

P.E.R.C. NO. 2020-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

AMALGAMATED TRANSIT UNION
DIVISION NO. 540,

Respondent,

-and-

Docket No. CI-2016-012

DONALD BAKER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Director of Unfair Practices to issue a complaint in D.U.P. No. 2019-4, 45 NJPER 391 (¶104 2019), which found: (1) the charge is barred by the 6-month statute of limitations; and (2) the charging party, Baker, has not been a public employee since 2006, thus he lacks standing to pursue his claim that his former majority representative and former employer violated the Act, respectively, by refusing to allow Baker to gain back his union membership after his employment had ceased and refusing to assist him in obtaining his correct disability and regular pension benefits, and by breaching his contractual rights. The Commission finds that on appeal Baker is not entitled to relief because he failed to state a factual or legal basis for not sustaining the Director's decision, and otherwise made new, unsupported allegations without explaining why they could not have been previously presented.

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, Kenneth Rice, President

For the Charging Party, Donald Baker, pro se

DECISION

On August 26, 2015, October 19, 2015, and February 9, 2016, respectively, Donald Baker filed an unfair practice charge, an amended charge and a second amended charge against his former majority representative, Amalgamated Transit Union Division No. 540 (ATU), and his former employer, New Jersey Transit (NJT). The charge, as amended, alleges that ATU, by refusing to allow Baker to gain back his union membership after his employment with NJT had ceased, and by refusing to assist him in obtaining his "correct disability and regular pension" benefits, violated sections 5.4b(1), (2), (3) and (5)^{1/} of the New Jersey Employer-

^{1/} These provisions prohibit employee organizations, their representatives or agents from: "(1) Interfering with,
(continued...)"

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Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act). The charge does not allege that NJT violated a specific section of the Act, however the Director of Unfair Practices inferred a charge that NJT violated section 5.4a(5)^{2/} of the Act by breaching his contractual rights.

On May 6, 2019, the Director refused to issue a Complaint. D.U.P. No. 2019-4, 45 NJPER 391 (¶104 2019).

On May 17, 2019, the charging party appealed, and on June 17, 2019, he filed an amended appeal.

On May 21, 2019, Baker filed a new unfair practice charge against NJT and ATU, Docket No. CI-2019-039, making the same allegations, in substance, as his previous charge: that NJT violated the collective bargaining agreement by not providing him

1/ (...continued)
restraining or coercing employees in the exercise of the rights guaranteed to them by this act;" "(2) Interfering with, restraining or coercing a public employer in the selection of his representatives for the purposes of negotiations or the adjustment of grievances;" "(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 the unit;" and "(5) Violating any of the rules and regulations established by the commission."

2/ This provision prohibits public employers, their representatives or agents from: "Refusing to 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."

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with the correct pension, and that ATU did not provide him with effective assistance and representation on that issue.

On May 28, 2019, the Director wrote to Baker, advising him, among other things, that the new charge would be dismissed if he did not withdraw it by June 3, 2019.^{3/} The Director explained that Baker, in his appeal from the refusal to issue a Complaint on the previous charge, had already invoked the power of the Commission to review that decision, thus the similar allegations in the new charge would be better addressed in that proceeding. Baker did not subsequently withdraw the new charge.

We affirm the Director's refusal to issue a Complaint on the charge docketed CI-2016-012, and the dismissal of the charge docketed CI-2019-039, for the reasons set forth in the Director's decision, which are applicable to both charges. We add the following.

The Director refused to issue a Complaint for two reasons: the charge is barred by the 6-month statute of limitations set forth in N.J.S.A. 34:13A-5.4c,^{4/} and Baker lacks standing to

3/ June 3rd was also the date Baker was given to perfect the appeal that he initially filed on May 17th. Although we did not receive his amended appeal until June 17th, it was accepted for filing as Baker had mailed it by certified mail on May 31st.

4/ This statute provides, in pertinent part, "that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such a
(continued...)

pursue his claims because he has not been a public employee since 2006. Regarding the timeliness issue, the Director noted:

All of the alleged unlawful events occurred more than six months before the charge and the amendments were filed. The only actions falling within the six-month statutory period are Baker's March 25, 2015 letter to ATU requesting assistance (which could constitute a request that ATU file a grievance on Baker's behalf), and ATU's April 9, 2015 letter denying the request. By that time, almost nine years had passed since Baker had been terminated from New Jersey Transit, and seven years had passed since his ATU membership had been "suspended." Such correspondence does not render the charge timely filed. Nor has Baker alleged any facts suggesting that he was prevented from filing a timely charge.

