

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

In the Matter of

CHERRY HILL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-80-34-123

STEVEN GISMONDE,

Charging Party.

SYNOPSIS

A Hearing Examiner grants a respondent's Motion to Dismiss the Complaint. The charging party indicated the charge would be withdrawn yet after many requests, no withdrawal was forthcoming. The Complaint had been issued on June 17, 1980, but no proceeding had taken place. Accordingly, the Motion was granted. Pursuant to N.J.A.C. 19:14-4.7 the case will be closed ten days after issuance of decision unless the charging party requests the Commission to review the action.

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Appearances:

For the Cherry Hill Board of Education
Davis & Reberkenny, Esqs.
(Kenneth D. Roth, Esq.)

For the Charging Party
Selikoff & Cohen, P.A.
(Steven R. Cohen, Esq.)

HEARING EXAMINER'S DECISION AND
ORDER ON RESPONDENT'S MOTION TO DISMISS

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on March 24, 1980, by Steven Gismonde (the "Charging Party") alleging that the Cherry Hill Board of Education (the "Board" or the "Respondent") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") in that the Charging Party was transferred from "light work" as a grounds keeper to "heavy work" in retaliation for having participated in a class action grievance as a member of the Cherry Hill Supportive Staff Association, which action is alleged to be a vio-

lation of N.J.S.A. 34:13A-5.4(a)(1) of the Act. 1/

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 17, 1980, at which time a hearing was scheduled for September 17 and 18, 1980. A prehearing conference was held at the Commission's offices on September 3, 1980, and the parties jointly requested that the hearing be adjourned pending completion of discovery.

The Respondent served Interrogatories on the Charging Party on September 5, 1980. Answers to the Interrogatories were not received and the Respondent applied to the Commission on January 22, 1981, for an Order to Compel Answers to Interrogatories. The Charging Party advised the undersigned that the charge would be withdrawn and the order was not issued. On February 26, 1981, the Charging Party was requested to formally withdraw the charge. The charge was not withdrawn and on April 10, 1981, the Respondent requested that the undersigned rule on the Motion ordering discovery or dismiss the charge. 2/

On July 13, 1980, the undersigned received a Motion to Dismiss the complaint, a copy of which was served on the Charging

1/ This subsection prohibits 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."

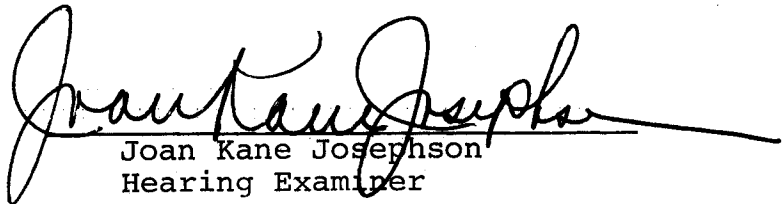
2/ The Charging Party's counsel advised both the Respondent and the undersigned that he had contacted his client to receive authorization to withdraw the charge but was still awaiting such authorization from his client.

Party. The undersigned contacted the Charging Party's attorney by telephone on July 16, 1981, to ascertain whether he intended to file any response prior to my ruling on the motion. He advised me he had by certified mail again requested authorization from his client to withdraw the charge but had not received a response. I advised him that in view of the delays in the processing of the case, I intended to grant the Motion to Dismiss and that any objection thereto should be filed within three days. No response has been received.

This action has been pending before the undersigned since June 17, 1980 without any proceeding having taken place; therefore, pursuant to N.J.A.C. 19:14-4.3 the Respondent's Motion to Dismiss the Complaint in its entirety is granted.

ORDER

It is hereby ORDERED that the Complaint in this matter be dismissed in its entirety.


Joan Kane Josephson
Hearing Examiner

Dated: July 22, 1981
Trenton, New Jersey