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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5655-13T2

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION,

Respondent-Respondent,

v.

JANE LYONS,

Charging Party-Appellant.

Argued December 11, 2017 - Decided February 1, 2018

Before Judges Messano and Accurso.

On appeal from the Public Employment Relations Commission, P.E.R.C. No. 2014-85.

Jane Lyons, appellant, argued the cause pro se.

Adam K. Phelps, Deputy Attorney General, argued the cause for respondent New Jersey Department of Transportation (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Adam K. Phelps, on the brief).

David N. Gambert, Deputy General Counsel, argued the cause for respondent New Jersey Public Employment Relations Commission (Robin T. McMahon, General Counsel, on the statement in lieu of brief).

PER CURIAM

Jane Lyons appeals from a final decision of the Public Employment Relations Commission (PERC) dismissing her unfair practice charge as untimely. We affirm.

This matter has a long and complicated procedural history, the details of which are largely unimportant.[1] The key facts are these. Lyons is a senior engineer and has worked for the Department of Transportation for over thirty-five years. On November 4, 2005, her supervisor, Jeff Palmer, relieved her of her duties as resident engineer on the Route 73 median closure project and reassigned her to the Cherry Hill regional office.

Lyons grieved the reassignment. Following a departmental hearing on June 26, 2006, her grievance was denied. Treating the matter as a non-contractual grievance, Lyons' union did not seek arbitration. Lyons appealed the denial of her grievance to the Merit System Board, which found no basis to conclude the Department had abused its authority in reassigning her out of the field. See N.J.A.C. 4A:2-3.7(b). Lyons continued to protest her reassignment, filing several more grievances, which

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[1] For more of the history of this matter, see New Jersey Department of Transportation and Jane Lyons, P.E.R.C. No. 2009-16, 34 N.J.P.E.R. ¶ 104, 2008 N.J. PERC LEXIS 177 (2008); and P.E.R.C. No. 2009-69, 35 N.J.P.E.R. ¶ 74, 2009 N.J. PERC LEXIS 210 (2009). We addressed an earlier matter between these same parties in In re Lyons, No. A-2488-07 (App. Div. April 26, 2010). We are also aware of a federal court case regarding Lyons' employment by the Department, Lyons v. N.J. DOT, No. 06-2875—NLH-JS (D.N.J. September 30, 2010).

the Department eventually declined to process, claiming she was simply re-filing the same grievance already decided against her. On October 23, 2006, the Director of Human Resources sent Lyons an email stating with regard to her "desire to perform field work" that "[t]his matter has been the subject of at least one previous grievance and has been resolved and will not be reopened."

On May 25, 2007, Lyons filed an unfair practice charge, alleging her reassignment from a resident engineer in the field to an administrative position in the regional office was done in retaliation for grievances she filed protesting her working conditions. She later amended that charge to add claims relating to the Department's refusal to accept her grievances.

After Lyons presented her case during a multi-day hearing before a PERC hearing examiner, the Department moved to dismiss the charge, claiming it was untimely. Accepting the evidence supporting Lyons' allegations as true and according her the benefit of all reasonable inferences from the facts, the hearing examiner agreed with the Department the charge was untimely.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to -43, requires an unfair practice charge to be filed within six months of the alleged unfair practice. N.J.S.A. 34:13A-5.4(c); Kaczmarek v. N.J. Tpk. Auth., 77 N.J. 329, 333

(1978). Lyons alleged that although she was transferred in November 2005, "the permanency [of her reassignment] started to become a reality" in May 2007.

The hearing examiner found, however, "that Lyons knew or should have known that her assignment was permanent no later than June 26, 2006, when she was present for Palmer's testimony to that fact" at the departmental hearing over the reassignment, "which was subsequently memorialized in the grievance decision." The hearing examiner further found that "Lyons acknowledged her understanding of Palmer's testimony in a July 12 email to Palmer" stating she was "told that this assignment is a permanent assignment and not temporary at the grievance hearing." Relying on the October 23, 2006 email Lyons received from the Director of Human Resources, the hearing examiner found "that October 23, 2006 is the date Lyons on which knew, or should have known, that [the Department] did not intend to accept any more grievances relating back to her November 2005 assignment."

PERC adopted the hearing examiner's factual findings, concluding "the Hearing Examiner's findings of fact and conclusions of law with regard Lyons' charge being untimely are supported by sufficient, credible evidence in the record." Relying on the extensive record generated over the course of

five days of hearings, PERC found no "support in the record for the general assertions made by Lyons that she was not given a full and fair opportunity to be heard."

Our role in reviewing the decision of an administrative agency is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). "Unless . . . the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed." Ibid. We "intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy." Ibid. (quoting George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994)).

Applying those standards to this matter, we find no reason to disturb PERC's finding that Lyons' unfair practice charge was untimely; Lyons' own email communications with management confirm that fact beyond any doubt. Accordingly, we affirm, substantially for the reasons expressed by PERC in its affirmance of the Hearing Examiner's meticulously documented decision.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION