

P.E.R.C. NO. 88-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CO-86-244-185
CO-87-12-16

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the State of New Jersey violated the New Jersey Employer-Employee Relations Act when its administrators made or authorized statements interfering with the rights of employees represented by the Communications Workers of America, AFL-CIO to engage in union activity, file grievances or testify in Commission proceedings. The Commission, however, dismissed allegations that the State harassed and threatened employees engaged in protected activity.

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COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Charging Party.

Appearances:

For the Respondent, W. Cary Edwards, Attorney General
(Maureen Adams, Deputy Attorney General)

For the Charging Party, Reitman, Parsonnet, Maisel &
Duggan, Esqs. (Tara F. Levy, of counsel)

DECISION AND ORDER

On March 10 and July 10, 1986, Communications Workers of America, AFL-CIO ("CWA") filed unfair practice charges against the State of New Jersey, Department of Human Services ("Department"). The charge alleged, essentially, that the Department violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (3), (4), (5) and (7), ^{1/} when administrators, especially the Director of Psychology,

^{1/} These subsections 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

at the North Princeton Developmental Center ("NPDC") allegedly harassed and threatened staff psychologists, especially Karen Bromirski and Donald Klein, engaged in protected activity.

On May 16 and August 1, 1986, Complaints were issued. The Complaints were consolidated for hearing. On May 27 and August 18, 1986, the Department filed Answers denying the alleged violations.

On July 15, October 14-17, November 12 and 24 and December 5, 1986, Hearing Examiner Alan R. Howe conducted a hearing. CWA amended its charges to allege further acts of harassment and threats.^{2/} The parties then examined witnesses and introduced exhibits. After CWA's case-in-chief, the Hearing Examiner granted the Department's motion to dismiss the allegations concerning subsections 5.4(a)(4), (5) and (7). The parties waived oral argument, but filed post-hearing briefs by March 16, 1987.

1/ Footnote Continued From Previous Page

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; (5) 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; (7) Violating any of the rules and regulations established by the commission."

2/ The Hearing Examiner's report details the allegations contained in the charges and the amendments.

On April 22, 1987, the Hearing Examiner issued his report and recommended decision, H.E. No. 87-60, 13 NJPER 366 (¶18151 1987). He recommended dismissal of all allegations that the Director threatened or harassed Bromirski or Klein. He found, however, that the Director of Psychology had allegedly threatened to sue Thomas Cullen if he testified in this case and that the Director had illegally interfered with Mark Fabiny's rights when in Fabiny's presence he disparaged CWA shop steward Klein, said he was fed up with union crap and said that if the union wanted to play games, he would play them too. The Hearing Examiner recommended the employer be ordered to stop such violations and to post a notice of its intent to do so.

CWA and the Department filed exceptions. CWA asserts essentially that the Hearing Examiner erred in rejecting its allegations that Bromirski and Klein had been harassed and threatened; and it challenges many of the factual findings underlying his conclusions. It also objects to the recommended notice as confusing. The Department alleges that the Hearing Examiner erred in finding that the Director interfered with the rights of Cullen and Fabiny.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 6-28) are generally accurate. We adopt and incorporate them, except as modified, supplemented or corrected below. We specifically adopt his credibility determinations, which are at the heart of the allegations concerning Bromirski and Klein.

Bromirski Allegations

CWA essentially alleges that the NPDC's Director of Psychology, Michael Parnes, harassed Karen Bromirski, a staff psychologist, and discriminated against her because she filed grievances demanding appropriate office space, contesting certain work assignments, and accusing Parnes of conduct unbecoming an employee in the public service. Among the alleged acts of harassment and discrimination were attempts and threats to block or delay Bromirski's transfer to another State institution, attempts to prevent her return to her previous job, and unreasonable work assignments. The Hearing Examiner found that Parnes had not harassed Bromirski or discriminated against her because of her grievances. Based on our review of the whole record, we agree.

Bromirski, having transferred from Hunterdon Developmental Center, started work at NPDC on January 6, 1986. She had been told that the administration intended to have offices for her and other psychologists in the Thompson Building, but these offices were not yet ready and she thus had to work in Morrow West where there was great noise and crowding. Understandably upset, Bromirski filed a grievance, as had many other employees, and later sought and received a transfer to Johnstone Training and Research Center. She told Parnes on January 30, 1986 that she was leaving.

At the time of Bromirski's transfer, NPDC was facing a federal audit of the quality of its services and was having difficulty in meeting the prescribed standards. Decertification

would have resulted in the loss of millions of dollars in federal aid. NPDC was also changing from a departmental system to a unit system at this time. Given these difficulties and changes, Bromirski's leaving so soon after transferring to NPDC upset Parnes and he insisted that Bromirski complete certain assignments before she left. She did so by March 18, 1986 and started working at Johnstone six days later.

We agree with the Hearing Examiner that Parnes' actions were not motivated by Bromirski's grievances. Rather he was upset at losing Bromirski's services so soon after she came to NPDC and understandably worried about the effect on the federal audit.

CWA asserts that the Hearing Examiner erroneously found that when hired, Bromirski promised to stay at NPDC for two years and that she later promised to give NPDC officials until March 1, 1986 to find better offices. The Hearing Examiner credited Parnes' testimony that these promises had been made, but inaccurately found that Bromirski had not denied making them. Whether these promises were made is not critical since Bromirski's transfer was granted in any event. What is critical is Parnes' good faith belief that Bromirski's leaving posed additional problems for an already beleaguered institution.

CWA contends that Parnes made certain threats when Bromirski told him she was leaving. The Hearing Examiner credited his denials. We will not disturb that determination.^{3/}

CWA also asserts that the Hearing Examiner erroneously described its proposed settlement at the February 19 grievance hearing. Parnes and Employee Relations Officer Harold Young testified that CWA offered to withdraw the grievances and destroy all copies of a supporting document (R-1) if Bromirski was allowed to transfer to Johnstone immediately without completing her work assignments. Parnes considered this proposal "blackmail." He was especially upset because R-1 alleged that he had called Wall, his boss then, crazy and paranoid and because Wall had previously asked for and received Parnes' transfer from Johnstone.^{4/} CWA representatives and Bromirski denied that the settlement offer was conditioned on Bromirski not having to complete her assignments.

^{3/} CWA contends that Parnes made similar threats against Bromirski to Carolyn Wade, vice-president of CWA Local 1040, before a February 19 grievance hearing. Wade testified that Parnes called Bromirski a liar; said he had friends at Johnstone and she'd been fingered, and added that the superintendent there (John Wall) was a crazy man and would get her. Parnes denied discussing the grievance with Wade before the hearing. The Hearing Examiner did not describe Wade's testimony or resolve this testimonial conflict. Given the Hearing Examiner's decision to credit Parnes' testimony about other similar alleged threats and given our reading of the record as a whole, we do not believe these statements were made nor are we convinced they were a response to the grievance rather than the intended transfer.

^{4/} The Hearing Examiner credited Parnes' testimony that he did not call Wall crazy and paranoid.

The Hearing Examiner credited the testimony of Parnes and Young, but stated inaccurately that this testimony had not been contradicted. However, the Hearing Examiner did expressly resolve a testimonial conflict between Parnes and Klein on a telephone call concerning settlement of the grievance, finding that Klein had demanded that Bromirski be allowed to transfer without completing her work and adding that Klein had told Parnes Klein had him by the "short hairs."

CWA contends that the Hearing Examiner erred in crediting Wall's testimony concerning the March 3 meeting with Bromirski and Klein. We will not disturb this credibility determination. We specifically accept Wall's testimony that he believed Klein was seeking to exploit the differences between Parnes and him.

CWA contends that Parnes blocked Bromirski's transfer back to Hunterdon Developmental Center by calling the Director of Psychology there, William Grady. The Hearing Examiner, however, credited Grady's testimony that he did not want her back because his working relationship with Bromirski had always been poor, even though her work had always been satisfactory.

CWA contends that Parnes issued a March 13 memo which was unjustified and which unreasonably delayed Bromirski's transfer. The memo directed her to provide summaries for Individual Habitation Plans prepared for four clients. We find the directive was necessary and proper because such summaries were legally required, and the empty spaces on forms might have caused problems during the audit.

CWA contends that Parnes harassed Bromirski by requiring her to complete unreasonable assignments before her transfer. Our function is simply to determine whether the assignments were motivated by Bromirski's grievances. We agree with the Hearing Examiner that they were not; instead Parnes made these assignments in good faith because he needed the work done before the transfer to satisfy the auditors.^{5/}

Given our review of the record and our essential agreement with the Hearing Examiner's findings and analysis, we dismiss the allegations that Bromirski was illegally harassed, threatened or discriminated against.

At the start of the hearing, CWA amended its charges to allege, in part, that Frank Yarrish, a NPDC administrative supervisor, told Bromirski that she should back off from her grievances, adding that Wall would make trouble for her after her transfer to Johnstone. Bromirski so testified, and the respondent neither produced Yarrish to testify or explained his absence. The Hearing Examiner thus found that Yarrish made this statement, but considered it too isolated to warrant finding a violation. We disagree. The statement clearly had the tendency to coerce

^{5/} We do not determine whether the assignments were otherwise "reasonable." We do note, however, that Bromirski was not required to complete behavior modification programs, but simply to prepare and implement them "to whatever extent is possible" by February 28.

Bromirski in the exercise of her right to pursue grievances and thus independently violated subsection 5.4(a)(1).^{6/}

Klein Allegations

CWA essentially alleges that Parnes harassed Klein and discriminated against him because of his representation of Bromirski in grievance proceedings. Among the alleged acts of harassment and discrimination are an attempt to create discord between Klein and a subordinate of his, Victoria Bernard; an attempt to convince Marion Fenwick to complain about his work performance; Parnes' questioning Klein's use of sick leave, and Parnes' requests that disciplinary action be taken against Klein. The Hearing Examiner found that Parnes had not harassed Klein or discriminated against him because of his protected activity. Based on our review of the entire record, we agree. However, we preface the following comments with a disavowal of the Hearing Examiner's perception that Klein was an "interloper" or "volunteer" in Bromirski's affairs. Klein was a shop steward and Bromirski had several grievances and concerns about working conditions. Klein was her representative and entitled to act on her behalf. We further disavow any intent or right to judge his performance in that capacity.

