

P.E.R.C. NO. 2014-45

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRIDGEWATER-RARITAN REGIONAL  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-2009-045

STAN J. SERAFIN,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms a Hearing Examiner's decision granting a motion to dismiss filed by the Bridgewater-Raritan Regional Board of Education in a consolidated unfair practice case filed by Stan Serafin against the Board and the Bridgewater-Raritan Transportation Association. The Commission holds that Serafin failed to point to any protected activity occurring prior to the Board's non-renewal of his contract that would substantiate his claim of retaliation by the Board.

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.

P.E.R.C. NO. 2014-45

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRIDGEWATER-RARITAN REGIONAL  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-2009-045

STAN J. SERAFIN,

Charging Party.

Appearances:

For the Respondent, Schwartz, Simon, Edelstein, Celso & Zitomer, LLC, attorneys (Nicholas Celso III, of counsel)

For the Charging Party, Stan Serafin, pro se

DECISION

On June 10, 2013, Stan Serafin filed an appeal of a May 29, 2013 oral decision of the Hearing Examiner dismissing the case against the Bridgewater-Raritan Regional Board of Education. Serafin was employed as a bus driver by the Board and was a member of the Bridgewater-Raritan Transportation Association. In May 2008, Serafin was suspended from active duty with pay, and then informed that his contract would not be renewed.

The procedural history in this case is long and complex. On May 29, June 23 and 30 and July 10, 2009, Serafin filed an unfair practice charge and amended charges against the Board. The charge, as amended, alleges that, based on various incidents, the

Board violated the Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3), (4) and (7).<sup>1/</sup> Serafin also filed an unfair practice charge against the Association alleging that it breached its duty of fair representation. CI-2009-046. On July 21, 2009, the Director of Unfair Practices declined to issue a complaint due to timeliness. Serafin appealed, alleging, *inter alia*, that the charge was timely and he was prevented from filing earlier due to various actions by the Board and Association. On December 17, 2009, we issued a decision allowing Serafin additional time to amend his charge in order to "clearly and concisely" state how he was terminated for protected activity covered by the Act. P.E.R.C. No. 2010-043, 35 NJPER 455 (¶150 2010). Serafin amended his unfair practice charge and the Director again declined to issue a complaint due to timeliness and Serafin's failure to clearly and concisely state how the Board's actions violated the Act. Serafin appealed, and on August 12, 2010, we issued a decision

---

<sup>1/</sup> 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. (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. . . (7) Violating any of the rules and regulations established by the commission."

remanding the matter for complaint issuance and for consolidation with the charges Serafin filed against the Association, finding that Serafin's "charge against the Board is timely only if Serafin can prove a breach of the duty of fair representation" by the Association. P.E.R.C. No. 2011-1, 36 NJPER 296 (¶110 2010) A Complaint and Notice of Hearing was issued on September 14, 2010 and the Board filed an answer on September 24, 2010.

To date, there have been seventeen evidentiary hearings conducted before Hearing Examiner Perry Lehrer. At the outset of the hearings, the Hearing Examiner instructed Serafin that his case against the Association would proceed first, and the case against the Board would be held in abeyance pending the outcome of the charges against the Association. On May 29, 2013, a motion to dismiss was made by the Board with regard to the charges filed against it. The Hearing Examiner granted the motion.<sup>2/</sup> On June 10, Serafin appealed the dismissal pursuant to N.J.A.C. 19:14-4.7.

Serafin argues that since he had only presented his case against the Association at the time the Board's motion to dismiss was granted, he was not given adequate opportunity to fully present his case and respond to the Board's motion. The Board responds that Serafin cannot make a prima facie case showing that

---

<sup>2/</sup> Two prior motions to dismiss on different grounds were made by the Board and denied.

protected activity was a substantial or motivating factor in the Board's decision to not renew his contract.

In granting the Board's motion, the Hearing Examiner found that although Serafin had only presented his case against the Association to that point, the ample record developed supported that the only protected activity covered by the Act that had been asserted by Serafin was the filing of a grievance on May 23, 2008. Serafin was informed that his contract would not be renewed on May 20, 2008. Therefore, the Hearing Examiner found that the Board could not have retaliated against him for protected activity when the alleged protected activity (the filing of the May 23, 2008 grievance) occurred after the alleged retaliatory action (the May 20, 2008 notice that his contract would not be renewed). The Hearing Examiner also found other evidence in the record supporting that the Board's decision to not renew Serafin's contract occurred well before the filing of the May 23, 2008 grievance. That evidence includes an April 4, 2008 evaluation indicating that Serafin was not being recommended for renewal, a May 1, 2008 meeting in which Serafin was informed by his supervisor that she would be unable to recommend him for renewal, and a May 5, 2008 memo that Serafin would not be recommended for renewal.

Under In re Tp. of Bridgewater, 95 N.J. 235 (1984), no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that

protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246. Here, after seventeen days of hearing, the Hearing Examiner found that the only protected activity asserted by Serafin occurred after he was informed about the non-renewal of the contract. Serafin has failed to point to any other protected activity which could form the basis for his claim. There is no basis to find a violation of the Act under Bridgewater. Therefore, we affirm the Hearing Examiner's dismissal.<sup>3/</sup>

ORDER

The complaint against the Bridgewater-Raritan Regional Board of Education is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones Voos and Wall voted in favor of this decision. None opposed.

ISSUED: January 30, 2014

Trenton, New Jersey

---

<sup>3/</sup> The hearing was recessed to give Serafin time to respond to the Board's motion. We are satisfied that he had the opportunity to make his case.