

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

OLIVIA DRAKE	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
STEAMFITTERS LOCAL UNION	:	
NO. 420	:	NO. 01-6968

MEMORANDUM AND ORDER

J. Davis

January 27, 2005

Presently before the Court are Defendant Local 420's Motion for Summary Judgment (Doc. No. 37), filed on August 26, 2004; Plaintiff's Response to Defendant's Motion for Summary Judgment (Doc. No. 42), filed on September 20, 2004; and Plaintiff's Supplemental Response to Defendant's Motion for Summary Judgment (Doc. No. 43), filed on September 21, 2004.

For the following reasons, this Court grants Local 420's motion for summary judgment.

I. Factual and Procedural History

This litigation arises from discrimination allegedly suffered by plaintiff Olivia Drake while she was a member of defendant Steamfitters Local Union No. 420 ("Local 420"). An initial understanding of the structure and operation of Local 420 is necessary to evaluate the merits of plaintiff's claims.

Local 420 is a "labor organization" within the meaning of § 2(5) of the National Labor Relations Act, 29 U.S.C. § 152(5). (Def. Mot. For SJ., at 2). Local 420 represents steamfitters, pipefitters, welders, and service technicians who work for contractors that sign collective

bargaining agreements with Local 420. (See Affidavit of Thomas Gallo (“Gallo Affidavit”), attached as Ex. 3 to Def. Mot., at ¶ 3).

Local 420 operates in accordance with a master collective bargaining agreement with the Mechanical Contractors Association of Eastern Pennsylvania (“MCA”). (Gallo Aff., at ¶ 4). This collective bargaining agreement (“MCA agreement”) identifies the wages, hours, and working conditions for Local 420 members who work for signatory contractors that belong to the MCA or who agree to be bound by the provisions of the MCA agreement. (Id.). Specifically, the MCA agreement applies to Local 420 members who work as journeymen or apprentice steamfitters. (See MCA agreement, attached as Ex. 3A to Def. Mot., at Article I, § 4). The MCA agreement requires each signatory contractor to pay wage rates to these members and to make fringe benefit contributions to various benefit funds on their behalf. (Id., at Articles III and IX; Gallo Aff., at ¶ 17).

A. Membership in Local 420

Individuals retain several methods to obtain membership in Local 420. One way is for applicants to apply for and complete the Local 420 Joint Apprenticeship Program (“JATP”). (See Gallo Aff., at ¶¶ 8, 9). The JATP lasts for five years, and incorporates classroom and on-the-job training. (Id.). The hiring and training of apprentices is governed by the rules and regulations promulgated and adopted by the JATP’s Joint Apprenticeship Committee. (Id.; see also MCA agreement, at Article X, § 1-2, and Article XVI, § 2(a)).

The terms and conditions of membership in Local 420 are governed both by the Constitution of the United Association of Plumbers and Pipefitters (“UA Constitution”), Local 420’s parent international labor organization, and Local 420’s internal bylaws. (See Gallo Aff., at

¶ 14; UA Constitution, attached as Ex. 3B to Def. Mot., at §§ 150-173; Local 420 Bylaws, attached as Ex. 3C to Def. Mot., at Article X). An applicant for membership is required to fill out an application and, upon acceptance, must pledge to “remain loyal and true to the principles and policies and to be governed by the Constitution and ByLaws and Ritual of the United Association and the Local Union” (See UA Constitution, at § 159). To maintain membership, members must pay dues. (Id., at § 133). Failure to pay dues for more than three months results in automatic suspension from “membership without notice of any kind.” (Id., at § 163). A suspended member is denied “all rights and privileges and is not entitled to any monetary benefits.” (Id.). To regain “good standing,” a suspended member must pay back dues through the current month and a reinstatement fee. (Id., at § 164). The failure to pay dues for a six month period results in expulsion from Local 420. (Id., at § 165).

Membership in Local 420 carries an array of rights. First, members have the right to vote in internal union elections and to run for union office. (See Gallo Aff., at ¶ 14; UA Constitution, at §§ 37, 123, 127; Local 420 ByLaws, at Article VI). Elected positions within Local 420 include business managers, assistant business managers, s, and executive board members. (See Gallo Aff., at ¶ 14; Local 420 ByLaws, at Article VII). Second, members are permitted to use Local 420 to obtain work opportunities with signatory contractors. (See Gallo Aff., at ¶ 23; Local 420 ByLaws, at Article IX). Third, members who work with signatory contractors have contributions made on their behalf to benefit funds. (See Gallo Aff., at ¶ 17; MCA agreement, at Article IX).

B. Work Opportunities

Local 420 is an “open solicitation” union, which permits members to solicit work with any contractor that signs a collective bargaining agreement with Local 420. (See Gallo Aff., at ¶

5). Local 420 also maintains an “out-of-work” list for unemployed members, which notifies members on the list of job openings with signatory contractors. (See Gallo Aff., at ¶ 6; MCA agreement, at Article XVI, §§ 2-9). Although Local 420 “refers” unemployed members on the list to signatory contractors when requested, this list is not an “exclusive hiring hall.” (See MCA agreement, at Article XVI, § 2(b)). Employees on the out-of-work list have the right to decline employment with any requesting contractor, and, in turn, contractors may decline employment to members referred from the out-of-work list. (See Gallo Aff., at ¶ 6; MCA agreement, at Article XVI, § 2(b)).

C. Retirement Funds

Local 420 members working for signatory contractors have contributions made on their behalf to benefit funds. (See MCA agreement, at Article IX). These funds include the Local 420 Pension Fund (“Pension Fund”), and the Local 420 Supplemental Retirement Fund (“SR Fund”). Both funds are administered by a Board of Trustees, consisting of an equal number of Local 420 and management personnel. (See Gallo Aff., at ¶¶ 17-20).

