

H.E. NO. 2000-12

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Respondent,

-and-

AMALGAMATED TRANSIT UNION
LOCAL 880,

Docket No. CI-H-99-66

Respondent,

-and-

JOSEPHINE CARROLL,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission grants New Jersey Transit's Motion for Summary Judgment. The Hearing Examiner finds that the Charging Party fails to state a viable claim against NJT; specifically, the Charging Party merely alleges a breach of the collective negotiations agreement a claim which does not rise to the level of an unfair practice and which she does not have standing to pursue.

The Hearing Examiner, however, notes that the Charging Party's amended charge against the ATU still exists, as no formal motion was filed with respect to it.

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Appearances:

For the Respondent, NJ Transit
John J. Farmer, Jr., Attorney General
(Virginia Class Matthews, Deputy Attorney General)

For the Respondent, ATU Local 880
Weitzman & Weitzman, attorneys
(Richard P. Weitzman, of counsel)

For the Charging Party,
Holston, MacDonald & Uzdavinis, attorneys
(William F. Ziegler, of counsel)

HEARING EXAMINER'S DECISION ON MOTION FOR SUMMARY JUDGMENT

On April 5, 1999, Josephine Carroll (Charging Party) filed an unfair practice charge against the Amalgamated Transit Union, Local 880 (ATU) and New Jersey Transit (NJT). On July 6, 1999, Carroll filed an amendment to her charge against the ATU. Carroll alleges that NJT violated provisions 5.4a(1), (3) and

(7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when it failed to reinstate her following her October 5, 1998 court acquittal on charges of official misconduct and theft by failure to make required disposition of property, in violation of the parties' collective negotiations agreement.

The charge against the ATU alleges that it violated provisions 5.4b(1), (3) and (5)^{2/} of the Act when it breached its duty of fair representation by failing to pursue Carroll's claim for reinstatement and by denying her assistance, in violation of clear contract language.

On September 30, 1999, the Director of Unfair Practices issued an amended Complaint and Notice of Hearing. On October 1, 1999, NJT filed an Answer requesting that the Complaint be

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 in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

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. (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. (5) Violating any of the rules and regulations established by the commission."

dismissed. NJT argued that Carroll failed to request a fourth-step grievance hearing within the time prescribed in the contract grievance procedure. NJT also claims that it is in compliance with the grievance procedure, and that the Complaint fails to state a cause of action under the Act.

The ATU also filed an Answer on October 1, 1999, denying it breached any duty of fair representation owed to Carroll and denying that it violated the collective agreement. The ATU denied it failed to assist Carroll in her request for reinstatement, and denied that any action it took or did not take following Carroll's acquittal constituted a violation of any legal obligation owed to her.

The ATU also argued that Carroll's amended charge fails to state any violation of law, and claims that even assuming it had an obligation to represent Carroll following her acquittal, it could not take any action on Carroll's behalf without NJT's agreement to waive contractual time limitations and allow a grievance to proceed to arbitration. It argued that since NJT refused to waive such limitations, any liability towards Carroll should be NJT's alone.

On January 14, 1999, NJT filed a Motion for Summary Judgment, along with supporting brief and exhibits, with the Commission. On January 19, 2000, the Motion was referred to me for decision. N.J.A.C. 19:14-4.8. On February 10, 2000, the ATU sent me a letter with regard to the pending motion, stating,

"While we take no position with regard to the above motion, it has been (and will continue to be) asserted, on behalf of the Union, that the Complaint fails to state a valid claim against the Union. While this is so even with the former employer joined as a party, if the motion of N.J. Transit should be granted, then, under applicable law, we fail to see how, in any event, the matter can properly proceed against the Union alone."

On February 14, 2000, Carroll filed an opposing response to the Motion with supporting documents.

* * *

Summary Judgment will be granted:

if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law.

[N.J.A.C. 19:14-4.8(d)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995) specifies the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." If that issue can be resolved in only one way, it is not a "genuine issue" of material fact. A motion for summary judgment should be granted cautiously -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty.

Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

Applying these standards and relying upon the pleadings, I make the following:

FINDINGS OF FACT

1. Josephine Carroll was employed by NJT as a ticket agent and was terminated on March 3, 1997 for failure to deposit and account for company receipts.
2. The parties' collective agreement contains a fourth-step grievance procedure, with arbitration as the fourth step.
3. The ATU grieved Carroll's discharge through the first three steps of the procedure. NJT denied the grievance at all steps. Carroll requested that the ATU take her grievance to arbitration.
4. Carroll was indicted for official misconduct allegedly in violation of N.J.S.A. 2C:30-2 and theft by failure to make required disposition of property received in violation of N.J.S.A. 2C:20-9. A summons and complaint was issued on April 4, 1997.
5. Carroll presented her grievance at the April 22, 1997 ATU Local 880 Executive Board meeting and again at the June 10, 1997 general union membership meeting for a determination as to whether or not the ATU should take her grievance to arbitration. The union membership voted against proceeding to arbitration.

6. On October 5, 1998, Carroll was acquitted of all criminal charges in Atlantic County Law Division Criminal Court.

7. Section 1B of the collective agreement provides:

When it is established that employees are innocent of charges against them, they shall be reimbursed for lost time as the result of a suspension or discharge.

8. By letter of October 15, 1998 to NJT, Carroll demanded reinstatement to her former position, along with reimbursement for lost time and related benefits. Carroll claimed she was entitled to such relief based on Section 1B of the collective agreement and court cases.

9. By letter of November 4, 1998 to Carroll, NJT Vice President and General Manager Maureen Milan denied Carroll's request for reinstatement explaining:

I have received your file, and it appears that your employment was not terminated because of the charge of theft, but was terminated for failure to deposit company receipts and failure to account for company receipts.

Since there has been no finding of innocence as to the charges for which your employment was terminated, your request for reinstatement must be denied.

10. Carroll believed NJT was failing and refusing to comply with Section 1B of the agreement; thus she sought assistance from the ATU Financial Secretary Frank Berber. Berber advised her she was no longer entitled to union protection. She then requested assistance from the ATU President Joseph Ripa; Ripa did not return her call.

11. By letter of March 4, 1999 to NJT, Carroll again requested reinstatement and reimbursement for her lost time as a

result of her discharge and, absent such relief, requested a third-step grievance hearing.

12. By letter of March 26, 1999, NJT again denied Carroll's request for reinstatement, stating:

The basis for Ms. Carroll's discharge was her failure to account for company receipts in the amount of \$2,816.65. The fact that she was acquitted of criminal charges does not absolve her of her responsibility to account for company receipts.

NJT also denied Carroll's request for a third-step hearing, noting that said hearing had previously been held in April 1997. NJT further explained that under the grievance procedure, a fourth-step hearing must be requested within 90 days after the dispute or grievance arose and that since the ATU failed to request a fourth-step hearing for Carroll within the contractual time period, Carroll is not now entitled to continue the grievance.

ANALYSIS

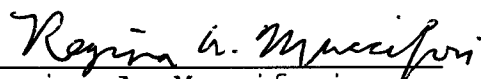
The Charging Party fails to allege any facts indicating that NJT violated provisions 5.4a(1), (3) and (7) of the Act. No facts or allegations were made showing that NJT interfered with, coerced or intimidated Carroll in violation of 5.4a(1) based on her exercise of protected activity, and Carroll has not alleged any facts indicating that NJT discriminated against her for the exercise of rights guaranteed by the Act in violation of 5.4a(3). Finally, Carroll has not presented any facts or allegations

showing that NJT violated any Commission rules or regulations, as prescribed by 5.4a(7).

Rather, it appears that Carroll merely alleges that NJT breached the collective negotiations agreement, specifically Section 1B, when it failed to reinstate her following her court acquittal. The denial of contractual benefits to an individual employee does not rise to the level of an unfair practice. Any such claim would have to be pursued in another forum. City of Newark (Montgomery), P.E.R.C. No. 2000-57, 26 NJPER 91 (¶31306 2000); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶5191 1984). In any event, Carroll, as an individual, does not have standing to raise such a claim. Burlington Cty., D.U.P. No. 95-16, 21 NJPER 23 (¶26013 1994); Beall and N.J. Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd NJPER Supp.2d 101 (¶85 App. Div. 1981).

Finally, Carroll does not allege that NJT and the ATU colluded against her. Accordingly, based on the above, I find that Carroll failed to state any viable claim against NJT. Thus, NJT's Motion is granted and Carroll's charge against it is dismissed.

However, I note that Carroll's amended charge against the ATU still exists. Since no formal motion for summary judgment was filed with respect thereto, the Charging Party may proceed to hearing on the remaining allegation.


Regina A. Muccifori
Hearing Examiner

DATED: June 16, 2000
Trenton, New Jersey