

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HILLSBOROUGH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-280-10

HILLSBOROUGH CUSTODIAL, MAINTENANCE
AND TRANSPORTATION ASSOCIATION,

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 Hillsborough Custodial, Maintenance and Transportation Association had filed against the Hillsborough Board of Education. The charge had alleged that the Board violated the New Jersey Employer-Employee Relations Act by discriminating against Association members and interfering with the Association's internal operations, but a Hearing Examiner found that the Association 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, Donald C. Chase, Esq.

For the Charging Party, John A. Thornton, Jr.,
NJEA UniServ Representative

DECISION AND ORDER

On March 21, 1981, the Hillsborough Custodial, Maintenance and Transportation Association ("Association") filed an unfair practice charge against the Hillsborough Board of Education ("Board") with the Public Employment Relations Commission ("Commission"). The Association alleged that the Board discriminated against Association members and interfered with the Association's internal operations in violation of subsections 5.4(a)(1), (2), and (3) ^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

On June 22, 1981, the Association amended its charge,

^{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 "(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."

alleging specific facts which formed the basis for the unfair practice allegations in the original charge.

On July 23, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The Board then filed a timely Answer denying all the allegations of the charge, as amended.

On October 1 and 2, and December 2, 3 and 4, 1981, and on February 10 and 11 and March 4 and 5, 1982, Hearing Examiner Edmund G. Gerber conducted hearings.^{2/} The parties examined witnesses, presented evidence and argued orally. The parties filed post-hearing briefs.

On August 16, 1983, the Hearing Examiner issued his report and recommended decision, In re Hillsborough Board of Education, H.E. No. 84-14, 9 NJPER 323 (¶14144 1983). The Hearing Examiner recommended dismissal of the Complaint because he found that the Association failed to prove by a preponderance of the evidence that the Board had discriminated against Association members and because subcontracting decisions are non-negotiable under In re Local 195, IFPTE, AFL-CIO v. State of New Jersey, 88 N.J. 393 (1982).^{3/}

2/ On October 1, 1981, at the start of the hearing, the Association filed a second amended charge. The Association alleged that the Board violated subsections 5.4(a)(1), (2), (3), (4), and (5) by subcontracting portions of the Board's transportation services. Subsections 5.4(a)(4) and (5) prohibit public employers from: "(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 "(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."

3/ The Hearing Examiner did not specifically address whether the Board's conduct as alleged by the Association in the original and amended charges violated subsections 5.4(a)(2) and (4).

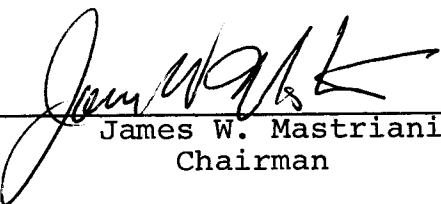
On August 16, 1983, the Hearing Examiner informed the parties by letter that exceptions could be filed within 10 days of the date of service of his report pursuant to N.J.A.C. 19:14-7.3. Neither party filed exceptions or requested an extension of time.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to decide this case. I have reviewed the record. The Hearing Examiner's findings of fact are accurate, and I incorporate them here. Based on these facts, and in the absence of exceptions, I agree with the Hearing Examiner that the Association has failed to meet its burden of proving, by a preponderance of the evidence, that the Board discriminated against Association members and unlawfully subcontracted portions of the transportation services. I further find that the Association failed to meet its burden of proving that the Board interfered with the Association's internal organization in violation of subsections 5.4(a)(2), or that it illegally subcontracted portions of the transportation service in retaliation for the filing of unfair practice charges with the Commission in violation of subsection 5.4(a)(4).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: TRENTON, NEW JERSEY
November 2, 1983

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SYNOPSIS

A Hearing Examiner recommends to the Public Employment Relations Commission that the charge brought by the Hillsborough Custodial, Maintenance and Transportation Association against the Hillsborough Board of Education be dismissed in its entirety. It was alleged by the Association that the Board discriminated against Association members with regard to assignment of overtime and new buses and generally harassment. It was also alleged that the Board subcontracted out work of school bus drivers in order to discharge union members so as to destroy the Association's effectiveness. However the Association failed to prove these allegations.