The SR Fund is a “defined contribution plan” within the meaning of ERISA. (Id., at ¶ 19). Participants may withdraw contributions to the SR Fund in accordance with Internal Revenue Service guidelines. (Id.). The Pension Fund, on the other hand, is a “defined benefit plan” within the meaning of ERISA. (Id., at ¶ 20). Participants receive a set monthly benefit upon retirement, which is based on earned service credits. (Id.). The Pension Fund does not permit withdrawals. (Id.).

D. Plaintiff’s Membership in Local 420

Plaintiff Olivia Drake took and passed the examination for entry into the JATP in 1980. (See Deposition of Olivia Drake (“Drake Deposition”), attached as Ex. 2, at 33). Plaintiff successfully completed the JATP, and became a journeyman steamfitter in 1984. (Id., at 32).

Plaintiff worked as a journeyman steamfitter for 14 years, from 1984 through 1997. (Id., at 40). During this time, plaintiff solicited work with contractors signatory to collective bargaining agreements with Local 420 and through Local 420’s out-of-work list. (Id., at 34, 41). Plaintiff received wages and benefits under the applicable collective bargaining agreements, including pension benefits through the Pension Fund, and supplemental retirement benefits through the SR Fund. (Id., at 65, 67-68). Plaintiff was permitted to withdraw contributions from the SR Fund, but not from the Pension Fund. (Id., at 68-70).

During her 14-year tenure as a member in Local 420, plaintiff retained the ability to participate in union affairs and to vote in internal union elections. (Id., at 88). Plaintiff also retained the right to run for elected office, although plaintiff was never nominated and never read the appropriate provisions of the UA Constitution governing the nomination process. (Id., at 90-92).

Plaintiff stopped paying membership dues in Local 420 in early 1997. (Id., at 79, 196; Gallo Aff., at ¶ 24). Plaintiff was expelled from membership that same year. (Id., at 172). Since that time, plaintiff has not worked as a steamfitter. (Id., at 79-81). Furthermore, between 1997 and early 2004, plaintiff made no attempt to get onto Local 420’s out-of-work list or to obtain reinstatement as a member by paying back dues, despite familiarity with the UA Constitution’s provisions requiring the payment of back dues and a reinstatement fee to return to good standing. (Id., at 79-85, 196-197).

E. Procedural History

On January 1, 1997, plaintiff filed her first Title VII lawsuit against Local 420 (“first lawsuit”). (See Civil Action No. 97-CV-0585). Proceeding on a *pro se* basis, plaintiff alleged that Local 420 referred white male members of Local 420 for employment over her, encouraged racial comments against plaintiff and permitted harassing graffiti at her job-site, and refused to provide plaintiff with free legal counsel received by other union members and officials. See, e.g., Drake v. Steamfitter’s Local Union No. 420, 1998 WL 564486, at *1-2 (E.D. Pa. Sept. 3, 1998) (McGlynn, J.). On June 28, 1998, the Court granted Local 420’s motion for summary judgment on the alleged “failure of [Local 420] to refer her for employment and for racial comments and graffiti.” (See June 29, 1998 Order, attached as Ex. 4 to Def. Mot.); see also Drake v. Steamfitters Local Union No. 420, 1998 WL 564486, at *1 (E.D. Pa. Sept. 3, 1998). The remaining counts were later dismissed by way of a summary judgment motion. Id., at *4-5. This decision was affirmed without opinion by the United States Court of Appeals for the Third Circuit. See Drake v. Steamfitters Local Union No. 420, 242 F.3d 370 (3d Cir. 2000).

Plaintiff filed another charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) and the Pennsylvania Human Relations Commission (“PHRC”) in May 2000. (Compl., at ¶ 6; see May 31, 2000 EEOC Charge of Discrimination, attached as Ex. 2 to Def. Mot. To Dismiss). Plaintiff subsequently received a right-to-sue letter from the EEOC on or about September 25, 2001, and, on January 25, 2002, plaintiff filed a second *pro se* complaint against Local 420 (“second lawsuit”). (Compl., at ¶ 5). Plaintiff’s complaint alleges that Local 420 committed, participated in, and perpetuated a host of discriminatory practices, dating back to 1965, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000(e)

et seq., and the Pennsylvania Human Relations Act (“PHRA”), 43 Pa. Cons. Stat. Ann. § 951 *et seq.* (Compl., at ¶ 3).

The complaint is not broken into individual counts. Furthermore, many of these allegations of discrimination are presented in general terms, without demonstrating a personal nexus to plaintiff and without specific dates for the allegedly discriminatory conduct. However, plaintiff concedes that the lawsuit was brought only on her behalf, rather than as a class action. (See Drake Deposition, at 112).

The allegations in the complaint can be broken into certain categories of gender and race discrimination. First, plaintiff alleges discrimination against African-American women with respect to all facets of Local 420’s apprenticeship program, including procedures and standards for admission, access to records, opportunities to return to and complete the program, pay, training, and promotions. (Compl., at ¶¶ 8, 15, 16, 18, 19, 20, 25, 28, 29). Second, plaintiff alleges discrimination against African-American women with respect to all facets of membership in Local 420, including the selection of members, working conditions, employment opportunities, promotions, job referrals, the right to transfer pension proceeds, the ability to work under aliases or false social security numbers, responses to grievances, and training. (Compl., at ¶¶ 8, 9, 10, 11, 17, 26, 27, 28, 30, 31, 32, 33). Third, plaintiff alleges that Local 420 has failed to comply with specific racial and gender non-discrimination obligations imposed by federal regulations and guidelines, such as failing to maintain records to reflect its minority membership, failing to implement diversity training, failing to force contractors to provide separate bathroom facilities for women, failing to maintain a 30% African-American membership, and failing to implement an affirmative action program. (Compl., at ¶¶ 12, 13, 14, 21, 22, 23, 24). Finally,

plaintiff alleges that in December 2000, Local 420 incorrectly stated that plaintiff, although no longer a member of Local 420, was not qualified for employment opportunities connected with Local 420. (Compl., at ¶ 9).

