

L.D. NO. 94-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HILLSDALE,

Respondent,

-and-

Docket No. CI-91-19

THERESA CARDINALE,

Charging Party.

Appearances:

For the Respondent
Randall, Randall & Stevens, attorneys
(Thomas W. Randall, of counsel)

For the Charging Party
Theresa M. Cardinale, pro se

DECISION

On October 15, 1990, March 1, May 14, and May 28, 1991, Theresa M. Cardinale filed an Unfair Practice Charge and amendments against the Borough of Hillsdale and the Hillsdale Crossing Guards Association. Cardinale alleges that the Borough violated subsections 5.4(a)(1), (3), (4), (5) and (7)^{1/} of the New Jersey

^{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 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

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it 1) required that its doctor examine her at the start of the school year and determine her medical fitness before allowing her to begin work; 2) coerced or influenced members of the Association to reject her grievance; and 3) permitted other crossing guards, particularly a male crossing guard, to return to work after extended illness without being examined by its doctor. Cardinale also alleges that the Association forced her from office as its president and conspired with the Borough to refuse to process her grievance.

The Director of Unfair Practices, in D.U.P. No. 91-29, 17 NJPER 350 (¶22159 1991), dismissed the allegations against the Borough that concerned its requirement that Cardinale pass a physical exam and issued a Complaint on the remaining allegations against the Borough and against the Association. On July 18, 1991, in accordance with the terms of a settlement agreement between Cardinale and the Association, those allegations against the Association were withdrawn.

Hearings on the allegations remaining against the Borough was conducted on October 17, October 18, December 9, and December

1/ Footnote Continued From Previous Page

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."

16, 1991 and on January 17, 1992. The parties waived the right to file briefs.

On August 20 and August 25, 1993 respectively, the Borough and Cardinale requested that this matter be submitted to the Commission's Litigation Alternative Program (LAP) in lieu of a Hearing Examiner's Report. The parties agree to accept this LAP decision, based upon the hearing record, as a final and binding resolution of the above-captioned unfair practice charge.

The Hillsdale Crossing Guards Association represents approximately 16 full and part-time crossing guards employed by the Borough in the police department. Cardinale has been a member of the Association since 1986. From December 1988 to October 19, 1990, she was the Association president and member of its team that negotiated with the Borough for the collective agreement in effect from January 1, 1989 to December 31, 1990.

On August 27, 1990, Chief of Police Ronald Schramm told Cardinale that the police department's physician, Dr. Pietrandrea, would have to certify her fitness for return to work before the first day of school on September 5. Chief Schramm explained that he was aware of public statements she made at meetings held by the Borough's Department of Health earlier in May and June, where she had complained that she and her children were afflicted by several chronic and acute health problems that required constant medical treatment. Cardinale had also testified that these ailments made her feel as though she were dying. Chief Schramm indicated that she

had missed 53-1/2 days during the past school year; therefore, he was concerned about her fitness to return to work.^{2/}

On August 31, 1990, Cardinale was examined by Dr. Pietrandrea, who refused to certify her fitness for work on the basis of high blood pressure and an irregular heartbeat. However, Cardinale understood that Dr. Pietrandrea would approve her returning to work if she were to provide a note from her physician verifying her fitness.

On September 4, 1990, Cardinale participated in the annual training meeting for crossing guards conducted by the Borough's police department. Before reporting to her post the next day, Cardinale stopped at police headquarters and delivered a note from her doctor stating that she was fit to return to work. Shortly after she arrived at her post, she was met by Lieutenant Mikulski and told that she could not remain at her post. Mikulski stated that Chief Schramm found her doctor's note unacceptable; therefore, she was not cleared to return to work.

Article III of the parties' agreement provides for a self-executing grievance procedure, ending in binding arbitration. A first step grievance may be initiated informally with the Chief of Police by either an individual crossing guard, a group of crossing guards or the Association. At the second step, the grievance must

^{2/} Almost half of Cardinale's sick day usage was due to an approved disability leave from May 31 to May 30, 1990 for the treatment of carpal tunnel syndrome. The police physician had approved her return to work on May 31, 1990.

be reduced to writing and filed by the Association with the Chairman of the Borough's Police Committee. The third step is before the Mayor and Borough Council and the fourth step is binding arbitration.

On September 6, 1990, Chief Schramm received a written first step grievance dated September 4, 1990, from Cardinale, alleging that the Chief's requirement of a medical exam was a violation of the parties' agreement. Chief Schramm responded in writing, rejecting the grievance on the grounds that it failed to specify which article of the agreement had been violated. Cardinale amended her grievance on September 7, 1990, citing Article II, Management Rights. On September 13, 1990, the Chief again rejected her grievance.

On September 17, 1990, Cardinale hand delivered a letter to the Borough's Police Committee Chairman recounting the events surrounding the Chief's demand that she get a medical exam and his denial of her step one grievance. She stated that the Chairman was the next step in the parties' negotiated grievance procedure and that she would appreciate his "clarifying this matter as soon as possible," stating that she felt the Chief's request to be a form of discrimination. Cardinale asked that the Chairman "contact me in regard to your feelings in this matter." Cardinale did not receive a reply from the Chairman.

The crossing guards usually hold their first Association meeting of the year shortly after they have returned to work at the start of the school year. The usual business is to collect dues and

elect new officers. The incumbent officers were: Cardinale, president; Marge Moss, secretary; and Arlene Meier, treasurer. The vice-president position was vacant. In addition, because the parties current agreement expired in December 1990, the Association would be preparing for upcoming negotiations.

Meier knew that Cardinale had not been reporting to her post. She owned a police scanner and on the first day of school she heard the Borough's police dispatcher announce that a substitute had been assigned to Cardinale's post. She concluded that because Cardinale was not working, she could not continue as the Association's president. On September 17, 1990, in her capacity as treasurer, she attempted to convene a meeting of Association members. However, the meeting broke up when only three crossing guards showed up. On September 19, 1990, the local newspaper published a detailed account of the Borough's refusal to allow Cardinale to return to work and Cardinale's subsequent grievance against the Chief.

On September 28, 1990, Meier and Moss organized a second Association meeting. Approximately 14 members were present. Although she had not been officially notified, Cardinale also attended. An open confrontation broke out between Cardinale, Meier and Moss over whether Cardinale, because of her indefinite suspension from work, had the right to continue as president of the Association. Cardinale was unsuccessful in asserting her right to preside over the meeting. She then attempted to read a written

statement to the group, explaining that she had sought legal advice in regard to the Chief's demand that she see a doctor before she returned to work. She asserted that this violated the parties' agreement and that they should not sign a successor agreement until the Association also conferred with a lawyer to make sure that there were no other contractual "loopholes." She also warned the crossing guards that although this grievance was her "personal and private business," it could happen to them.

This set off a heated exchange among Cardinale and certain members, including Meier and Moss, who vehemently disagreed with Cardinale's refusal to cooperate with the Chief. When Cardinale asked for the backing of the Association, Sharon Knichel flatly declare that she wasn't getting it. The meeting ended without the membership taking a vote on the Cardinale's suggestion; however, she felt that she had the authority to talk to an attorney who could advise the Association on labor relations matters.

The Association met again on October 12, 1990. The most vocal participants at the meeting either opposed Cardinale's continued presidency or supported her. The faction opposing Cardinale, which included Meier, Moss and Knichel, were openly hostile to the idea of paying for an attorney. Moss declared that the Association would not "spend one red cent." Ample testimony from the other members present at both meetings indicate that they were generally confused by the chaotic and hostile nature of the confrontation among Cardinale, Meier, Moss and others. There was a

lack of understanding of the circumstances surrounding Cardinale's suspension from work and of the grievance procedure in general, as this was the first grievance ever filed under the parties' agreement. However, the accumulative testimony supports a finding that the membership concluded that the grievance was "personal" as to Cardinale.

On October 3, 1990, Cardinale presented the grievance to the Mayor and Council, the third step in the grievance procedure. On or about October 18, 1990, Neil Deutsch sent a letter to the Mayor asserting that he was representing Cardinale and the Association in the grievance.

On October 19, 1990, the Association met again and elected Meier president and Knichel vice-president. On October 23, 1990, Chief Schramm met with Meier. Her showed her the October 18 letter from Deutsch, explaining that the grievance was now before the Mayor and Council. Meier denied that the Association was part of the grievance. On that same day, Meier wrote a letter to Deutsch, stating that Cardinale did not have the Association's authorization to hire him on its behalf; therefore, it would not be responsible for any legal fees incurred.

On November 1, 1990, Borough Administrator Joseph Rampala, in behalf of the Mayor and Council, rejected Cardinale's grievance, stating that only the Association could present a grievance on behalf of a crossing guard beyond the first step of the grievance procedure. Deutsch responded on November 2, 1990 with a request to proceed to arbitration.

In the latter part of October or in the beginning of November, the Borough and the Association began negotiations for a successor agreement. The Association's negotiations team was its elected officers, including its president, Meier and its vice president, Knichel.

On November 20, 1990 Dr. Pietrandrea examined Cardinale again and approved her fitness to return to work. She resumed her post on November 27, 1990.

