

P.E.R.C. No. 2009-69

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF TRANSPORTATION),

Respondent,

-and-

Docket No. CI-2007-065

JANE LYONS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands an amended unfair practice charge to the Director of Unfair Practices for complaint issuance. The initial charge was filed by Jane Lyons against the State of New Jersey (Department of Transportation) alleging that the State violated the New Jersey Employer-Employee Relations Act. The Director refused to issue a complaint and dismissed the unfair practice charge. He found her claim that she was unlawfully reassigned to be untimely; her discrimination claims and allegations of discipline to be outside the Commission's jurisdiction; that she had not claimed a breach of the duty of fair representation; no facts suggested a violation of N.J.S.A. 34:13A-5.4a(3) and, derivatively, a(1) of the Act; and that she had not identified any Commission rule that had been violated. In P.E.R.C. No. 2009-16, 34 NJPER 291 (¶104 2008), the Commission held that Lyons's charge was timely filed and remanded the case to the Director to afford Lyons one last opportunity to amend the charge to clarify her allegations that her reassignment was in retaliation for complaints, whether the complaints constitute protected activity, and whether the State refused to accept her grievances. Lyons amended her charge alleging that she was retaliated against for filing complaints and grievances about the workplace and that the State refused to process her grievances. The Director refused to issue a complaint finding that nowhere in the charge was there an allegation of discrimination, retaliation or adverse employment action based on activity protected by the Act or that the amended charge alleged specific facts and dates supporting Lyons's allegation that the State refused to accept her grievances. The Commission remands the charge to the Director for complaint issuance on the 5.4a(1) and (3) allegations holding that Lyons has alleged sufficient facts that, if true, might constitute an unfair practice.

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, Anne Milgram, Attorney General of New Jersey (Geri Benedetto, Deputy Attorney General, on the brief)

For the Charging Party, Jane Lyons, pro se

DECISION

On April 27, 2009, after an extension of time, Jane Lyons appealed a decision of the Director of Unfair Practices. That decision refused to issue a complaint based on an unfair practice charge and two amended charges Lyons filed against the State of New Jersey (Department of Transportation). D.U.P. No. 2009-9, \_\_\_ NJPER \_\_\_ (¶\_\_\_ 2009). We remand the charge to the Director for complaint issuance. What follows is a brief procedural history. Additional details can be found in our prior decision in this case. P.E.R.C. No. 2009-16, 34 NJPER 291 (¶104 2008).

Lyons filed her unfair practice charge on May 25, 2007. She alleged that the State violated the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq., when it reassigned her in retaliation for issues that occurred when she was on a field job. She further alleged that she continued to file grievances about the reassignment and management refused to accept some of her grievances. Finally, she alleged that her reassignment was now permanent, which she perceives as an unfair practice, retaliation, and discrimination because she is a female engineer.

On June 19, 2008, the Director issued his first decision refusing to issue a complaint. D.U.P. No. 2008-7, 34 NJPER 135 (¶57 2008). He found that Lyons's challenge to her November 14, 2005 and earlier reassignments are untimely; her discrimination claims and allegations of discipline are outside the Commission's jurisdiction; she could not pursue her 5.4a(5) allegation about a refusal to accept some grievances about her reassignment because she had not also claimed that her union had breached its duty of fair representation; no facts suggest that the State violated 5.4a(3) or, derivatively, a(1) of the Act; and she had not identified any Commission rule that had been violated.

On July 14, 2008, Lyons filed an appeal focusing on the timeliness of her claim that the State unlawfully reassigned her permanently.

On September 25, 2008, we found that Lyons's charge was timely filed within six months of the date she became aware that her reassignment was permanent. P.E.R.C. No. 2009-16. We

remanded the charge to the Director to afford Lyons one last opportunity to amend the charge to clarify her allegations that her reassignment was in retaliation for complaints, whether the complaints constitute protected activity, and whether the State refused to accept her grievances. The Director could then reassess whether those allegations, if true, might constitute a violation of the Act.