On October 23, 2002, the Court denied Local 420's motion to dismiss the complaint. (Doc. No. 8). On April 3, 2003, defendant filed a motion for entry of judgment for failure to meet discovery deadlines (Doc. No. 17), which was granted by the Court on August 27, 2003. (Doc. No. 24). On April 16, 2004, the United States Court of Appeals for the Third Circuit vacated the decision to dismiss the complaint and remanded the matter for further proceedings. See Drake v. Steamfitters Local Union 420, 2004 WL 1055286 (3d Cir. 2004).

On May 21, 2004, the Court issued a new scheduling order and resumed discovery. (Doc. No. 26). Factual and expert discovery finished on August 16, 2004, and, on August 26, 2004, Local 420 submitted its first motion for summary judgment. (Doc. No. 37). Plaintiff filed her response on September 20, 2004. (Doc. No. 42). Plaintiff then subsequently corrected her response to Local 420's summary judgment on September 21, 2004. (Doc. No. 43).

II. Discussion

Local 420 presents several arguments in favor of summary judgment. First, Local 420 argues that plaintiff's claims are time-barred because the EEOC charge was filed more than 300 days after the date of the last incident of discrimination against plaintiff. (Def. Mot. For Sum. Judg., at 18). Second, Local 420 argues that the record is devoid of any evidence to support plaintiff's discrimination claims. (Id., at 24-33). Third, Local 420 argues that plaintiff has sued the wrong entity with respect to discrimination related to the JATP and the pension funds. (Id., at 19-23).

Prior to reaching the merits of Local 240's motion, the Court must first determine what evidence it may examine during the course of its analysis. Plaintiff argues that the Court should strike the affidavit of Thomas Gallo (the "Gallo affidavit") on the basis that the affidavit did not take the appropriate form, as required by Federal Rule of Civil Procedure 56(e). (Pl. Br. In Opp'n., at 3). Plaintiff further argues that the affidavit was presented in bad faith, thereby entitling plaintiff to sanctions in accordance with Federal Rule of Civil Procedure 56(g). (Id.).

A. The Gallo affidavit complies with the requirements of Federal Rule of Civil Procedure 56, and is therefore admissible to resolve Local 420's summary judgment motion.

Plaintiff contends that the Gallo affidavit should be stricken because the affidavit was "constructed and composed" by Local 420's attorney, Richard McNeil Jr., rather than by Thomas Gallo ("Gallo"), and because the affidavit was not "certified, notarized, or dated." (Pl. Br. In Opp'n., at 3). This Court rejects both arguments.

The Gallo affidavit complies with Rule 56(e) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 56(e). First, the Gallo affidavit presents relevant and admissible facts concerning the general operation and structure of Local 420. Second, Gallo is competent to testify to these facts, which are within his personal knowledge, due both to his previous role as the Business Agent of Local 420 and to his current role as the Business Manager of Local 420, a trustee of the JATP Committee, and a trustee of the Pension and SR Funds. See Fed. R. Civ. P. 56(e) (affidavits must be based on personal knowledge and affiant must be competent to testify to stated matters). Third, although the Gallo affidavit is neither dated nor notarized, it is "sworn" to according to applicable law, and signed by the affiant. See 10B Wright, Miller, & Kane, Federal Practice and Procedure § 2738, at 362 (1998) ("Since 1976, affidavits [attached to summary

judgment motions] no longer need to be notarized and will be admissible if they are made under penalties of perjury; only unsworn affidavits will be rejected.”). Finally, plaintiff provides no evidence that the Gallo affidavit contains factual misrepresentations, or that it was not read, understood, composed, or signed by Gallo. Indeed, plaintiff’s assertion that Gallo’s non-responsiveness during his deposition raises doubts about the authenticity of his affidavit remain unsubstantiated. Accordingly, because the Gallo affidavit meets the requirements of Rule 56(e), both the affidavit and the documents attached to the affidavit are admissible for the purpose of resolving Local 240’s summary judgment motion.¹

Plaintiff’s request for sanctions in accordance with Rule 56(g) also fails as a matter of law. Fed. R. Civ. P. 56(g) (permitting sanctions against party who submits affidavit in “bad faith or solely for the purpose of delay”). Plaintiff offers no evidence that the Gallo affidavit was introduced for the sole purpose of delaying the trial. Nor does plaintiff provide reasoning as to her theory why the submission of the affidavit rises to the level of bad faith. Indeed, the Gallo affidavit is integral to defendant’s summary judgment motion, which was filed consistent with the deadlines in the Court’s August 3, 2004 scheduling order (Doc. No. 33). *See, e.g.*, 10B Wright, Miller, & Kane, Federal Practice and Procedure, § 2742, at 448 (1998) (noting that “there appear to be few situations in which the courts have resorted to Rule 56(g)”).

B. The majority of plaintiff’s Title VII and PHRA claims are procedurally barred because the last date of discrimination pre-dates the 300-day limitation period for the filing of an EEOC charge.

Title VII requires a plaintiff to exhaust her administrative remedies before filing a lawsuit

¹Plaintiff has not questioned the admissibility of the documents attached to and authenticated by the Gallo affidavit.

under the statute. See Freed v. Consolidated Rail Corp., 201 F.3d 188, 191 (3d Cir. 2000). A plaintiff must exhaust her administrative remedies by filing an EEOC charge alleging discrimination. See 42 U.S.C. § 2000e-5(e)(1); Nat’l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 105 (2000) (recognizing mandatory nature of filing EEOC charge). Because Pennsylvania is considered a “deferral state,” due to the existence of a cooperating state agency, the Pennsylvania Human Relations Commission (“PHRC”), the EEOC charge must be filed within 300 days of the date of the last act of alleged discrimination.² See 42 U.S.C. § 2000e-5(e); 29 CFR § 1601.13(a)(4)(ii)(A); see also West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d Cir. 1995); Colgan v. Fisher Scientific Co., 935 F.2d 1407, 1414-1415 (3d Cir. 1991). Alleged discrimination that occurs prior to the commencement of the 300-day limitation period is time-barred, pending the application of an equitable exception to this rule. See, e.g., Zysk v. FFE Minerals, 225 F.Supp.2d 482, 488 (E.D. Pa. 2001).