Early in December, Meier took a poll of each crossing guard at their post whether they wanted to spend their dues on legal services. The majority of the members voted no.

ANALYSIS

The primary issue in this proceeding is Cardinale's allegation that the Borough coerced and/or influenced the Association to refuse to process her grievance.^{3/} I conclude that it did not. I find, based upon the record, that no evidence has been presented to support Cardinale's contention that the Borough was involved with the Association's decision not to support her grievance. Instead, there is ample evidence that the Association acted independently.

^{3/} The issue of whether or not the Borough could require Cardinale to be certified as fit to perform her duties was not considered here. D.U.P. No. 91-29 specifically dismissed this allegation on the basis that Cardinale had not alleged that the Borough was requiring the physical in retaliation against her involvement in any activity protected under the New Jersey Employer-Employee Relations Act, i.e., filing grievances.

Her first statement to the Association membership concerning the circumstances of her indefinite suspension pending a medical clearance was made on September 28, 1990, after she had moved her grievance to the second step. At that time, the only issue she asked them to consider was the need to consult with labor counsel in order to prepare for negotiations for a successor agreement. Cardinale clearly communicated to them that this was her grievance. She hadn't attempted to call a meeting of the Association. Rather Meier, then treasurer, convened the meeting.^{4/} The fact that Cardinale processed the grievance without consultation with or notification to the Association is further evidence that she intended to proceed with it on her own.^{5/}

Cardinale testified that she came away from this meeting feeling she had the membership's approval to hire an attorney. Whether Cardinale's conclusion was correct is doubtful. The Association had divided allegiances and apparently no consensus could be reached on these matters. The evidence indicates that Cardinale faced strong opposition from certain Association members, which included two officers. They clearly stated that she didn't

^{4/} There was no vice president at this time.

^{5/} It is not necessary to conclude whether Cardinale incorrectly interpreted the agreement, believing that an individual Association member could proceed though the grievance procedure; or whether she, as president of the Association, could process her grievance as an Association grievance. After October 19, 1990 and Cardinale was no longer president, the Borough correctly rejected the grievance.

have their support. Their objections to hiring and/or paying for labor counsel was more explicitly stated at the second Association meeting on October 12, 1990. At this time Deutsch was representing Cardinale at the third step of the grievance before the Mayor and Borough Council, yet Cardinale failed to tell Association members of this fact.

At the October 19, 1990 Association meeting, Cardinale was removed from office and succeeded by Meier. Meier, in her capacity as the newly-elected Association president, notified Deutsch on October 23, 1990 that the Association hadn't hired him and wouldn't pay his fees. From this point on, the official position of the Association was that it was not processing the grievance and it was not paying for Cardinale's attorney.

I find no evidence to support Cardinale's contention that the Borough influenced members of the Association to take this position. Association members were not informed by Cardinale as the issues surrounding the grievance unfolded; therefore, the first time that Meier knew that Cardinale had hired Deutsch and that the grievance had proceeded to the third step was when Chief Schramm showed her Deutsch's letter to the Borough Council. I credit testimony that indicated that this was the first time that Borough management talked with members of the Association about Cardinale's grievance.

Meier had been opposed to Cardinale's position from the beginning. After she became president of the Association, she was

in a position to officially deny support for the grievance. Also, it is reasonable to conclude that Meier was concerned about the Association's ability to pay Cardinale's legal fees. The Association is a small union and it apparently assesses its members for extra expenses such as holiday gifts and get-well tokens.

The second issue in this matter is whether the Borough discriminated against Cardinale by requiring the medical release. No proof was offered to support Cardinale's allegation that she was treated differently than other employees. There was creditable testimony from Borough Administrator Rampala that Cardinale's history of sick leave usage, plus the urgency of her public statements presented a unique situation to the Borough. Its response was to seek to verify her physical fitness to perform her job.

The establishment of a sick leave verification policy is a prerogative of the employer. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). The separate issue of whether or not Association members may be examined, treated and verified by their own physician is negotiable and, therefore, arbitrable. See City of Elizabeth, P.E.R.C. No. 93-84, 19 NJPER 211 (¶24101 1993). However, this issue was not part of the unfair practice charge as there was no allegation that the Borough refused an Association demand to negotiate over a change in its sick leave policy. Nor could the issue have been put before an arbitrator in this case because the grievance here was not properly processed.

For all the reasons stated above, I find that the Borough did not violate the Act.



Ilse E. Goldfarb
Ilse E. Goldfarb
Commission Designee

DATED: September 20, 1993
Trenton, New Jersey