

P.E.R.C. NO. 83-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MENDHAM,

Respondent,

-and-

Docket No. CI-82-52-20

GARY R. ACKLEY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge Gary R. Ackley filed against the Township of Mendham. The charge had alleged that the Chief of Police had pressured employees represented by the Mendham Township Police Bargaining Committee to oust a negotiations committee member. The Commission finds that Ackley has not proved this charge by a preponderance of the evidence.

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Appearances:

For the Respondent, Lawrence M. Koenig, Esquire

For the Charging Party, Gary R. Ackley, Pro Se

DECISION AND ORDER

On May 6, 1982, Gary R. Ackley ("Ackley") filed an unfair practice charge against the Township of Mendham ("Township"). The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1), (2), and (7),^{1/} when its Chief of Police sought to influence employees represented by the Mendham Township Police Bargaining Committee to oust a negotiations committee member because the member opposed a substantial salary increase for a secretary.^{2/}

^{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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (7) Violating any of the rules and regulations established by the commission."

^{2/} The charge form itself contains no specific allegations, but instead incorporates two attached letters previously sent to the Commission. On May 18, 1982, Ackley supplemented his charge with another letter which the Township did not receive until shortly before the hearing. These letters contain multitudinous allegations and do not provide the clear and concise statement of facts constituting the alleged unfair practice which N.J.A.C. 19:14-1.3 requires.

On August 27, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 17, 1982, the Township forwarded a copy of a letter dated May 27, 1982 to serve as its Answer.^{3/} This letter denied all the allegations of the charge and specifically denied that the Chief of Police ever sought to influence unit members in choosing their negotiations representatives.

On November 22 and 23, 1982, Commission Hearing Examiner Alan R. Howe conducted a hearing. At the outset, Ackley questioned the timeliness of the Township's Answer. The Hearing Examiner construed this question as a Motion for Summary Judgment and then heard argument from the parties concerning the motion. The Township's attorney informed the Hearing Examiner that at the June 11, 1982 exploratory conference, he provided Ackley with a copy of the letter ultimately submitted as the Township's Answer. Ackley then stated that the Township's Answer was not a specific response to his detailed allegations. The Hearing Examiner ruled that the Answer was sufficiently specific in light of the charge's failure to set forth a clear and concise statement of the facts as required by N.J.A.C. 19:14-1.3. He stated he would allow Ackley a continuance if he needed additional time to prepare, but Ackley rejected this offer. The parties were then given an opportunity to examine witnesses, present evidence, and argue orally. Both parties waived their right to file post-hearing briefs.

^{2/} This letter, directed to the staff member assigned to this case, acknowledged that counsel for the Township would be in attendance at an exploratory conference scheduled for June 11, 1982 and set forth the Township's position regarding the charge.

On December 1, 1982, the Hearing Examiner issued his report and recommendations, H.E. No. 83-17, 8 NJPER ____ (¶ ____ 1982) (copy attached). He found that neither the Chief nor any other agent of the Township had interfered with, coerced or dominated any unit member in the election of the negotiations committee or the collective negotiations process. In deciding that Ackley failed to prove the charge by a preponderance of the evidence, the Hearing Examiner resolved several credibility judgments in favor of the Chief and placed substantial weight on the undisputed fact that Ackley had no evidence establishing a nexus between the actions of unit members seeking to remove a negotiations committee member and any action of the Chief or other Township representatives.

On December 13, 1982, Ackley filed Exceptions. On December 20, 1982, the Township responded to these Exceptions.

After reviewing the record, we find that the Exceptions are without merit. We adopt and incorporate the Hearing Examiner's findings of fact because the record substantially supports them. We also adopt his conclusions of law substantially for the reasons stated in his report.