CWA contends that the employer's hostility towards Klein's protected activity was manifested by an alleged statement of

^{6/} We do agree with the Hearing Examiner that this statement is isolated in the sense of proving that respondents' actions affecting Bromirski were illegally motivated under subsection 5.4(a)(3). Yarrish was a peripheral player who later lightened Bromirski's workload.

Employee Relations Officer Harold Young that he had "had it up to here" with "union officials." Young denied that he made that statement and the Hearing Examiner credited that denial. We will not disturb that credibility determination.

CWA also contends that Parnes discriminated against Klein by writing five memos in April 1986 criticizing his work. The Hearing Examiner, however, found insufficient evidence that these memoranda were illegally motivated rather than a good faith, even if strict, perception of Klein's performance. We note that Klein's administrative supervisor rejected these criticisms, adding that Klein's caseload was too large.

Fabiny Allegations

The Hearing Examiner found that Parnes violated subsection 5.4(a)(1) when he loudly said, in the known presence of program technician Mark Fabiny, that Klein had been conducting union business without permission; that his supervisor should sit on him; that Parnes was "fed up with union crap," and that "if the union wants to play games" Parnes could play them too. The Hearing Examiner concluded that these comments had a reasonable tendency to intimidate Fabiny's exercise of his rights and thus found a violation. We agree.

The Department contends that the Hearing Examiner should not have found a violation of subsection 5.4(a)(1) since CWA had only introduced evidence of this statement to illustrate Parnes' alleged anti-union animus. The second unfair practice charge, however, specifically alleges that the incident occurred; alleges

that Parnes had interfered with the rights of Klein and other employees, and asserts a violation of subsection 5.4(a)(1). The Department had fair notice that CWA contested the legality of the statements Fabiny overheard. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13243 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83).^{7/}

The Department contends that the Hearing Examiner should not have credited Fabiny's testimony because he was Klein's friend. It was for the Hearing Examiner to weigh this fact. We will not disturb his credibility determination.

The Department finally contends that Parnes' statements did not violate subsection 5.4(a)(1) because Parnes reasonably assumed that Klein was on union business during work time and Parnes had not directed his comments to Fabiny. We agree with the Hearing Examiner, however, that Parnes' statements, objectively viewed, had a tendency to chill employees such as Fabiny who heard them. Regardless of the reasonableness of Parnes' assumption and whether he directed his comments at Fabiny, his statements conveyed that he would play games in response to union crap and Parnes knew he had an audience including Fabiny. The tendency of his comments was thus coercive, regardless of his motivation. Commercial Tp. Bd. of Ed.

^{7/} Ocean Cty. Coll., P.E.R.C. No. 82-122, 8 NJPER 372 (¶13170 1982), is distinguishable because there the charging party itself stressed that the statement in question had solely been introduced as evidence of the discrimination prohibited by subsection 5.4(a)(3).

Cullen Allegations

The Hearing Examiner found that Parnes violated subsection 5.4(a)(1) when he told Thomas Cullen, a senior clinical psychologist, that he had heard Cullen was going "to be testifying in this case" and that depending on what Cullen said Parnes would sue him. We agree and add that Parnes himself told Cullen the next day he understood his statements could be interpreted as a threat. However, given that Parnes in the same conversation thoroughly unequivocally and immediately retracted his statements, we will not require further relief to remedy this violation.

CWA contends that statements of Parnes to Cullen shortly after the February 19 grievance session independently violated subsection 5.4(a)(1).^{8/} The charges and amendments do not allege these statements were made and Cullen did not testify about them. We thus decline to consider whether they independently violated subsection 5.4(a)(1).

CWA also contends that Parnes made other threats to sue CWA and its representatives for slander and libel and that these threats

^{8/} Parnes testified that he told Cullen he was surprised he was there and Cullen responded that he had not known that CWA would be introducing the document (R-1) with the accusations (found untrue by the Hearing Examiner) that Parnes called Wall crazy and paranoid; Cullen added he would not have gotten involved had he known about that document. When Parnes asked why Cullen didn't walk out when he saw the document, Cullen said Klein was a friend. Parnes then asked Cullen if it wouldn't be wise to stand aside when two of his friends had a dispute and Cullen said he'd think about it.

violated subsection 5.4(a)(1). The charges and amendments do not place these alleged threats in issue so we will not consider them or reprove the Hearing Examiner for rejecting CWA's offers of proof.^{9/}

CWA also contends that Parnes' secretary violated subsection 5.4(a)(1) when she told Cullen to warn Bromirski to watch her step or her transfer would be rescinded. Cullen testified, on cross-examination, that he later asked Parnes why Parnes had Cullen run errands through his secretary and Parnes responded that he'd never be able to prove that. Neither the secretary nor Parnes denied the substance of these conversations. The first charge having placed the secretary's statements in issue, we find a violation of subsection 5.4(a)(1) based on them.

Remedy

CWA contends that the recommended notice may cause some confusion among current employees because it is specifically tied to Fabiny and Cullen and they no longer work at NPDC. We have revised

^{9/} The Department claims a distinction between threats to sue an employee for simply getting involved in a grievance or unfair practice proceeding and threats to sue an employee expressly conditioned upon the employee perjuring himself and slandering others at such proceedings. We do not determine whether that is a valid distinction or how it would apply to these facts if it was. Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731 (1983). We note that the statements to Cullen which we have found to violate the Act were not expressly conditioned upon perjury and slander occurring and may have suggested that any adverse testimony would be objectionable.

the notice in light of this concern and have added statements concerning the other violations we have found.

ORDER

The Public Employment Relations Commission orders the State of New Jersey, Department of Human Services to:

A. Cease and desist from:

Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by administrators (here Dr. Michael Parnes and Frank Yarrish) making or authorizing statements interfering with the rights of employees (here Mark Fabiny, Thomas Cullen and Karen Bromirski) to engage in union activity, file grievances or testify in Commission proceedings.

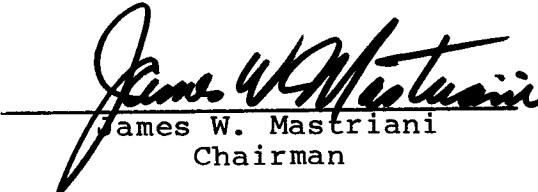
B. Take this affirmative action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

All other allegations of the Complaint are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey

July 14, 1987

ISSUED: July 15, 1987

NOTICE TO ALL EMPLOYEES**PURSUANT TO**

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

The New Jersey Employer-Employee Relations Act guarantees employees the right to support unions, to file grievances concerning their working conditions, and to testify in unfair practice proceedings before the Public Employment Relations Commission. A dispute arose with respect to whether these rights had been violated. The Commission determined that these rights were interfered with when Dr. Michael Parnes made coercive statements in the presence of program technician Mark A. Fabiny; when Dr. Parnes' secretary communicated a coercive statement to senior clinical psychologist Dr. Thomas Cullen, and when Administrator Frank Yarrish made a coercive statement to staff psychologist Karen Bromirski. The Commission, however, dismissed other allegations of harassment and threats.

Docket No. CO-86-244-185STATE OF NEW JERSEY, DEPARTMENT OF HUMAN SERVICES

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

H.E. NO. 87-60

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT
OF HUMAN SERVICES,

Respondent,

-and-

Docket Nos. CO-86-244-185
CO-87-12-16

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent State independently violated §5.4(a)(1) of the New Jersey Employer-Employee Relations Act when its Director of Psychology made coercive statements regarding the Charging Party in the presence of a negotiations unit employee and, further, when the same Director of Psychology threatened another employee with respect to his testifying before the Commission in the instant proceeding and, additionally, the Director of Psychology threatened to sue this latter employee because of an article which appeared in the April 1986 issue of the Charging Party's publication, the "State Worker."

However, the Hearing Examiner recommended dismissal of allegations that the Respondent violated §§5.4(a)(1) and/or (3) of the Act as to an employee who decided to transfer from one State institution to another as a psychologist and as to a CWA Shop Steward, who gratuitously intervened on her behalf. Although there was much evidence adduced as to coercion and discrimination regarding the transferee and the Shop Steward, the Hearing Examiner was of the opinion that it amounted to much ado about nothing.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 87-60

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT
OF HUMAN SERVICES,

Respondent,

-and-

Docket Nos. CO-86-244-185
CO-87-12-16

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent

W. Cary Edwards, Attorney General
(Maureen Adams, D.A.G.)

For the Charging Party

Reitman, Parsonnet, Maisel & Duggan, Esqs.
(Tara F. Levy, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 10, 1986, Docket No. CO-86-244-185, by the Communications Workers of America, AFL-CIO (hereinafter the "Charging Party" or the "CWA") alleging that the State of New Jersey, Department of Human Services (hereinafter the "Respondent" or the "State") has engaged in unfair practices within the meaning of the New Jersey

Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that, inter alia, CWA, is the certified representative of employees in a professional unit of the Respondent at its North Princeton Developmental Center (hereinafter "NPDC"); and on or about February 10, 1986, Karen Bromirski, a Staff Clinical Psychologist filed two grievances as a result of the action of the Director of Psychology, Michael Parnes; that on or about February 13, 1986, Parnes' secretary told Thomas Cullen, a Clinical Psychologist, that Parnes was going to rescind the transfer of Bromirski to another institution (Johnstone Training & Research Center) and that Bromirski was going to have trouble; that on or about February 19, 1986, Parnes told Carolyn Wade, a CWA representative, that he had friends at Johnstone and that Bromirski was "fingered" to have trouble; also on February 19th, Parnes told Wade that the Superintendent of Johnstone would "get Karen"; that on February 10 and 19, 1986, Donald Klein, a CWA Local 1040 representative, tried to resolve the issue with Parnes; and that on or about February 26, 1986, Bromirski contacted the Hunterdon Developmental Center about transferring there but this was denied based upon a negative report by Parnes; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) and (7) of the Act.^{1/}

