

P.E.R.C. NO. 91-24

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY COLLEGE AND  
CAMDEN COUNTY COLLEGE  
ASSOCIATION OF ADMINISTRATIVE  
PERSONNEL,

Respondents,

-and-

Docket No. CI-H-89-15

GEORGE P. LaMARRA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies motions to dismiss filed by Camden County College and the Camden County College Association of Administrative Personnel in an unfair practice charge filed by George P. LaMarra. Accepting as true all the evidence supporting LaMarra's position and granting him every reasonable inference, the Commission denies the respondents' motions.

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Appearances:

For the Respondent Camden County College,  
William J. Wilhelm, Dean

For the Respondent Association, Wills, O'Neill & Mellk,  
attorneys (Arnold M. Mellk, of counsel)

For the Charging Party, George P. LaMarra, pro se

DECISION AND ORDER

On July 26, 1988, George P. LaMarra filed an unfair practice charge against Camden County College and the Camden County College Association of Administrative Personnel. The charge alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3) and (7),<sup>1/</sup> when it suspended and then fired LaMarra for

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<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

insubordination during a telephone call placed to him on his day off by Robert King, LaMarra's supervisor and president of the Association. The charge also alleges that the Association violated subsections 5.4(b)(1), (3) and (5)<sup>2/</sup> by misleading him to believe that it would represent him and then failing to file for arbitration, by refusing to file six grievances because he was not employed at the time he submitted them, and by allowing King to be involved in the Association's decision not to arbitrate his grievance.

On November 28, 1988, a Complaint and Notice of Hearing issued. At hearing, the respondents adopted the County's earlier statement of position as their Answers. That statement asserts that as a result of the intervention of a New Jersey Education Association ("NJEA") representative, the College offered to reduce

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1/ Footnote Continued From Previous Page

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

2/ These subsections prohibit employee organizations, 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) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

LaMarra's penalty to a 30 day suspension without pay and that LaMarra rejected that offer. It also asserts that LaMarra's allegations about inadequate representation and conflict of interest on the part of the Association president were unfounded.

On November 28 and 29, 1989, and February 26, April 18, and April 19, 1990, Hearing Examiner Joyce M. Klein conducted a hearing. At the conclusion of the charging party's case, the respondents moved to dismiss. The Hearing Examiner granted the motions on the record. We summarize her review of the evidence for purposes of deciding the motion.

George LaMarra was a good employee with a good employment record at Camden County College. Robert King was his supervisor and the Association's president. LaMarra had a number of disputes with King as supervisor and union president, particularly concerning job descriptions. The intensity of these disputes heightened in the period before January 1988.

On January 5, 1988, King notified LaMarra and Association Vice-President Frank C. Hoffman that King's being president of the Association and LaMarra's supervisor at the same time posed problems and that in the future LaMarra was to address all Association matters to Hoffman.

On January 27, 1988, LaMarra took a compensatory day off. He had in his possession certain keys to filing cabinets in a computer laboratory. King had at least one copy of the keys in his

desk, but did not realize that fact.<sup>3/</sup> King telephoned LaMarra. LaMarra refused to speak to him, claiming he was on vacation. King hung up the phone and then wrote a memo to college Dean William J. Wilhelm requesting LaMarra's suspension without pay for being insubordinate and absent without approval.

After a hearing, Wilhelm dismissed the unauthorized absence charge, but found that LaMarra had been insubordinate. He offered LaMarra the opportunity to resign or be terminated. NJEA representative Leo Galcher and Hoffman then met with College President Robert W. Ramsay. The earlier steps of the grievance procedure were bypassed.

Ramsay agreed to reinstate LaMarra following a 30 day suspension, provided he apologized and underwent counselling at the College's expense. The College was concerned about LaMarra's alleged erratic behavior. LaMarra was given a few days to consider the offer and he replied "no thanks, it's a ridiculous offer."