Ackley's first Exception alleges that the Hearing Examiner erred by denying his Motion for Summary Judgment based on the Township's alleged failure to file a timely or specific Answer pursuant to N.J.A.C. 19:14-3.1.^{4/}

^{4/} This rule provides, in part: "The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The hearing examiner, upon proper cause shown, may extend the time within which the answer shall be filed. The respondent shall specifically admit, deny or explain each of the charging party's

(Continued)

We believe that under all the circumstances outlined above, the Hearing Examiner acted reasonably in declining to reject the Answer and instead offering Ackley a continuance which he refused. The essence of this case, although not clearly set forth in the protracted letters attached to the charge, is simple: did the Chief improperly attempt to influence unit members to oust a negotiations committee representative? The Township submitted a letter to Ackley at the exploratory conference denying the Chief took any such actions and later converted this letter into its final Answer. Under these circumstances, the Hearing Examiner had cause to accept a belated formal filing of the Answer and to find that the Answer adequately denied the pertinent allegations in the charge.

Ackley excepts to the weight the Hearing Examiner placed on his finding that the Chief was a proponent of a substantial increase for his secretary when he was a sergeant and a member of the negotiations unit. We believe the Hearing Examiner was correct in not placing substantial weight on this testimony. This testimony does not directly bear upon the central problem with the charging party's case: the absence of any credible evidence showing that the Chief sought to influence unit members to oust a negotiations committee member.

In another Exception, Ackley disputes the Hearing Examiner's termination of a line of questioning. Ackley claims the Hearing Examiner erred by denying him the opportunity to

4/ (Continued) allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the commission, unless good cause to the contrary is shown."

establish on re-direct examination of Patrolman Koert that Chief Schatzel had threatened Patrolman Costanza, when the Township had been allowed to introduce testimony that Costanza allegedly threatened the Chief.

The record indicates that Ackley did not object to any cross-examination of Costanza or other evidence pertaining to his threats concerning the Chief. On re-direct examination of Patrolman Koert, Ackley, however, attempted to lessen any impact of the Township's cross-examination of Costanza by establishing that Schatzel had threatened Costanza. Even assuming that the Hearing Examiner should have permitted this questioning, we believe that the Hearing Examiner's decision did not prejudice Ackley. The testimony obtained on cross-examination of Costanza was not relied on by the Hearing Examiner in making a recommendation nor do we rely on it. Further, the terminated line of questioning would not have overcome the absence of evidence connecting the actions of the Chief or any other Township officer with the vote of unit members to remove Costanza from the negotiations committee.

The rest of Ackley's Exceptions dispute credibility judgments made by the Hearing Examiner. We have held in numerous cases that the trier of fact must weigh the testimony based upon his observation of the demeanor of the witness. Generally, the Commission will not substitute its reading of the transcript for the Hearing Examiner's credibility judgments, unless there is compelling evidence to the contrary. In re State of New

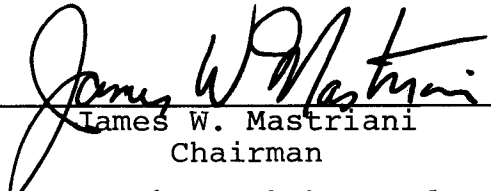
Jersey, CMDNJ, P.E.R.C. No. 82-33, 7 NJPER 588 (¶12264 1981);
In re Twp. of Clark, P.E.R.C. No. 80-117, 6 NJPER 186 (¶11089
1980).

In this case, we find there is no compelling evidence to contradict the Hearing Examiner's determination that Chief Schatzel testified credibly in denying that he interfered with the negotiations committee election. Thus, we agree with the Hearing Examiner that the Complaint must be dismissed.^{5/}

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Newbaker and Suskin voted in favor of this decision. None opposed. Commissioners Graves and Hartnett abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
January 19, 1983
ISSUED: January 20, 1983

^{5/} We have some doubts whether Ackley had standing as an individual to file the instant charge. Given our result, and the fact that this matter has been fully litigated without objection to Ackley's standing, we need not decide that issue.

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SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Township did not violate Sections 5.4(a)(1), (2) and (7) of the New Jersey Employer-Employee Relations Act by the conduct of its Chief of Police and other officials during the course of collective negotiations for a successor collective negotiations agreement for 1982-83. The Charging Party had alleged that the Township sought to dominate or interfere in the administration of the employee organization with respect to the composition of the Negotiations Committee and the securing of a substantial salary increase for one employee. The Hearing Examiner credited the denials of the Chief of Police that he sought to dominate or interfere with the composition of the Negotiations Committee or the obtaining of a raise for the employee. The case turned on credibility resolutions among the witnesses for the parties.