In contrast to Title VII, the PHRA requires a plaintiff to file an administrative complaint within 180-days of the last act of alleged discrimination. 43 Pa. Cons. Stat. Ann. §§ 959(a)-(h), 962 (2005). Accordingly, because Title VII provides a longer period during which to file an administrative complaint, a claim barred under Title VII for failure to file a timely EEOC charge must also be considered untimely under the PHRA. See, e.g., Ryan v. General Machine Products, 277 F.Supp.2d 585, 591 (E.D. Pa. 2003).

Plaintiff alleges that she filed a charge of discrimination with the EEOC on or about May 2, 2000, and then received a right-to-sue letter on September 25, 2001. (See Compl., at ¶¶ 5-6).

²The Court notes that defendant was incorrect in its application of a 180-day limitation period for the filing of a charge with the EEOC. (Def. Mot., at 18).

Counting backwards, this means that the 300-day limitation period for discriminatory conduct (actionable in this lawsuit) commenced on July 7, 1999. In other words, plaintiff's claims are barred by the 300-day limitation period to the extent that the last date of discrimination predates July 7, 1999. See, e.g., Figueroa v. Ortho-McNeil Pharm., Inc., 2001 WL 34371698, at *2 (E.D. Pa. Oct. 29, 2001) (granting summary judgment because plaintiff filed EEOC charge two months after the 300-day statute of limitations ran on the final incident of discrimination).

At the outset, this Court emphasizes that the instant lawsuit is brought only on behalf of plaintiff, rather than as a class action. (See Drake Deposition, at 112). With this principle in mind, the Court concludes that all discrimination suffered by plaintiff as an apprentice or member of Local 420 predates July 7, 1999, and, consequently, is barred by the appropriate limitation period.

1. Apprenticeship Program

First, all claims under Title VII and the PHRA concerning the apprenticeship program are time-barred. According to plaintiff's deposition, plaintiff entered the apprenticeship program in 1980, served four years in the program, and then graduated from the program to achieve journeyman steamfitter status. (See Drake Deposition, at 30, 114-116). Accordingly, any discrimination allegedly suffered by plaintiff during her time in the apprenticeship program would have occurred between 1980 and 1984, well before the July 7, 1999 statutory deadline. Defendant is therefore entitled to summary judgment on all allegations in the complaint that relate to alleged discrimination plaintiff experienced in the apprenticeship program. (See Compl., at ¶¶ 8, 15, 16, 18, 19, 20, 28, 29).

2. Membership

Second, all claims predicated upon discrimination allegedly suffered by plaintiff as an African-American member of Local 420 are time-barred. (Compl., at ¶¶ 8, 9, 10, 11, 17, 28, 30-33), as plaintiff was no longer a member in Local 420 between July 7, 1999 and May 2, 2000.

Plaintiff admits that she stopped paying dues in 1997. (See Drake Deposition, at 79-83; Pl. Br. In Opp'n., at 6). The UA Constitution governing Local 420 states that:

a member owing over three months' dues shall automatically be suspended from membership without notice of any kind. A suspended member is denied all rights and privileges and is not entitled to any monetary benefits.

(See UA Constitution, at § 163). Once a member is in arrears for a period of six months, that person "shall stand expelled," and must make a payment of past dues and a new initiation fee to obtain reinstatement. (Id. at § 165). It is indisputable that plaintiff never followed the procedures to return to "good standing," such as by paying back dues and the reinstatement fee, despite familiarity with the UA Constitution. (See Drake Deposition, at 79-85). As a result, plaintiff was never a member of Local 420 during the relevant limitation period. (See Gallo Aff., at ¶ 24).

Plaintiff concedes that she lost her membership rights in 1997. (See Drake Deposition, at 40, 79-83, 172). Plaintiff also concedes that her failure to pay dues in 1997 was "absolutely" a motivating factor in her expulsion from membership. (Id., at 186). However, in the same breath, plaintiff argues that Local 420 revoked plaintiff's membership and health care benefits in 1997 for filing a complaint in the first lawsuit, rather than for failing to pay dues. (Id., at 190; Pl. Br. In Opp'n. at 3, 6).³

³Plaintiff presents no evidence, with the exception of the close temporal proximity of the two events, to support the proposition that she was expelled from membership in 1997 in retaliation for the filing of the first lawsuit, rather than from her failure to pay dues. Nonetheless,

Regardless of why plaintiff lost her membership rights in Local 420, plaintiff's admission that she was expelled (or "terminated") from membership in 1997 is procedurally fatal to her instant Title VII and PHRA claims. Plaintiff's expulsion from Local 420 membership in 1997 rendered her ineligible for membership benefits, including the right to referrals from Local 420's out-of-work list, the right to use Local 420 to obtain work with contractors signatory to the MCA agreement, the right to seek appointed positions within Local 420, and the right to run for elected positions within Local 420. (See Gallo Affidavit, at ¶¶ 6, 14, 23). Nor did plaintiff, between 1997 and early 2004, attempt to regain membership status, such as by paying back dues or by making an effort to be placed on Local 420's out-of-work referral list. (See Drake Deposition, at 80, 190-197, 228).⁴ Hence, regardless of whether defendant discriminated against plaintiff while she was a member, plaintiff could not have suffered race and/or gender discrimination in connection with any facet of membership in Local 420 during the 300-day limitation period. In fact, plaintiff concedes that the last instance of alleged discrimination with respect to her various forms of Title VII claims, including her failure to promote,⁵ retaliation,⁶ adverse employment resolution of the factual basis for plaintiff's expulsion from membership in 1997 is immaterial to Local 420's procedural argument that plaintiff's Title VII and PHRA claims are time-barred.