The Association never told LaMarra that if he rejected the College's offer, it would not file for arbitration. LaMarra repeatedly asked Hoffman to file for arbitration. On the telephone with LaMarra, Hoffman indicated that the time had run out, and that he, Hoffman, had dropped the ball. An NJEA attorney gave LaMarra reason to believe he could still file for arbitration and argue timeliness before the arbitrator.

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<sup>3/</sup> LaMarra presented contrary evidence. See discussion infra.

The Hearing Examiner found that the Association had no obligation to take every case to arbitration or to provide legal services to unit members. She further found that Galcher and Hoffman fulfilled the Association's obligation under its constitution and by-laws to present LaMarra's grievance to the Association's grievance committee. The Hearing Examiner was a little troubled by King's dual positions, but found that he acted as he should to avoid an unfair practice. Beyond that, she found no evidence that the Association acted arbitrarily, discriminatorily, or in bad faith. She found that Hoffman was negligent in not pursuing LaMarra's grievance to arbitration, but that negligence was insufficient to warrant an unfair practice finding. In addition, she found no evidence that the College interfered with his exercise of protected rights. Accordingly, she dismissed the Complaint.

On June 27, 1990, after an extension of time, LaMarra requested review of the Hearing Examiner's decision. He argues that there is at least a scintilla of evidence supporting his allegations and that therefore the dismissal motions should be denied. He claims the Association did not inform him until May 26, 1988 that it was no longer representing him, although it had not been representing him for some time before then. He argues that it is hard to believe that Hoffman was simply negligent. Specifically he questions why Hoffman would have told Galcher that LaMarra was no longer interested in being employed by the college, when he knew otherwise. He also claims the Association acted in bad faith when

it allowed King to be involved in deciding the fate of his grievance. And finally, he claims that the Hearing Examiner should have admitted into evidence additional telephone conversations concerning his disputes with Hoffman over his job description and the processing of his discharge case.

We now consider whether the Hearing Examiner properly granted the motions to dismiss. The test is whether:

the evidence, together with the legitimate inferences therefrom, could sustain a judgment in...favor of the party opposing the motion, i.e., if, accepting as true all the evidence which supports the position of the party defending against the motion and affording him the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied. [Dolson v. Anastasia, 55 N.J. 2, 5 (1969); citations omitted]

The precise issue is whether LaMarra presented evidence, which, with all reasonable inferences, could sustain a judgment that the Association breached its duty of fair representation in the course of processing his discharge grievance and that he was unlawfully terminated for insubordination.

We have reviewed the record. Accepting as true all the evidence supporting LaMarra's position and granting him every reasonable inference, we deny the respondents' motions. King's name appears on a letter from the Association to LaMarra concerning the further processing of his grievances and an Association executive board member told LaMarra that she would get back in touch with King about the Association's response to LaMarra's request to go to arbitration. This evidence raises questions about a possible

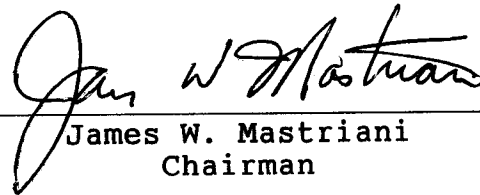
conflict of interest and the Association's motivation in denying LaMarra's bid to arbitrate his discharge. In addition, there was testimony that King knew that he had an additional set of keys at the time he telephoned LaMarra. This raises questions about the rationale for the telephone call and the legitimacy of the insubordination charge.

Given the standard for reviewing motions to dismiss, we are compelled to deny the motions and remand the matter for further proceedings.<sup>4/</sup> Since Hearing Examiner Klein is no longer employed by the Commission, we transfer the case to the Director of Unfair Practices for assignment to another Hearing Examiner.

ORDER

The motions for dismissal are denied. The matter is transferred to the Director of Unfair Practices for assignment to another Hearing Examiner.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Smith, Wenzler, Johnson, Ruggiero and Reid voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration.

DATED: Trenton, New Jersey  
August 13, 1990  
ISSUED: August 15, 1990

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<sup>4/</sup> In light of this determination, we deny LaMarra's request for oral argument.