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.

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Appearances:

For the Respondent
Lawrence M. Koenig, Esq.

For the Charging Party
Gary R. Ackley, Pro Se

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on May 6, 1982 by Gary R. Ackley (hereinafter the "Charging Party" or "Ackley") alleging that the Township of Mendham (hereinafter the "Respondent" or the "Township") had 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 the Respondent put pressure on probationary patrolmen to vote a certain way in an election of representatives to the negotiations committee for the collective negotiations unit, and otherwise interfere with said election, all of which has created confusion and disension within the collective negotiations unit, and which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (7) of

the Act. ^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on August 27, 1982. Pursuant to the Complaint and Notice of Hearing, hearings were held on November 22 and 23, 1982 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument and post-hearing briefs were waived.

An Unfair Practice Charge having been filed with the Commission, a question concerning an alleged violation of the Act, as amended, exists and, after hearing the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Township of Mendham is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. Garry R. Ackley is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

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.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

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

3. The Township voluntarily recognized an organization known as "The Mendham Township Police Bargaining Unit" and has entered into collective negotiations agreements since 1974 covering Sergeants, Patrolmen, Probationary Officers and Police Matrons. The collective negotiations agreement effective January 1, 1980 through December 31, 1981 was received in evidence as Exhibit J-1. A successor collective negotiations agreement, which is the subject of these proceedings, is presently in effect for the term January 1, 1982 through December 31, 1983.

4. A preliminary meeting of unit members to formulate proposals for the 1982-83 collective negotiations agreement was held in March 1981. Among those in attendance was William C. Shatzel, who was then a Sergeant, and who on June 1, 1981 became Chief of Police. Shatzel had been on the negotiations committee in 1978 and 1979. In formulating proposals for the successor agreement to J-1, Shatzel urged that one Pauline Johnston, a secretary, should receive the same salary as a Probationary Patrolman. At this meeting, or shortly thereafter, the members of the employee Negotiations Committee were elected and they were Gary R. Ackley, Thomas J. Costanza with James Golden, a Sergeant, serving as an alternate member.

5. The first collective negotiations meeting between the parties took place in late November or early December 1981. At this meeting the three employee Negotiations Committee members were present but only Councilman Fraser Lyle was present for the Township. The Mayor, W. Augustus Rentsch, and Councilman I. Jackson Angell were absent. The employee Negotiations Committee members submitted written proposals, which did not include a proposal for a salary increase on behalf of Pauline Johnston. The meeting went smoothly until Sergeant Golden brought up the subject of a substantial raise for Pauline Johnston, to which Ackley and Costanza objected.

6. About one or two weeks after the first collective negotiations meeting, the unit members met on the subject of a raise for Pauline Johnston, who was then earning \$10,900. A decision was reached to seek a salary for her of \$14,000, which

was several hundred dollars below the salary for Probationary Patrolman.

7. Either shortly prior to the foregoing meeting, or shortly thereafter, Chief Shatzel summoned Ackley and Costanza to meet in his office. According to the Chief the purpose was to talk about such problems as thefts, misuse of the bulletin board, etc.^{2/}

8. A second negotiations meeting between the parties took place three to four weeks after the first meeting and, at this meeting, all representatives were present. The written proposals submitted by the employee representatives were discussed and quickly agreed to except for the proposed salary increases and additional insurance coverage. Golden presented the proposed salary for Pauline Johnston of \$14,000 and the Township representatives indicated that it was "no problem."

9. Ackley testified that several days later he, the Chief and the Mayor were in the radio room where the Mayor said that Councilmen Lyle and Angell did not like Costanza although the Mayor did. Further Ackley testified that after the Mayor left, the Chief said to Ackley, "Tell Tom to back off a little bit."^{3/}

10. A couple of negotiations meetings followed the second negotiations meeting with the parties still not having resolved the salary and insurance coverage issues.

