

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT BUS  
OPERATIONS, INC. & AMALGAMATED  
TRANSIT UNION, LOCAL 819,

Respondents,

-and-

Docket No. CI-H-88-85

EMERSON ELDER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that Amalgamated Transit Union, Local 819 violated the New Jersey Employer-Employee Relations Act by failing to inform Emerson Elder, on request, about his right to appeal to the membership an executive board decision refusing to arbitrate his discharge grievance. The Commission further finds that Elder was not unlawfully denied arbitration and accordingly the remaining allegations against the Union and the allegations against New Jersey Transit Bus Operations, Inc. are dismissed.

P.E.R.C. NO. 90-46

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Appearances:

For the Respondent, New Jersey Transit Bus Operations,  
Inc., Peter N. Perretti, Jr., Attorney General  
(Harriet H. Miller, Deputy Attorney General)

For the Respondent, Amalgamated Transit Union, Local  
819, Weitzman & Rich, Esqs. (Richard P. Weitzman, of  
counsel)

For the Charging Party, Emerson Elder, pro se

DECISION AND ORDER

Under procedures adopted by Amalgamated Transit Union,  
Local 819 ("ATU"), negotiations unit members have a right to appear  
at the next membership meeting to request that it overrule an  
Executive Board decision. In an interim decision, we ordered ATU to  
afford Emerson Elder the opportunity to appeal the decision of ATU's  
Executive Board not to arbitrate Elder's discharge grievance.

P.E.R.C. No. 89-135, 15 NJPER 419 (¶20173 1989).

According to ATU, membership meetings are regularly  
scheduled for the third Tuesday of each month. Elder appeared at a  
July 18, 1989 membership meeting; but no action was taken because  
the meeting did not have a quorum. Elder was advised to return on

August 15, 1989 to present his appeal. He did not appear at that meeting.<sup>1/</sup>

In our interim decision, we stated that ATU fairly represented Elder through the decision of the Executive Board not to arbitrate his grievance. Because the union president, in response to Elder's question about his appeal rights, did not inform Elder that he could appeal the Board's decision to the union membership, we ordered ATU to allow such an appeal. This placed the parties back where they would have been had the president answered Elder's question about the appeal procedure. We have accomplished that result. Elder was afforded that opportunity. There is no evidence that union procedures require ATU to do more than it has. We now address the respondents' liability.

As we stated in our interim decision, a breach of the duty of fair representation occurs only when a union's conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." We find that the union president's conduct breached that duty. We need not reach whether he had a duty, absent a request, to inform Elder of his appeal right. Once Elder asked, however, the president had a duty to respond. We order no additional relief because ATU has already remedied its unfair practice.

We dismiss the allegations against New Jersey Transit Bus Operations, Inc. ("NJTB"). Absent collusion or unfair

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<sup>1/</sup> According to Elder, he was not informed of the August meeting. Consequently, ATU notified Elder in writing that he could come before the membership at its October 17, 1989 meeting. Elder did not attend. Elder claims his reason for not attending was due to a death in the family.

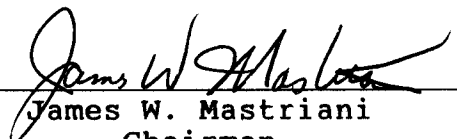
representation by the majority representative, an individual employee cannot use the unfair practice forum to litigate an employer's alleged breach of a collective negotiations agreement. New Jersey Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980). Here, we have found that ATU initially breached its duty of fair representation when it did not inform Elder of his appeal rights. We have also found that it has cured that violation pursuant to our prior order and that Elder has not been unlawfully denied arbitration. Accordingly, we find no collusion to refuse to process Elder's grievance and no basis to maintain the unfair practice charge against NJT Bus.

ORDER

The Amalgamated Transit Union, Local 819 is ordered to cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to inform Emerson Elder, on request, about his right to appeal to the membership an Executive Board decision refusing to arbitrate his discharge grievance.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
November 20, 1989  
ISSUED: November 21, 1989