

P.E.R.C. NO. 2008-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Respondent,

-and-

Docket No. CI-2008-001

THEODORE WARFIELD,

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 Theodore Warfield against New Jersey Transit. D.U.P. No. 2008-5. The charge alleges that NJ Transit violated the New Jersey Employer-Employee Relations Act when its representatives disciplined Warfield for poor performance. Specifically, Warfield alleges that he was written up for not completing a work assignment that he allegedly stated was unsafe. Warfield appealed the Director's decision asserting that the employer has the burden of proof in disciplinary disputes and he contends that he identified several Commission rules that the employer violated. The Commission holds that it does not adjudicate disciplinary disputes and that neither the charge nor the appeal identify the rules alleged to have been violated. The Commission sustains the refusal 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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Appearances:

For the Respondent, Anne Milgram, Attorney General of
New Jersey (Raymond C. Barzey, Deputy Attorney General)

For the Charging Party, Theodore Warfield, pro se

DECISION

On February 11, 2007, Theodore Warfield appealed a decision of the Director of Unfair Practices that refused to issue a Complaint based on the unfair practice charge he filed against his employer, New Jersey Transit. D.U.P. No. 2008-5, NJPER (¶ 2008). The charge alleges that N.J. Transit violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3), (5), (6) and (7),^{1/} when its

1/ These provisions 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 . . . (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 . . . (5) Refusing to
(continued...)

representatives disciplined Warfield for poor performance. Specifically, Warfield alleges that he was written up for not completing a work assignment that he allegedly stated was unsafe. However, Warfield asserts that he never wrote or made such a statement.

On February 19, 2007, the employer filed a letter opposing the appeal. Finding no merit to the arguments raised on appeal, we sustain the Director's refusal to issue a Complaint. N.J.A.C. 19:14-2.1.

The Director found that Warfield had not alleged that the employer engaged in any discriminatory conduct, or conduct that tended to interfere with protected rights. Accordingly, he dismissed the 5.4a(1) and (3) allegations. The Director found that Warfield did not have standing to allege a violation of 5.4a(5) or (6) because an employer's obligations to negotiate in good faith and sign a contract run only to the majority representative. Finally, the Director found that Warfield had

1/ (...continued)
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 [and] (7) Violating any of the rules and regulations established by the commission."

not identified any Commission rule that had been violated. He thus dismissed the 5.4a(7) allegation.

Warfield raises two issues in his appeal. Relying on N.J.S.A. 34:13A-29, a statute applicable to school board employees only, he contends that the employer has the burden of proof in disciplinary matters. This Commission does not adjudicate disciplinary disputes.

Warfield also contends that he identified several Commission rules that the employer violated. However, neither his charge nor his appeal do so.

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: March 27, 2008

Trenton, New Jersey