⁴Plaintiff contended in her deposition that she attempted to place her name on the out-of-work referral list in February 2004, and was told that she was ineligible for placement on the list because of her back dues. (See Drake Deposition, at 192-196). Plaintiff provides no evidence that this refusal to place plaintiff on the out-of-work list in February 2004, prior to the payment of back dues, was motivated by race or gender discrimination.

⁵Plaintiff admits that the last time Local 420 allegedly denied her a promotion on the basis of her race and gender occurred in 1997. (See Drake Deposition, at 304).

⁶Although plaintiff's complaint does not expressly mention retaliation, plaintiff's deposition and brief raise this claim, arguing that plaintiff was expelled from membership in 1997 because plaintiff filed a complaint against Local 240. (See Drake Deposition, at 186; Pl. Br., at 6). Plaintiff's testimony therefore admits that the last instance of alleged retaliation against

action,⁷ denial of the grievance process,⁸ and hostile work environment⁹ claims, occurred in 1997, nearly three years before plaintiff filed her EEOC claim. (See Drake Deposition, at 228, 264-265, 291-294, 297, 304, 305).

Plaintiff has also failed to assert that any equitable exception applies to avoid application of the 300-day limitation period, such as waiver, estoppel, or equitable tolling. See, e.g., Jones v. Univ. of Pennsylvania, 2003 WL 21652083, at *10 (E.D. Pa. March 20, 2003) (Title VII retaliation claim barred when plaintiff fails to file EEOC charge within 300 days of when last unlawful employment practice occurred and when plaintiff fails to assert that any pertinent exception applies). Furthermore, plaintiff fails to argue, let alone demonstrate, that the continuing violation theory saves plaintiff's discrimination claims with respect to membership in Local 420. Indeed, plaintiff has failed to demonstrate that Local 420 committed at least one discriminatory act against plaintiff within the actual filing period or that any such acts were part of a "persistent, on-going pattern." West v. Philadelphia Elec. Co., 45 F.3d 744, 754 (3d. Cir.

plaintiff occurred in 1997, upon plaintiff's allegedly impermissible expulsion from membership in Local 420.

⁷Plaintiff admits that the last time that Local 420 failed to provide equal work opportunities to her was in 1997. (See Drake Deposition, at 305). This admission, coupled with plaintiff's concession that she was no longer a member of Local 420 after 1997, undermines the factual and legal basis for plaintiff's EEOC charge, in which plaintiff alleges that she applied both for a foreman position and for the position of job steward in early 2000 and that Local 420 refused to "hire" plaintiff for these positions. (See May 31, 2000 EEOC Charge).

⁸Plaintiff admits that the last time she observed an African-American member being denied the grievance process was in 1998. (See Drake Deposition, at 297).

⁹Plaintiff admits that she was allegedly last harassed based upon her race or gender in 1997. (See Drake Deposition, at 291-294). Plaintiff also admits that since 1997, plaintiff has not been subject to contractors who fail to provide separate bathrooms for men and women. (Id., at 264-265).

1995). Nor has plaintiff argued that Local 420 continues to discriminate against plaintiff with respect to seeking reinstatement as a member of Local 420 or that discrimination within Local 420 has prevented plaintiff from seeking reinstatement. Finally, the few allegations in the complaint that do contain specific or open-ended dates of discrimination fail to trigger application of the continuing violation exception.¹⁰

Because plaintiff failed to file a charge of discrimination within 300 days from the last date of alleged gender and racial discrimination, which occurred sometime in 1997, and because plaintiff has failed to raise or provide evidence in support of an exception to the limitation

¹⁰These allegations include the following: ¶ 8 (“Since 1965, Defendant has continued it’s [sic] discriminatory practices in the union and it’s [sic] apprenticeship against African American workers, particularly African American females in recruitment, selection, promotions, training, benefits, and admission to Defendant.”); ¶ 9 (“In February 2000, Defendant alleged Plaintiff was not qualified for positions, (shop steward general foreman, foreman, superintendent), when plaintiff successfully completed a four year training program, paid for by the union.”); ¶ 10 (“Since 1995, Defendant has refused to refer plaintiff to any available jobs but continue to refer other male and white union *members* to both local and non-local positions.”), and ¶ 11 (“Defendant for 16 years has denied plaintiff the positions of: shop steward, general foreman, foreman, superintendent, when *members* with less training and less experience than Drake are recommended, appointed, or offered these positions.) (Emphasis added).

These allegations fail to trigger the continuing violation doctrine for several reasons. First, plaintiff has failed to provide evidentiary support for any of these allegations. Second, ¶ 8, ¶ 10, and ¶ 11 of the complaint refer to adverse employment actions taken against plaintiff while she was a member of Local 420, and thereby entitled to particular employment opportunities; thus, because plaintiff was expelled from membership in 1997, none of these alleged discriminatory actions could have occurred during the relevant limitation period. (See Drake Deposition, at 305). Third, ¶ 9 of the complaint, which contains the only specific date of discrimination, refers to statements made by Local 420 in the first lawsuit and fails to rise to the level of an adverse employment action. Finally, all the allegations in ¶ 8, ¶ 9, ¶ 10, and ¶ 11 refer to distinct and separate employment decisions by Local 420 that, to the extent that they occurred during the relevant limitation period, can not be combined with separate actionable unlawful employment practices occurring prior to the limitation period. See, e.g., *Morgan*, 536 U.S. at 114-115 (discriminatory acts of termination, failure to promote, denial of transfer, or refusal to hire are distinct and easy to identify, and should rarely trigger the continuing violation doctrine).

period, all claims requiring as an element, predicated upon, or associated with plaintiff's membership in Local 420, including those based upon Local 420's alleged failure to promote, retaliation, adverse employment action, denial of the grievance process, and hostile work environment, are time-barred. (See Compl., at ¶¶ 8, 9, 10, 11, 12, 13, 21, 23, 24, 25, 26, 27, 39, 31, 32, 33). Plaintiff's *pro se* status does not excuse her failure to comply with the appropriate limitation period for the filing of her EEOC complaint. See, e.g., Robinson v. Southeastern Pennsylvania Transportation Auth., 2002 WL 1870462, at * 3 (E.D. Pa. Aug. 14, 2002) (applying 300-day limitation period to *pro se* plaintiff).

