

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

In the Matter of

NEW JERSEY TRANSIT & AMALGAMATED
TRANSIT UNION,

Respondent,

-and-

DOCKET NO. CI-83-68

KEVIN W. RANDOLPH,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to unfair practice charges that the employer improperly discharged Charging Party and that the majority representative refused to submit the Charging Party's grievance to binding arbitration. There were no factual allegations in the Charge indicating that the majority representative's actions were arbitrary, discriminatory, or in bad faith.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on March 25, 1983, by Kevin W. Randolph ("Charging Party") against New Jersey Transit ("NJT") and the Amalgamated Transit Union, Division No. 819 ("ATU") alleging that they were 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 subsections 5.4(a)(1), (2) and (3) ^{1/} and (b)(1), (2) and (3). ^{2/}

^{1/} 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

^{2/} These subsections 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 representative 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 that unit."

The Charging Party alleges that NJT improperly discharged him and that ATU did not grieve NJT's action to arbitration.

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. ^{3/} 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. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below, it appears to the undersigned that the allegations contained in the charge do not provide a factual basis upon which a complaint may be issued.

The instant charge relates to the Charging Party's discharge from employment by New Jersey Transit and the decision by ATU not to grieve New Jersey Transit's decision to arbitration. Under Commission precedent, allegations against an employer for an allegedly wrongful discharge in violation of contractual disciplinary protections may be

^{3/} 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 anyone 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 and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof..."

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

reviewed only in those cases where the charge contains a factual allegation that the majority representative has either alone, or in collusion with the employer, violated its duty to fairly represent employees in grieving the employer's determination. In re N.J.Turnpike Authority and Jeffrey Beall, P.E.R.C. No. 81-64, 6 NJPER 560 (¶ 11284 1980), aff'd App. Div. No. A-1263-8073 (Oct. 30, 1981). ^{6/} Accordingly, the undersigned has initially focused his attention on the Charging Party's claims against the ATU.


The Charging Party has alleged that ATU reviewed his discharge but determined not to present the matter to arbitration. Under the standards adopted by the Commission in reviewing claims of unfair representation, the decision of a majority representative not to submit a grievance to arbitration does not constitute an unfair practice unless the decision is arbitrary, discriminatory, or in bad faith. In re Council #1, A.F.S.C.M.E., P.E.R.C. No. 79-28, 5 NJPER 21 (¶ 10013 1978); In re New Jersey Turnpike Authority and Walter Kaczmarek, P.E.R.C. No. 80-38, 5 NJPER 412 (¶ 10215 1979). However, there are no factual allegations in the charge which would establish that the judgmental decision of the ATU not to proceed with arbitration was either arbitrary, discriminatorily motivated or exercised in bad faith. Further, absent specific factual allegations showing, in accordance with the above standard, that the ATU was derelict in investigating and evaluating the grievance a complaint may not issue. ^{7/}

^{6/} Since the statement of facts does not indicate that the discharge was related to any statutory protected activity in which the Charging Party may have been engaged, it does not appear that subsections 5.4 (a) (2) or (3) are implicated in the present matter.

^{7/} There appears, further, to be no factual basis for the allegations under subsections 5.4(b) (2) and (3). Allegations of improper representation are litigated as subsection 5.4(b) (1) claims.

The Charging Party has been advised of the Commission's standard for complaints issuance and has been provided the opportunity to file an amendment to the charge. There has been no additional submission by the Charging Party. Accordingly, in the absence of any factually based claim supporting the allegations of unfair representation, the undersigned declines to issue a complaint against ATU, and in turn, against NJT.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: July 15, 1983
Trenton, New Jersey