

D.U.P. NO. 99-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF ATLANTIC CITY and
AFSCME COUNCIL 71, LOCAL 2303,

Respondent,

-and-

Docket No. CI-99-2

MELVIN T. JONES,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint on an unfair practice charge filed by Melvin Jones against the City of Atlantic City and AFSCME, Local 2303. Jones alleged that the City violated N.J.S.A.34:13A-5.4a(1), (3) and (6) when it failed to promote him to a permanent supervisor title; demoted him by removing him from an acting supervisor assignment; threatened him with demotion for failure to maintain a commercial driver's license; and the City supervisor threatened to discipline him, harassed him, and created a hostile working environment. Jones also raised allegations of age and disability discrimination. The Director found that many of the allegations occurred more than six months prior to the filing of the charge, and the timely allegations concerned personnel matters outside the Commission's jurisdiction. Moreover, the charge raised no factual allegations against Local 2303 which might implicate a violation of the Act. Therefore, the charge was dismissed.

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Appearances:

For the Respondent, City
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Respondent, AFSCME
Masolene W. Hopkins, Staff Representative

For the Charging Party,
Melvin T. Jones, pro se

REFUSAL TO ISSUE COMPLAINT

On August 12, 1998, Melvin Jones (Charging Party or Jones) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the City of Atlantic City (City) and his employee representative, AFSCME Local 2303 (Local 2303). Jones alleges that the City violated the New Jersey Employer-Employee

Relations Act (Act), N.J.S.A. 34:13A-5.4a(1), (3) and (6)^{1/} by requiring him to work out-of-title as an acting sanitation supervisor from October 1994 through February 1998 without appointing him permanently or even provisionally to the title; by threatening for years to demote him because he did not possess a commercial driver's license (CDL); and by permitting his supervisor, Celeste Thompson, to harass him and to create a hostile work environment. Jones also alleges that he is 45 years old and 57% disabled due to work-related injuries and further requests that the employer evaluate his current position status.

Jones' charge also names AFSCME Local 2303 as a respondent and asserts violations of N.J.S.A. 34:13A-5.4b(4) and (5).^{2/} However, the charge does not set forth any specific factual assertion concerning Local 2303.

The City denies engaging in an unfair practice and responds that the charge is filed outside the Commission's six-month statute

^{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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

^{2/} These provisions prohibit employee organizations, their representatives or agents from: "(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

of limitations. N.J.S.A. 34:13A-5.4(c). The City contends that if the Commission sustained the charge, it would interfere with the City's managerial prerogative to deploy its workforce. Further, to the extent that Jones appears to claim discrimination based upon age and disability, the City asserts that these claims are beyond the Commission's jurisdiction.

On August 31, 1998, Jones submitted a letter containing additional information clarifying the charge. In the letter, Charging Party alleged that after being removed from his out-of-title supervisor position, the City appointed another individual to do the same duties. Jones further contends that the City failed to conduct a desk audit of Charging Party's duties as called for in a grievance decision^{3/} and that another individual had been promoted to the position of heavy equipment operator due to favoritism and racism in violation of contractual seniority guidelines. Attached to the August 31 letter were the grievance decision (dated May 6, 1998) and a copy of a discrimination complaint which Charging Party filed with the City's affirmative action office (dated August 17, 1998).

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

^{3/} The grievance decision denied Charging Party's assertion of discrimination and denied that he had a right to a promotion or provisional appointment by virtue of his service as an out-of-title supervisor.

N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint.

N.J.A.C. 19:14-2.3. In correspondence dated May 5, 1999, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

Melvin Jones has been employed by the City of Atlantic City since September 8, 1987. His last permanent title was equipment operator. Jones alleges that he served as acting sanitation supervisor from October 14, 1994 through February 17, 1998, when the City terminated his out-of-title pay status. While in acting supervisor status, Jones believed that he would eventually be promoted to the permanent title; he was not.

On August 26, 1992, the City issued a memorandum requiring truck drivers and equipment operators to hold a valid New Jersey Class B Commercial Driver's License (CDL) by November 1, 1992. The memorandum stated that any such employee not meeting this objective would be subject to demotion and a reduction in salary. By memorandum dated January 20, 1995, Sanitation Superintendent Celeste Thompson recommended that Jones be demoted and his salary reduced for not possessing a CDL. However, Jones was not demoted. Jones contends that equipment operators are exempt from CDL certification requirements.