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, Donald C. Chase, Esq.

For the Charging Party, John A. Thornton, Jr. NJEA UniServ
Representative

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On March 21, 1981, the Hillsborough Custodial, Maintenance and Transportation Association (Association) filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Hillsborough Board of Education (Board) engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.1 et seq., as amended (the Act). The charge was amended on June 22, 1981, to provide a clear statement of the facts constituting the alleged unfair practices.

It was specifically alleged that Raymond Riegal, the Dispatch Mechanic of the Board

1) Spoke to individual members of the bargaining unit, specifically Diane Klimovich, Janet Antrobus, Audrey Presser, Diane Wells, in a manner designed to coerce those individuals into non-

Association (sic) membership and support,

2) discriminates in terms of work assignments and compensation against members of the Association specifically by not assigning union members to wash buses or run errands or conduct extra runs.

3) The dispatch mechanic, Raymond Riegal, called the Association president a "God damn liar and a God damn trouble maker," a "bitch" etc.

4) On specific occasions the dispatch mechanic refused Janet Antrobus the right to park in a protected area and Jo Anne Wells was refused a properly maintained van, was improperly denied a transfer, was assigned a run at half of her proper salary and was denied proper maintenance on her vehicle.

5) Riegal held specific conversations with members with the intent of having them drop their membership.

6) On specific occasions Riegal interfered with the internal operations of the Association by distributing withdrawal cards, telling other members of the unit that grievances were filed against their interests.

It was claimed that this conduct was a violation of N.J.S.A. 34:13A-5.4(a) (1), (2) and (3) of the Act. ^{1/}

It appearing that the allegations of the charge as enumerated, if true, might constitute unfair practices within the meaning

^{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; (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."

of the Act, a Complaint and Notice of Hearing was issued on July 23, 1981.

Said Complaint was amended when on September 16, 1981, the Association filed a charge alleging that the Board contracted out bargaining unit work without negotiations or consultation with the Association in retaliation for filing the unfair practice charges.

Pursuant to the Complaint and Notice of Hearing, hearings were held on October 1 and 2, December 2, 3 and 4, 1981, and February 10 and 11, March 4 and 5, 1982, at which times the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Posthearing briefs were filed by October 12, 1982.

The hearing was thorough and extensive. The Association attempted to prove that the Hillsborough Board engaged in activities which were coercive, discriminatory and designed to discourage the exercise of protected rights. What was proven was there was a personality conflict between Ray Riegal, the dispatch mechanic, and Rose Drabich, the President of the Association, and several women who had run-ins with Riegal, on job related and/or purely personal grounds and who allied themselves with Drabich and the Association.

Riegal has no supervisory authority. He does not make the regular route assignments which are made by the transportation coordinator. He does however have limited discretion to make certain special route assignments.

Audrey Presser, one of the bus drivers, testified she had a problem with Riegal about being assigned extra-bus runs on March 6,

1980. Until this incident Presser had spoken out against the Association and sought information about decertifying the Association. Presser joined the Association on March 19, 1980.

Presser once had an argument with Riegal concerning a memo about a bus run. Riegal claimed he gave the memo to Presser. Presser denied it. An argument ensued. Presser testified that Riegal became heated so she went into a van, locked the door and stayed there. Drabich then approached Riegal. Drabich filed a grievance on this matter protesting Riegal's conduct. Apparently to settle the grievance the Board placed a letter of reprimand in Riegal's file.

Presser testified that after she joined the union she received fewer extra runs and consequently earned less salary.

Finally Presser testified that after the instant unfair practice charges were filed a copy of the charge was hung up in the bus garage.