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

On July 10, 1986, a second Unfair Practice Charge was filed with the Commission, Docket No. CO-87-12-16, alleging that the Respondent has engaged in additional unfair practices within the meaning of the Act, in that on or about February 10, 1986, Parnes refused to meet with Klein and Bromirski to resolve the "transfer issue"; that on or about February 19, 1986, Parnes threatened Klein because of his role as a CWA representative on behalf of Bromirski; that on March 3, 1986, Parnes made anti-union statements regarding Klein; that on or about April 4, 1986, Parnes attempted to create discord between employee Victoria Bernard and Klein and on April 9, 1986, Parnes attempted to discredit Bromirski, Klein and CWA because of an article about the harassment of Bromirski; that on or about April 14, 1986, Parnes attempted to convince employee Marian Fenwick to complain about Klein's work performance and also on April 14, 1986, Parnes questioned the validity of Klein's use of sick leave and, further, on April 14th, Parnes attempted to intimidate and

1/ Footnote Continued From Previous Page

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; (5) 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; and (7) Violating any of the rules and regulations established by the commission."

coerce Fenwick; that on or about May 2, 1986, Klein was made aware that Parnes was seeking disciplinary action against him; and that on May 13, 1986, Parnes again attempted to discredit Klein to his co-workers, supervisors and colleagues; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) and (7) of the Act, supra.

At the hearings on July 15 and October 14, 1986, the Charging Party amended its Charges as follows: Docket No. CO-86-244-185 - On or about January 13, 1986, Klein filed a grievance on behalf of Bromirski, concerning the failure of her working conditions to conform with promises made; in January 1986, Bromirski sought to transfer from NPDC and on January 30th Parnes threatened her that she would not be able to get another job in the State, which Parnes repeated to Klein on January 31st; on February 19, 1986, Parnes told Klein of his threats to delay Bromirski's transfer; on February 26, 1986, Administrator Frank Yarrish told Bromirski that he had been told to threaten her that she would have trouble at Johnstone; that on March 3, 1986, Acting Superintendent John Wall discouraged Bromirski from pursuing grievances that she filed; and that on April 7, 1986, Parnes threatened Cullen if he gave testimony against Parnes. Docket No. CO-87-12-16 - On January 8, 1986, Klein filed a grievance regarding his workload; on April 23, 1986, Parnes sought to have the Supervisor of Professional Services, Joseph Romano, discipline Klein without cause; and on May 5, and May 12, 1986, Klein learned that Parnes was seeking to discipline him without cause.

It appearing that the allegations in the two Unfair Practice Charges, as amended, if true, may constitute unfair practices within the meaning of the Act, Complaints and Notices of Hearing were issued, respectively, on May 16, 1986 and August 1, 1986. Pursuant to the Complaints and Notices of Hearing, hearings were held on July 15, October 14 through 17, November 12, November 24 and December 5, 1986, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.^{2/} Oral argument was waived and the parties filed post-hearing briefs by March 16, 1987.

Two Unfair Practice Charges, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

^{2/} The transcript references infra will be 1 Tr. for July 15th and thereafter continue seriatim through 8 Tr. for December 5, 1986.

At the conclusion of the CWA's case in chief on October 16, 1986, the State moved to dismiss those allegations in the two Complaints, which alleged violations of §§5.4(a)(4), (5) and (7) of the Act. The motion was granted for lack of any evidence having been adduced (4 Tr. 81-89).

Upon the entire record in this case, the Hearing Examiner makes the following material:^{3/}

FINDINGS OF FACT

1. The State of New Jersey, Department of Human Services is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Communications Workers of America, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

Findings as to Karen Bromirski

3. Karen Bromirski was hired as a Staff Clinical Psychologist I on January 6, 1986 at NPDC. She had worked since September 1979 at the Hunterdon Developmental Center, also, as a Staff Clinical Psychologist I.

4. Michael Parnes, a Principal Clinical Psychologist at NPDC and its Director of Psychology since July 1981, engaged Bromirski to do consulting work with him at NPDC between July 1985 and December 1985. Early in November 1985, Bromirski was interviewed by Parnes for permanent employment at NPDC and was ultimately hired by Parnes and commenced employment on January 6,

^{3/} Given the myriad allegations in the two Unfair Practice Charges, as amended, as to which supporting testimony and documentary evidence was adduced by both parties over the course of seven days of hearing (2 Tr. to 8 Tr.), the Hearing Examiner will limit his Findings of Fact to the evidence which, in his opinion, bears a causal relationship to the §§5.4(a)(1) and (3) allegations in the Complaints.

1986, supra. Both Bromirski and Parnes testified that it was understood that she would have an office in quarters known as the Thompson Building. However, when Bromirski commenced her employment at NPDC she was not given an office in the Thompson Building and instead worked out of Morrow West where there was incredible noise and crowding. When she registered objections with Parnes he told her that others were in the same situation but he did set up a meeting with the Assistant Superintendent of NPDC, Robert Burke. Before this meeting occurred on January 14, 1986, Bromirski filed a grievance on January 13th, requesting the immediate provision of "appropriate office space" (CP-1).

5. Bromirski met with Burke on January 14th, as scheduled, and stated that she was unable to perform her duties properly. Burke said that the administration was actively seeking better office accommodations and had a target date of March 1, 1986.

6. On January 30, 1986, Bromirski initiated a meeting with Parnes which lasted two hours. Both witnesses testified that Bromirski, during this meeting, advised Parnes that she was leaving NPDC for the Johnstone Training & Research Center. Bromirski testified credibly and without essential contradiction that Parnes' reaction was to respond in a loud and angry voice, pacing back and forth and wringing his hands (2 Tr 40). Parnes did not deny that he may have called Bromirski a "liar" and "untrustworthy," explaining that he was referring to Bromirski's having committed herself to stay at NPDC for at least two years and also referring to her

commitment to Burke to await satisfactory office accommodations by March 1, 1986. (2 Tr. 40; 5 Tr. 72, 77, 78).^{4/} Bromirski testified that Parnes also told her at this meeting on January 30th that she would not get another job in State service if he had anything to do with it (2 Tr. 40). However, the Hearing Examiner credits the denial of Parnes that he made any such statement, based upon the Hearing Examiner's appraisal of the demeanor of Parnes, who admitted many of the statements attributed to him by Bromirski, and the fact that Parnes, while a volatile individual, did not appear to be an untruthful witness (5 Tr. 76, 77). Bromirski also testified that Parnes told her that John M. Wall, who was then the Acting Superintendent of NPDC, and who, on March 20, 1986, returned as Superintendent of Johnstone where he had been Superintendent for 17 years, would "make trouble" for her (2 Tr. 40, 42, 43; 5 Tr. 4, 5). Bromirski also testified that Parnes told her that Wall was "crazy" and "paranoid" (2 Tr. 43). Parnes credibly denied that he said Wall was crazy and paranoid and would make trouble for Bromirski (5 Tr. 78). In so finding, the Hearing Examiner is cognizant of the fact that the relationship between Parnes and Wall was "bad," based on Parnes having worked with Wall at Johnstone for several years and having been asked by Wall to leave (5 Tr. 6, 7). Parnes did acknowledge in his direct examination that he told Bromirski that he

^{4/} Bromirski never denied the testimony of Parnes that she had committed herself to remain at NPDC for a period of at least two years.

knew that Wall was returning to Johnstone as Superintendent and that, based on his experience with Wall, the smartest thing that Bromirski could do was "...not make any trouble and go to Johnstone and do her job there..." (5 Tr. 75). Parnes also admonished Bromirski not to "stir things up" before going to Johnstone, explaining that she had been spending a lot of time with Klein on union matters and that she had been out of her work area without permission, adding that this might reach "Wall's ear" (5 Tr. 75, 76). Finally, during the course of this January 30th meeting Parnes insisted that Bromirski remain for at least 30 days, to which Bromirski agreed (2 Tr. 44; 5 Tr. 72-74).

7. On February 3, 1986, Parnes sent a memorandum to Bromirski, which stated, in part, that prior to her last day at NPDC on February 28th, Bromirski was to complete and submit form "IHP 2/2A's" on six clients in Morrow West and implement "behavior modification programs" for five core clients in Morrow West (CP-2). Bromirski deemed these requests by Parnes to be unreasonable and they were subsequently modified by Frank Yarrish, whose title was Supervisor of Professional Resident Services (SPRS) and who was Bromirski's administrative supervisor (2 Tr. 45-50, 53; CP-4 & CP-8). Bromirski also filed a grievance, regarding Parnes' memo to

Bromirski of February 3rd (CP-2, supra) on February 10, 1986 (CP-5).^{5/}

8. As early as February 6, 1986, Bromirski was advised by Patrick J. Crowley, the Personnel Director of NPDC, that her requested transfer to Johnstone had been agreed upon between Crowley and the personnel officer at Johnstone (CP-3). Notwithstanding that the last day of Bromirski's employment at NPDC was originally fixed at February 28, 1986 (CP-2, supra), Bromirski's actual last day at NPDC was March 18th and after a short rest she commenced employment at Johnstone on March 24, 1986 (2 Tr. 76). Although there was much testimony elicited from Bromirski and Parnes as to what transpired regarding Bromirski's efforts to complete her work assignments between February 3, 1986 and the date on which she left, March 18, 1986, the fact is that by March 18th Parnes acknowledged that Bromirski had made an "adequate response" to Parnes' memorandum of February 3, 1986 (CP-2, supra)[2 Tr. 64, 66-73, 75-77; 5 Tr. 78-87, 104-109; CP-8 & CP-12].

