

P.E.R.C. NO. 91-100

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WYCKOFF,

Respondent,

-and-

Docket No. CI-H-90-68

EDWARD W. NATALE, JR.,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, pursuant to authority granted to him by the full Commission, dismisses a Complaint against the Township of Wyckoff. The Complaint, based on an unfair practice charge filed by Edward W. Natale, Jr., alleged that the Township violated the New Jersey Employer-Employee Relations Act, by terminating Natale. The Chairman concluded that the charging party failed to prove that protected activity was a substantial or motivating factor in the Township's decision to terminate him.

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EDWARD W. NATALE, JR.,

Charging Party.

Appearances:

For the Respondent, Savage and Serio, attorneys
(Thomas J. Savage, of counsel)

For the Charging Party,
Edward W. Natale, Jr., pro se

DECISION AND ORDER

On March 27, 1990, Edward W. Natale, Jr. filed an unfair practice charge against the Township of Wyckoff. The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically sections 5.4(a)(1), (2), (3) and (4),^{1/} by terminating Natale. At the time

^{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. (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."

of his termination, Natale was president and chairman of the negotiating committee of the Wyckoff Road Department Employees Association.

On April 24, 1990, a Complaint and Notice of Hearing issued. On May 17, the Township filed its Answer denying that Natale's termination violated the Act.

On November 13, 1990, Hearing Examiner Stuart Reichman conducted a hearing. The parties examined witnesses and introduced exhibits. Natale argued orally and filed a post-hearing brief.

On March 12, 1991, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 91-28, 17 NIPER ____ (¶ ____ 1991). He found that Natale did not show that protected activity was a substantial or motivating factor in his termination. He further found that even if it was, the Township would have terminated Natale anyway.

The Hearing Examiner served his decision on the parties and informed them that exceptions were due on March 25, 1991. On March 20, Natale requested an extension of time to file exceptions because he would be out of the State until March 26. He was granted an extension of time until April 5. No exceptions have been received.

I have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-12) are accurate. I incorporate them here. Acting pursuant to authority granted to me by the full Commission in the absence of exceptions, I dismiss the Complaint. Natale failed to prove that protected activity was a substantial or

P.E.R.C. NO. 91-100

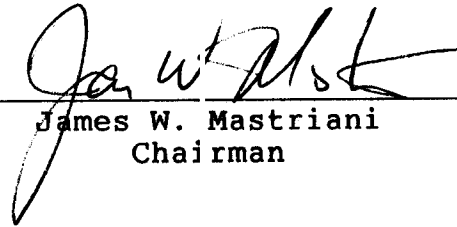
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motivating factor in the Township's decision to terminate him. See
In re Bridgewater Tp., 95 N.J. 235 (1984).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: April 23, 1991
Trenton, New Jersey

H.E. NO. 91-28

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

In the Matter of

TOWNSHIP OF WYCKOFF,

Respondent,

-and-

Docket No. CI-H-90-68

EDWARD W. NATALE, JR.,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Township of Wyckoff did not terminate Edward Natale, Jr., the President of the Wyckoff Road Department Employees Association, in retaliation for exercising his rights protected by the Act. The Hearing Examiner found that Natale did not establish a prima facie showing that his protected activity was a motivating or substantial factor in Wyckoff's decision to terminate him. Even assuming that Natale established a prima facie showing, the Hearing Examiner found that Wyckoff would have terminated him anyway.

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.

H.E. NO. 91-28

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

In the Matter of
TOWNSHIP OF WYCKOFF,

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Docket No. CI-H-90-68

EDWARD W. NATALE, JR.,

Charging Party.

Appearances:

For the Respondent
Savage and Serio, attorneys
(Thomas J. Savage, of counsel)

For the Charging Party
Edward W. Natale, Jr., pro se

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 27, 1990, Edward W. Natale, Jr. ("Charging Party") filed an Unfair Practice Charge (C-3)^{1/} against the Township of Wyckoff ("Wyckoff"). The Charging Party alleges that Wyckoff violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically sections 5.4(a)(1), (2), (3)

^{1/} Exhibits received in evidence marked "C" refer to Commission exhibits, those marked "CP" refer to Charging Party exhibits, and those marked "R" refer to respondent's exhibits. Transcript citation "T1" refers to the transcript developed on November 13, 1990, at page 1.

and (4)^{2/} by terminating Natale, who was, at the time of the action, the President and Chairman of the negotiating committee of the Wyckoff Road Department Employees Association ("Association"), the employee representative of Wyckoff's blue collar collective negotiations unit. Natale alleges that the Township terminated him in retaliation for exercising his rights protected by the Act.

A Complaint and Notice of Hearing (C-1) issued on April 24, 1990. Wyckoff filed its answer (C-2) on May 17, 1990 and generally denied that its actions violated the Act.

