

D.U.P. No. 2007-5

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

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Respondent,

-and-

Docket No. CO-2006-192

NEW JERSEY TRANSIT PBA LOCAL No. 304,

Charging Party.

SYNOPSIS

The collective agreement between New Jersey Transit and PBA Local 304 allows a Local 304 delegate to attend PBA meetings and conferences. New Jersey Transit advised Local 304 that its delegate must submit documentation attesting to his/her attendance at such meetings. Local 304 filed a grievance contending that the collective agreement did not require the submission of such documentation. New Jersey Transit failed to meet the grievance procedure's time frames for response. The grievance procedure provided that if New Jersey Transit failed to timely respond, the remedy sought in the grievance will be considered granted. Ultimately, New Jersey Transit advised Local 304 that it would not grant the remedy it sought in the grievance. Local 304 filed the instant unfair practice charge contending that New Jersey Transit repudiated the collective agreement when it refused to implement the remedy sought in the grievance. Local 304 filed the unfair practice charge 10 months after the operative date of the employer's action. The Director has refused to issue a Complaint on the basis that the filing of the unfair practice charge exceeds the six-month limitations period.

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Appearances:

For the Respondent,
Stuart Rabner, Attorney General
(Richard W. Schleifer, Deputy Attorney General)

For the Charging Party,
Loccke, Correia, Schlager, Limsky & Bukosky, attorneys
(Merick H. Limsky, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 31 and February 6, 2006, the New Jersey Transit PBA Local No. 304 (Local 304) filed an unfair practice charge and amended charge with the Public Employment Relations Commission. The charges allege that the New Jersey Transit Corporation (Transit) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1), (3) and (5)^{1/} when Transit failed

^{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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees (continued...)"

to implement the requested remedy in a grievance Local 304 claims was deemed sustained.

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. My understanding of the facts appears below.

Article XX, Grievance Procedure, of the parties' collective agreement provides, in relevant part, the following:

(B) Any disagreement, dispute or grievance (including discipline) which shall arise between the parties with respect to the interpretation or application of the terms of this agreement shall be adjusted as follows:

- (1) An aggrieved employee or his or her Union representative shall submit all grievances in writing to this (sic) Commanding Officer within fifteen (15) working days of the event or reasonable knowledge thereof. The Commanding Officer shall answer the grievance in writing within ten (10) working days of receipt thereof.

1/ (...continued)
in the exercise of the rights guaranteed to them by 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."

- (2) Grievances not resolved at step 1 may be appealed to the Chief of Police, in writing, within fifteen (15) working days of the decision at step one and the Chief of Police shall respond, in writing, within fifteen (15) working days of the recap thereof.
- (3) Grievances not resolved at step 2 may be appealed to the Director of Labor Relations, or designated company official, in writing, within ten (10) working days of the decision at step two (2) and the Director of Labor Relations or designated company official shall respond, in writing, within ten (10) working days of the recap thereof.

* * *

(C) It is understood that the time limitations set forth in this agreement are of the essence and may only be waived in writing by a representative of each of the parties. In the event NJ Transit fails to comply with any time limitation hereunder, the grievance as submitted will be deemed to have been granted. If the Union or the employee fail to comply with any time limitation hereunder, then NJ Transit's final response shall be deemed to have been accepted.

On December 20, 2004, Geoffrey Schaedel, President of Local 304, filed a grievance in accordance with Step 1 of the parties' grievance procedure. The grievance alleges that Transit violated the collective negotiations agreement when it required Local 304's PBA delegate to provide documentation attesting to his/her attendance at PBA state delegates' meetings. Local 304 contends that Transit violated Articles X, XII, XIV, Past Practice, and other articles policies, regulations, etc. The remedies sought

in the grievance are: (1) that Transit stop its practice of harassing union officials by unilaterally and arbitrarily changing terms and conditions of employment, (2) that Transit be made to cease its unilateral and arbitrary practice of requiring union officials to provide documentation to attend meetings where no such requirement exists, and (3) any and all other remedies deemed appropriate.

On January 7, 2005, pursuant to the collective agreement, President Schaedel moved the grievance to the second step by serving it upon Joseph Bober, Chief of Police. Transit failed to respond to the grievance within the fifteen-day period allotted pursuant to Article XX (B) (2). Consequently, on February 3, 2005, President Schaedel sent a letter to Virginia Class-Matthews, Transit's Director of Labor Relations, indicating that since Local 304 had not received a timely reply to the grievance at step 2, Transit was now in default of the grievance procedure. Schaedel advised Class-Matthews that pursuant to Article XX, Local 304 was moving the grievance to the Director of Labor Relations level.

In a March 4, 2005 letter to Class-Matthews, Schaedel reviewed the procedural processing of the grievance and advised of the lack of response at both steps 2 and 3. Schaedel cited Article XX (C) and advised that Local 304 had not waived the time limits set forth in the grievance procedure and that Transit's

failure to comply with such time limitations resulted in the grievance having been deemed granted. Schaedel concluded his letter by stating that "failure on the employer's part to respond to this [letter] will serve as prima facie evidence that the employer is in agreement with our position as it relates to the above listed grievances."

On March 14, 2005, Rosalyn West, Assistant Director of Labor Relations, wrote Schaedel a letter stating that Transit found no merit to the grievance. No further action on the grievance was taken.

As of the filing of the unfair practice charge and amended charge, Transit has refused to grant the grievance. Transit has continued to require Local 304's delegate to provide it with a notice of attendance each time the delegate is released from work to attend an off-site PBA meeting while on paid leave time.

* * *

Based upon the above, I am inclined to dismiss this unfair practice charge for failure to meet our complaint issuance standard. The Act provides for a 6-month statute of limitations for unfair practice charges to prevent the litigation of stale claims. N.J.S.A. 34:13A-5.4(c) states in pertinent part:

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

In application, the statute of limitations period normally begins to run from the date of some particular action, such as the date the alleged unfair practice occurred, provided the person(s) affected thereby are aware of the action. The date of action is known as the "operative date," and the six-month limitations period runs from that date. To be timely, a charge must ordinarily be filed within six months of the operative date. Two exceptions to timeliness requirements are (1) tolling of the limitations period and (2) a demonstration by the charging party that it was "prevented" from filing the charge prior to the expiration of the period.

The standard for evaluating statute of limitations issues was set forth in Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978). The Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent litigation of stale claims, but it did not want to apply the statute strictly without considering the circumstances of individual cases. Id. at 337-338. The Court noted it would look to equitable considerations in deciding whether a charging party slept on its rights. The Court still expected charging parties to diligently pursue their claims.

Local 304 contends that Transit violated the Act by repudiating Article XX (C) of the collective negotiations

agreement which requires Transit to consider a grievance as having been granted if it fails to comply with any of the time limitations set forth in the grievance procedure. Local 304 contends that since Transit failed to timely respond to its grievance at either steps 2 or 3, as required by the collective agreement, Article XX (C) controls and the grievance is deemed granted.

The grievance was appealed to Chief Bober on January 7, 2005. Under the terms of the grievance procedure, Bober had until January 28, 2005 to issue a timely response. Having received no response, on February 3, 2005, Local 304 appealed the grievance to the Director of Labor Relations. The Director of Labor Relations had until February 7, 2005 to issue a timely response. No response was issued. On March 4, 2005, Local 304 exercised its right under Article XX (C) to have the grievance be considered granted in light of Transit's failure to comply with the time limitations set forth in the grievance procedure. Ultimately, on March 14, 2005, Transit responded to Local 304 rejecting the grievance and effectively advising Local 304 that it would not grant the remedy sought in its grievance. Thereafter, Transit has not complied with Article XX(C) and has not granted the remedy sought in the grievance, notwithstanding its breach of the time parameters established in the grievance procedure.

March 14, 2005 is the date Transit notified Local 304 that it would not find in favor of the grievance or grant the requested remedy. It is this action by Transit which Local 304 alleges constitutes a repudiation of the collective agreement. Thus, I find that March 14, 2005, serves as the operative date to begin the running of the six month limitations period in this matter.^{2/} The unfair practice charge was originally filed on January 31, 2006, well after the expiration of the six month limitation period. There are no facts alleged which leads to the conclusion that Local 304 was in any way prevented from filing an unfair practice charge within the six month period commencing March 14, 2005.

I find no allegations in the charge which support a claim that Transit has violated N.J.S.A. 34:13A-5.4a(1) or (3). Accordingly, I am inclined to dismiss these alleged violations as well.

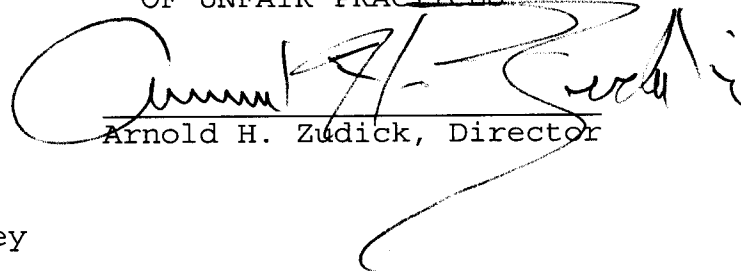
^{2/} I find no continuing violation here. Transit allegedly repudiated Article XX(C) on March 14, 2005, when it effectively notified Local 304 of its unwillingness to grant the remedy sought in the grievance notwithstanding its nonconformance to the grievance procedure's time frames. As a result, the requirement for Local 304's delegate to submit documentation of attendance which had begun in December 2004, has continued. That requirement merely amounts to another example of the consequence which flows from Transit's alleged repudiation of Article XX(C), and does not constitute a separate, independent violation. See Salem Cty., P.E.R.C. No. 87-159, 13 NJPER 584 (¶18216 1987).

Based on the above facts and analysis, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.1, 2.2 and 2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zedick, Director

DATED: December 13, 2006
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 December 26, 2006.