9. Notwithstanding that Bromirski's request to transfer from NPDC to Johnstone was granted and that this transfer actually took place as of March 24, 1986, and notwithstanding that Bromirski has continued to work at Johnstone since that date without any

^{5/} Bromirski filed another grievance on February 10th, complaining that Parnes, by his conduct on January 30, 1986, supra, engaged in conduct unbecoming an employee in public service, contrary to N.J.A.C. 4:1-16.9 (CP-6).

reduction in pay, change of job title, or any manifestation of discrimination by the Respondent toward Bromirski, the Charging Party adduced considerable evidence as to what happened to Bromirski between January 6, 1986, and her departure on March 18, 1986. This evidence pertained generally to: (1) Bromirski's filing of grievances on January 13th (CP-1, supra) and February 10th (CP-5 & CP-6, supra), followed by a grievance hearing on the latter two grievances on February 19, 1986, including the conduct and statements of Parnes to Bromirski at this hearing (2 Tr. 55-61; 3 Tr. 31-38), which Parnes either admitted or did not deny (5 Tr. 90-96); (2) a meeting between Bromirski and Yarrish on February 25th for the purpose of ascertaining how far along Bromirski was on her given assignments where Yarrish stated to Bromirski that she should back off from her grievance proceedings, adding that Wall was apt to make trouble for her at Johnstone (2 Tr. 62, 63);^{6/} (3) Bromirski's self-doubt as to her decision to transfer to Johnstone during the latter part of February 1986, which included the possibility of transferring back to Hunterdon, which, it turned out, was out of the question since the Director of Psychology there, William E. Grady, did not want her to return because their relationship had been poor (2 Tr. 66, 67; 6 Tr. 77); and, finally, a meeting on March 3, 1986

^{6/} Since Yarrish did not testify, the testimony of Bromirski is uncontradicted; it is noted, however, that Bromirski also testified that Yarrish subsequently modified her assignments to give her a lighter load (2 Tr. 63, 64; CP-8 & CP-12, supra).

between Bromirski, Wall and Klein where, according to Bromirski, Wall stated that she did not impress him as the type of person "...who wants to make any trouble..." and that Bromirski should not "...bother with any more grievance proceedings..." (2 Tr. 73).^{7/}

10. On March 13, 1986, Parnes sent a memo to Yarrish with a copy to Bromirski, in which he stated that, after reviewing all of the "IHP2/2A's" submitted by Bromirski, no summaries had been provided as to four clients (CP-14). Parnes stated further that Burke concurred with him that such information must be entered on the "IHP2/2A's" prior to Bromirski's transferring to Johnstone.

11. On the next day, March 14th, Bromirski wrote to Parnes, responding to his memo of March 13th, supra (CP-15). She claimed that his memo was harassment of her professional performance and that it was untimely (3 Tr 82).

Findings as to Donald L. Klein

12. Klein commenced employment at NPDC on September 7, 1982, as a Staff Clinical Psychologist II and was promoted six months later to a Staff Clinical Psychologist I. Parnes was Klein's supervisor, both clinically and administratively, until January 1986. Since January 1986, Klein's clinical supervisor has been Parnes and his administrative supervisor has been Joseph E. Romano, who was succeeded by Retha Wilkerson.

^{7/} However, Wall's version of the conversation, which is credited, was that Bromirski should "quit complaining" and do her job and get out, adding that "...she didn't look like a troublemaker..." (5 Tr. 8).

13. Klein has been the Shop Steward for CWA Local 1040 since 1983 and has represented the professional unit at NPDC. As Shop Steward, Klein submits grievances to Harold J. Young, Jr., the Employee Relations Officer at NPDC. Since 1983, Klein has filed approximately 100 grievances, 28 of which were filed in January 1986, covering four CWA collective negotiations units, including the professional unit. These 28 grievances involved complaints about the sufficiency of office space, job descriptions, etc. One of these grievances was filed by Klein on his own behalf on January 8, 1986, in which he complained of the size of his caseload (CP-20).

14. On January 31, 1986, Klein encountered Parnes in the hall of the administration building at NPDC and stated to him "...Let's make this Bromirski transfer go smooth and not...take any issue here..." (3 Tr. 124). Parnes responded that Bromirski had made an agreement with both himself and Burke and that "...she would stick it out until March...until the physical changes could take place..." (3 Tr 125). Klein testified without contradiction that Bromirski had told him she had made no such agreement with Burke, to which Parnes responded "...she's a liar, and if I have anything to do with it she will not get a job in state services..." (3 Tr. 125).

15. On February 10th, Klein met Bromirski in his office where she expressed her feeling of the unfairness of Parnes in giving her the assignments to complete, supra (3 Tr. 126). Klein's response was to telephone Parnes, urging him to try to resolve the assignments problem amicably. Parnes's response was to state that

"...it's a direct order, grieve it..." and he hung up the telephone (3 Tr. 126). Parnes' version of what transpired in his telephone conversation with Klein on February 10th was substantially the same as that of Klein, supra, except that Parnes testified that Klein threatened him by making a statement to the effect of delivering Parnes into the hands of his enemy, referring to Wall with whom Parnes had had a poor relationship at Johnstone (5 Tr. 87-90). Klein denied ever threatening Parnes and denied making any such statement, supra, in his telephone conversation with Parnes on February 10, 1986 (7 Tr. 161). The Hearing Examiner credits the foregoing denials by Klein on the basis of the improbability that Klein would have threatened Parnes as alleged in the context of Klein requesting that the assignments problem be resolved amicably and Parnes having responded that it was a direct order and that Bromirski or Klein should grieve it. In so crediting Klein, the Hearing Examiner finds further that neither in the telephone call of February 10th nor at the grievance hearing on February 19th, infra, did Klein state to Parnes "...you would deliver..." me "...into the hands of my enemy..." (7 Tr. 162) Rather, it was Parnes who made such a statement at the February 19th hearing (7 Tr. 162).^{8/}

^{8/} On this same date, February 10, 1986, Bromirski filed two grievances, the first objecting to the assignments which Parnes had given her on February 6, 1986 (CP-5) and the second grievance, in which she objected to Parnes' conduct on January 30, 1986 (CP-6); see Finding of Fact No. 9, supra.

16. The next event was the grievance hearing on February 19, 1986, pertaining to the two grievances filed by Bromirski on February 10th (CP-5 & CP-6, supra). Young served as the hearing officer but the hearing was not completed because of the disruptive conduct of Parnes (3 Tr. 127, 128). According to the testimony of Klein, which is not seriously disputed by Parnes, Parnes became flustered and started to wring his hands and pace the floor, stating that the Bromirski grievances were blackmail and lies (3 Tr. 128; 5 Tr. 91-95). Parnes, by way of explanation of his conduct at this grievance hearing, testified without contradiction that it was triggered by the presence of Exhibit R-1, which Bromirski had prepared and distributed at the hearing, and that he was agitated by some of the quotations attributed to him in the January 30th meeting, supra, between him and Bromirski (5 Tr. 92).^{9/}

17. Later in the day on February 19th, Klein telephoned Parnes and offered to withdraw the two Bromirski grievances (CP-5 & CP-6, supra), stating that the matter had "...gone far enough..." (3 Tr. 128). According to Klein, the response of Parnes was that he

^{9/} Parnes testified without contradiction that before this grievance hearing concluded Young presented to him a CWA proposal to settle the two Bromirski grievances, namely, that Bromirski would be able to transfer quickly to Johnstone without completing her work and that the offending document (R-1, supra) would be destroyed and would never reach the desk of Wall (5 Tr. 94, 95). Parnes testified further that he considered the CWA proposal blackmail and would not agree to it even if he had to tell Wall about the matter himself (5 Tr. 95).

did not want to be blackmailed and "...that he has friends in the state and these friends owe him and he's going to block the transfer..." (3 Tr. 129). On cross-examination, Klein parried a question as to whether or not he had stated to Parnes in the foregoing telephone conversation "You're playing hardball now" by testifying that Parnes made such a statement in the conversation (4 Tr. 24). Also, Klein testified that he did not recall telling Parnes, "I got you by the short hairs" (4 Tr. 25). Parnes' version of his telephone conversation with Klein was more detailed, Parnes having testified that Klein stated again, as in the grievance hearing on the same date, that he wanted Bromirski to be allowed to transfer to Johnstone without completing her work and that he, Klein, wanted a good letter of reference for Bromirski, giving Klein suggestions for its content (5 Tr. 98). Parnes also testified that Klein became very hostile, stating that Parnes had "...betrayed psychology. That we're going to play hardball now and he sure knew how to do that..." (5 Tr. 99, 100). Finally, according to Parnes, Klein said, "...I have you by the short hairs..." (5 Tr. 100). In rebuttal, Klein testified that he never made the quote "hardball" statement, rather it was Parnes' expression (7 Tr. 163). On the other hand, Klein never denied the direct testimony of Parnes that he made the "short hairs" statement, the only testimony in the record by Klein in that regard being his failure to recall making such a statement on cross-examination (4 Tr. 25, supra). The Hearing Examiner, in deciding whose testimony to credit, regarding

the "hardball" and "short hairs" statements, finds as a fact that it more probable that Klein made the statements to Parnes rather than vice-versa, given his impression from the testimony of the parties involved, namely, Bromirski, Klein and Parnes, that there existed the real probability that Klein would bring Bromirski's work assignment problem and her intended transfer to Johnstone to Wall in a manner which would negatively reflect upon Parnes. In this context, the Hearing Examiner does not credit the testimony of Klein that Parnes said to him in the February 19th telephone conversation, supra, that he has friends in the state and that he was going to block Bromirski's transfer to Johnstone (3 Tr. 129).