A Hearing was conducted on November 13, 1990, at the Commission's offices in Newark, New Jersey. The parties were afforded an opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. At the conclusion of the Charging Party's case, Wyckoff moved to dismiss the charge. The motion was denied (T123). Briefs were due on or before February 1, 1991. Charging Party filed a brief and supplement on January 11, and January 28, 1991, respectively. Wyckoff did not file a brief.

^{2/} 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. (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."

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Township of Wyckoff is a public employer and at all times relevant to this charge Edward W. Natale, Jr. was a public employee within the meaning of the Act (T7-T8).

2. The weather forecast on the day before Thanksgiving, 1989 indicated the possibility of snow on Thanksgiving (T133-T134). Tom Corbett, Superintendent of Public Works, advised Natale that if sufficient snowfall developed, employees would be required to return and operate the snow plows (T133). Natale did not indicate to Corbett that he would be unavailable to respond if called (T124-T125). Although Corbett has the authority under the collective agreement to institute a stand-by list and place employees on it, he did not do so (T44; J-1). In the early morning hours on Thanksgiving, Supervisor Don Mabie telephoned Natale's home. Natale's father answered the telephone and told Mabie that Natale was asleep and left instructions not to be awakened. Mabie advised Natale's father that Natale had been told on the preceding day that he would be subject to recall for snow plowing if a snowstorm developed, but Natale's father still refused to wake him (T125). Mabie then contacted the Wyckoff Police Department and arranged for a patrol officer to be dispatched to Natale's home to prompt Natale's return to work (T45; T125-126). Later, Natale arrived at work and operated a snow plow (T45; T125-T126).

3. Five other employees did not return to work on Thanksgiving (T107). One employee was on disability leave. Three other employees, including Michael Dowling, advised Corbett prior to Thanksgiving that they would be unavailable to return to work during the extended Thanksgiving holiday weekend and received specific permission to be unavailable (T109). The fifth person who did not return to work was Dennis Slodycska (T107; T126-T127). Slodycska had not obtained prior approval to be unavailable for work on Thanksgiving (T126-T127).

4. None of the employees who did not return to work on Thanksgiving day were disciplined (T108). Natale was never given a written warning for failing to promptly return to work after being called. On the Monday following the Thanksgiving holiday weekend, Corbett called Natale into his office and told him that he (Corbett) would not continue to tolerate a circumstance which required Natale's supervisor to argue with Natale's father and send the police to Natale's home to get him to return to work (T24; T46-T47; T126; T134). Similarly, Corbett called Slodycska into his office and warned him that he would not continue to tolerate his failure to respond after being recalled to work (T126-T127).

5. On December 15, 1989, a winter storm warning calling for snow was announced by the weather service. During the afternoon, Corbett told supervisors to have the work crews return to the maintenance yard earlier than normal so that he could meet with them to discuss the upcoming storm (T128). At approximately 3:45

p.m., Corbett met with employees (T18; T81; T128; CP-2). The events in the maintenance yard are in dispute. Natale testified that Corbett approached him and fellow employee, Christopher Altieri, as they stood together, but apart from the other employees in the yard (T18; T44-T45; T81-T82). Corbett asked Altieri if he would be available that night to return for snow plowing (T81; T86). Later that evening, the storm developed and Altieri returned to work (T88).

Corbett next turned to speak with Natale. Altieri was waiting to leave for the day and paid no attention to the conversation between Natale and Corbett (T82; T87-T88). Natale states that Corbett asked him if he would be available that evening to return for snow plowing (T18). Natale states that he told Corbett that he had other plans that evening and, therefore, would be unavailable (T18-T19; T54). Natale contends that Corbett laughed and said nothing. Natale then left the yard (T54).

6. Corbett's version of what occurred is somewhat different. Corbett contends that he called all of the employees together to discuss the upcoming snowfall (T128-T129; CP-2). Corbett told the employees that a significant snowfall was predicted to begin later that evening and that they would be recalled for snow plow duty (T129-T130; CP-2). Corbett and Supervisor Henry Kirkenir testified that Natale attended this meeting with the rest of the employees (T129; T139-T140).

7. Corbett also testified that before he spoke to the group, he spoke to Natale separately. Corbett stated that the purpose of his separate meeting with Natale was to remind him that his late arrival during the Thanksgiving snowstorm was unacceptable and to emphasize that he expected Natale to respond when called later that evening (T130-T131; T137-T138; CP-2). Corbett also met privately with Slodycska and had the same conversation regarding to Slodycska's obligation to return for snow plowing (CP-2). Corbett contends that neither Natale nor Slodycska indicated that either would be unavailable to return to work or requested permission to be bypassed from recall (T130-T131; CP-2).