3. Failure to Comply with Federal Anti-Discrimination Regulations and Guidelines

Plaintiff alleges that she was discriminated against within the meaning of Title VII and the PHRA because Local 420 failed to comply with EEOC regulations and Department of Labor guidelines concerning the implementation of obligatory anti-discrimination measures. (Compl., at ¶¶ 8, 12, 13, 14, 21, 22, 23, 24). These allegations are all linked to membership in Local 420, and all imply injury against female and/or African-American members of Local 420. These allegations, regardless of their merit, are also barred by the 300-day limitation period.

By admitting that she was not a member of Local 420 between July 7, 1999 and May 2, 2000, plaintiff admits that she suffered no injury-in-fact during the limitation period based upon Local 420's alleged failure to comply with certain federal anti-discriminatory obligations related to membership in Local 420. See Anjelino v. New York Times Co., 200 F.3d 73, 81 (3d Cir. 1999) (standing under Title VII requires plaintiff to suffer injury-in-fact); see, e.g., Jackson v. T & N Van Serv., 2000 WL 792888, at *5 (E.D. Pa. June 20, 2002) (employee ineligible for union

membership lacks standing to sue union based on discrimination in the admission of members). Accordingly, plaintiff's loss of membership rights in 1997 deprives her of standing to pursue these allegations under a Title VII theory of liability See, e.g., Jones v. United Gas Improvement Corp., 383 F.Supp. 420, 432-34 (E.D. Pa. 1975) (applying theory that plaintiff "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others" and holding that non-member plaintiff alleging discriminatory practices against unions lacked standing to proceed with Title VII claim). Phrased another way, an EEOC claim concerning Local 420's failure to comply with federal anti-discrimination regulations and guidelines should have been filed by plaintiff, at the latest, within 300 days from her loss of membership in Local 420, the last point in time that plaintiff suffered injury from these alleged practices.¹¹

4. Conclusion

Based upon the preceding analysis, plaintiff's Title VII and PHRA claims of race and/or gender discrimination concerning the apprenticeship program, membership in Local 420, and Local 420's non-compliance with federal anti-discrimination regulations and guidelines are

¹¹The Court's holding does not create a *per se* rule that non-union members may never hold a union liable for discrimination. Indeed, this proposition has been rejected by other courts, based upon the express language of Title VII. See, e.g., 42 U.S.C. § 2000e-2(c) (unlawful for labor organization "to exclude or to expel from its membership, or otherwise to discriminate against, any *individual* because of his race, color, religion, sex, or national origin") (emphasis added); see also Jackson v. T & N Van Serv., 2000 WL 792888 (E.D. Pa. Jan. 20, 2000); EEOC v. General Motors Corp., 11 F.Supp.2d 1077, 1081 (E.D. Mo. 1998) (union may be liable under Title VII for discrimination against non-members and no summary judgment when plaintiff presents evidence that union ratified and encouraged racial and gender discrimination by employer's supervisors against non-union plaintiff). Instead, this Court merely applies existing standing principles to the labor union context, holding that for non-union members to sue a union for discrimination, such members must suffer injury-in-fact sufficient to meet the standing threshold. See, e.g., Jackson, 2000 WL 792888, at *5. A complaint that alleges discrimination against members of a union, when brought by a plaintiff who is not a member during the applicable limitation period, fails to meet this threshold.

procedurally barred for failure to comply with the 300-day period in which to file an EEOC complaint. Plaintiff's inability to provide a response to this procedural argument merely confirms its merit. (See Pl. Br. In Opp'n., at 7).¹² Defendant is therefore entitled to summary judgment with respect to the allegations in ¶ 8, ¶¶ 10-30, and ¶¶ 32-33 of the complaint, along with any Title VII or PHRA claims incorporating these allegations.¹³

C. The remaining allegations fail to state a claim under Title VII or the PHRA for substantive reasons.¹⁴

The remaining two allegations in the complaint include: Local 420's alleged failure to permit African-American members, ex-members, or "inactive" members to transfer their pension to a fund of their choice;¹⁵ and Local 420's alleged statements in February 2000 concerning plaintiff's lack of qualification for employment positions with or through Local 420. (Compl., at

¹²In her brief, plaintiff responds to Local 420's procedural argument by arguing that "Defendant has refuses [sic] to and failed to recruit a single Black female for any of the JATP's, its union membership or union positions." (Pl. Br. In Opp'n. To Def. Mot., at 7). Plaintiff, therefore, fails to address the substance of defendants' argument that the alleged discrimination against plaintiff occurred prior to the applicable limitation period.

¹³The remaining allegations in the complaint concern both statements made by Local 420 in December 2000 that plaintiff was not qualified for certain positions and the refusal to permit plaintiff to transfer money from the SR Fund and Pension Fund. As discussed in Section II-C of the opinion, these claims lack substantive merit to survive Local 420's summary judgment motion.

¹⁴The analysis to resolve plaintiff's PHRA claims is identical to the analysis to resolve plaintiff's claims under Title VII. See, e.g., Goosby v. Johnson & Johnson Med. Inc., 228 F.3d 313, 317 n. 3 (3d Cir. 2000).

¹⁵Plaintiff's complaint does not allege that ex-members of Local 420 are denied permission to transfer their pension to a fund of their choice, while non-African-American ex-members are permitted to do so; instead, plaintiff's complaint only states that "inactive" members "shall be entitled to transfer their pension to a fund of their choice." (Compl. at ¶ 13). Nonetheless, with the intent of being thorough, the Court will address the substance of this claim, as it is raised through plaintiff's deposition and alleges discrimination that may have occurred during the relevant limitation period.