18. On February 28th, Klein learned from Young that Bromirski's transfer to Johnstone had been approved (4 Tr. 37, 38). Notwithstanding this, Klein met with Bromirski later on other same date, February 28, 1986, where "her options" were discussed and they concluded that Wall had to be informed and a meeting was set with him on March 3rd (4 Tr. 32, 33).

19. As scheduled, Bromirski and Klein met with Wall on March 3, 1986.^{10/} Klein testified, as did Bromirski, that Wall told her to "...keep your mouth shut and no more grievances..." (3 Tr. 136; cf. 2 Tr. 73). Klein also testified that Wall stated that Bromirski was caught between him and a paranoid and psychotic,

^{10/} What transpired at this meeting was testified to by Bromirski and Wall and is incorporated in Finding of Fact No. 9, supra.

referring to Parnes (4 Tr. 35). However, the Hearing Examiner credits the testimony of Wall that he perceived Klein's role at the meeting on March 3rd as being there to complain about Parnes, knowing that Wall and Parnes did not get along together (5 Tr. 7, 8). Wall testified credibly that Klein was seeking to exploit the differences between Parnes and himself and that he was using Bromirski in this regard, to which Wall's response was "Quit complaining, do your job and get out..." (5 Tr. 8). In response to a question as to whether Wall stated that Bromirski was caught in the middle of a man who was paranoid, referring to Parnes, Wall testified that he recalled telling her "...that she was caught between the people who were involved, Klein and Parnes. And that she didn't look like a troublemaker..." (5 Tr. 8).

20. Mark A. Fabiny, who had been employed at NPDC from June 1981 through June 1986, testified without contradiction that on March 3, 1986, between 11 a.m. and 11:30 a.m., he saw Parnes in the day room of Morrow East where Parnes was conducting a class (2 Tr 94). On that occasion he saw Klein in the building during a period of five to ten minutes and, after Klein left the building, Fabiny observed Parnes coming into a room where Parnes appeared to be upset and agitated (2 Tr 95). When Parnes could not locate a visitor sign-in sheet, he made a telephone call and stated in a loud voice to the person on the other end^{11/} that Klein had been "over here

11/ Parnes in his testimony supplied the name of the person that he called, namely, Joseph E. Romano, who at that time was Klein's administrative supervisor (5 Tr 122-124).

conducting union business without permission and you better sit on him..." (2 Tr 95). When Parnes terminated the conversation he said "...to no one in particular..." that he was "...fed up with union crap. If the union wants to play games, he can play them also..." (2 Tr 95). Regarding this incident in Morrow East on the morning of March 3rd, Parnes testified along the same lines as Fabiny, that he telephoned Romano, asking him if he knew that Klein had been in Morrow East, to which Romano replied in the negative. Parnes testified further that at that point he assumed that Klein had been there to consult with Bromirski, which was ultimately confirmed by Yarrish, and which confirmed to Parnes that Klein and Bromirski had been talking about "union business" (5 Tr 123-125). The Hearing Examiner does not credit the denial of Parnes that he made the statement in the presence of Fabiny to the effect that if the union wants to play games he can play them too. This leaves uncontradicted that Parnes said that he was "fed up with this union crap." The Hearing Examiner credits Fabiny, a witness for the Charging Party, who appeared to have no axe to grind nor any motive to testify untruthfully.

21. Thomas J. Cullen, Jr., who was a Senior Clinical Psychologist at NPDC for three and one-half years, having left its employ in April 1986, testified that on April 7, 1986, Parnes said that he had heard that Cullen was going "to be testifying in this case" and that because Parnes had "a lot of money tied up in this and depending on what you say you'll be sued..." (2 Tr 81, 82).

Parnes did not deny that these statements were made, explaining that he had been angered by CP-18,^{12/} which he described as "outrageous" and "libelous," and that if Cullen perjured himself and lied then he, Parnes, would "sue your ass off too," indicating Cullen (5 Tr 129, 130). The next day, upon learning that Cullen was upset, Parnes retracted his threat (5 Tr 131) and Cullen acknowledged that such a retraction had occurred (2 Tr 89).^{13/}

22. Victoria Ann Bernard, a Behavior Modification Program Technician since May 1984 at NPDC, testified as a witness for the Respondent. On a date that must have been sometime in April 1986, Parnes telephoned Bernard and stated that Ann Roth, the Director of Professional and Residential Services, had asked that she produce all of her "schedules" and, after Parnes reviewed them, he noted the number of times that she had met with Klein (7 Tr 11, 12). Bernard testified that Parnes was not critical of the fact that she had recorded meetings with Klein (7 Tr 14). Later, in a meeting with Roth and Romano regarding her schedules, Bernard acknowledged that she may have been asked by Roth if Klein was intimidating or harassing her, to which she made no response, adding that she was

^{12/} CP-18 is an article from the April 1986 issue of the CWA's publication, "State Worker," which charges Parnes with harassment of Bromirski, regarding her transfer to Johnstone, supra.

^{13/} See also, the testimony of Parnes as to what he said to Cullen shortly after the grievance hearing of February 19, 1986, supra (5 Tr 101, 102).

not criticized in any way during the meeting by Roth or Romano (7 Tr 15, 16).

23. On a day unspecified, but probably in mid-April 1986, Bernard testified that Klein asked her for a statement in support of his grievance that he was being harassed by the "Director of Psychology" (Parnes), mentioning a few incident in which Bernard had played a part (7 Tr 25). Bernard did not acquiesce in Klein's request since she did not have a clear recollection of the events requested by Klein (7 Tr 25). Bernard recalled that one of the matters which Klein had asked her to include in a statement in support of his grievance involved "sick time." She recalled that Parnes approached her on one occasion and asked if Don (Klein) was feeling better, which she took as coming from him in a joking manner (7 Tr 26, 27). Thus, Bernard did not consider in her own mind that the matter of Klein's "sick time" was harassment but rather as "...just basically a joke..." (7 Tr 27).

24. Bernard testified that she could not say that Klein was "derelict" in the exercise of his duties in writing notes whether they be monthly notes or quarterly notes (7 Tr 44). Bernard also testified that she did not recall ever having complained to anyone at NPDC that she was doing Klein's work, adding, however,

that they worked together, which includes joint signatures on documents such as Behavior Modification Programs (7 Tr 45-48).^{14/}

25. On April 18, 1986, Klein filed a grievance, in which he complained that Parnes had persisted in harassing him since Klein's involvement in a case which related to Parnes personally (CP-22). Klein testified, in elaboration on this grievance, that his sick time was being questioned and that Romano had said that he had been identified as one having "...patterned sick time..." (3 Tr 143). Klein also testified that he had been put under a lot of "...scrutiny for my union activity..." (3 Tr 143). Klein then testified that an attorney for Parnes, Thomas Taylor, had spoken with him by telephone, which Klein testified was "...intimidating to me...", obviously referring to an article in the CWA's publication, "State Worker" of April 1986, where Parnes was accused of threatening Bromirski with "trouble" if she transferred to Johnstone (3 Tr 143; 3 Tr 101-105; CP-18).^{15/}

^{14/} The testimony of Parnes and his secretary, Wilma G. Betsch, that they overheard Bernard state at a Bosses' luncheon on October 17, 1986, that she had been doing Klein's work is not credited (6 Tr 46, 47, 92, 93). Bernard impressed the Hearing Examiner as a truthful witness, who was called by the Respondent and whose testimony vis-a-vis Parnes and Betsch is to be credited, considering the interest of Parnes and Betsch in the outcome of this proceeding. Additionally, the Hearing Examiner in crediting Bernard, notes that she was clearly an unwilling witness who was unhappy about being subpoenaed to appear at this hearing (see 7 Tr 63-65, 79).

^{15/} The Hearing Examiner rejected an offer of proof by CWA with respect to further testimony on the issue of whether Parnes' threat to file a lawsuit over CP-18 was relevant to the contention of CWA that the threat was made to require it to withdraw certain grievances (3 Tr 104, 105).

26. On April 23, 1986, Klein met with Romano, who told him that he had been identified as having "patterned sick time" (3 Tr 145, 146). When Klein asked Romano to do him a favor by writing a memorandum stating that he had not abused sick time, Romano replied, "...don't bust my balls, Don....Parnes is trying to have you written up, which means disciplinary action, and you're asking me for a memo to vindicate you..." (3 Tr 147). Between April 10th and April 28th, Parnes had sent five memos to Roth, requesting that Klein be disciplined for neglect of duty, inefficiency and falsification of records (CP-17A through CP-17E).^{16/} These memos by Parnes to Roth pertained to "missing reports" by Klein and his inability to handle his caseload.

27. Significantly, on May 1, 1986, Romano sent a detailed memorandum to Roth, regarding Parnes' memos of April 10 through April 28, 1986, supra. In Romano's memo, he stated that Klein had completed all of the "missing reports" as outlined by Parnes; that Parnes' concern about Klein's pattern of sick time was unjustified inasmuch as Klein had either used only allotted sick days or had provided medical verification where required; and, finally, Romano, as Klein's administrative supervisor, was highly critical of Parnes' approach in handling any problems regarding Klein, concluding that

^{16/} Parnes testified that the issue was not "the quality" of Klein's work, but "the absence" of his work (6 Tr 69).

