

D.U.P. No. 2012-13

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

In the Matter of

BRIDGEWATER-RARITAN TRANSPORTATION  
ASSOCIATION,

Respondent,

-and-

Docket No. CI-2011-043

CARL F. MAYER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Carl Mayer against the Bridgewater-Raritan Transportation Association (BRTA). The charge alleged that the BRTA had violated 5.4b(1), (2), (3) and (5) of the New Jersey Employer-Employee Relations Act when it failed to advance Mayer's wrongful termination grievance to arbitration.

The Director found that Mayer did not allege any facts to support that BRTA's decision not to advance his wrongful termination grievance to arbitration was a breach of its duty of fair representation. In addition, no facts supported an allegation of a violation of 5.4b(2), (3) and (5), and were therefore dismissed.

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

In the Matter of

BRIDGEWATER-RARITAN TRANSPORTATION  
ASSOCIATION,

Respondent,

-and-

Docket No. CI-2011-043

CARL F. MAYER,

Charging Party.

Appearances:

For the Respondent,  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,  
attorneys  
(Jason Sokolowski, of counsel)

For the Charging Party,  
Carl F. Mayer, pro se

REFUSAL TO ISSUE COMPLAINT

On March 22, 2011, Carl F. Mayer, (Mayer) filed an unfair practice charge against the Bridgewater-Raritan Transportation Association (BRTA). Mayer alleges that BRTA has violated 5.4b(1), (2), (3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee

---

<sup>1/</sup> 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an

(continued...)

Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), by failing to move his wrongful termination grievance to 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. On March 2, 2012, I wrote to the parties advising that I was not inclined to issue a complaint in this matter and set forth the reasons for that conclusion. The parties were given an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

Mayer was terminated from his employment as a bus driver by the Bridgewater-Raritan Board of Education on October 26, 2010, as the result of a physical altercation with another driver on September 23, 2010.

On September 23, 2010, J. Michael Schilder, Board Superintendent, suspended Mayer with pay. On September 24, Schilder issued a letter to Mayer providing that on September

---

1/ (...continued)  
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."

28th, the Board intended to discuss the altercation, the status of his employment, and notifying him of his right to have the matter discussed in public. On September 27, 2010, Mayer sent a letter to Peter Starrs, Business Administrator/Board Secretary, stating that he wished to have his employment discussed in public before the Board. On September 27, 2010, Starrs sent a letter to Mayer, authorizing him to appear at an investigative meeting on September 28, the same day as the scheduled Board meeting, where Meyer's employment would be discussed. On September 28, 2010, the investigative meeting convened, with Starrs, Mayer, Ron Schmidt, BRTA President, and Linda Yadlosky, BRTA grievance chair in attendance. Mayer did not attend the Board of Education meeting on September 28, 2010, however, BRTA President Schmidt was present. On October 26, 2010, the Board terminated Mayer.

On October 28, 2010, Mayer sent a letter to BRTA grievance chair Yadlosky, together with a grievance contesting his alleged wrongful termination. His letter requested that Yadlosky file the grievance with the Board. On November 8, 2010, Mayer, together with BRTA representatives Schmidt and Yadlosky, met with Starrs to discuss the grievance. On November 9, 2010, Starrs denied the grievance.

On December 22, 2010, Mayer's grievance was appealed to the Board at its meeting. Mayer, Schmidt and Yadlosky attended. The Board adopted a resolution denying his Level III grievance.

On December 30, 2010, and March 16, 2011, Mayer wrote letters to the BRTA, requesting that his grievance be appealed to arbitration. On March 23, 2011, Schmidt issued a letter to Mayer, informing him that on March 8, 2011, the Executive Committee of the BRTA voted not to forward his case to arbitration. Mayer denies that he received the letter.

Under the "Discipline Code" (Article IV, Section K) of the collective agreement between the Board and the BRTA, a violation of a "group I rule" ("major items of personal conduct") may be considered cause for suspension and/or dismissal, including, but not limited to, ". . . provoking or starting fights involving physical contact." The agreement provides that a first offense of a group I rule violation calls for a suspension or discharge.

Under the grievance procedure (Article III) of the agreement, the BRTA is not obligated to submit a grievance to arbitration if it determines that the grievance, ". . . is [not] meritorious for further consideration."

#### ANALYSIS

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the U.S. Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court held:

. . . [A] breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary,

discriminatory or in bad faith. [Id. at 386  
U.S. 190, 64 LRRM 2376]

New Jersey has adopted the Vaca standard in deciding fair representation cases arising under the Act. See Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976); See also, Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Saginario v. Attorney General, 87 N.J. 480 (1981); OPEIU Local 153 (Johnstone), P.E.R.C. No 84-60, 10 NJPER 12 (¶15007 1983).

Mayer alleges no facts indicating that BRTA acted discriminatorily, arbitrarily or in bad faith. It appears that a contractually-identified reason, i.e., fighting, informed the BRTA executive board's decision not to advance the grievance to arbitration. The BRTA executive board's alleged negligent failure to inform Mayer of its decision not to proceed to arbitration does not violate the duty of fair representation. See, e.g., Eichelberger v. NLRB, 765 F2d 851 (9<sup>th</sup> Cir.), 119 LRRM 3333 (1985). That BRTA did not act in accordance with Mayer's expectations, or achieve the results Mayer desired, does not demonstrate bad faith. IBEW Local 64, D.U.P. No. 98-37, 24 NJPER 395 (¶29180 1998). The alleged facts, even if true, do not constitute a breach of the duty of fair representation. Accordingly, the 5.4b(1) allegation is dismissed.


Mayer also alleges a violation of 5.4b(2), (3) and (5). No facts alleged support these allegations. Accordingly, I dismiss them.

Considering all the facts, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
\_\_\_\_\_  
Gayl R. Mazuco  
Director of Unfair Practices

DATED: March 28, 2012  
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 April 10, 2012.