

D.U.P. NO. 85-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

NEW JERSEY TRANSIT BUS
OPERATION,

Respondent,

-and-

DOCKET NO. CI-85-1

FRANCIS E. BOYLE,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge filed by an individual concerning the employer's seniority policy. The alleged unfair practice occurred prior to the six month period immediately preceding the filing of the charge.

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Appearances:

For the Respondent

Honorable Irwin I. Kimmelman, Attorney General
(Jeffrey Burstein, Deputy Attorney General)

For the Charging Party

Francis E. Boyle, pro se

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on July 2, 1984, by Francis E. Boyle ("Charging Party") against New Jersey Transit Bus Operation ("New Jersey Transit") alleging that New Jersey Transit was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(3). ^{1/}

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives or agents from: "(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."

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

For the reasons stated below the undersigned has determined that the Commission's complaint standards have not been met.

Pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that any one has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

5.4(c) provides: "...provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented."


The charge was filed on July 2, 1984, and states that employees previously employed by the Lincoln Transit Company ("Lincoln") were hired by New Jersey Transit after Lincoln declared bankruptcy. A group of the employees, including Charging Party, who could not initially pass a physical, were accorded different seniority dates than those who immediately passed. The charge states, however, that in one instance, a former Lincoln employee who had failed his examination, was given full seniority.

In the undersigned's judgment, if the above facts constitute an unfair practice, the operative date for the occurrence of a claimed unfair practice in this matter is the date New Jersey Transit advised employees who had failed the physical that their seniority would be treated differently. It appears from the charge that New Jersey Transit's seniority policy was made known to employees in early 1983.

Further, it does not appear to the undersigned from the facts of the charge that New Jersey Transit adopted its seniority policy in order to encourage or discourage Lincoln employees from engaging in protected activity.

Accordingly, for the above reasons, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS



Joel G. Scharff, Administrator

DATED: October 18, 1984
 Trenton, New Jersey