Klein's present caseload of 112 clients was too large to prepare all of the required evaluation paper work, etc. (CP-17).^{17/}

28. Sometime in the latter part of May or in early June 1986, a first-step grievance hearing was held on Klein's harassment grievance of April 18, 1986 (CP-22, supra). According to Klein and George F. White, Jr., a Staff Representative of CWA Local 1040, Employee Relations Officer Young indicated at the outset of the hearing that he had "had it up to here" (indicating his throat) with "union officials" (7 Tr 165; 8 Tr 11). While Young admitted as to having had "...some frustration with behavior of union officials...." he flatly denied having made the statement attributed to him by Klein and White, supra (6 Tr 124). Young appeared to the Hearing Examiner to be a person of even temperament, and, in the face of Young's credible denial that he made the statement attributed to him by Klein and White, the Hearing Examiner is unwilling to credit the contrary testimony of Klein and White that Young said he had "had it up to here" supra, notwithstanding that Young testified that he considered Klein "incompetent," "a liar" and "a manipulator" (6 Tr 128). There is nothing inconsistent with crediting Young's denial of the "up to here" statement vis-a-vis the

^{17/} The Hearing Examiner does not credit the equivocal testimony of Roth that Klein's caseload was not too large (7 Tr 125). Roth's qualifications, speaking in terms of "prioritizing" Klein's caseload, does not appear to refute Romano's unequivocal statement in his May 1st memo to Roth, supra, that Klein's "...present caseload of 112 clients is too large..." (CP-17, supra).

fact that Young later expressed at the instant hearing the negative opinion of Klein, supra, which may or may not be true in fact.

DISCUSSION AND ANALYSIS

The Relevant Findings As To Bromirski

Bromirski's relationship with Parnes must have been satisfactory prior to her commencement of employment at NPDC on January 6, 1986, since, based on the consulting work that she did for Parnes between July and December 1985, Parnes interviewed and hired her. Both Bromirski and Parnes understood that she would have an office in the Thompson Building, but this never came to pass. Bromirski was totally dissatisfied with her office space in Morrow West, which resulted in Bromirski's filing of a grievance on January 13th.

Notwithstanding that Bromirski obtained from Burke a representation that the administration had a target date of March 1st for better office accommodations, Bromirski concluded that she wished to transfer from NPDC to Johnstone and so advised Parnes on January 30, 1986, twenty-four (24) days after commencing employment at NPDC. Bromirski's meeting with Parnes on January 30th lasted two hours and Parnes was understandably upset and expressed this fact in strong terms, explaining that he was referring to her having committed herself to stay at NPDC for at least two years to and await satisfactory office space. Bromirski never denied that she had committed herself to remain for a period of at least two years at NPDC. Parnes credibly denied that he threatened Bromirski (1)

regarding her getting another job in State service or (2) that Wall, the Superintendent at Johnstone, would make trouble for her, notwithstanding that Parnes had told Bromirski that the smartest thing she could do was not make any trouble and go to Johnstone and not to "stir things up" before going there. The "stir things up" reference was to her having spent a lot of time with Klein out of her work area without permission and that this might reach "Wall's ear." The meeting concluded on January 30, 1986 with Bromirski agreeing to remain for at least 30 days.

What transpired thereafter was the denouement attendant to Bromirski's ultimate departure on March 18, 1986. When Parnes sent Bromirski a memo on February 3rd, directing her to complete and submit "IHP's" on six clients and "BMP's" on five core clients in Morrow West before her departure, Bromirski deemed these requests unreasonable and they were ultimately adjusted by Yarrish. Nevertheless, Bromirski filed a grievance on Parnes' February 3rd memo on February 10th along with a grievance protesting Parnes' conduct on January 30, 1986. These grievances were filed by Bromirski, notwithstanding that she was advised in or around February 6, 1986, that her request to transfer to Johnstone had been agreed upon. Although there was much testimony from Bromirski and Parnes regarding her efforts to complete her work assignments, the fact was that by March 18th Parnes acknowledged that she had made an "adequate response" to his memo of February 3rd, supra.

In the period between February 3rd and March 18th, Bromirski had a grievance hearing on February 19, 1986, where Parnes made a series of statements, objected to by Bromirski, which Parnes either admitted or did not deny. On February 25th Yarrish told Bromirski that she should back off from her grievance proceedings, adding that Wall was apt to make trouble for her, which is uncontradicted since Yarrish did not testify. However, Yarrish did thereafter modify Bromirski's assignments to give her a lighter load. On March 3, 1986, Klein set up a meeting with Bromirski and Wall where Wall testified credibly that Bromirski should "quit complaining" and do her job and get out, adding that she "didn't look like a troublemaker..."

The last event before Bromirski's departure on March 18, 1986, was her reaction to a memo which Parnes sent to Yarrish on March 13th, in which he complained that Bromirski had not provided summaries for her "IHP's." Parnes also stated to Yarrish that Burke concurred with him that the summaries must be entered on the "IHP's" prior to Bromirski's transfer to Johnstone. The following day Bromirski wrote to Parnes claiming that his memo to Yarrish was harassment of her professional performance and that it was untimely. Since Parnes had testified that Bromirski provided an "adequate response" to his request before she left for Johnstone, the summaries were obviously provided before her departure.

Finally, the Hearing Examiner notes that Bromirski's request to transfer from NPDC to Johnstone was granted as early as

February 6, 1986, 30 days after Bromirski commenced employment at NPDC, and, further, that her transfer actually took place as of March 24th, with her last day of work on March 18th. Insofar as the instant record discloses, Bromirski has continued to work at Johnstone without any reduction in pay, change of job title or any other manifestation of discrimination by the Respondent toward her. Given the fact that Bromirski testified in this matter in October 1986, the Hearing Examiner has no doubt whatsoever but that if there had been further instances of alleged discrimination by the Respondent toward her it would have been brought forth at the hearing.

The Respondent State Did Not Violate
§§5.4(a)(1) And/Or (3) Of The Act By
The Conduct Of Parnes And Others In
Connection With Bromirski's Hire And
Voluntary Transfer To Johnstone.

The above recitation of the relevant facts as to Bromirski indicates clearly that the Respondent NPDC in no way violated §§5.4(a)(1) or (3) of the Act. Parnes was plainly satisfied with Bromirski as a prospective Staff Clinical Psychologist I when he observed her work as a consultant prior to hire at NPDC and as an initial hire, commencing at NPDC on January 6, 1986. Both Bromirski and Parnes understood that she would have an office in the Thompson Building but, however, this never materialized and Bromirski's dissatisfaction with employment at NPDC originated with this event.

The Hearing Examiner finds no nexus between Bromirski's dissatisfaction with her lack of satisfactory office space and her filing of her first grievance on January 13th (CP-1). Parnes set up

a meeting the following day, January 14th, with Burke where Burke indicated that better office accommodations should in place by March 1, 1986.

By January 30th, Bromirski had concluded that she wished to leave NPDC and met with Parnes on that date. Parnes' reactions to Bromirski's stating that she wished to transfer to Johnstone were entirely understandable and he manifested no hostility or anti-union animus towards Bromirski. Parnes was understandably upset that Bromirski was seeking to leave NPDC, notwithstanding a commitment by her, which the Hearing Examiner credits, to have stayed there for at least two years. The Hearing Examiner has credited Parnes' denial that he stated that she would never get another job in State service and, additionally, the Hearing Examiner has credited Parnes' denial that Wall was crazy and paranoid and would make trouble for Bromirski at Johnstone.

Further, in connection with the January 30th meeting between Parnes and Bromirski, the Hearing Examiner has no problem in accepting as a fact that Parnes told Bromirski that Wall was returning to Johnstone and that based on his experience with Wall the smartest thing that Bromirski could do was "...not make any trouble and go to Johnstone and do her job there..." Also, Parnes was completely within his rights in stating to Bromirski that she not "stir things up" before going to Johnstone, noting that she had been spending a lot of time with Klein on union matters at a time when she was out of her work area, adding that this might reach "Wall's ear."

What happened thereafter was strictly a winding down of Bromirski's employment at NPDC, as to which no hostility or any anti-union animus is found on the part of Parnes vis-a-vis Bromirski. One asks, why shouldn't Parnes have directed Bromirski to complete her work in a matter satisfactory to him. The fact that Bromirski deemed his request unreasonable is totally irrelevant since the bottom line was that Parnes acknowledged that when Bromirski left on March 18, 1986, to transfer to Johnstone, she had made an "adequate response" (see Finding of Fact No. 8, supra).

As noted in Finding of Fact No. 9, supra, the Charging Party elicited considerable testimony and documentary evidence as to what happened to Bromirski during the time frame from the grant of her request to transfer to Johnstone on February 6, 1986, to the date of her departure on March 18, 1986. During this period she filed two grievances on February 10th, had a grievance hearing on February 19th, during which Parnes made statements offensive to Bromirski, which Parnes either admitted or did not deny;^{18/} a meeting between Bromirski and Yarrish on February 25th, regarding her assignments where the evidence is uncontradicted that Yarrish

^{18/} It is well settled in decisions of the Commission that "...wide latitude in terms of offensive speech and conduct must be allowed in the context of grievance proceedings to insure the efficacy of this process..."; City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28, 29 (¶15017 1983) and Hamilton Tp. Board of Education, P.E.R.C. No. 79-59, 5 NJPER 115, 116 (¶10068 1979), quoting from Crown Central Petroleum Corp., 430 F.2d 724, 74 LRRM 2844 (5th Cir. 1970).

told Bromirski that she should back off from her grievance proceedings, adding that Wall was out to make trouble for her at Johnstone;^{19/} and, finally, that at a meeting on March 3rd between Bromirski, Wall and Klein, Wall allegedly made statements, indicating anti-union animus toward Bromirski, which the Hearing Examiner has not credited based on Wall's denial that he said anything other than that Bromirski should "...quit complaining..." adding that she did not "look like a troublemaker..."

The Hearing Examiner has no difficulty in crediting Wall's version of the conversation of March 3rd since it appears totally "off the wall" for Wall to have made a statement out of the blue that Bromirski did not impress him as the type of person who "wants to make any trouble" and that she should not "...bother with any more grievance proceedings..." CWA failed to provide a persuasive rationale, which might explain why Wall would have made these statements to Bromirski and, thus, the Hearing Examiner has credited Wall's version of the conversation, supra.

