

P.E.R.C. NO. 94-116

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION ON CIVIL RIGHTS),

Respondent,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1033,

Docket No. CI-93-42

Respondent,

-and-

MARIA JONES,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission declines to issue a Complaint and transfers this matter back to the Superior Court, Appellate Division. The Commission finds that Maria Jones was not prevented from filing this unfair practice charge within six months of being notified in June 1991 that she was on her own regarding her layoff. Her complaint to the Communications Workers of America in January 1992 and its report issued in September 1992 did not resurrect her untimely allegation. Any allegations regarding a January 1992 grievance were not pled in the unfair practice charge and cannot be considered for purposes of issuing a Complaint.

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Appearances:

For the Respondent State of New Jersey, Deborah T. Poritz,
Attorney General (Mary L. Cupo-Cruz, Senior Deputy Attorney
General)

For the Respondent CWA Local 1033, Reitman Parsonnet,
attorneys (Jesse H. Strauss, of counsel)

For the Charging Party, Zita & Gusciora, attorneys,
(W. Reed Gusciora, of counsel)

DECISION AND ORDER

On November 24, 1992, Maria Jones filed an unfair practice charge against the State of New Jersey (Division on Civil Rights) and Communications Workers of America, Local 1033 ("CWA"). The charge alleges that on March 30, 1991, Jones was laid off from the Division; CWA has not acted in accordance with its contractual

duties; and the employer has not compensated her for her unfair termination. The charge seeks reinstatement.

On December 4, 1992, the Director of Unfair Practices notified Jones that her charge failed to allege the occurrence of unfair practices within the six month statute of limitations. N.J.S.A. 34:13A-5.4(c). He gave her ten days to amend her charge or he would assume that she had no interest in pursuing it and would deem it withdrawn. On January 26, 1993, having received no response from the charging party, the Director deemed her charge withdrawn.

On February 25, 1993, the charging party filed a Complaint against the employer and CWA in Superior Court alleging, among other things, breach of contract in her capacities as an individual and/or third party beneficiary. The employer and union moved for summary judgment. On July 2, the Honorable Andrew J. Smithson, J.S.C. dismissed Jones' ancillary age discrimination claim, but transferred the matter to the Appellate Division for a determination "as to whether Plaintiff was prevented from filing certain unfair practice charges with the New Jersey Employment Relations Commission."

On April 4, 1994, the Appellate Division remanded this matter to us to accept a CWA investigative report into the record and reconsider our Director's determination in light of that report.

N.J.A.C. 19:14-2.1 provides that a Complaint should issue "if it appears ... that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent." We begin by reviewing the allegations in the unfair

practice charge. We accept these allegations as true for the limited purpose of deciding whether a Complaint should issue.

Jones alleges:

She worked for the Division as a senior investigator. On March 1, 1991, she received a layoff notice and immediately went to her shop steward. The union was unresponsive so on March 18, she initiated a layoff appeal without the union's help. She also made a claim for employment under her prior Civil Service rights which the employer denied.

Jones was laid off on March 30, 1991. After the layoff, Jones continued her appeals. On June 27, she filed a Claims Notice with the Attorney General for her contractual claims. She contends that her shop steward had half her seniority, but was not laid off despite a contract provision requiring layoffs in reverse order of seniority. Jones also contends that the employer was required to give 45 days notice of layoff, but gave her only 30.

In January 1992, Jones filed a complaint with the union executive board for failure to represent her. In February, the union formed an investigative committee. The committee found that Jones' chances of prevailing on her grievance claims were excellent. However, the union had not filed any grievance on her behalf.

On September 20, 1992, Jones was notified by the Attorney General that she would be considered for rehire when the Division hired additional personnel. On October 6, the union offered Jones

legal counsel to pursue her discrimination claims against the employer. On December 10, Jones discovered that another investigator with less seniority had been transferred from the Asbury Park Office to perform her old job. Jones had not been advised of her recall rights prior to the transfer. She seeks reinstatement to her position with the Division and compensation for the unfair discharge, improper representation and breach of contract.

N.J.S.A. 34:13A-5.4(c) provides, in part:

that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

Jones was laid off on March 30, 1991. In June 1991, she was informed by her union representative that she was on her own. She did not file an unfair practice charge within six months of her knowing that the union would not help her pursue her claims against her employer. Jones filed a complaint with the union executive board in January 1992, after the statute of limitations on filing an unfair practice charge had run. The union's investigative committee issued a report indicating that had the union filed a grievance on Jones' behalf, her chances of prevailing would have been excellent. Jones then met with an attorney and had her rights fully explained to her. On November 24, 1992, she filed this charge.

Giving the charging party every reasonable inference based on the allegations in her unfair practice charge, we find that she

was not prevented from filing an unfair practice charge between June 1991, when she knew of the union's inaction, and December 1991, when the statute of limitations ran out. Invoking an internal union appeal procedure after the limitations period ran out could not resurrect an untimely charge.

In her position statement on remand, the charging party contends that a second event also gives rise to her claim: the union's alleged failure to process her grievance against the employer for refusing to recall her for an available opening in January 1992. Both the union and the employer have submitted documents in response that indicate that Jones filed a grievance on January 9, 1992, received an answer from the employer denying her grievance on January 13, had a hearing on March 10 where she was represented by a CWA staff representative, and had her grievance denied by the employer based on the hearing officer's recommendation.

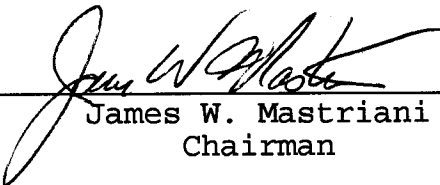
Complaints are issued based on the allegations in an unfair practice charge. Jones' charge does not allege that the union failed to process her January 1992 grievance. Accordingly, no Complaint can issue on that allegation. In addition, we note the limited nature of the Court's remand. The Court asked us to reconsider our Director's decision in light of the union's September 1992 report. That report does not discuss the processing of the January 1992 grievance or suggest that CWA acted inappropriately in regard to that grievance.

We conclude that the charging party was not prevented from filing this unfair practice charge within six months of being notified in June 1991 that she was on her own regarding her layoff. Her complaint to CWA in January 1992 and CWA's report issued in September 1992 did not resurrect her untimely allegation. Any allegations regarding a January 1992 grievance were not pled in the unfair practice charge and cannot be considered for purposes of issuing a Complaint.

ORDER

A Complaint shall not issue. This matter reverts back to the Superior Court, Appellate Division.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 30, 1994
Trenton, New Jersey
ISSUED: June 30, 1994