

D.U.P. NO. 95-11

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

In the Matter of

N.J. TRANSIT BUS OPERATIONS  
& ATU LOCAL 824,

Respondent,

-and-

Docket No. CI-94-68

WILLIAM J. KNIPP,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that a majority representative and public employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The charging party alleged that ATU Local 824 violated the Act because it violated its by-laws and constitution and because it requested proof of membership. The Director determined that internal union matters are generally beyond the scope of the Commission's jurisdiction and the union's request of a member in this matter did not violate the duty of fair representation.

The Director also dismissed an allegation that N.J. Transit violated the Act by not providing the charging party an "adequate explanation" for rejecting his application for full-time employment as an operator. The Director determined that these actions were not taken in retaliation for protected activity or in collusion with the majority representative.

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Appearances:

For the Respondent, N.J. Transit  
Deborah T. Poritz, Attorney General  
(Sharon Price-Cates, Deputy Attorney General)

For the Respondent, ATU  
Balk, Oxfeld, Mandell & Cohen, attorneys  
(Arnold S. Cohen, of counsel)

For the Charging Party  
William J. Knipp, pro se

REFUSAL TO ISSUE COMPLAINT

On April 20, 1994, William Knipp filed an unfair practice charge alleging that his employer, N.J. Transit Bus Operations, and his majority representative, ATU Local 824, violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Knipp alleges that N.J. Transit failed to provide an adequate explanation for not promoting him to a full-time position as operator, violating

subsection 5.4(a)(1), (2), (3), (4), (5), (6) and (7)<sup>1/</sup> of the Act. The ATU allegedly violated its own by-laws and unlawfully asked him to prove his membership in the organization. These acts allegedly violate subsection 5.4(b)(1), (2), (3), (4) and (5)<sup>2/</sup> of the Act.

On September 20, 1994, we issued a letter tentatively dismissing the charges.

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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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

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. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

Knipp alleges that the ATU is in "direct violation of their own by-laws and constitution." Internal union matters are generally beyond the scope of the Commission's jurisdiction. See Camden Cty. Coll. Fac. Ass'n, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987). Knipp has not alleged facts suggesting that the ATU violated the duty of fair representation. A breach of the duty occurs only when a union's conduct toward a unit employee is arbitrary, discriminatory or in bad faith. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967). Knipp also concedes his membership in the ATU. An allegation of a request for proof of membership, without more, does not violate the law.

I also dismiss all allegations that N.J. Transit engaged in unfair practices by not providing Knipp "adequate explanations" for rejecting applications for full-time employment. Knipp has not alleged that these actions were taken by N.J. Transit in retaliation for engaging in protected activity or because it colluded with Local 824 to deny him full-time employment. Moreover, the "rejections" occurred prior to any comments allegedly made to Knipp by a Mr. Braswell, on or about April 7, 1994.<sup>3/</sup> It is also not clear if Braswell is included in the ATU negotiations unit and if he had and

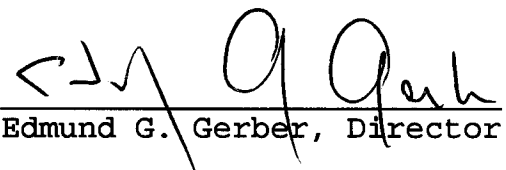
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<sup>3/</sup> I have received a letter from Ms. Price-Cates, Deputy Attorney General, confirming that Mr. Knipp has been a full-time employee since July 2, 1994. I have also been advised that an applicant's chances to become a full-time employee are reduced when the applicant applies to one garage -- in Mr. Knipp's case, the Howell garage.

exercised any control in the employment selection process. If the employer was not following the proper procedures in making selections for full-time employment, Mr. Knipp may have been able to pursue a grievance.

Based upon all of the foregoing, the above-captioned unfair practice charge does not meet the Commission's complaint issuance standard. N.J.A.C. 19:14-2.1. Accordingly, I decline to issue a complaint and dismiss the charge. N.J.A.C. 19:14-2.3, 2.1.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: October 26, 1994  
Trenton, New Jersey