In conclusion on the factual discussion herein, the Hearing Examiner finds no indication of animus or hostility toward Bromirski in Parnes' memo of March 13, 1986 to Yarrish, notwithstanding that Bromirski on March 14th wrote to Parnes, claiming that his memo was harassment of her professional performance.

^{19/} This is the only credible evidence of any animus manifested to Bromirski by the administration at NPDC. The Hearing Examiner is, however, unwilling to find a violation of the Act based on this minimal evidence of animus, given the entire chronology of events between January 6, 1986 and March 18, 1986.

The Hearing Examiner notes that the Charging Party has cited no case authority in support of its position that Bromirski was discriminated against in violation of §§5.4(a)(1) and (3) of the Act, the sole citation of authority having been limited to Parnes' alleged threat of a law suit to discourage Cullen if he assisted the union in prosecuting its unfair practice charges, infra.

In assessing whether or not a public employer has violated §§5.4(a)(1) and/or (3) of the Act, the Commission, following the decision of the New Jersey Supreme Court in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), utilizes the twofold Wright Line test in "dual motive" cases. This involves the following requisites in assessing employer motivation: (1) the Charging Party must make a prima facie showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision to discriminate; and (2) once this is established, the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected activity (see 95 N.J. at 242). Further, the court in Bridgewater refined the test in "dual motive" cases by adding that the protected activity engaged in must have been known by the employer and, also, it must be established that the employer was hostile toward the exercise of the protected activity (95 N.J. at 246).

Clearly, Bromirski engaged in protected activity while at NPDC, having filed three grievances and having participated in a

grievance hearing. Further, the employer clearly had knowledge of these events and, thus, two of the requisites for establishing a prima facie case have been made by the Charging Party. The problem is that the Hearing Examiner is not persuaded that the employer manifested the requisite hostility or anti-union animus toward Bromirski in connection with her exercise of activities protected by the Act, i.e., the utilization of the grievance procedure and participating in a grievance hearing.^{20/}

It is true, as noted above, that Yarrish did make the uncontroverted statement to Bromirski on February 25, 1986, that she should back off from her grievance proceedings and that Wall was out to make trouble for her at Johnstone. However, this isolated event, occurring within a time frame of two and one-half months of Bromirski's employment at NPDC, is, in the opinion of the Hearing Examiner, clearly insufficient to support a finding that the Respondent herein through its agents and representatives manifested anti-union animus and hostility toward Bromirski within the meaning of Bridgewater, supra. This conclusion is strengthened by the fact that the allegations of hostility and animus by the Charging Party as to Bromirski lie essentially with Parnes and not with Yarrish who was strictly on the periphery of the events involved herein.

^{20/} The Commission has recognized on more than one occasion that the filing of grievances and participating in the grievance procedure is a protected activity: Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333, 338 (¶15157 1984).

Accordingly, the Hearing Examiner will recommend dismissal of the allegations that the Respondent State violated §§5.4(a)(1) and/or (3) of the Act as to Karen Bromirski.

Relevant Findings As To Klein
On Behalf Of Bromirski.

Klein has worked at NPDC since September 7, 1982, and is, like Bromirski, a Staff Clinical Psychologist I. Since January 1986, Klein's clinical supervisor has been Parnes and his administrative supervisor was initially Romano, who was succeeded by Wilkerson.

Klein has been the CWA Local 1040 Shop Steward since 1983, and has represented the professional unit at NPDC. As Shop Steward, Klein submits grievances to Young, the NPDC Employee Relations Officer, and Klein has since 1983, filed approximately 100 grievances, 28 of which were filed in January 1986. These 28 grievances involved complaints about office space, job description, etc. One of these 28 grievances was filed by Klein in his own behalf on January 8th, complaining about the size of his case load.

It appears from the record, and the facts as found above, that Klein gratuitously involved himself in the Bromirski transfer to Johnstone and, thus, much of what transpired between him and Parnes from January 31, 1986 to March 3rd resulted from Klein's interloping (see Findings of Fact Nos. 14-20, supra). This is not to suggest that Parnes is in any way exonerated from any illegal conduct that he may have manifested under the Act toward Klein on and after Klein's having injected himself in the Bromirski transfer matter in or around January 31, 1986.

On January 31, 1986, and on February 10th, Klein had encounters with Parnes, regarding Bromirski's transfer. Their colloquy on January 31st prompted Parnes to state that Bromirski was a liar and that if he had anything to do with it she would not get a job in State services. This occurred in the context of Parnes' insistence that Bromirski had made an agreement with himself and Burke that she would "stick it out until March" when physical improvements would have been completed for offices.

Following Bromirski's having received the assignment memo from Parnes, dated February 3rd, Bromirski met with Klein on February 10th and expressed her dissatisfaction regarding Parnes' assignments to her. Klein telephoned Parnes, urging him to resolve the assignments problem amicably and Parnes' response was to state that it was a direct order and to "grieve it."

The next event was the grievance hearing on February 19, 1986, pertaining to the two grievances filed by Bromirski on February 10th. The hearing was not completed because of the disruptive conduct of Parnes, who became flustered and agitated as indicated by gestures and words, all of which was triggered by a document prepared by Bromirski and distributed at the hearing (R-1). Parnes testified that on February 19th he was agitated by some of the quotations attributed to him by Bromirski at their January 30th meeting, supra. Parnes testified that before the grievance hearing was concluded, Hearing Officer Young presented him with a CWA proposal to settle the grievances conditioned, however,

on Bromirski's prompt transfer to Johnstone without completing her work assignments and the destruction of R-1. Parnes considered the proposal "blackmail" and that ended the matter.

Later in the day on February 19th, Klein telephoned Parnes and offered to withdraw Bromirski's two grievances, stating that the matter had "gone far enough..." Parnes stated that he did not want to be blackmailed. Further, as found in Finding of Fact No. 17, supra, Klein stated to Parnes that he was "...playing hardball now" and that he had Parnes "...by the short hairs..."^{21/} Further, according to Parnes, Klein in the telephone conversation of February 19th, renewed the CWA request that Bromirski be allowed to transfer to Johnstone without having completed her work, adding that he, Klein, wanted a good letter of reference for her.

On February 28th, Klein learned from Young that Bromirski's transfer had been approved and, notwithstanding that fact, Klein met with her on that date where "her options" were discussed and they concluded that they had to set up a meeting with Wall on March 3rd.^{22/}

^{21/} It will be recalled that the conflict in the testimony of Parnes and Klein as to who said what regarding "hard ball" and "short hairs" was resolved by the Hearing Examiner in favor of the testimony of Parnes that Klein made these statements in that telephone conversation (see pp. 16, 17, supra).

^{22/} No one during the hearing explained the meaning of Bromirski's "options" in the context of an approved transfer to Johnstone nor was any explanation provided as to why a meeting with Wall was necessary.

The meeting with Wall occurred on March 3rd as scheduled and what transpired is incorporated into Findings of Fact Nos. 9 & 19, supra. The Hearing Examiner has there credited the testimony of Wall that Klein's role in the meeting was to complain about Parnes, and that Klein was seeking to exploit the differences between Parnes and Wall and was using Bromirski in this regard. Wall credibly told Bromirski to quit complaining, to do her job and "get out," adding at one point that she was caught between Klein and Parnes and that she didn't look like "...a troublemaker..."

Remaining Relevant Findings As To Klein

The first of the remaining findings to be considered are those involving Bernard, who testified credibly as a witness for the Respondent. A review of the relevant Findings of Fact, regarding Bernard (see Nos. 22-24, supra), fails to disclose even a suggestion of illegal conduct on the part of Parnes or anyone else acting on behalf of the Respondent. Parnes was not critical of Bernard for having recorded the number of times that she had met with Klein; Klein's request to Bernard for a statement in support of grievance in no way implicated the Respondent; and, finally, Bernard never complained to anyone at NPDC that she was doing Klein's work which, even if she had, would have nothing whatever to do with an unfair practice charge against the Respondent.^{23/}

^{23/} The Hearing Examiner notes at this point that Klein's job performance is not the subject of this proceeding since no disciplinary action against him was ever litigated herein.

The events surrounding Klein's filing of a grievance on April 18, 1986, are inconclusive. The thrust of this grievance was that Parnes was harassing him by questioning his sick time and that Romano had said that Klein had been identified as one having "...patterned sick time..." Klein also stated that he had been put under a lot of scrutiny for his "union activity," adding that an attorney for Parnes had telephoned him regarding an article in the CWA publication, "State Worker" of April 1986.^{24/}

The record indicates that, notwithstanding Klein's concern about having been challenged on his sick time, coupled with harassing memos by Parnes, which requested that Klein be disciplined for neglect of duty, inefficiency and falsification of records, the bottom line was that on May 1st, Romano sent a detailed memo to Roth, in which he completely exonerated Klein's job performance. Notwithstanding Parnes' earlier memos between April 10 and April 28, 1986, urging discipline of Klein, Romano was highly critical of Parnes' approach. Romano concluded that Klein's present caseload was too large. From the foregoing, there would appear to be nothing upon which a conclusion of illegal conduct on the part of representatives of the Respondent might be based.

24/ This publication is referred to in Finding of Fact No. 21, supra, involving Cullen. Unlike Cullen, who bore the brunt of crude threats by Parnes in connection with the "State Worker" publication (CP-18, supra), Klein testified only that he felt intimidated by the telephone call from Parnes's attorney in connection therewith. The matter of Cullen is treated hereinafter.

Further, at a first-step grievance hearing on Klein's harassment grievance of April 18th, the Hearing Examiner has found as a fact that Young did not state that he "had it up to here" with the union at a hearing on Klein's April 18th grievance, supra, at some point in the latter part of May or early June 1986. While Young admitted as to having had some frustration with the behavior of union officials, he flatly denied having made the "up to here" statement. Thus, there is no finding that the Respondent violated the Act by the conduct of Young in late May or early June 1986.^{25/}

The Respondent State Did Not Violate §§5.4(a)(1) And/Or (3) Of The Act As To Klein By The Conduct Of Parnes And Others Between January And June 1986.

