJPER 5 (¶5 2007); see also, R. 4:9-3; Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 499 (2006) ("[w]hen a period of limitation has expired, it is only a distinctly new or different claim or defense that is barred" such that "where the amendment constitutes the same matter more fully or differently laid, or the gist of the action or the basic subject of the controversy remains the same, it should be readily

allowed and the doctrine of relation back applied") (citations omitted).^{5/}

We find that the action challenged in the amended unfair practice charge remains the same as the action challenged in the original charge - i.e., Rogers' transfer was allegedly in retaliation for her exercise of protected activity and her activity as an Association delegate. We also find, as the Association represented, that the amendment simply provides additional factual background about the protected activity alleged. Thus, the amendment merely "constitutes the same matter more fully laid out." Notte, supra. Therefore, and since the District has not demonstrated that it will be prejudiced by the amendment or that the amendment would be futile, we find that it should be considered timely. See n.5.

^{5/} The Notte Court added that under its rules, a request to amend a pleading will be denied either if prejudice will inure to the party opposing the amendment or if the amended pleading itself is without legal merit, that is, if the amendment as proposed would be futile. 185 N.J. at 495. Similarly, in administrative forums, pleadings may be freely amended when the "amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice" and a continuance may be granted "to allow the opposing party additional preparation time." N.J.A.C. 1:1-6.2.

ORDER

The Paterson State-Operated School District's motion for summary judgment is denied. This matter is remanded to the Hearing Examiner for a hearing.

BY ORDER OF THE COMMISSION

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

ISSUED: August 17, 2017

Trenton, New Jersey