

P.E.R.C. NO. 84-52

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY UTILITIES AUTHORITY,

Respondent,

-and-

Docket No. CO-83-133-91

UTILITY WORKERS UNION OF AMERICA,  
LOCAL 534, AFL-CIO,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on an unfair practice charge that the Utility Workers Union of America, Local 534, AFL-CIO had filed against the Bergen County Utilities Authority. The charge alleged that the Authority violated the New Jersey Employer-Employee Relations Act when it required white collar and technical employees to punch a time clock, allegedly because they had filed an earlier unfair practice charge against the Authority and had testified in those proceedings, but a Hearing Examiner found that Local 534 had not proved this charge by a preponderance of the evidence. No exceptions were filed to the Hearing Examiner's recommended decision. Based on his review of the record, the Chairman adopts the Hearing Examiner's recommendation.

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Appearances:

For the Respondent, Giblin & Giblin, Esqs.  
(Paul J. Giblin, of Counsel)

For the Charging Party, Thomas O'Hare, President

DECISION AND ORDER

On November 22, 1982, the Utility Workers Union of America, Local 534, AFL-CIO ("Local 534") filed an unfair practice charge with the Public Employment Relations Commission. The charge alleged that the Bergen County Utilities Authority ("Authority") 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), and (7),<sup>1/</sup> when it required white

<sup>1/</sup> 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 or complaint or given any information or testimony under this Act; and (7) Violating any of the rules and regulations established by the commission."

collar and technical employees represented by Local 534 to punch a time clock, allegedly because they had filed an earlier unfair practice charge against the Authority and had testified in those proceedings.

On May 11, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-3.1. The Authority filed an Answer denying Local 534's allegations and asserting instead that it had legitimate and non-negotiable business reasons for requiring all hourly employees to punch a time clock.

On September 8, 1983, Hearing Examiner Alan R. Howe conducted a hearing. The parties stipulated facts, introduced exhibits, and agreed to the submission of a post-hearing affidavit. On October 3, 1983, the Hearing Examiner heard oral argument and received a post-hearing brief from the Authority.

On October 6, 1983, the Hearing Examiner issued his report and recommended decision. H.E. No. 84-22, 9 NJPER \_\_\_\_ (¶ \_\_\_\_ 1983). He recommended that the Complaint be dismissed.

The Hearing Examiner served a copy of his report on the parties and advised them that exceptions were due on or before October 19, 1983. Neither party has filed exceptions or requested an extension of time.

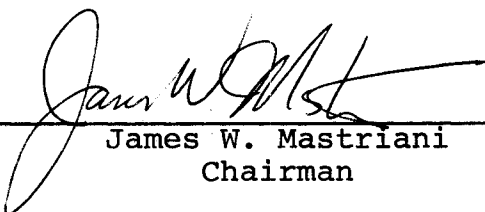
Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to review this case. I have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-4) are accurate and I incorporate them here. I agree

with the Hearing Examiner that, under all the circumstances of this case, Local 534 has failed to prove that the Authority violated the Act when it required hourly white collar and technical employees to punch a time clock in a similar manner as required for hourly employees in its blue collar and landfill and solid waste units.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
November 2, 1983

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

In the Matter of

BERGEN COUNTY UTILITIES AUTHORITY,

Respondent,

-and-

Docket No. CO-83-133-91

UTILITY WORKERS UNION OF AMERICA,  
LOCAL 534, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsections 5.4(a)(1), (3), (4) and (7) of the New Jersey Employer-Employee Relations Act when it unilaterally installed a time clock on October 18, 1982, four days after employees represented by the Charging Party testified in an Unfair Practice Hearing before another Commission Hearing Examiner. The employees in question were formerly compensated on an annual basis and as of June 1982 became hourly rated employees. The employer demonstrated a legitimate business justification in requiring the said employees to punch a time clock in order to verify their hours worked and calculate fringe benefits.

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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Charging Party.

Appearances:

For the Respondent  
Paul J. Giblin, Esq.

For the Charging Party  
Thomas O'Hare, President

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 22, 1982 by the Utility Workers Union of America, Local 534, AFL-CIO (hereinafter the "Charging Party" or the "Union") alleging that the Bergen County Utilities Authority (hereinafter the "Respondent" or the "Authority") 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 four days after the conclusion of the hearing in another case before the Commission involving the same parties (Docket Nos. CO-82-232 and CO-83-5) the Respondent installed a time clock and for the first time required employees in the Clerical and Technical unit, who are represented by the Union, to punch a time clock. This action by the Respondent manifested anti-union animus and was in retaliation against the said employees because they filed a complaint and gave testimony under the Act in the prior

proceeding, supra, all of which was alleged to be a violation of N.J.S.A  
34:13A-5.4(a)(1), (3), (4) and (7) of the Act.<sup>1/</sup>

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 May 11, 1983. Pursuant to the Complaint and Notice of Hearing, a hearing was held on September 8, 1983 in Newark, New Jersey, at which time the parties stipulated a complete factual record. The parties argued orally on October 3, 1983 and the Respondent filed a post-hearing brief on the same date.

An Unfair Practice Charge 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 oral argument of the parties and the post-hearing brief of the Respondent, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

FINDINGS OF FACT

1. The Bergen County Utilities Authority is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Utility Workers Union of America, Local 534, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Charging Party has for several years represented employees of the Respondent in a "blue collar" unit. These employees are hourly and have always punched a time clock.