Janet Antrobus was a driver who had trouble with Riegal. Antrobus' trouble with Riegal began when a gate at the bus yard was locked before she went off duty one evening.

The school bus yard and garage is enclosed by a high chain-link fence and on two sides abuts a larger area of school board property. There are not enough parking spaces within the fenced-in yard to accommodate all the bus driver. A half-dozen cars are packed outside of the yard along the fence close to a side gate. This gate, left open during the day, was locked at night. Janet Antrobus was one of the women who parked their cars outside

of the gate. When Antrobus returned to the bus yard after a late bus run, the side gate was locked and she had to walk around to the front gate of the bus yard in the dark by herself.

She complained the following day that she was afraid of being raped. Drabich filed a grievance on her behalf complaining that someone with less seniority was parked inside the gate.

Although Antrobus and Drabich claimed that Antrobus was denied a parking space inside the gate simply because she was a member of the Association, it is noted that all the other drivers who parked outside of the gate were women and none were union members. The Board settled the grievance by assigning Antrobus a parking space inside the yard. It is hard to see in light of the settlement how this incident goes to demonstrate an unfair practice.

Ron Makuch was another witness for the Association. His demeanor was defensive and suspicious. He testified he worked as a bus driver for six months. Makuch testified that when he started working as a driver he did not join the Association. Once when he was in the garage Riegal stated, "Here comes that Rose...She is trying to upset all the drivers about the union and I wish she would _____ quit and take the _____ union with her." Also once he was in the garage with the assistant mechanic, Joe. A bus pulled up beside the gas pump. Makuch maintains that Joe usually would go out and gas up the buses. Joe stated, "Well she's in the union, she can gas her own bus up" and did not go out and gas up the bus. Makuch claimed that in another conversation Joe told Makuch that if Makuch were to join the union Riegal would make it very hard for you to work and you might lose your job.

Makuch testified that when he was on a bus run, driving the basketball team, it started to rain. He put on the windshield wipers and it looked like someone had put vaseline on the windshield wipers. "As soon as I put them on I couldn't see anything, nothing in front of me. I had to open up the door at 50 and guide myself to the side of the road." Makuch believed that someone intentionally tried to endanger his life and it was at that point he joined the Association and sought its help.

Makuch also claimed that he was wrongfully denied a day off, but this was before Riegal knew that he had joined the union. Makuch testified that he didn't have any further problem after Riegal learned he joined the Association.

Joseph McKennon was the assistant mechanic referred to by Makuch. McKennon lost his job in December of 1981. McKennon had a low opinion of Makuch. He denied ever threatening Makuch about the union. He did testify that he told Makuch about his prior experience with an NJEA affiliate association. He lost his job and that association did not help him. Accordingly he was very skeptical of unions in general. Given the confused status of Makuch's testimony, I credit the testimony of McKennon as to their conversation and must discount Makuch's testimony.

The testimony of JoAnne Wells also demonstrated a confusion between a personality clash with Riegal and any discriminatory action vis-a-vis the Association. Wells testified as to how, after being assigned a new bus run, she failed to pick up a child and returned to the yard. When Riegal found out that Wells failed to pick up the child he became angry and began yelling, "You son of a

bitch, I told you to pick up the child." Wells was offended by Riegal and complained to the Superintendent of Schools and went to her lawyer. She also had complaints about her van. Once she smelled fumes and became ill. When she told Riegal he repaired the muffler. Another time a State Trooper stopped her van and told Wells that it sounded as if the van had a bad universal joint. She told McKennon about the incident and he repaired it. Wells felt the van was not fixed properly because the steering was "not right." (It is noted that the universal joint is mechanically unrelated to the steering.) She also testified that when she was assigned a new bus route she did not get a new bus as was the Board policy. However she complained that the bus began to smoke and demanded a different bus and was given one. Wells also claimed that even though routes were given out on the basis of seniority she believed that another driver, whose last name she didn't know, had less seniority but got the route. There was no evidence introduced to support this claim. Wells testified that she heard a lot of talk against the Association but only from the other drivers and the only incident which linked Wells to the Association was a time when Riegal told Wells to go out with one of two other drivers to familiarize herself with a new route and go with "Janet or Rose." Both of them were Association members. Wells became upset because she had always avoided dealing with members of the Association but she was now forced to by Riegal. She testified that somehow because she went out on a training run with a "union member" Riegal's attitude toward her changed and to protect her interests Wells was forced to become active in the Association. Wells' testimony fails to prove

any of the Association's contentions. Her dissatisfaction with older vehicles existed before she became active in the Association.

