

D.U.P. NO. 88-11

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

In the Matter of

NEW JERSEY TRANSIT RAIL OPERATIONS

Respondent,

-and-

Docket No. CO-88-177

UNITED TRANSPORTATION UNION, LOCAL 60  
and NICHOLAS L. BOLIO

Charging Parties.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint where the charge alleged no more than a mere breach of the parties' collective negotiations agreement. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (15191 1984).

D.U.P. NO. 88-11

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

In the Matter of

NEW JERSEY TRANSIT RAIL OPERATIONS

Respondent,

-and-

Docket No. CO-88-177

UNITED TRANSPORTATION UNION, LOCAL 60  
and NICHOLAS L. BOLIO

Charging Parties.

REFUSAL TO ISSUE COMPLAINT

On January 7, 1988, the United Transportation Union, Local 60 ("Union" or "Charging Party") filed an Unfair Practice Charge against New Jersey Transit Rail Operations ("NJ Transit") alleging violations of the Public Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4.<sup>1/</sup> The charge alleges that Nicholas Bolio was unjustly dismissed for starting duty one hour early and for failing to take the earliest "deadhead" train home after completing his shift. The

---

<sup>1/</sup> Although no specific subsections were cited, it is assumed from the substance of the charge that the Union is alleging a violation of subsections (a)(1) and (5). These subsections 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; and (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.

charge further alleges that NJ Transit violated Rule 43 of the collective negotiations agreement in its handling of Bolio's disciplinary hearing.

These allegations do not state a cause of action under N.J.S.A. 34:13A-5.4. Rather, the substance of this claim is no more than a mere breach of the parties' collective negotiations agreement.

In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984)<sup>2/</sup>, the Commission held that:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

In that case, the Commission set forth some examples of situations where a breach of contract claim bears a sufficient relationship to an alleged violation of the Act so as to warrant the processing of the charge and the possible issuance of a complaint: (1) The employer repudiates an established term or condition of employment. (2) The employer decides to abrogate a contract clause based on its belief that the clause is outside the scope of negotiations. (3)

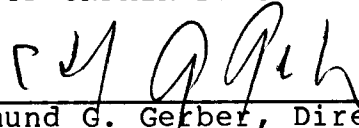
---

<sup>2/</sup> In N.J. Transit Bus Operations, P.E.R.C. No. 88-74, 14 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1988), the Commission found that private sector as well as public sector law should apply to employment disputes concerning employees of N.J. Transit. Human Services is firmly rooted in private sector precedent. See the decision at 10 NJPER p. 422 and the cases cited therein.

The contract clause is so clear that an inference of bad faith arises from a refusal to honor it. (4) Factual allegations indicate that the employer changed the parties' past and consistent practice in administering the disputed clause. (5) Specific allegations of bad faith over and above mere breach of the collective negotiations agreement are present. (6) Breach of the agreement places the policies of the Act at stake.

None of these situations appear in the instant case. The contract clauses involved do not clearly or specifically address the acts complained of nor did the Charging Party allege a change in a consistent past practice in administering these clauses. The Charging Party presented no evidence of repudiation or bad faith which would raise this dispute to the level of a cognizable unfair practice. Further, the contract provides that disciplinary disputes may be appealed to the Special Adjustment Board, a tripartite arbitration panel. Accordingly, we find that the Commission's complaint issuance standard has not been met and we decline to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Edmund G. Gerber, Director

DATED: March 2, 1988  
Trenton, New Jersey