

P.E.R.C. NO. 2016-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

AMALGAMATED TRANSIT UNION, LOCAL 540,

Respondent,

-and-

Docket No. CI-2014-026

THEODORE WARFIELD,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Director of Unfair Practices refusing to issue a Complaint based on unfair practice charges filed by Theodore Warfield against the Amalgamated Transit Union, Local 540. The charges alleged that the ATU violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by not providing him representation at multiple steps of the grievance procedure, refusing to provide him with discovery related to his disciplinary hearing, and conspiring with management regarding his disciplinary discharge. The Commission agrees with the Director that because the ATU ultimately represented Warfield during the arbitration proceeding and he did not criticize its handling of the arbitration, the ATU did not breach its duty of fair representation.

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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THEODORE WARFIELD,

Charging Party.

Appearances:

For the Respondent, Oxfeld Cohen, attorneys (Samuel B. Wenocur, of counsel)

For the Charging Party, (Theodore Warfield, pro se)

DECISION

Theodore Warfield (Warfield or Charging Party) filed an appeal from the refusal of the Director of Unfair Practices to issue a complaint on unfair practice charges he filed against Amalgamated Transit Union, Local 540 (ATU or Respondent) stemming from Warfield's attempt to have his disciplinary discharge overturned. D.U.P. No. 2016-3, \_\_ NJPER \_\_ (§ \_\_\_\_ ). We affirm the Director's action.

On November 8, 15, and December 31, 2013; March 19, 2014; and May 4, 2015, Warfield filed an unfair practice charge and amended charges against the ATU. The charge, as amended, alleges

the ATU violated sections 5.4b(1), (3), (4) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by not providing him representation at steps one, two and three of the grievance procedure set forth in ATU's collective negotiations agreement (CNA) with New Jersey Transit Mercer, Inc. (NJ Transit). Warfield also alleges that ATU violated the Act by refusing to provide him discovery related to his disciplinary hearing and by "conspiring" with management at NJ Transit to "keep [him] fired before and during the above [grievance] steps."

The background facts and Warfield's allegations are recited in the Director's decision. The charge focuses on the ATU's acts or omissions, during the initial stages of the grievance procedure, prior to a binding arbitration hearing at which Warfield was represented by a labor attorney hired by the ATU. After considering them and applying the law governing the Duty of Fair Representation, the Director concluded that the allegations

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<sup>1/</sup> 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; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; and (5) violating any of the rules and regulations established by the commission."

of the charge, if true, would not violate the ATU's duty of fair representation. She concluded:

- [T]here are no factual allegations indicating ATU's representation of Warfield was arbitrary, discriminatory, or in bad faith;
- Warfield does not criticize ATU's handling of his case during the arbitration process;<sup>2/</sup>
- Warfield, as an individual employee, lacks standing to prosecute an alleged violation of 34:13A-5.4b(3); and
- Warfield alleged no facts that would, if true, violate either 34:13A-5.4b(4) or 34:13A-5.4b(5).

Warfield's appeal reiterates the arguments he presented to the Director. The ATU relies on the submission it made to the Director before she issued D.U.P. No. 2016-003.

We agree with the Director's analysis. We add the following. As argued by the ATU, even assuming that Warfield's allegations relating to the preliminary steps of the grievance procedure have merit, the subsequent arbitration proceeding serves to cleanse any possible misconduct. In addition to Rutgers University, D.U.P. No. 94-1, 19 NJPER 426 (¶24192 1993), where the Union was allegedly negligent in processing the grievance at the early steps, see Self, et al, v. Drivers, Chauffeurs, Warehousemen and Helpers Local Union No. 61, 620 F.2d 439, 443-444 (4th Cir. 1980) where the Court of Appeals held:

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<sup>2/</sup> The arbitrator found that NJ Transit had just cause to terminate Warfield and denied the grievance.

[D]espite the District Court's finding of inadequacy in the Union's representation in the initial grievance proceedings, there was no showing that the plaintiffs' dismissals would not have stood even had the Union done its duty and pressed their case more zealously. Hence, the judgment of the Court charging the Union with liability for plaintiffs' losses arising from their discharges rests on a false premise and cannot stand.

In both Rutgers and Self, the unions declined to pursue the grievances to binding arbitration, but in both cases no breach of the duty of fair representation was found. Here the ATU pursued binding arbitration and Warfield makes no claim that the ATU's performance during the arbitration process violated the Act.

ORDER

The Director's refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Jones voted in favor of this decision. None opposed. Commissioners Voos and Wall were not present.

ISSUED: January 28, 2016

Trenton, New Jersey