

D.U.P. No. 2008-5

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

In the Matter of

NEW JERSEY TRANSIT,

Public Employer,

-and-

Docket No. CI-2008-001

THEODORE WARFIELD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Theodore Warfield against New Jersey Transit. The Director found no facts supporting any violation of the Act and therefore the Commission's complaint issuance standards were not met.

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Appearances:

For the Respondent
Anne Milgram, Attorney General of New Jersey
(Raymond C. Barzey, DAG)

For the Charging Party
Theodore Warfield, pro se

REFUSAL TO ISSUE COMPLAINT

On July 17, 2007, Theodore Warfield filed an unfair practice charge against his employer, New Jersey Transit Bus Operations, Inc. (NJT or Employer) and majority representative, Amalgamated Transit Union, Division 540 (ATU).^{1/} Warfield alleges that on February 25, 2007, NJT representatives disciplined him for not completing a work assignment, owing to his protest that his ". . . work environment was unsafe." Warfield denies that he wrote or spoke words to that effect and alleges that NJT representatives ". . . made it up." Warfield alleges that NJT's

^{1/} Warfield later withdrew his charge against the ATU.

conduct violated 5.4a(1), (3), (5), (6) and (7)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

NJ Transit denies violating the Act. It contends that Warfield and the ATU filed a contractual grievance contesting Warfield's discipline which was denied and not advanced to binding arbitration.

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. Based upon the following facts, I find that the complaint issuance standard has not been met.

^{2/} 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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

Theodore Warfield is employed by New Jersey Transit as a maintenance person and is a member of ATU. On February 25, 2007, Warfield was given a work order by foreman Torsten Bay. The work order and related conversations between Bay and Warfield were the subject of an incident report for poor work performance issued to Warfield.

Warfield and the ATU filed a contractual grievance contesting the discipline. A first step hearing was conducted and the grievance was denied, thereby sustaining the written warning for poor work performance. Second, third and fourth step hearings were held, and the grievance was denied at every step. The ATU did not pursue the matter to grievance arbitration.

ANALYSIS

Warfield essentially disputes the outcome of his grievance. He has not alleged, however, that NJT engaged in any conduct which violates our Act, or would have a tendency to interfere with protected rights. His 5.4a(1) and (3) allegations, therefore, must be dismissed.

Warfield also lacks standing to assert a 5.4a(5) violation of the Act. A 5.4a(5) violation occurs when an employer fails to negotiate an alteration of a mandatory subject of negotiations with the majority representative; knowingly refuses to comply with the terms of the collective negotiations agreement; or refuses to process grievances presented by the majority representative. The employer's duty to negotiate in good faith

runs only to the majority representative. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980) aff'd. NJPER Supp. 2nd 101 (¶85 App. Div. 1981); Union Cty. Ed. Services Com'n. and Westlake EA (Kelly), D.U.P. 2000-13, 26 NJPER 160 (¶31062 2000); Camden Cty. Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). Accordingly, Warfield's 5.4a(5) allegation must also be dismissed.

Similarly, the 5.4a(6) allegation must be dismissed. Only a majority representative may allege an a(6) violation.

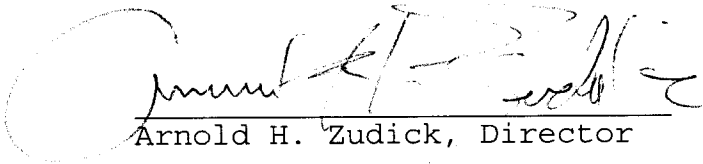
Finally, Warfield has not identified any Commission rule which NJT allegedly violated. See Burlington Tp. Bd. of Ed., D.U.P. No. 97-31, 23 NJPER 152 (¶28073 1997). Accordingly, I dismiss the 5.4a(7) allegation.

The Commission's complaint issuance standard has not been met and I decline to issue a complaint. N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Arnold H. Zudick, Director

DATED: February 4, 2008
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 February 14, 2008.