

D.U.P. NO. 2018-5

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

In the Matter of

SOMERSET COUNTY,
Respondent,

-and-

Docket No. CO-2016-176

TRANSPORT WORKERS UNION,
LOCAL 225,
Respondent,

-and-

SOMERSET COUNTY DRIVERS AND AIDES
ASSOCIATION,
Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge against Somerset County and Transportation Workers Union, Local 225 because all of the allegations were beyond the six-month statute of limitations. Furthermore, the charging party lacked standing to file a charge alleging a refusal to negotiate in good faith because the charging party was no longer the majority representative.

D.U.P. NO. 2018-5

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

In the Matter of

SOMERSET COUNTY,
Respondent,

-and-

Docket No. CO-2016-176

TRANSPORT WORKERS UNION,
LOCAL 225,
Respondent,

-and-

SOMERSET COUNTY DRIVERS AND AIDES
ASSOCIATION,
Charging Party.

Appearances:

For Somerset County
Ruderman, Horn, & Esmerado
(Mark S. Ruderman, Esq.)

For Transport Workers Union, Local 225
Lenwood McKoy, President

For Somerset County Drivers and Aides Association
Oxfeld Cohen, PC
(Sanford R. Oxfeld, Esq.)

REFUSAL TO ISSUE COMPLAINT

On March 2, 2016, the Somerset County Drivers and Aides Association (Association) filed an unfair practice charge against Somerset County (County) and Transportation Workers Union, Local 225 (TWU). The charge alleges that from about March, 2014 until September 13, 2015, the County negotiated in bad faith with the

Association while it was the majority representative, causing the Association to lose its majority representative status to TWU, in a Commission-conducted secret ballot election, based on TWU's timely, valid representation petition filed on April 24, 2015 (Docket No. RO-2015-042). More specifically, the Association alleges that if the County had offered it the same economic package offered to TWU, and if PERC had blocked the election, TWU would have never been certified as the majority representative. The County's conduct allegedly violates 5.4a(1), (3), and (5)^{1/} of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) and TWU's conduct allegedly violates 5.4.b(1) and (2)^{2/}. As a remedy, the Association seeks

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. (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."

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 representative for the purposes of negotiations or the adjustment of grievances."

an order rescinding the certification of TWU as the majority representative.^{3/}

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.

The Association was the majority representative for all County employees in the Division of Transportation, including mini bus drivers, motor coach operators, in-home service workers, transportation aides, home delivered meals drivers, dispatchers, administrative assistant, and transportation assistants. The Association ceased its representation of these employees in September 2015, after losing a Commission secret ballot election to TWU (Dkt. No. 2015-042).

On March 20, 2015, before TWU filed its representation petition, the Association filed an unfair practice charge alleging that the County violated 5.4a(1) and (3) of the Act by

^{3/} The Association also seeks rescission of the collective negotiations agreement (CNA) signed by the County and TWU, with the exception of the retroactive pay raises. However, by letter dated October 17, 2016, Counsel for the Association concedes that rescission of the CNA is not feasible.

proposing an "absurdly low" economic package during negotiations for a successor agreement in retaliation for the Association's union activity and ". . . its ability to prevail in other matters before PERC." (Dkt. No. CO-2015-226). Part of the remedy the Association sought was a finding that the County, ". . . has been negotiating in bad faith [and] that its salary offer was done in bad faith." On June 12, 2015, the Association requested that its charge block further processing of TWU's representation petition.

On July 28, 2015, the Director of Representation issued a decision denying the Association's request to block the election. The Director specifically found no requisite evidence supporting the Association's claim that the County negotiated in bad faith or discriminated against the Association (D.R. No. 2016-1, 42 NJPER 87, 89 (¶23 2015)). The Association did not appeal the Director's decision.

On September 23, 2015, TWU was certified as the new majority representative of the collective negotiations unit, following our tally of the ballots in the secret ballot election and in the absence of any objections (Dkt. No. RO-2015-042). On October 13, 2015, the Association voluntarily withdrew its unfair practice charge (Dkt. No. CO-2015-226).

Only a majority representative may file an unfair practice charge contesting the public employer's refusal to negotiate in good faith. N.J. Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560

(¶11284 1980), aff'd App. Div. Dkt. No. A-1263-80T2;^{4/} Essex Cty. Coll., P.E.R.C. No. 87-81, 13 NJPER 75 (¶18034 1986).

Pursuant to the Commission's certification, TWU has been the majority representative of the subject negotiations unit since September 23, 2015. Accordingly, the Association lacks standing to file a charge alleging a refusal to negotiate in good faith in violation of subsection 5.4(a)(5) of the Act. Currently, only TWU may bring such a charge. See N.J.S.A. 34:13A-5.4(a)(5); State of New Jersey (DHS), D.U.P. No. 95-21, 21 NJPER 52 (¶26036 1994).

If I assume the Association has standing to file its charge, I find that it is untimely. N.J.S.A. 34:13A-5.4(c) establishes a six-month statute of limitations period for the filing of unfair practice charges. The statute provides in pertinent part:

[T]hat 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

^{4/} Individual employees alleging a majority representative's violation of its duty of fair representation, together with its collusion with the public employer, may have standing to allege a violation of 5.4a(5) of the Act. N.J. Turnpike Auth.

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.

TWU filed its representation petition on April 24, 2015. During the pendency of that matter, the County and the Association were prohibited from negotiating a successor agreement. Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-29, 7 NJPER 266 (¶12118 1981). Any Association unfair practice allegations contesting the County's "good faith"--that ostensibly led to the filing of TWU's representation petition--would have had to have been filed within six months from the filing of that petition, more specifically, October 24, 2015. The Association filed the instant charge on March 2, 2016. The Association has not alleged any facts which suggest it was prevented from filing a timely charge. Therefore, the charge is untimely.

The Association has not alleged any facts indicating that the County has violated 5.4a(3) of the Act or that TWU has violated 5.4b(1) or (2). Nor do any facts alleged support an independent violation of 5.4a(1). For all of these reasons, I find that the charge does not meet the complaint issuance standard.

ORDER

The unfair practice charge is dismissed.

/s/Daisy B. Barreto
Acting Director of
Unfair Practices

DATED: January 10, 2018
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 January 22, 2018.