[D.U.P. No. 2019-4, at 4.]

Regarding the standing issue, the Director noted:

The Commission does not have jurisdiction over individuals who are no longer public employees, such as individuals who have resigned or retired . . . Once a charging party ceases to be a public employee within the meaning of the Act, the Commission no longer retains jurisdiction over any subsequent disputes between the former public employee and his or her former public employer and majority representative.

. . .

Baker has not been a public employee since 2006. He lacks standing to pursue the claims set forth in his unfair practice charge. Nor do the facts show that the ATU breached any duty owed to Baker on April 9, 2015, many

4/ (...continued)
charge in which event the 6-month period shall be computed from the day he was no longer so prevented."

years after he was no longer a public employee within the meaning of the Act.

[D.U.P. No. 2019-4, at 4-6 (internal quotes, citations omitted).]

On appeal, Baker has not stated a factual or legal basis for not sustaining the Director's decision. N.J.A.C. 19:14-2.3(b).^{5/} Baker claims in his appeal, as amended, that ATU "did not make any attempt to try to help the Charging Party receive a correct pension because they said he was no longer an active member." Baker further states that the suspension of his union membership "was because Mr. Baker had no money coming in to support his family after being terminated from employment after being hurt on the job which is unlawful. He could not afford to pay his union dues." These statements do not materially dispute (and provide no cause to disturb) the Director's findings that the termination of Baker's employment occurred in 2006, the suspension of his union membership occurred in 2008, and that Baker alleged no "facts suggesting that he was prevented from filing a timely charge," following either occurrence.

^{5/} This regulation provides, in pertinent part, "An appeal must be a self-contained document, enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented. . . . The Commission may sustain the refusal to issue a complaint, stating the grounds of its affirmance, or may direct that further action be taken."

Baker himself alleges, in the unfair practice charge he filed on May 21, 2019, that he "was terminated unlawfully in 2006 for being hurt on the job," and further states that in 2008 he "filed a Civil Rights Complaint against this State run agency [NJT] for being terminated unlawfully." Yet neither the charge nor the amended appeal provide any facts that would enable us to rule that Baker was prevented from filing an unfair practice charge within six months of either his termination or the suspension of his union membership, as required by N.J.S.A. 34:13A-5.4c. Thus there is no basis upon which to conclude that the 6-month filing period should have been relaxed for Baker.

The fact that Baker now claims, in his amended appeal, that "on February 9, 2016, he was still an employee" of NJT does not alter our affirmance of the Director's finding that Baker lacks standing. As none of Baker's prior submissions contained this allegation, it was not before the Director. N.J.A.C. 19:13-2.3(b) requires that an appeal from a refusal to issue a complaint on an unfair practice charge "may not allege any facts not previously presented, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented." Baker provides no specific factual allegations that would either support this new claim that he was still an employee in 2016 or that would explain why it could not have previously been presented. In any case, this

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claim contradicts Baker's own numerous admissions, as noted, in both his present appeal and his current and prior unfair practice charges, that his employment was terminated in 2006 after he was hurt on the job, and that as of 2015 he had not worked for over 11 years. We also note that one must cease being an employee in order to begin receiving a pension.

Regarding the pension issue, Baker states in his May 21, 2019 unfair practice charge that he "filed for a pension April 01, 2012 . . . [but] he refused that pension, because in 2008 [he] was promised a much higher pension when [he] filed a Civil Right Complaint . . . for being terminated unlawfully." If true, these statements indicate that Baker knew of his problem with his pension at least as early as 2012, well before he first filed the unfair practice charge in 2015. This also undermines Baker's complaint, in his amended appeal, that the delay in the issuance of the Director's decision dismissing the unfair practice charge was unfair to Baker given that he "just retired 4 months ago on 1/16/2019." The fact that Baker previously applied for, and refused, a pension in 2012, three years before he filed his first unfair practice charge, suggests that the timing of Baker's retirement decisions was not driven by or dependent upon the outcome of the unfair practice filing. While we acknowledge the delay in the issuance of the Director's decision, there is nothing in the record to suggest that had his decision been

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issued earlier, it would have or should have been decided differently.

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ORDER

The refusal to issue a complaint on CI-2016-012 and the dismissal of CI-2019-039 are sustained.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: August 15, 2019

Trenton, New Jersey