

P.E.R.C. NO. 87-158

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT and UNITED  
TRANSPORTATION UNION,

Respondents,

-and-

Docket Nos. CI-86-46-199 and  
CI-86-69-200

EDGAR RAMOS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Edgar Ramos against the New Jersey Transit Bus Operations, Inc. and United Transportation Union. The charge alleged New Jersey Transit violated the New Jersey Employer-Employee Relations Act when it terminated Ramos and that the Union violated the Act when it harassed him and did not grieve his discharge. The Commission finds that the Hearing Examiner properly dismissed the charge because Ramos did not appear at the hearing and did not explain his failure to appear.

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In the Matter of

NEW JERSEY TRANSIT BUS  
OPERATIONS, INC.,

Respondent,

-and-

Docket No. CI-86-46-199

EDGAR RAMOS,

Charging Party.

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UNITED TRANSPORTATION UNION,

Respondent,

-and-

Docket No. CI-86-90-200

EDGAR RAMOS,

Charging Party.

Appearances:

For the Respondent, N.J. Transit, W. Cary Edwards, Attorney  
General (John Ward, Deputy Attorney General)

For the Respondent, United Transportation Union (Frank  
Lawton, Treasurer)

For the Charging Party, Robert G. Rosenberg, Esq.

DECISION AND ORDER

On January 24 and March 27, 1986, respectively, Edgar Ramos  
filed unfair practice charges against New Jersey Transit Bus  
Operations, Inc. ("NJT") and the United Transportation Union  
("Union"). The charge against NJT alleges that it violated the New  
Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,

specifically 5.4(a)(1), (2), (3), (4), (5), (6) and (7),<sup>1/</sup> when it terminated Ramos. The charge against the Union alleges that it violated the Act, specifically subsections 5.4(b)(1), (2), (3), (4) and (5),<sup>2/</sup> when it harassed Ramos and did not grieve his discharge.

On June 16, 1986, the charges were consolidated and a Complaint and Notice of Hearing was issued.

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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."

On June 19, 1986, New Jersey Transit filed its Answer. It admits terminating Ramos, but contends it did so because he missed assignments without excuse. On June 26, 1986, the Union filed its Answer. It denies that it failed to represent Ramos properly and asserts that since he was a probationary employee, it could not contest his discharge.

Hearing Examiner Arnold H. Zudick was assigned to conduct a hearing and, after several adjournments, scheduled hearings for December 3 and 9, 1986. Although the hearing dates were confirmed by message to his home the day before, Ramos did not attend. At the hearing, the Hearing Examiner granted respondents' motions to dismiss the Complaint for failure to prosecute pursuant to N.J.A.C. 19:14-6.8. The Hearing Examiner advised, however, that he would reconsider his ruling if Ramos established cause for failure to appear. By letter dated December 4, 1986, the Hearing Examiner advised that:

You have seven (7) days from the above date to advise me of some significant or emergent reason for not appearing on December 3. Failure to submit a response, submitting a late response, or submitting a response without some compelling reason for your absence will result in the matter remaining dismissed.

Ramos telephoned the Hearing Examiner and advised that his attorney might respond to this letter. No response was received. On December 19, 1986, the Hearing Examiner dismissed the Complaint.

On December 22, 1987, Ramos' attorney sent an ex parte letter to the Hearing Examiner asking that the matter be reopened

because "there was a serious mix-up with my office staff, whereby they had assumed the matter had been adjourned, when in fact, it had not been." On January 5, 1987, the Hearing Examiner reiterated that the motion to dismiss had been granted.

By letter dated January 15, 1987,<sup>3/</sup> again ex parte, Ramos' attorney appealed the dismissal. In part, he said, "Mr. Ramos moving ex parte was under the mistaken impression which caused this office to not appear on his behalf."

On March 6, 1987, we advised Ramos' attorney that "supporting affidavits that would demonstrate good cause to explain the charging party's failure to appear at the scheduled hearing" were required within 5 days and that "you must also explain the circumstances surrounding the late appeal filing." Ramos' attorney did not respond.

We affirm the Hearing Examiner's dismissal of the Complaint. While we are reluctant to impose this sanction, it is appropriate under the circumstances. The charging party has not adequately explained his failure to appear at the hearing; the appeal was not timely filed, and our request for supporting papers was not answered. Therefore, dismissal is appropriate for failing to appear; comply with our request to produce documentation; serve the other parties pursuant to N.J.A.C. 19:14-4.7; file a timely

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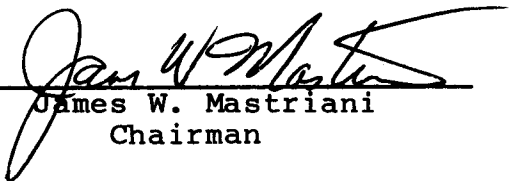
<sup>3/</sup> This letter was not received by us until February 11, 1987, but that may have been because the letter was misaddressed.

appeal and explain the appeal's deficiencies. See also R. 1:2-4; Kohn's Bakery, Inc. v. Terracciano, 147 N.J. Super. 582 (App. Div. 1977); Elmora S. & L. Ass'n v. D'Augustino, 103 N.J. Super. 301, 304 (App. Div. 1968).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Wmth, Reid and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
June 17, 1987  
ISSUED: June 18, 1987