^{2/} Ackley and Costanza testified that at this meeting Chief Shatzel made a strong "pitch" on behalf of a substantial salary increase for Pauline Johnston, pointing out that she makes the coffee, types reports for the officers, etc. However, the Chief denied making any "pitch" on behalf of Johnston but did admit referring to her making coffee and to the fact that she would not be typing reports in the future since, under a directive from the Morris County Prosecutor, reports in the future were to be handwritten. The Chief categorically denied any involvement in the collective negotiations process. Additionally, Chief Shatzel objected to the misuse of the bulletin board, referring to a cartoon (R-1), as to which there was credible testimony that it depicted Pauline Johnston unfavorably. In making the credibility resolution between Ackley and Costanza on the one hand and Chief Shatzel on the other hand, the Hearing Examiner elects to credit the version as testified to by the Chief, based upon the respective demeanor of the witnesses and the fact that the Chief's denials seem more probable.

^{3/} Chief Shatzel flatly denied that he was present in the radio room when the Mayor allegedly made this statement regarding Lyle and Angell, and he further denied that he made any statement to Ackley regarding Costanza's conduct as a negotiator. Having previously credited Chief Shatzel's denial of involvement in the collective negotiations process, the Hearing Examiner again credits Shatzel's denials of the facts as testified to by Ackley regarding the encounter in the radio room.

11. On January 6, 1982 Chief Shatzel again summoned Ackley and Costanza into his office to discuss problems pertaining to working conditions. Ackley and Costanza testified that the Chief said that he was not satisfied as to the issue of the raise for Pauline Johnston. According to Ackley, Costanza told the Chief that more than half of the men were opposed to her raise. According to Costanza, the Chief made reference to the removal of Costanza from the Negotiations Committee. The Chief flatly denied the testimony of Ackley and Costanza as to what transpired at the meeting. The Hearing Examiner again resolves the credibility issue in favor of the Chief finding his denials more consistent with what most likely happened at the meeting.

12. Under date of January 8, 1982 Johnston wrote to the Mayor requesting that she be "taken off the police contract" (CP-1). The Hearing Examiner interprets this as a request to be removed from the collective negotiations unit and to be no longer covered by the collective negotiations agreement. Johnston subsequently negotiated a separate agreement covering her terms and conditions of employment with the Township.

13. Ackley testified that several days after the Johnston letter of January 8th, he spoke to Joseph A. Szoke, who was then a Patrolman, and Szoke told Ackley that he had heard that Costanza was using the negotiations for his own benefit^{4/} and that the Township would not meet in further negotiations unless Costanza was removed from the Committee. Szoke did not deny the testimony of Ackley, adding that his information came from Golden and that he, Szoke, concluded that Costanza did not

^{4/} At the conclusion of one of the negotiations meetings Costanza took the opportunity to raise with the Councilmanic negotiators a personal matter involving additional compensation. This was passed on to unit members by Golden. Costanza subsequently admitted to several unit members that he had done so. Patrolman Thomas J. McConnell testified credibly that Costanza's use of his position as a negotiator for his own purposes immediately after a meeting was improper, pointing out that it would have been perfectly proper if Costanza had arranged to meet separately outside of the negotiations context regarding his personal compensation.

belong on the Committee. Szoke discussed the status of Costanza with many others in the collective negotiations unit.

14. On January 27, 1982 a meeting of unit members was convened in the radio room for the purpose of conducting a secret ballot vote on whether Costanza should continue to serve as a member of the Negotiations Committee. Following a heated discussion the vote was five in favor of removal and five in favor of Costanza's continuance. The result of the tie vote was that Costanza was not removed.

15. Two Patrolman, who were on probation at the time of this meeting, Vincent J. Koert and Vincent J. Romano, testified that they were impliedly threatened by Sergeant Golden and Sergeant Francis H. Herron to vote for the removal of Costanza inasmuch as it was a "sensitive area" and that the Chief was not going to like a vote, which resulted in Costanza remaining on the Committee.^{5/} The Hearing Examiner notes that both Golden and Herron as Sergeants were in the collective negotiations unit and there was no credible testimony that they were acting as agents of the Township at the time such statements were made. The Charging Party acknowledged during the hearing that he had no evidence connecting Sergeant Golden's actions regarding Costanza to Township officials. Concededly, Golden was the most active unit member in seeking the removal of Costanza from the Negotiations Committee.

