

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT and
ATU DIVISION 819,

Respondents,

-and-

Docket No. CI-2004-003

TERRY GRAY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by Terry Gray against New Jersey Transit and ATU Division 819. The charge alleges that the employer, New Jersey Transit, terminated Gray in violation of the New Jersey Employer-Employee Relations Act and that the majority representative, ATU, failed to properly represent Gray in challenging his termination. The Director concluded that since an arbitrator had already considered the termination, Gray could not relitigate it before this Commission. The Director further noted that the charge did not allege that the termination was for reasons illegal under the Act. As for the ATU, the Director found that, even if true, Gray's factual allegations concerning the union's action in representing him, negotiating settlement terms, and taking his case to arbitration when Gray declined to settle, did not establish a violation of the Act. In his appeal, Gray contends that an arbitration decision was tainted by fraud, collusion, unfairness and serious procedural irregularities. The Commission concludes that an adverse arbitration ruling alone does not support an inference that the ruling was a product of fraud or collusion. Under all the circumstances, the Commission sustains the Director's decision not to issue a Complaint.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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In the Matter of

NEW JERSEY TRANSIT and
AMALGAMATED TRANSIT UNION
DIVISION 819,

Respondents,

-and-

Docket No. CI-2004-003

TERRY GRAY,

Charging Party.

Appearances:

For the Respondent - New Jersey Transit, Peter Harvey,
Attorney General (David S. Griffiths, Deputy Attorney
General)

For the Respondent - Amalgamated Transit Union Division
819, Craner, Satkin & Scheer, attorneys (John A.
Craner, of counsel)

For the Charging Party, Terry Gray, pro se

DECISION

On May 20, 2004, Terry Gray appealed D.U.P. No. 2004-5, 30
NJPER 177 (¶67 2004). In that decision, the Director of Unfair
Practices refused to issue a Complaint based on Gray's unfair
practice charge. The charge alleges that Gray's employer, New
Jersey Transit (NJT), terminated him in violation of 5.4a(1) and
(3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A.

1/ These provisions prohibit public employers, their
representatives or agents from: "(1) Interfering with,
restraining or coercing employees in the exercise of the
(continued...)

34:13A-1 et seq.; and that his majority representative, Amalgamated Transit Union Division 819 (ATU), failed to properly represent him in challenging his termination in violation of 5.4b(1) and (3).^{2/}

N.J.A.C. 19:14-2.1 provides that a Complaint will not issue unless it appears that the factual allegations of the charge, if true, may constitute unfair practices. The Director found that the essence of Gray's charge against NJT is that it wrongfully terminated him. The Director concluded that since an arbitrator had already considered the termination, Gray could not relitigate it before this Commission. The Director further noted that the charge did not allege that the termination was for reasons illegal under the Act.

As for the ATU, the Director found that, even if true, Gray's factual allegations concerning the union's representing

1/ (...continued)
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."

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. (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."

him, negotiating settlement terms, and taking his case to arbitration when Gray declined to settle, did not establish a violation of the Act. The Director further found that the Commission does not have jurisdiction over claims that the notarized signatures of the arbitration panel were defective, or that the arbitration decision contained erroneous facts. The Director also found that the charge was untimely filed.

In his appeal, Gray contends that the arbitration decision was tainted by fraud, collusion, unfairness and serious procedural irregularities. He also contends that the statute of limitations on filing his charge should not begin to run until January 24, 2003, the date he received the arbitrator's decision.

We have reviewed the charge, the amended charge and the appeal. A charge must contain a clear and concise statement of the facts constituting the alleged unfair practice. N.J.A.C. 19:14-1.3. There have been no facts alleged that, if true, would permit us to conclude that the respondents caused the arbitration decision to be tainted by fraud, collusion, unfairness or serious procedural irregularities. The alleged failure of two notaries to use their seals and the allegation that one of the notaries was present at the arbitration hearing do not suggest that the respondents violated the Act. Nor is a violation of the Act suggested by the allegation that Gray received a greater penalty than other employees charged with the same offense. The Director

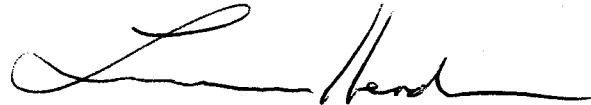
found that other employees had entered into a settlement agreement and that Gray declined to do so. An adverse arbitration ruling alone does not support an inference that the ruling was a product of fraud or collusion.

Under all these circumstances, we sustain the Director's decision not to issue a Complaint. In light of our ruling, we need not consider whether the charge was untimely filed.

ORDER

D.U.P. No. 2004-5 is sustained.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: August 12, 2004
Trenton, New Jersey
ISSUED: August 13, 2004