

D.U.P. NO. 2005-1

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

In the Matter of

NEW JERSEY TRANSIT AND
AMALGAMATED TRANSIT UNION, DIVISION 540,

Respondents,

-and-

Docket No. CI-2004-012

ANTHONY B. PUE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint on an unfair practice charge filed by Anthony B. Pue against New Jersey Transit, Pue's employer, and Amalgamated Transit Union, Division 540 (ATU), Pue's employee representative. The Director found several of Pue's allegations against New Jersey Transit to be untimely. The Director found Pue's allegations that ATU violated the Act by refusing to process his grievances were likewise untimely, and that Pue failed to allege any facts showing that ATU's conduct was arbitrary, discriminatory or in bad faith. Finally, the Director found Pue alleged no facts to support his remaining allegations against ATU and New Jersey Transit.

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Appearances:

For the Respondent - New Jersey Transit,
Peter C. Harvey, Attorney General
(Virginia Class-Matthews, Deputy Attorney General)

For the Respondent - ATU Division 540,
Oxford Cohen, attorneys
(Arnold S. Cohen, of counsel)

For the Charging Party,
Anthony B. Pue, pro se

REFUSAL TO ISSUE COMPLAINT

On September 11, 2003, Anthony B. Pue filed an unfair practice charge against New Jersey Transit and Amalgamated Transit Union, Division 540 (ATU), alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Specifically, Pue alleges that New Jersey Transit violated subsection 5.4a (1)^{1/} of the Act when it violated the

^{1/} This provision prohibits public employers, their representatives or agents from: "(1) Interfering with,
(continued...)

parties' collectively negotiated agreement by: 1) refusing to pay him for reporting to New Jersey Transit's medical department regarding a work-related injury; 2) refusing to compensate him for a work related court appearance in June 2002, 3) refusing to pay him retroactive pay after the parties settled their agreement in July 2002; and 4) refusing to pay him for a June 10, 2000 personal day off.

Pue further alleges that ATU violated the Act, specifically subsections, 5.4b(3), (4), and (5)^{2/} by refusing to process his grievances and by failing to protect his contractual rights.

New Jersey Transit denies it violated the Act. It claims it was not obligated to pay Pue for his medical department visit because Pue, and not New Jersey Transit, requested it. Moreover, New Jersey Transit explains that it was not required to pay Pue for the cited court appearance, as the appearance involved Pue's

1/ (...continued)
restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

2/ These provisions prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (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."

The charge also alleged a violation of 5.4b(7). However, no such subsection exists and thus that allegation is dismissed.

worker's compensation claim against New Jersey Transit. Further, according to New Jersey Transit, Pue received the maximum amount allowed under worker's compensation law and thus, was not entitled to any retroactive pay when the contract was settled.

ATU also disputes Pue's allegations. It claims it diligently processed all of Pue's grievances through the third step of the grievance procedure, but New Jersey Transit denied them. ATU further explains that not all grievances automatically proceed to arbitration; rather, arbitration is granted only when a member requests it in front of the membership at a union meeting and the membership votes in favor of the request. ATU notes that Pue never appeared at any union meetings to request arbitration, as was required.

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. 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. I find the following facts.

Anthony B. Pue is employed by New Jersey Transit as a bus driver and is a member of ATU.

Section 1 of the agreement between New Jersey Transit and ATU contains a three-step grievance procedure and an arbitration clause, Section 2, which provides in pertinent part:

Any differences, disputes, or grievances which remain unresolved following conclusion of the third step meeting . . . shall be referred, upon the demand in writing of either party, to a Board of Arbitration. Such a demand for arbitration shall be made within seventy-two (72) hours following the conclusion of the next regular scheduled meeting of the Union or Company. The Union will notify management within twenty-four (24) hours of the outcome of that meeting. . . .