On October 29, 2008, Lyons filed an amendment with a narrative and numerous attachments. The amendment states:

I have been given permission by the PERC to amend my complaint. NJDOT was also sent a notice. I am a member of the CWA Local 1032 and all grievances since 2008 have been denied. I filed a charge, docket no. CI-2007-065 and I am including as part of my amendment:

1) a list of all complaints in the form of grievances and discrimination that were filed and I am alleging retaliation and in addition; I filed a workplace violence complaint.

2) emails that show refusal to accept my grievances.

Among other things, the narrative attached to the amendment states:

Complainant position: Grievances, Discriminations, and Whistle Blower complaints filed were the reason that management chose to bring me into the office and I am alleging retaliation. The Union Contract does not allow the State the discretion to transfer or reassign an employee for retaliatory reasons.

Does Management have the right to reassign me permanently after an involuntary temporary reassignment is grieved?

On April 1, 2009, the Director issued a second decision refusing to issue a complaint. He found that nowhere in the attachments is there an allegation of discrimination, retaliation or adverse employment action based on activity protected by the Act. He further found that the amended charge does not allege specific facts and dates supporting Lyons's allegation that the State refused to accept her grievances.

In her second appeal, Lyons claims that the State permanently reassigned her in retaliation for her union activities and her filing a federal complaint in 2006. She further claims that she filed grievances on six dates and that the State refuses to accept any further grievances related to any aspect of her reassignment.<sup>1/</sup>

The employer responds that the amended allegations do not meet our specificity requirements; the charging party has simply filed the same grievances over and over again and she has been informed by management and the union that her issues would not be readdressed; her reassignment was a matter of inherent managerial

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<sup>1/</sup> In her second appeal, Lyons states that "the Union has accepted the Departments position that I am alleging is a breach of their duties to represent employees." Lyons has not filed an unfair practice charge against her union.

prerogative; and she does not have standing to allege a violation of 5.4a(5).

N.J.S.A. 34:13A-5.3 grants public employees the right to use grievance procedures to appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them. N.J.S.A. 34:13A-5.4a(3) makes it an unfair practice for a public employer to retaliate against a public employee for exercising rights guaranteed by the Act, including the right to file grievances. Lyons states that the employer retaliated against her for filing complaints and grievances about the workplace. She also asks whether management has the right to reassign her permanently in retaliation for her grieving her temporary reassignment. We view her statement and question as an allegation that, if true, might constitute an unfair practice. Accordingly, a complaint must issue. See West Deptford Tp. Bd. of Ed., P.E.R.C. No. 99-68, 25 NJPER 99 (¶30043 1999); N.J.A.C. 19:14-2.1.

Lyons also claims that the employer refuses to accept any further grievances related to any aspect of her reassignment. She has attached to her amended charge a copy of a June 2007 email exchange with Gregory Vida, who appears to be an employer representative. Vida states:

As I have indicated to you, it is not appropriate to keep refileing the same grievances. You have had your grievance hearings and the results have been issued.

If you disagree please follow the appeal procedures as contained in the contract.

\* \* \*

Please understand that my decision to not permit you to refile these grievances again and again is not made in a vacuum. We have discussed this with the Attorney Generals Office and Division of Civil Rights. You have filed grievances and if you are not satisfied with the results you should follow the appeal process outlined in the contract. Continuing to refile these will not change the outcome unless new facts are presented.

A refusal to accept grievances might constitute an unfair practice because to do so tends to interfere with protected rights in violation of 5.4a(1). Accordingly, a complaint must issue on this allegation. The employer's defense that it has already responded to her grievances can be raised in hearing or through a motion for summary judgment.

ORDER

This matter is remanded to the Director of Unfair Practices to issue a Complaint on the 5.4a(1) and a(3) allegations addressed in this decision.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Joanis was not present.

ISSUED: June 25, 2009

Trenton, New Jersey