¶ 31, 9). These allegations raise discriminatory practices that may have occurred during the relevant limitation period. Both allegations, however, fail to state a claim for discrimination pursuant to Title VII or the PHRA.

1. Transfer of Benefits

Plaintiff's claim of race and gender discrimination in the transfer of benefits by African American ex-members of Local 420 fails as a matter of law. First, plaintiff fails to dispute the testimony of Thomas Gallo that both the Pension Fund and the SR Fund are distinct legal entities, run and controlled by a Board of Trustees, rather than by Local 420. (See Gallo Aff., at ¶¶ 17-21); see *c.f. Daniel v. Eaton*, 839 F.2d 263, 266 (6th Cir. 1988) ("unless an employer is shown to control administration of a [pension] plan, it is not a proper party defendant in an action concerning benefits" pursuant to Employee Retirement Income Security Act). Indeed, plaintiff admits in her brief that her claim is based upon the alleged refusal of a member of the Board of Trustees of the Pension Fund, rather than Local 420, to transfer plaintiff's pension. (Pl. Br. In Opp'n. To Pl. Mot., at 5).

Second, even if Local 420 was the appropriate party to sue with respect to administration of the Pension and SR Fund, plaintiff fails to provide any evidence of discrimination. Plaintiff admits that she was able to, and did, withdraw money from the SR Fund. (See Drake Deposition, at 68-70, 300). Furthermore, plaintiff fails to dispute Gallo's testimony that the Pension Fund does not permit withdrawals, regardless of race or gender. (Gallo Aff., at ¶ 20). Indeed, plaintiff concedes in her deposition that she retains no evidence that white males were able to transfer money from the Pension Fund. (See Drake Deposition, at 304). Accordingly, by failing to demonstrate that non-members of the protected class were treated more favorably, plaintiff fails

to establish a *prima facie* case of discrimination in the transferring of funds from either the Pension Fund or the SR Fund. Goosby v. Johnson & Johnson Medical, Inc., 228 F.3d 313, 318-19 (3d Cir. 2000) (plaintiff must show that non-members of protected class received more favorable treatment to demonstrate *prima facie* case of discrimination).

2. December 2, 2000 Statements

Plaintiff alleges that in February 2000, defendant averred that plaintiff “was not qualified for positions, (shop steward, general foreman, superintendent), when plaintiff successfully completed a four year training program, paid for by the union.” (Compl., at ¶ 9). Plaintiff admits in her deposition that this allegation refers to statements made during the first lawsuit against Local 420 and that they were not made by an elected or appointed official of Local 420. (Drake Deposition, at 176-177).

Any such statements made by Local 420 in the first lawsuit, standing alone, do not rise to the level of an actionable discriminatory practice within the meaning of Title VII and the PHRA. Plaintiff provides no evidence that such statements were accompanied by an adverse employment action, or even that plaintiff was qualified to be referred or appointed to employment positions by Local 420 in February 2000, particularly after plaintiff had been expelled from membership in 1997 for failure to pay dues. Accordingly, plaintiff can maintain no cause of action for discrimination under Title VII or the PHRA on the basis of ¶ 9 of the complaint.

D. Plaintiff’s Title VII and PHRA claims are substantively barred because plaintiff has failed to make a sufficient showing of race and gender-based discrimination to survive summary judgment.

Local 420 also argues that, even if plaintiff’s Title VII and PHRA claims were not procedurally barred, the record is devoid of any evidence to support plaintiff’s discrimination

claims. (Def. Mot., at 24-33). Specifically, Local 420 argues that plaintiff has failed to present evidence to establish a *prima facie* case of gender or race discrimination by Local 420 under any of the many theories of Title VII liability that may be inferred from a reading of plaintiff's complaint. (Id.). This Court agrees.

In the absence of direct evidence of discrimination, a plaintiff may establish discrimination under Title VII through circumstantial evidence by way of the well-known burden-shifting formula. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under the McDonnell Douglas framework for allocation of the burden of proof in Title VII cases, a plaintiff has the initial burden of proving by a preponderance of the evidence a *prima facie* case of discrimination. Goosby, 228 F.3d at 318. Once the plaintiff establishes a *prima facie* case of discrimination, the burden shifts to the defendant to assert a legitimate, non-discriminatory reason for the alleged action. See Deli Santi v. CNA Ins. Co., 88 F.3d 192, 199 (3d Cir. 1996). In turn, where the defendant proffers a legitimate, non-discriminatory reason for its employment decision, the plaintiff must meet her burden of showing that the asserted reason was pretextual or that discrimination played a role in the employer's decision-making and had a determinative effect on the outcome. See Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994).

At the summary judgment stage, the defendant has two opportunities to demonstrate that the plaintiff can not carry her burden of proof at trial: (i) by showing that the plaintiff is unable to establish a *prima facie* case of discrimination; or (ii) by showing that the plaintiff could not produce sufficient evidence of pretext to rebut an assertion of nondiscriminatory reasons for adverse employment action. Jalil v. Avdel Corp., 873 F.2d 701, 707 (3d Cir. 1989). In responding to a motion for summary judgment, the plaintiff may not "rest upon mere allegations

or denials,” but must put forward affirmative proof so that a reasonable juror could find that Local 420 discriminated against plaintiff. Anderson, 477 U.S. at 256-57.

Plaintiff fails to provide proof to support her allegations of discrimination against Local 420. While representing that she has “evidence and proof to substantiate her claims against Local 420,” plaintiff proffers no such evidence. (See Pl. Mot., at 6). Plaintiff provides no affidavit testimony or relevant documentation to support the allegations in her complaint. Furthermore, although plaintiff attaches to her brief the deposition transcripts of Thomas Gallo, the current business manager for Local 420, Joseph Rafferty, the former business manager for Local 420 between January 1995 and May 2003, and Danny Hill, a current Business Agent for Local 420, to her brief, plaintiff fails to demonstrate how this testimony supports her claims. (Id., at Ex. 1-3). As such, plaintiff relies solely upon the unsupported allegations in the complaint to survive summary judgment and to create genuine issues of material fact. This strategy fails as a matter of law with respect to all of plaintiff’s possible discrimination claims. See Fed. R. Civ. P. 56(e) (non-moving party “may not rest upon the allegations or denials of the adverse party’s pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial”); see also Drake, 1998 WL 564486, at *4 (plaintiff’s reliance on personal affidavit to support claim fails to demonstrate dispute of material fact sufficient to defeat summary judgment motion).

1. Adverse Employment Action Claim

Plaintiff’s complaint alleges that Local 420 refused to refer plaintiff to positions of employment based on her race and gender. However, as Local 420 demonstrates, plaintiff fails to provide evidence to meet the second, third, and fourth elements of her adverse employment

action claim. See, e.g., Lawrence v. Nat'l. Westminster Bank, 98 F.3d 61, 65-66 (3d Cir. 1996) (*prima facie* case of adverse employment decision claim requires plaintiff to show that: (i) she is a member of a protected class; (ii) she was qualified for the job in question; (iii) she suffered an adverse employment decision; and (iv) other employees not in the protected class were treated more favorably).

First, plaintiff's complaint, brief, and deposition testimony fail to identify particular employment opportunities that Local 420 denied plaintiff during the relevant limitation period. Although the EEOC charge of discrimination refers to two attempts in early 2000 to obtain employment with certain employers, plaintiff fails to provide evidence that she applied for these positions and that Local 420 was responsible for, or contributed to, the denial of her applications to such employers. (See May 31, 2000 EEOC Charge of Discrimination, attached as Ex. 2 to Def. Mot. To Dismiss). Second, by virtue of plaintiff's failure to pay dues since 1997 and her subsequent loss of membership "rights and privileges," plaintiff was not qualified for promotions, training, referrals, and/or appointments within Local 420 during the limitation period. (See UA Constitution, at §§ 163-165). Indeed, plaintiff was not entitled to be referred to work with contractors signatory to the MCA agreement, to use the out-of-work list, to receive promotions, to run for elected office, to receive training, and/or to receive appointments for non-elected positions within Local 420. (See Gallo Affidavit, at ¶¶ 6, 14, 23). Third, plaintiff fails to provide evidence of non-African American members of Local 420 who were treated more favorably, such as by being referred for jobs sought by and denied to plaintiff. Accordingly, Local 420 is entitled to summary judgment on the merits of plaintiff's adverse employment action claim.

2. Retaliation Claim

Plaintiff's May 31, 2000 EEOC charge of discrimination indicates that her cause of discrimination was based on "retaliation." (See May 31, 2000 EEOC Charge of Discrimination). Plaintiff suggests that the discrimination was based on past EEOC filings and on the filing of the first lawsuit. (*Id.*; see also Drake Deposition, at 186). To the extent that plaintiff's complaint can be read to state a claim for retaliation, this claim fails as a matter of law. See, e.g., Farrell v. Planters Lifesavers Co., 206 F.3d 271, 279 (3d Cir. 2000) (to make out a *prima facie* case of retaliation under Title VII, plaintiff must show that: (I) she engaged in protected conduct; (ii) her employer took adverse action against her; and (iii) there was a causal link between the protected conduct and the adverse action).

First, plaintiff fails to provide any evidence that Local 420 instigated an adverse employment action against her within the relevant limitation period after she filed the first lawsuit against Local 420. Second, assuming that the denial of employment opportunities in 2000 alleged in plaintiff's EEOC charge (but not expressly referenced in her complaint) constitutes sufficient evidence to establish an adverse employment action on the part of Local 420, plaintiff fails to establish the requisite causal nexus between Local 420's adverse employment action and plaintiff's filing of the first lawsuit or of previous EEOC charges. See, e.g., Sarullo v. U.S. Postal Serv., 352 F.3d 789, 800-801 (3d Cir. 2003) (summary judgment appropriate when nothing in the record suggests relationship between adverse employment action and prior EEOC activity). Third, even if plaintiff's evidentiary proffers could establish a *prima facie* case of discrimination, defendant has provided a legitimate, non-discriminatory reason for any unfavorable employment decisions during the relevant limitation period--her failure to pay

dues in 1997. (See Gallo Aff., at ¶ 24; Drake Deposition, at 96, 172, 196); see, e.g., Fuentes, 32 F.3d at 763 (“The employer satisfies its burden of production by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable decision”). Plaintiff has failed to rebut this reasonable, non-discriminatory reason for plaintiff’s loss of membership, and, in fact, concedes that plaintiff’s failure to pay dues influenced her expulsion from membership. (See Drake Deposition, at 186); see Fuentes, 32 F.3d at 764 (plaintiff may defeat summary judgment motion either by discrediting the proffered reasons or by adducing evidence that discrimination was more likely than not a motivating or determinative cause of adverse employment decision). Accordingly, Local 420 is entitled to summary judgment on the merits of plaintiff’s retaliation claim.

3. Additional Claims

In addition to those allegations giving rise to plaintiff’s retaliation and adverse employment action claims, plaintiff fails to provide factual support for any of the additional allegations in her complaint. Fed. R. Civ. P. 56(e). These allegations may be read to state claims under Title VII for, *inter alia*, hostile work environment, unfair compensation, and failure to promote. Consequently, by not putting forth any evidence to establish a *prima facie* case of liability, Local 420’s motion for summary judgment must be granted on the merits of the remaining discrimination claims.

III. Conclusion

For the following reasons, this Court grants Local 420’s motion for summary judgment as to all counts in the complaint. An appropriate Order follows.

