D.U.P. No. 2009-9

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF TRANSPORTATION)

Respondent,

-and- Docket No. CI-2007-065

JANE LYONS,

Charging Party.

SYNOPSIS

The Director refused to issue a complaint where the charge does not set forth a clear and concise statement of facts as required under N.J.A.C. 19:14-1.3(a).

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Appearances:

For the Respondent
Anne Milgram, Attorney General
(Geri Benedetto, Deputy Attorney General)

For the Charging Party
Jane Lyons, pro se

REFUSAL TO ISSUE COMPLAINT

On May 25 and June 11, 2007, Jane Lyons (Lyons or Charging Party) filed an unfair practice charge and amended charge against her employer, the State of New Jersey, Department of Transportation (State or DOT). Lyons alleges that the State unfairly reassigned her from her engineer position in the field to an administrative assignment in the regional field office. Lyons also alleges that her reassignment violated the collective negotiations agreement and amounted to an unlawful disciplinary action. She also alleges that the State had refused to accept some of her grievances about the reassignment and that it

discriminated against her because of her gender. The State's actions allegedly violate 5.4a(1), (2), (3), (4), (5), (6) and (7)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

The State denies violating the Act. It claims that the first amended unfair practice charge fails to state a claim upon which relief can be granted because it involves a non-negotiable managerial prerogative -- reassignments. The State also contends that the charge is untimely because the Charging Party was reassigned on November 14, 2005, and the amended charge was filed more than one and one-half years later. The State notes that the facts set forth in the amended charge have been litigated in

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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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

another forum and that Lyons' reassignment was held to be proper and non-discriminatory.

On January 11, 2008, I wrote a letter to the parties, advising that I was not inclined to issue a complaint in this matter and setting forth the reasons for the tentative decision. On January 21, 2008, Lyons filed a reply, largely reiterating what she had previously written. She asserted that her charge was timely because it concerned a grievance hearing and appeal in 2007; and that each performance evaluation system (PES) rating period entitles her to a new (i.e., timely) opportunity to assert a violation of the Act.

On June 19, 2008, I refused to issue complaint and dismissed the unfair practice charge (D.U.P. No. 2008-7). Specifically, I found that the charge was untimely; that the allegations of gender discrimination, civil rights violations and discipline were not in the Commission's jurisdiction; that there was no claim of a breach of the duty of fair representation; that no facts suggested a violation of N.J.S.A. 34:13A-5.4a(3) and derivatively a(1) of the Act; and that no Commission rule violation had been identified.

On September 25, 2008, the Commission issued a decision, P.E.R.C. No. 2009-16, 34 NJPER 291 (¶104 2008), finding that the charge was timely because it was filed within six months of the date a new permanent position was created which changed Lyons'

temporary reassignment to a permanent one. Since Lyons asserts that the permanent reassignment was in retaliation for her complaints, the Commission remanded the charge to afford Lyons the opportunity to amend the charge to clarify whether her permanent reassignment was in retaliation for those complaints, and if so, whether the complaints constitute protected activity under the Act. The Commission also remanded the case to provide Lyons an opportunity to provide specific facts or dates to support her allegation that the State refused to accept her grievances.

On October 29, 2009, Lyons filed an amended charge with ninety pages of attachments. The exhibits are comprised mostly of emails, grievances and memoranda concerning Lyons' repeated complaints about race, gender and age discrimination; descriptions of workplace violence; hostile work environment; the Conscientious Employee Protection Act (CEPA) or whistleblower claims; improper evaluations; and her involuntary transfer, resulting in loss of overtime, training and promotional opportunities. The documents date from December, 2004 through June, 2008. Nowhere in the attachments is an allegation of discrimination, retaliation or adverse employment action based upon activity protected by the Act. Nor does the amended charge allege specific facts and dates supporting Lyons' allegation that the State refused to accept her grievances.

The amended allegations do not meet our complaint issuance standard. N.J.A.C. 19:14-1.3(a) provides that a charge must contain the following:

> A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the time and place the alleged acts occurred, the name of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

See N.J. Transit and ATU Div. 819, P.E.R.C. No. 2005-003, 30 NJPER 295 (¶103 2009). "Facts must be stated in the charge itself; a charging party may not simply attach a packet of documents to its charge as a substitute for a concise statement of facts." Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-030, 27 NJPER 25 (¶32014 2001)." Newark Library and IUOE Loc. 68 and Shaw, D.U.P. 2005-006, 30 NJPER 494 (¶168 2004).

Lyons' second amended charge lacks the specificity required by the rule. It also lacks the clarity sought by the Commission in its decision remanding this matter. Her attached documents, offered without explanation, do not comply with N.J.A.C. 19:14-1.3(a)(3). All of Lyons' "complaints" in the form of emails, grievances and letters essentially assert age, race and gender discrimination, workplace violence, whistleblower and civil service issues. Although Lyons maintains she has been retaliated against for her "complaints," they are not "protected" under our Act.

Lyons was also afforded the opportunity to file a second amended charge to provide specific dates and facts in supporting her allegation that the State refused to accept her grievances. Lyons did not file an amended charge. She instead attached numerous emails, most of which were issued by her to named, but unidentified individuals, alleging grievance(s), with unspecified dates. The responsive emails, many of which are from the Communications Workers of America (CWA), Lyons' union, repeatedly highlight several points. They reiterate that all grievances must be processed through the union, pursuant to Article 4.C.1(d) and (3) of the parties' collective negotiations agreement (and not by Lyons, individually). They also advise that issues pertaining to Lyons' reassignment have been processed and decided and that grievances on the identical issue will not be considered. Other responses advise that the State is returning all grievances that do not indicate the contractual issues being grieved.

N.J.S.A. 34:13A-5.3 requires an employer to negotiate with the majority representative over employees' terms and conditions of employment. Section 5.4a(5) of the Act makes it an unfair practice for an employer to refuse to negotiate in good faith with the majority representative. Lyons individually, does not have standing to file a 5.4a(5) charge contesting the interpretation or application of the Association's collective

agreement with the State. Only the Association, as the majority representative, has standing to raise such a claim. See N.J. Turnpike Auth. (Beall), P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp. 2d 101 (¶85 App. Div. 1981); Middlesex Cty. and NJCSA (Mackaronis), P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980) aff'd NJPER Supp. 2d 113 (¶94 App. Div. 1982), certif. den. 91 N.J. 242 (1982); City of Newark (Montgomery); West New York and PBA Local 88 (Sancho), D.U.P. No. 2000-3, 26 NJPER 353 (¶31139 2000).

Even if Lyons had standing to claim that the State violated the collective negotiations agreement, the second amended charge fails to specify what grievance(s) was or were denied, by whom and when they were denied. Lyons' mere conclusionary assertions, with voluminous, unexplained documents are insufficiently clear and concise to warrant the issuance of an unfair practice complaint.

Accordingly, 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.[2/]

2/ N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Arnold H. Zudick, Director

DATED: April 1, 2009
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by April 13, 2009.