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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0852-13T1  
A-0866-14T1

IN THE MATTER OF CWA LOCAL  
1040, CWA DISTRICT ONE and  
STATE OF NEW JERSEY (JUVENILE  
JUSTICE),

Respondents-Respondents,

and

JUDY THORPE,

Charging Party-Appellant.

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Argued February 13, 2017 – Decided March 24, 2017

Before Judges Haas and Currier.

On appeal from the New Jersey Public  
Employment Relations Commission.

Judy Thorpe, appellant pro se.

David N. Gambert, Deputy General Counsel,  
argued the cause for respondent Public  
Employment Relations Commission (Robin T.  
McMahon, General Counsel, attorney; Mr.  
Gambert, on the statement in lieu of brief).

Annmarie Pinarski argued the cause for  
respondents CWA Local 1040, CWA District One  
(Weissman & Mintz, attorneys; Ms. Pinarski and  
Nora L. Sullivan, on the brief).

Sally Ann Fields, Senior Deputy Attorney General, argued the cause for respondent State of New Jersey, Juvenile Justice Commission (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Ms. Fields, on the brief).

PER CURIAM

In these related matters<sup>1</sup> arising out of the termination of her employment, appellant Judy Thorpe appeals from the denial of her motions for reconsideration by the Public Employment Relations Commission (PERC). Appellant contests PERC's refusal to issue a complaint alleging unfair practices by her former union, the Communications Workers of America (CWA), and her former employer, the State of New Jersey Juvenile Justice Commission (JJC or State). After a review of these contentions in light of the record and applicable principles of law, we affirm.

In The Matter of CWA and The State

Appellant began her employment with the State in 1983 and in 2005 became the Supervisor of Nursing Services at the JJC's New Jersey Training School. In August 2008, appellant received a Final Notice of Disciplinary Action<sup>2</sup> terminating her employment

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<sup>1</sup> The cases were consolidated for the purpose of this opinion.

<sup>2</sup> Prior to her termination, appellant had several disciplinary infractions and harassment complaints against her.

for insubordination due to her refusal to submit to a psychological fitness-for-duty examination.<sup>3</sup>

The CWA filed a grievance, challenging appellant's termination under its collective bargaining agreement (agreement) with the State. When the parties were unable to resolve the matter, CWA filed for grievance arbitration. Appellant was represented by a union-appointed attorney at the arbitration proceeding; in February 2010, the arbitrator upheld appellant's termination.

In June and August 2010, appellant filed unfair practice charges (UPCs or charges) and amended UPCs against CWA and the State, claiming the union and her employer had breached their duties of fair representation and good faith negotiation during arbitration in violation of the New Jersey Employer-Employee Relations Act (the Act), N.J.S.A. 34:13A-1 to -43.

On December 15, 2011, the Deputy Director of Unfair Practices of PERC (Deputy Director) dismissed appellant's charges against CWA and the State, finding that her allegations did not satisfy

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<sup>3</sup> When appellant took a medical leave of absence for "stress" in late 2007, she was informed that she needed to submit to a psychological fitness-for-duty examination before she could return to work. Appellant appeared for the evaluation but "refused to sign a release form or participate in the evaluation," resulting in the disciplinary action.

PERC's standards for issuing a complaint. In a thorough written decision, the Deputy Director addressed each of appellant's claims. He found certain claims to be untimely as they concerned allegations that occurred outside the six-month statute of limitations, N.J.S.A. 34:13A:5.4(c).

In considering appellant's claims that the CWA breached its duty of fair representation in her arbitration process, the Deputy Director noted the lack of facts presented to support that the "CWA acted arbitrarily, discriminatorily or in bad faith in its handling of Thorpe's grievance arbitration case." The Deputy Director also noted that appellant lacked standing to assert certain violations of the Act, and he therefore, dismissed those allegations.

In addressing the charges levelled against the State, the Deputy Director found appellant had not presented any allegations to support a violation of the Act. Noting that the allegations concerned testimony and evidence proffered by the State at the arbitration hearing, the Director observed that the arbitrator's award was final and binding pursuant to the parties' agreement, and therefore, appellant's recourse lay in an appeal from the award. Finally, the Deputy Director found numerous allegations were beyond PERC's jurisdiction. The UPC was dismissed.

PERC affirmed the Deputy Director's refusal to issue a complaint on October 25, 2012; appellant's motion for reconsideration was denied in September 26, 2013.

In The Matter Of The State

Prior to her August 2008 termination, appellant was placed on paid administrative leave beginning in December 2007. She was requested to remove her personal property in January 2008, but refused to do so. As a result, her personal property was inventoried, packed, and moved to a storage building. A final inventory list was provided to Human Resources.

After the arbitrator upheld her termination, appellant requested her personal property in May 2011, and the stored boxes were returned to her. Appellant advised that she was missing ten boxes of documents important to the appeal of her termination and she accused the State of destroying the documents. An investigation determined that all property had been returned. The State provided the inventory and chain of custody reports of appellant's personal property to PERC.

In November 2011, appellant filed a UPC against the State, claiming it had engaged in "abuse of process and spoliation of evidence" in violation of the Act.

In November 2012, the Deputy Director dismissed the UPC against the State finding that appellant lacked standing to file

the charge, as she was no longer a public employee. In addition, he found her allegations untimely. He stated:

A timely charge would have to allege unlawful conduct within six months of a date Thorpe could be considered a public employee – either within six months of Thorpe's August 15, 2008 termination (i.e. by February 15, 2009) or within six months of the February 12, 2010 arbitration award upholding that termination (i.e. by August 12, 2010).

As a result, the Deputy Director refused to issue a complaint.

PERC affirmed the Deputy Director's refusal to issue a complaint on April 24, 2014, and denied appellant's motion for reconsideration September 18, 2014.

In her appeal of PERC's denial of the motions for reconsideration, appellant reiterates the arguments made in the prior proceedings and asserts that PERC erred in failing to issue complaints on her charges. We disagree.


On appeal, PERC decisions are reviewed under a deferential standard and will be upheld unless "clearly demonstrated to be arbitrary or capricious." City of Jersey City v. Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555, 568 (1998) (citing In re Hunterdon County Bd. of Chosen Freeholders, 116 N.J. 322, 329 (1989)) (internal quotation marks omitted). Our review of PERC's factual determinations is limited. In re Bridgewater Twp., 95 N.J. 235, 245 (1984). PERC's factual findings will be upheld

so long as there is "sufficient, credible, competent evidence in the record." Id. at 246.

Mindful of that standard, we find appellant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(1)(D). We affirm substantially for the reasons expressed by PERC in its well-reasoned written decisions in both matters. We are satisfied that PERC presented detailed reasons in support of its conclusions, which were based on the credible evidence in the record. Appellant has shown no evidence of arbitrary or capricious conduct.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION