

D.U.P. NO. 2019-4

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

In the Matter of

AMALGAMATED TRANSIT UNION  
DIVISION No. 540,

Respondent,

-and-

Docket No. CI-2016-012

DONALD BAKER,

Charging Party.

Appearances:

For the Respondent,  
(Kenneth Rice, President)

For the Charging Party,  
(Donald Baker, pro se)

REFUSAL TO ISSUE COMPLAINT

On August 26, 2015, October 19, 2015, and February 9, 2016, Donald Baker filed an unfair practice charge, an amended charge, and a second amended charge, respectively, against his majority representative, Amalgamated Transit Union Division No. 540 (ATU), and his former employer, New Jersey Transit.<sup>1/</sup> Baker alleges that ATU violated its duty of fair representation by refusing to allow him to gain back his union membership after his retirement,

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<sup>1/</sup> Although New Jersey Transit is identified as a second respondent in the amended and second amended charge, Baker does not allege that New Jersey Transit violated a specific section of the Act.

and by refusing to assist him in obtaining appropriate disability and pension benefits from New Jersey Transit. Baker alleges that ATU's actions violate section 5.4b(1), (2), (3) and (5)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).<sup>3/</sup>

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.

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2/ These provisions prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act;" "(2) Interfering with, restraining or coercing a public employer in the selection of his representatives for the purposes of negotiations or the adjustment of grievances;" "(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 the unit;" and "(5) Violating any of the rules and regulations established by the commission."

3/ Although Baker does not expressly allege that New Jersey Transit violated a specific section of the Act, I will infer that he is alleging that New Jersey Transit violated section 5.4a(5) of the Act by breaching his "contractual" rights. This provision prohibits public employers, their representatives or agents from: "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."

Baker was employed by New Jersey Transit as a heating and air conditioning specialist from April, 1980, until he suffered a work-related injury in December, 2004. Baker then received workers' compensation, medical and disability benefits until July, 2006, when he was terminated from employment after his workers' compensation treating physician opined that he had reached "maximum medical improvement" and was unable to perform "any type of work duty."

In January, 2008, Baker was "suspended" from ATU membership. On March 25, 2015, more than seven years after his "suspension" from ATU, Baker wrote to ATU, requesting assistance with his New Jersey Transit pension. On April 9, 2015, ATU's International President Lawrence J. Hanley wrote to Baker, advising that ATU "has no role in the pension plan administered by NJ Transit," and recommending that Baker contact New Jersey Transit's pension office.

#### ANALYSIS

N.J.S.A. 34:13A-5.4c establishes a six-month statute of limitations period for the filing of unfair practice charges.

The statute provides in pertinent 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 a charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), our Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent the litigation of stale claims, and cautioned that it would consider the circumstances of individual cases. Id. at 337-338. The Court noted that it would look to equitable considerations in deciding whether a charging party slept on its rights.

Baker filed a charge on August 26, 2015, an amended charge on October 19, 2015, and second amended charge on February 9, 2016. All of the alleged unlawful events occurred more than six months before the charge and the amendments were filed. The only actions falling within the six-month statutory period are Baker's March 25, 2015 letter to ATU requesting assistance (which could constitute a request that ATU file a grievance on Baker's behalf), and ATU's April 9, 2015 letter denying the request. By that time, almost nine years had passed since Baker had been terminated from New Jersey Transit, and seven years had passed since his ATU membership had been "suspended." Such correspondence does not render the charge timely filed. Nor has Baker alleged any facts suggesting that he was prevented from filing a timely charge.

The Commission ". . . does not have jurisdiction over individuals who are no longer public employees, such as individuals who have resigned or retired," Asbury Park, D.U.P.

No. 2002-9, 28 NJPER 160 (¶33057 2002), aff'd P.E.R.C. 2002-73, 28 NJPER 253 (¶33096 2002). See also, Weisman and CWA 1040, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012); Sarapuchiello and Local 2081, D.U.P. No. 2009-4, 34 NJPER 453 (¶142 2009), aff'd P.E.R.C. 2009-47, 35 NJPER 66 (¶251 2009). Once a charging party ceases to be a public employee within the meaning of the Act, the Commission no longer retains jurisdiction over any subsequent disputes between the former public employee and his or her former public employer and majority representative.

In Asbury Park, supra, the Director refused to issue a complaint on an unfair practice charge filed on June 20, 2001, more than seven (7) months after the charging party retired from service on December 1, 2000. In reaching this determination, the Director explained that when, "[the charging party] retired, he ceased to enjoy the rights guaranteed to public employees by our Act." Id. at 161. Consequently, the Director concluded, that the charging party lacked standing to pursue the June 20, 2011 unfair practice charge since he no longer was a public employee within the meaning of the Act.

Baker has not been a public employee since 2006. He lacks standing to pursue the claims set forth in his unfair practice charge. Nor do the facts show that the ATU breached any duty owed to Baker on April 9, 2015, many years after he was no longer


a public employee within the meaning of the Act. See Weisman,  
P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

For these reasons, I find that Baker's unfair practice  
charge fails to meet the Commission's complaint issuance  
standard. N.J.A.C. 19:14-2.2 and 2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
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Jonathan Roth  
Director of Unfair Practices

DATED: May 6, 2019  
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 May 16, 2019.