Thompson also issued oral and written reprimands to Jones from 1994 through 1998 for various infractions including insubordination for refusing to perform certain work and acting in a disrespectful manner toward Thompson. Jones alleges that he refused the work due to his work related disability; that he never acted disrespectfully toward Thompson; and that Thompson's actions constituted harassment and created a hostile work environment.

The City raises a timeliness defense to the charge. N.J.S.A. 34:13A-5.4(c) precludes the Commission from issuing a Complaint where an unfair practice charge has not been filed within six (6) months of the occurrence of the alleged unfair practice, unless the aggrieved person was prevented from filing the charge. The charge was filed on August 12, 1998. Therefore, any alleged conduct occurring more than six months before February 11, 1998, would be beyond the Commission's six-month statute of limitations and, therefore, cannot be the subject of a Complaint.

In his charge, Jones has alleged that the City supervisor threatened to demote him in 1995 for his failure to maintain a CDL license. He also alleged that the City supervisor threatened to discipline him, harassed him, and created a hostile working environment. However, these allegations lack any reference to a specific time period. Jones alleged that the City repeatedly disciplined him and in February 1998, charged him with insubordination and disrespect. Jones also asserts that the City violated the Act when it failed to promote him to the permanent

supervisor title and instead demoted him by removing him from the acting supervisor assignment on February 17, 1998.

Only the events which have allegedly occurred on February 17, 1998 have been filed within the Commission's statute of limitations. All of the remaining allegations occurred more than six months prior to the filing of the charge. N.J.S.A. 34:13A-5.4(c). We are therefore prohibited by statute from issuing a Complaint on these allegations, and I dismiss them.

However, even the timely allegations do not meet the Commission's Complaint issuance standard and must be dismissed. We issue a Complaint where it appears that facts, if true, would violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4. Our jurisdiction over public employee personnel matters is limited. Section 5.3 of the Act guarantees public employees the right to form, join and assist an employee organization or to refrain from doing so. Section 5.4 makes it an unfair practice to interfere with this right or to discriminate against an employee for engaging in those activities protected by the Act. Jones has not alleged that either his discipline or his removal from the supervisor's title was based upon the exercise of any protected activity. Therefore, absent allegations of retaliation or discrimination based upon activities protected by our Act, we have no jurisdiction to review such personnel matters as assignment,

promotion or discipline. Bridgewater Tp., 95 N.J. 235 (1984).^{4/} Additionally, we do not have jurisdiction to require the City to evaluate Jones' title classification status, since such matters are governed by the Department of Personnel. Atlantic City (Woolbert), D.U.P. No. 88-6, 13 NJPER 803 (¶18308 1987). Nor do we have jurisdiction over issues of age or race discrimination. Elizabeth Ed. Ass'n (Jefferson), D.U.P. No. 95-33, 21 NJPER 245 (¶26154 1995); State of New Jersey (Dept. of Military and Veterans Affairs), D.U.P. No. 94-12, 19 NJPER 520 (¶24240 1993); Marlboro Tp. Bd. of Ed. (Watson), D.U.P. No. 91-1, 16 NJPER 420 (¶21176 1990). Based upon all of the above, Jones has not alleged any facts which would support a violation of our Act.^{5/}

Finally, the Charging Party has not articulated any factual allegations in his charge concerning Local 2303 which might implicate a violation of our Act. Therefore, I dismiss that portion of the charge as well.

^{4/} In the Bridgewater matter, the New Jersey Supreme Court set the standards for determining whether an adverse personnel action violates subsections 5.4a(3) of the Act: the charging party must prove that activity protected by the Act was a substantial or motivating factor in the adverse action.

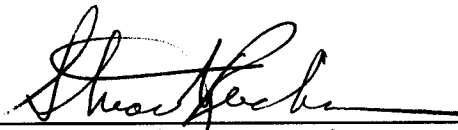
^{5/} Any alleged timely violations of Jones' civil rights may more appropriately be filed before the State Division on Civil Rights or the Federal Equal Employment Opportunities Commission; any timely alleged violations of Department of Personnel Rules concerning classification and promotion may be filed before the New Jersey State Department of Personnel.

Based upon all of the above, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{6/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: May 27, 1999
Trenton, New Jersey