Rose Marie Drabich has been employed by the Board for seven years. She is President of the Association, grievance chairperson and a member of the negotiating team.

In September of 1980 there was a problem with overtime. Dr. Hesse, the Superintendent of Schools, called a meeting with Riegel, Dominick Sassano and Drabich to straighten out the procedure for overtime. This procedure was established in a side bar agreement. Hesse described the proper manner in which overtime was to be assigned by Riegel. Drabich had no problem with the procedure described by Hesse.

However a few days later Riegel changed it. On his own he separated the Saturday overtime from the weekday overtime. Drabich went back to Hesse and complained. Hesse then ordered John Pacifico to talk to Riegel and straighten out the overtime situation.

Drabich testified that Audrey Presser, Diane Klimovich, Diane Wells and Janet Antrobus joined together and filed a "group grievance" alleging that they were being discriminated against and reprisals were taken "without just cause" on February 19, 1981. This grievance concerned the individual complaints of these women as well as their claim of lack of a fair share of overtime assignments and failure of the Board's agent, Riegel, generally to assign work on the basis of overtime pursuant to the contract.

Rose Drabich testified that the discrimination was not strictly against union members, but rather, against "active" union members, i.e., "If a girl belonged to the union and didn't complain

at all about Ray, then she was treated almost like the girls who didn't belong, but if you were a union member and exercised your rights in the grievance, then there were many, many reproaches."

Audrey Presser complained to Rose Drabich about not getting any more summer work and "girls were working all summer running buses through inspection, cleaning the buses." When Rose and Audrey confronted Riegal about this his reply was, "Why should I call her back, she caused so much trouble, why should I give her anything extra."

Rose also testified that active union members did not get the new buses. She related how Diane Wells was transferred to a new run but did not get the bus that went along with it.

Riegal denied the allegations of the Association members. He admitted that he called Drabich a trouble maker on any number of occasions but denied cursing at her.

Riegal proved to be a knowledgeable and, by and large, forthright witness. There was lengthy testimony concerning the assignment of work. Since bus drivers were paid on an hourly basis, this work was valued by most employees.

The contract side bar agreement, signed by Drabich, delineates the procedures for the assignment of work. Extra runs were to be done on a rotating basis. There is a proviso though if the Superintendent or his designee determines that "i.e. the (assignment) procedures are not administratively feasible, assignment shall be made at the discretion of the administration."

Riegal was able to demonstrate how certain drivers, those who did not have kindergarten runs during the day, were assigned

extra runs simply because they were available during the day, unlike the other driver. These drivers would often wait in the garage between runs and were immediately available to take extra runs. This was particularly so with Mary Lambert and Gloria Galaini, two employees who were not active union members. Under the side bar agreement Riegal had the right to make these assignments.

In addition, when drivers on regular runs would pass by close to certain institutions, parts suppliers, etc. Riegal would have those drivers make the extra stop on their way back to the garage rather than sending the next driver scheduled for an extra run, in order to keep costs down.

As to the assignment of summer work, this work was not contract work. It was outside of the contract and the pay was at the minimum wage. Riegal testified this work was basically cleaning the buses and running them through inspection. Riegal testified that, although Presser wanted summer work she would not clean the buses. She would only run them through inspection, for she claimed she was too big to clean between and under bus seats.