It is clear from the recitation of the events between January 31, 1986 and the latter part of May or early June 1986, there was no conduct manifested by representatives of the Respondent State toward Klein, which could constitute a violation of §§5.4(a)(1) and/or (3) of the Act. Regarding Bromirski's transfer to Johnstone, Klein was clearly a volunteer and an interloper in that situation. Thus, while any conduct of Parnes toward Klein of an illegal nature was not to be condoned or excused, any conduct of

^{25/} Even assuming that Young made the "up to here" statement, the Hearing Examiner would exonerate him, based on the cases cited previously in connection with Parnes' at the February 19th grievance hearing: see City of East Orange, footnote 18, supra.

Klein's must be viewed in the light of what Klein brought about as a result of his gratuitous intervention on behalf of Bromirski.

That said, it is clear that Parnes did not engage in any illegal conduct toward Klein, which might indicate that Parnes was hostile toward Klein in an anti-union animus sense. In so concluding, the Hearing Examiner has thoroughly considered his Findings of Fact in paragraphs Nos. 14-17 & 22-27, supra.

Paragraphs 14-17, supra, deal with Klein's efforts on behalf of Bromirski between January 31st and February 19th. But the Hearing Examiner has found no evidence of any illegal conduct on the part of Parnes attributable to the Respondent.^{26/}

The evidence elicited by the Charging Party and the Respondent, regarding Bernard, adds up to a "zero" vis-a-vis an alleged violation of the Act by representatives of the Respondent. Bernard was a credible witness, who testified that Parnes was in no way critical of the fact that she had recorded meetings with Klein. Also, she did not acquiesce in Klein's request for assistance from her in filing his grievance in mid-April 1986.^{27/} Bernard's opinion as to Klein's job performance was totally irrelevant and in no way implicated the Respondent in any illegality under the Act.

^{26/} It is noted here that any conduct of Parnes manifested at the Bromirski grievance hearing on February 19, 1986, was privileged under the Commission decisions cited above: see City of East Orange, footnote 18, supra.

^{27/} The events involving Bernard and Klein's grievance of April 18th are set forth in detail in Findings of Fact Nos. 22-27, supra.

Finally, as noted under the relevant findings above, Klein's April 18th grievance and the subsequent events to its filing in no way suggested that the Respondent had engaged in any illegal conduct, particularly in view of the fact that, notwithstanding Parnes' derogatory April memos to Klein, Romano, who was Klein's administrative supervisor, totally exonerated Klein in a memo on May 1, 1986.

There is one further matter to discuss at this point, as it might bear on anti-union animus, and that was the alleged statement by Employee Relations Officer Young at a first-step grievance hearing in the latter part of May or early in June 1986. The Hearing Examiner has credited Young's denial that he made the statement that he had "had it up to here" with "union officials," notwithstanding that he admitted to having had some frustration with their behavior. Even though the Hearing Examiner has credited Young's denial that he made such a statement, even if such a statement had been made, it occurred in the context of a grievance hearing on Klein's grievance of April 18th and would, thus, be protected under Commission decisions cited several times heretofore.

Based upon the foregoing, it is crystal clear that the Respondent did not violate the Act as to Klein between January and June of 1986 for the reasons previously indicated. There was no manifestation of hostility or animus by any representative of the Respondent regarding the activities of Klein within the meaning of Bridgewater, supra. Thus, the Hearing Examiner will recommend

dismissal of any allegations that the Respondent violated the Act as to Klein.

The Respondent State Independently
Violated §5.4(a)(1) Of The Act By Parnes'
Statements In The Presence Of Fabiny On
March 3, 1986.

We move now to the events of March 3, 1986, in Morrow East and what Fabiny heard Parnes state on that date. Fabiny, who testified credibly about this incident, provided direct evidence of hostility or animus on the part of Parnes toward CWA and Klein. On that date, Parnes telephoned Romano from Morrow East, stating that Klein had been "...over here conducting union business without permission and you better sit on him..." At the end of this conversation Parnes said to no one in particular that he was "...fed up with union crap. If the union wants to play games..." he could play them too. As indicated in Finding of Fact No. 20, supra, Parnes had no factual basis upon which to conclude that Klein had been improperly conducting union business, notwithstanding Parnes' telephone call to Romano and the fact that Yarrish ultimately confirmed that Klein and Bromirski had been talking about "union business."^{28/}

^{28/} Note is taken again of the fact that Yarrish did not testify and, thus, Parnes' testimony as to what Yarrish allegedly said is discounted since it was clearly in Parnes' interest to justify and seek a basis for his "assumption" that Klein had been in Morrow East to consult with Bromirski on "union business."

From the foregoing recital of events, as testified to by Fabiny and Parnes, the Hearing Examiner has little difficulty in concluding that Parnes' statements in the presence of Fabiny constituted interference, restraint and coercion of Fabiny's rights under the Act. This is so whether or not Klein was present at the time that Parnes made those statements since, in the presence of Fabiny, he was clearly referring to Klein as a representative of CWA.

Accordingly, the Hearing Examiner concludes that the Respondent State independently violated §5.4(a)(1) of the Act^{29/} when Parnes stated in the presence of Fabiny that he wanted Romano to "sit" on Klein and that he was "...fed up with union crap" and that "If the union wants to play games, he can play them also..."^{30/}

The Respondent State Independently Violated §5.4(a)(1) Of The Act When Parnes Threatened Cullen About Testifying In This Case And Then Threatened To Sue Cullen Regarding The "State Worker" Article of April 1986.

Anyone reading Finding of Fact No. 21, supra, should have no difficulty in concluding that the conduct of Parnes toward Cullen

^{29/} See N.J. Sports & Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (¶10285 1979) and Commercial Twp. Board of Education, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd Appellate Division Docket No. A-1642-82T2 (1983).

^{30/} The Hearing Examiner refuses to conclude that the Respondent violated §5.4(a)(3) of the Act since Parnes did not by these statements discriminate regarding Fabiny's, Klein's or any other employee's hire or tenure or any term or condition of employment.

on April 7, 1986, was reprehensible. Parnes clearly threatened Cullen regarding his prospective testimony in this case, adding that Parnes had a lot of money tied up in the matter and, depending on what Cullen said, "...you'll be sued..." As noted in this Finding of Fact by the Hearing Examiner, Parnes did not deny making the foregoing statements but merely explained that he had been angered by the April 1986 issue of the CWA's "State Worker," which he described as "outrageous" and "libelous." Parnes then stated that if Cullen perjured himself and lied, presumably at the instant hearing, then he, Parnes, would sue Cullen's "...ass off too."

The Hearing Examiner agrees with the relevance of the holdings contained in the NLRB cases cited by CWA on this point, namely, that a threat to sue an employee interferes with and coerces that employee and other employees in the exercise of the rights guaranteed to them by the Act: see Pabst Brewing Co., 254 NLRB 494, 106 LRRM 1112 (1981) and St. Mary's Home, Inc., 258 NLRB 1024, 108 LRRM 1329 (1981).

These clearly threatening and coercive statements by Parnes to Cullen on April 7, 1986, are in no way vitiated by the fact that Parnes the next day retracted his threats and that Cullen acknowledged that such a retraction had occurred. While forgiveness and absolution may have a role elsewhere it has no place in the context of determining whether or not a substantive violation of the Act has occurred.

Thus, the Hearing Examiner finds and concludes that the Respondent State violated §5.4(a)(1) of the Act above by the conduct of Parnes vis-a-vis Cullen on April 7, 1986.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent State independently violated N.J.S.A. 34:13A-5.4(a)(1) when Michael Parnes, on March 3, 1986, made statements that constituted interference, restraint and coercion of the rights of Mark A. Fabiny, notwithstanding that Donald L. Klein, the object of such statements, was not present and, further, the same violation occurred when Michael Parnes threatened Thomas J. Cullen, Jr., regarding his giving testimony in the instant case before the Commission and when Parnes threatened to sue Cullen on April 7, 1986, because of Parnes' dissatisfaction with the April 1986 issue of the CWA publication, "State Worker."

2. The Respondent State did not violate N.J.S.A. 34:13A-5.4(a)(1) and/or (3) by the conduct of Michael Parnes or any other of the Respondent's representatives as to Karen Bromirski or Donald L. Klein between January and June 1986.

3. The Respondent State did not violate N.J.S.A. 34:13A-5.4(a)(4), (5) and/or (7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent State cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by permitting Michael Parnes to make coercive statements in the presence of employees such as Mark A. Fabiny or threatening employees such as Thomas J. Cullen, Jr. regarding testimony before the Commission or with threatening to sue employees such as Cullen regarding CWA publications.

B. That the Respondent State take the following affirmative action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

C. That the allegations in the Unfair Practice Charge, as amended, pertaining to Karen Bromirski and Donald L. Klein, which allege violations of §§5.4(a)(1) and (3) of the Act be dismissed in their entirety.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

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B. That the Respondent State take the following affirmative action:

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C. That the allegations in the Unfair Practice Charge, as amended, pertaining to Karen Bromirski and Donald L. Klein, which allege violations of §§5.4(a)(1) and (3) of the Act be dismissed in their entirety.

D. That the allegations in the Unfair Practice Charge, as amended, that the Respondent violated §§5.4(a)(4), (5) and/or (7) of the Act be dismissed in their entirety.



Alan R. Howe
Hearing Examiner

Dated: April 22, 1987
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT Interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by permitting Michael Parnes to make coercive statements in the presence of employees such as Mark A. Fabiny or threatening employees such as Thomas J. Cullen, Jr. regarding testimony before the Commission or with threatening to sue employees such as Cullen regarding CWA publications.

Docket No. _____

STATE OF N.J., DEPT. OF HUMAN SERVICES
(Public Employer)

Dated _____

By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.