On January 4 and January 10, 2002, Pue filed two grievances against New Jersey Transit involving retroactive pay and workers' compensation. ATU processed the grievances through the three steps of the grievance procedure and, while Pue was invited to attend the grievance hearing, he declined to do so. After New Jersey Transit denied the grievances, ATU summarized the three steps of the grievance proceeding by a February 5, 2002 letter to Pue and further informed him that if he obtained any additional information favorable to his grievances, he should notify ATU as soon as possible. Pue never provided any further information to ATU and never demanded arbitration, as required by the agreement.

Thereafter, on June 14, 2002, Pue filed a third grievance alleging that New Jersey Transit failed to pay him for a June 3, 2002 court appearance involving his workers' compensation case against New Jersey Transit. ATU also processed this grievance through the three steps of the grievance procedure. Then by a

July 22, 2002 letter, ATU President Cyrus Johnson informed Pue that New Jersey Transit had denied his grievance at Step 3. He further explained that if Pue wanted to pursue the matter to arbitration, he must so advise him by August 1, 2002, and that an arbitration vote would be required at the next union meeting on August 6, 2002. Pue responded to Johnson in writing the same day, requesting arbitration. It is unclear whether Pue's request was considered at the August 6 meeting; however, Pue does not assert that he appeared at the meeting to present his arbitration request, or that he was prevented from doing so.

Finally, in August 2003, Pue filed a fourth grievance alleging that he had not been compensated for reporting to the New Jersey Transit medical department. ATU pursued the grievance through the three steps of the grievance procedure, but New Jersey Transit denied the grievance in September 2003, explaining that Pue had requested the medical visit and not New Jersey Transit. Pue never requested that ATU pursue the matter to arbitration.

Analysis

Pue alleges 5.4b(3) and (4) allegations against Division 540; however, only the public employer has standing to allege such violations. Pue, as an individual, lacks standing to raise these claims. See CWA Local 1034 and Renaldo A. King, D.U.P. No. 2004-2, 29 NJPER 367 (¶113 2003); State of New Jersey (Hagedorn)

and Knapp, D.U.P. No. 99-17, 25 NJPER 311 (¶30132 1999). Thus, I dismiss those allegations.

Moreover, N.J.S.A. 34:13A-5.4c provides:

. . . 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-month period shall be computed from the day he was no longer so prevented.

See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1978); N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1980).

Pue's allegations that New Jersey Transit violated the agreement when: 1) it refused payment to him for a June 10, 2000 personal day off, 2) it refused Pue compensation for a work-related court appearance in June 2002 and; 3) it denied Pue retroactive pay after the parties' agreement settled in July 2002, are all untimely. Since Pue did not file his charge until September 11, 2003, all of these allegations took place well outside of the six month statute of limitations set forth in N.J.S.A. 34:13A-5.4c.

Likewise, Pue's allegations that ATU refused to process his grievances and protect his contractual rights regarding these matters are untimely. The grievances regarding these matters were filed in January 2002 and June 2002. They were pursued by ATU through three steps of the grievance procedure until two were denied in February 2002 and the third was denied in July 2002.

The charge was not filed until over a year later in September 2003; thus all but one of the alleged unlawful actions fall outside the limitations period set forth in N.J.S.A. 34:13A-5.4c. Only the claim regarding the ATU's failure to process the 2003 grievance is timely. I also note that Pue has not asserted that he was prevented from filing his charge regarding these 2002 allegations during the six-month period after they occurred. Therefore, I dismiss them as untimely. N.J.S.A. 34:13a-5.4c.

Nevertheless, even if viable, there are no alleged facts which support any of Pue's allegations against either ATU or New Jersey Transit.