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 or complaint or given any information or testimony under this Act.

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

4. Since 1981 the Charging Party has represented a unit of "clerical and technical" employees and these employees are currently covered by the same collective negotiations agreement as the "blue collar" unit employees.

5. The collective negotiations agreement covering the "blue collar" and "clerical and technical" employees is effective during the term January 1, 1982 through December 31, 1984. The negotiations which brought the "clerical and technical" employees under the "blue collar" agreement were consummated in March or April 1982 and the "clerical and technical" employees ratified the said agreement in June 1982.

6. Prior to being covered by their first collective negotiations agreement the "clerical and technical" employees were compensated at an annual salary. However, when the foregoing agreement became effective, they were converted to an hourly rate. This change was implemented after the ratification of the agreement by the "clerical and technical" employees in June 1982, supra.

7. The Charging Party also represents a unit of "landfill and solid waste" hourly employees employed by the Authority. These employees are covered by a separate collective negotiations agreement, which is effective during the term January 1, 1983 through December 31, 1984. Further, these employees have always punched a time clock.

8. Pursuant to Unfair Practice Charges filed by the Charging Party against the Respondent in Docket Nos. CO-82-232 and CO-83-5, hearings were held before Hearing Examiner Charles A. Tadduni on September 29, September 30 and October 14, 1982, at which time three witnesses testified for the Charging Party: Elaine Berg, Rose O'Hagen and Richard Andretta.

9. On October 18, 1982, four days after the conclusion of the above hearing, the Respondent posted a notice requiring employees in the "clerical and technical" unit to punch a time clock for the first time.

10. The Respondent's business justification for requiring employees in the "clerical and technical" unit to punch a time clock in the same manner as employees in the "blue collar" and the "landfill and solid waste" units, who have always punched



a time clock, is that when the "clerical and technical" employees were changed from compensation at an annual salary to an hourly rate the Respondent's auditors needed a method to verify the hours worked. The time clock was the vehicle decided upon to accomplish this purpose.

11. Some 14 unrepresented employees, who are neither managerial executives nor supervisors, are not required to punch a time clock (CP-1). It is not entirely clear whether some of these 14 employees are hourly compensated while others are compensated on an annual basis.

#### THE ISSUE

Did the Respondent violate Subsections(a)(1), (3), (4) and (7) of the Act when, on October 18, 1982, four days after three employees in the "clerical and technical" unit testified on behalf of the Charging Party at a Commission hearing, the Respondent unilaterally installed a time clock and required employees in the "clerical and technical" unit to punch a time clock?

#### DISCUSSION AND ANALYSIS

The Respondent Did Not Violate The Act When It Unilaterally Required Employees In The "Clerical And Technical" Unit To Punch A Time Clock On And After October 18, 1982

The Charging Party urges that a violation of the Act be found by reason of the timing of the Respondent's installation of a time clock on October 18, 1982, coming as it did four days after the completion of the Unfair Practice Hearing involving the same Respondent in Docket Nos. CO-82-232 and CO-83-5. The Hearing Examiner is not persuaded that, absent other discriminatory conduct of the Respondent, the Charging Party has proven by a preponderance of the evidence that the Respondent violated the Act, particularly, Subsections(a)(3) and (4).

Other than the fact that the Respondent has been charged in the earlier case, which was heard by Hearing Examiner Tadduni, there is no basis for finding a discriminatory motive on the part of the Respondent in the installation of the time

clock on October 18, 1982. Mr. Tadduni has not rendered a decision in that case and, thus, the Hearing Examiner herein cannot speculate as to what findings will be made.

It strains credulity for the Charging Party to contend that merely because three individuals in the "clerical and technical" unit testified in Mr. Tadduni's hearing the Respondent elected to install a time clock four days later. More logical is the business justification advanced by the Respondent, namely, that a time clock was necessary in order to verify the hours worked by the "clerical and technical" employees, who formerly were compensated at an annual salary and have since June 1982 been compensated at an hourly rate. It just makes plain good sense to the Hearing Examiner that the employer was in need of a method of verifying hours worked for purposes of payment of wages and the calculation of fringe benefits. The Hearing Examiner does not attach any weight to the fact that some personnel, not represented by a labor organization, are not required to punch a time clock (CP-1).

Finally, the Hearing Examiner takes note of the obvious fact that a time clock cannot be installed "overnight." The clock or clocks must be ordered and installed. Time cards must be printed. Logistically, this must take more than four days.

The Hearing Examiner concurs with the cases from the private sector, cited by the Respondent, wherein the National Labor Relations Board has sustained an employer's decision to install a time clock: Care Ambulance, Inc., d/b/a American Ambulance, 255 NLRB 417, 107 LRRM 1043 (1981) and Rust Craft Broadcasting of New York, Inc., 225 NLRB 327, 92 LRRM 1576 (1976).

Based on the foregoing, the Hearing Examiner will recommend dismissal of the Complaint.

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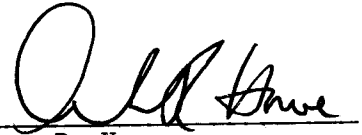
Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(1), (3), (4) and (7) when it unilaterally installed a time clock on October 18, 1982 for employees in the "clerical-technical" unit, the Respondent having demonstrated a legitimate business justification for so doing.

RECOMMENDED ORDER

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



Alan R. Howe  
Hearing Examiner

Dated: October 6, 1983  
Trenton, New Jersey