Subsection 5.4(a)(3) makes it an unfair practice to discriminate with regard to hire. Accordingly there could be an unfair practice here only where an employee applies for, but is denied, employment in order to discourage the exercise of protected rights. Although I credit Drabich's testimony that Riegal stated that Audrey caused so much trouble he didn't want her back, Riegal's testimony that Presser didn't want to clean the buses and he only wanted to hire people willing to clean as well as drive was un rebutted and I so find. Following East Orange v. Taliaferro, 180

N.J. Super. 155, 7 NJPER 415 (¶12182 1981), I find that although there was evidence of anti-union animus, there were other substantial business justifications for not hiring Presser for the position. I find that Riegal did attempt to distribute work in accordance with the side bar agreement.

Just about every driver employed by the Board testified in this proceeding. There is ample testimony that Riegal had a short temper and would holler and curse at most drivers. Riegal did call Drabich a trouble maker and used profanity in his dealing with her as well as many of the other employees. Such name calling is not an unfair practice. To find an unfair practice here it must be shown that this conduct interfered with, restrained or coerced employees.

The National Labor Relations Act ^{2/} states that

The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act if such expression contains no threat of reprisal or force or promise of benefit.

In applying this provision the NLRB has held that there have been no violations of the NLRA where an employer has engaged in name calling and referred to a union as a trouble maker.

Gazette Publishing Co., 101 NLRB No. 251, 31 LRRM 1257; Garden Center Aircraft Co., 103 NLRB No. 101, 31 LRRM 1616, ent'd 216 F.2d 572 (CA9 1954), 35 LRRM 2052; Mathew Lumber Co., 96 NLRB No. 52, 28 LRRM 1513.

Drabich and JoAnne Wells testified that active union

^{2/} As to the appropriateness of looking to the NLRA for guidance see Lullo v. Firefighters Local 1066, 55 N.J. 409 (1970).

members were not issued new vehicles and that buses should go with the routes. Riegel denied these allegations.

It is noted that Wells was assigned an older vehicle, but she was dissatisfied with her older vehicles before she ever became active in the Association.

To prevail the Association must prove its claims by a preponderance of the evidence. Here, absent corroborative proof of its claim concerning the buses, the Association failed to meet its burden of proof.

Finally the Association claims it was an unfair practice for the Board to subcontract out the bus routes. However the New Jersey Supreme Court held in In re Local 195, IFPTE, AFL-CIO, 88 N.J. 393 (1982), that the right to subcontract is an inherent managerial prerogative.

The Association claimed that the decision to subcontract was made not on the basis of any economic decision but rather such proffered reason was pretextual. It is maintained the true reason was to break the Association to let go of all the Association activities. Nothing in the record supports this claim. Both Drabich, the President of the Association, and Presser, Drabich's ardent supporter, were kept on.

As a result of the subcontracting, eleven drivers were not rehired." ^{3/} Of these, six were union members, one was a "non-active" Association member and four were active Association members.

The testimony is uncontroverted that the action taken by the Board to subcontract was economic in nature and according to

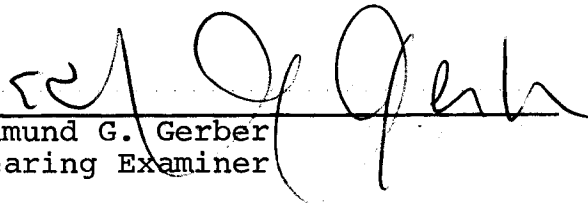
^{3/} The number of drivers were to be reduced by 13 but two drivers, one union and one non-union, voluntarily left in June.

the Board's transportation supervisor the Board saved \$108,000 in operating expenses by subcontracting. Even Drabich testified that the Board's officers believed they were saving money by subcontracting.

Accordingly, for the reasons set forth above it is hereby recommended that the Commission issue the following

ORDER

It is hereby Ordered that the Association's complaint be dismissed in its entirety.


Edmund G. Gerber
Hearing Examiner

Dated: August 16, 1983
Trenton, New Jersey