Section 5.3 of the Act empowers a union to negotiate on behalf of all unit employees and to represent all unit employees in administering the contract. With that power comes the duty to represent all unit employees fairly in negotiations and contract administration. Section 5.3 specifically links the power to negotiate and administer with the duty to represent all unit employees "without discrimination and without regard to employee organization membership." The standards in the private sector for measuring a union's compliance with the duty of fair representation were articulated in Vaca v. Sipes, 386 U.S. 171 (1967). Under Vaca, a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the negotiations unit is arbitrary, discriminatory or

in bad faith. Id. at 191. Those standards have been adopted in the public sector. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); see also Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Carteret Ed. Assn. (Radwan), P.E.R.C. No. 97-146, 23 NJPER 390, 391 (28177 1997).

Pue's allegation is that the ATU failed to pursue his grievances to arbitration. An employee organization is not required to take every grievance to arbitration. Rather, it must evaluate requests for arbitration on the merits and decide in good faith whether it believes the employee's claim has merit. See D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74 (1990); Carteret Ed. Ass'n. (Radwan); Camden Cty. College (Porreca), P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Trenton Bd. of Ed (Salter), P.E.R.C. No. 86-146, 12 NJPER 528 (¶17198 1986).

An organization's negligence in processing grievances, standing alone, is not sufficient to establish a breach of its duty of fair representation. See Glen Ridge Ed. Assn (Tucker), P.E.R.C. No. 2002-72, 28 NJPER 251 (¶33095 2002); OPEIU (Wasilewski), P.E.R.C. No. 98-131, 24 NJPER 256 (¶29122 1998); Printing and Graphic Communication, Local 4, 249 NLRB 88, 104 LRRM 1050 (1980); Service Employees Int'l Union, Local No. 579 AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977).

Here, ATU acted with due diligence on Pue's behalf with respect to all of his grievances. It processed them through all three steps of the grievance procedure in good faith and invited Pue to participate in the proceedings, but he declined. Further, upon the grievances being denied, ATU summarized the grievance proceedings for Pue and advised him to apprise them of any additional information helpful to his grievances, but Pue never responded. Further, Pue never requested that ATU take his January 2002 and August 2003 grievances to arbitration, as required under the agreement. Pue apparently did request, in writing, that ATU pursue the June 2002 grievance to arbitration, but apparently did not further pursue his request by presenting it at a union meeting in conformance with ATU rules. Under these circumstances, I find that Pue has failed to allege any facts showing conduct by ATU that is arbitrary, discriminatory or in bad faith. Vaca; Camden Cty. College. There does not appear to be any evidence or alleged facts showing discrimination that is "intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assoc. of Street, Electric Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301 (1971). Rather, it appears that ATU exercised reasonable care and diligence in pursuing Pue's grievances. Thus, I find that Pue failed to set forth any support for his allegations against ATU and those allegations are dismissed.

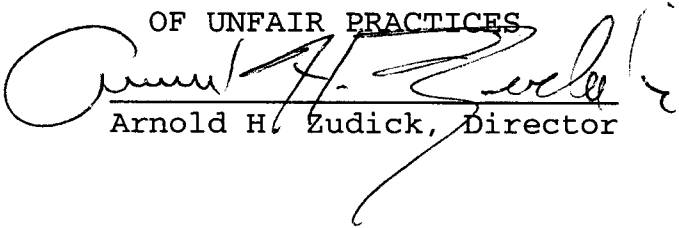
Finally, I find that Pue failed to set forth a 5.4a(1) claim against New Jersey Transit. Pue simply alleges that New Jersey Transit violated the Act when it violated the parties agreement by: 1) refusing to pay him for reporting to New Jersey Transit's medical department regarding a work-related injury; 2) refusing to compensate him for a work-related court appearance in June 2002; 3) refusing to pay him retroactive pay after the parties settled their agreement in July 2002, and 4) refusing to pay him for a June 10, 2000 personal day off. These are mere breach of contract claims which do not constitute any unfair practice within the meaning of the Act. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Accordingly, based upon the above, I find that the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge.^{3/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Arnold H. Zudick, Director

DATED: July 22, 2004
Trenton, New Jersey

^{3/} N.J.A.C. 19:14-2.3.