16. Herron, who had indicated to Ackley after the January 27th meeting that he had voted in favor of Costanza continuing on the Committee, thereafter indicated to Ackley that he was going to tell Golden that he had voted against Costanza. This prompted Golden to post a typewritten memo to the unit members dated February 3, 1982 (CP-7), in which Golden recited that he had spoken to five other unit members, who indicated that they had voted against Costanza, which would bring the number of

^{5/} Koert testified that prior to the meeting at which the secret ballot vote was taken the Chief spoke to Koert in the Chief's office and told him that he, Koert, had better vote the right way, stressing that Koert was still on probation and that it would be better if Costanza was off of the Negotiations Committee. The Hearing Examiner has previously credited the testimony of Shatzel and here credits his denial that he told anyone how to vote regarding Costanza.

votes for removal to six. He asked that the six persons, including himself, place their initials beside their names if they were in favor of the removal of Costanza from the Negotiations Committee. Exhibit CP-7 indicates that each of the six unit members initialed the document, indicating that they were in favor of Costanza's removal.

17. Under date of February 17, 1982 Herron posted a notice to all unit members (CP-6), which recited the results posted on the February 3rd memo, CP-7 supra, and asked for a new election of Committee members. An examination of this Exhibit indicates that the newly constituted Committee consisted of Herron, Szoke and McConnell due to the counting of the vote of Pauline Johnston, notwithstanding that she had been "requested to be taken off the police contract." Without her vote it would have been a four-way tie, including Ackley.

18. Notwithstanding that Ackley did not accept the vote of Pauline Johnston, and wrote a protest letter (CP-4), the three new Negotiations Committee members convened and met thereafter with the Township Negotiations Committee. After several meetings they concluded the successor collective negotiations agreement, which is effective through December 31, 1983.

DISCUSSION AND ANALYSIS

The gravamen of the instant unfair practice charge alleging a violation of Section 5.4(a)(2) of the Act is that the Township dominated or interfered with the administration of the employee organization, namely, it interfered with the composition of the Negotiations Committee and collective negotiations. The Hearing Examiner inquired during the hearing as to whether the Charging Party had any evidence which would link the actions and conduct of Sergeant Golden or agents or representatives of the Township, i.e., the Mayor, the Councilmen or the Chief of Police. The Charging Party freely acknowledged that he had no evidence connecting Golden's actions to officials of the Township.

As is evident from the above Findings of Fact by the undersigned, the

Hearing Examiner has credited the testimony of Chief Shatzel, in which he disclaimed interference in the vote of unit members on the composition of the Negotiations Committee and the collective negotiations process. In other words, the Hearing Examiner has concluded as a fact that the Chief did not interfere with or coerce unit members in their votes on the composition of the Committee, particularly, Costanza. Additionally, the Hearing Examiner has concluded that the Chief did not interfere with collective negotiations vis-a-vis Pauline Johnston and the efforts of Sergeant Golden to obtain for her a substantial salary increase.

Given this it is evident that the Hearing Examiner must conclude that, in the absence of other evidence implicating Township officials, the Charging Party has failed to prove by a preponderance of the evidence that the Township dominated or interfered with the administration of the collective negotiations representative of the employees on the Township Police Department.

In so concluding, the Hearing Examiner wishes to stress that the credibility resolution made by him was "close." In other words, notwithstanding cumulative testimony of the Charging Party's witnesses, the Hearing Examiner has found the denials of the Chief as to involvement in the composition of the Negotiations Committee and the raise for Pauline Johnston to be more credible in the aggregate

Finally, the Hearing Examiner notes that, notwithstanding the conduct of all of the parties in the course of collective negotiations for the 1982-83 agreement, the agreement was finally consummated and the parties are living under it.

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

CONCLUSION OF LAW

The Respondent Township did not violate N.J.S.A. 34:13A-5.4(a)(1), (2) and (7) by the conduct of its officials in the negotiations for 1982-83 collective agreement.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: December 1, 1982
Trenton, New Jersey