I credit Corbett's testimony. The facts indicate that a group meeting of employees was conducted in the yard as well as individual meetings between Corbett and Natale, and Corbett and Slodycska (T18; T44-T45; T130; T137). The facts also establish that a major snowstorm was predicted. Corbett was taking steps to ensure that the snow plowing operation would be implemented smoothly. Under those circumstances, it is unlikely that Corbett would have merely "laughed" when told by Natale that he was not available to return that evening after having made the effort to conduct both group and individual meetings.

8. At approximately 6:30 p.m. on December 15, 1989, Corbett called Natale's home, spoke with his mother, and found out that Natale went to visit a friend in Norwich, New York (T27; T36-T37; T132; T139). Neither Natale nor Slodycska returned to work that evening (T66; CP-2).

9. Corbett called Shannon at home and told him that neither Natale nor Slodycska returned on the evening of December 15, 1989, to plow snow. Shannon called Wyckoff's labor attorney to obtain advice regarding the nature of the disciplinary action to be taken against the employees. Wyckoff's labor counsel recommended that both employees be terminated. Shannon then decided to recommend to the Township Committee that Natale and Slodycska be terminated (T141-T142).

10. On December 18, 1989, Natale and Slodycska were suspended (CP-2).^{3/} On December 19, 1989, the Township Committee adopted a resolution terminating the employment of Natale and Slodycska (CP-3). While CP-3 indicates that Natale and Slodycska were given verbal notice of the meeting and advised that their termination would be addressed, Natale was not afforded a copy of CP-3 until January 19, 1990. Natale gave uncontroverted testimony, and I so find, that he was never given verbal notice of the Township Committee meeting and did not attend it for that reason (T22; T36).

11. On or about December 22, 1989, Robert Shannon, Township Administrator, sent Natale a letter advising him that the Township Committee terminated his employment on December 19, 1989, for failing to return to work as ordered on December 15, 1989 (T34;

^{3/} Natale testified that Corbett told him that he was being suspended for five days (T20). Corbett testified that he told Natale that he was suspended indefinitely, pending further action by the Township Committee (T131). A resolution of this conflict in the testimonies is unnecessary to reach the outcome in this decision.

R-1). Shannon advised Natale in R-1 that he was entitled to written specifications of the charges and a hearing before the Township Committee. On December 19, 1989, Natale filed a grievance appealing the disciplinary action (T30; T118). On or about January 5, 1990, Shannon sent Natale a letter setting forth the charges and specifications of the discipline. Shannon advised that the matter would be heard by the Township Committee on January 19, 1990 (CP-4). Michael Dowling, an active member of the Association, assisted Natale at the hearing before the Township Committee on January 19, 1990 (T111). Natale's grievance was pursued up through step three of the grievance procedure. Neither the Association nor Wyckoff appealed the matter to arbitration (T59-T60: J-1).

12. In 1976, the Association filed a grievance challenging Wyckoff's attempt to terminate Michael Dowling (T102). Since that grievance, the Association has not filed another grievance until December 19, 1989, challenging Natale's discipline (T101).

13. Chapter 12, paragraph 4 of the parties collective agreement provides as follows:

Disciplinary warnings shall be issued by the Department Superintendent in writing to the employee within two (2) working days of the incident giving rise to the warning and a copy shall be given to the Association and Township Administrator by hand delivery for which a receipt shall be given.

Superintendent Corbett never issued a written disciplinary warning to Natale for not having returned to work on Thanksgiving or on December 15 (T31; T46-T47). The agreement also provides in

Chapter 4, "Grievances," paragraph 3, that employees may process their own grievances provided the Association is notified by Wyckoff of the filing of such grievances (J-1). Wyckoff did not send a separate notice advising the Association of Natale's grievance (T30). However, at the time Natale filed his grievance, he was president of the Association (T140).

14. Chapter 14, "Emergency Work" in the collective agreement (J-1) provides that Wyckoff will continue its past practice of assigning emergency work to employees. The Association became the representative of unit employees in 1976. Since that time, the manner in which emergency work was assigned was left to the discretion of the Superintendent of Public Works (T91-T92). The Superintendent exercised discretion in assigning emergency work based on the nature of the emergency, e.g., flooding, tornado or snowstorm (T92). In a snow situation, the Superintendent can effectuate a stand-by list earlier than normal or extend the duration of an already posted list (T92). The Superintendent may also recall employees from their home in order to respond to an emergency (T26-T28). Chapter 18, "Call Back Time," states that "any employee who is called back to work after having completed his regularly scheduled workday shall be compensated at one and one-half (1-1/2) times his regular rate of pay with a minimum guarantee of two (2) hours of work" (J-1). When an emergency occurred, employees were not required to automatically return to work (T95). However, where an emergency arose and a supervisor ordered an employee to

return to work, the employee was obligated to comply with that order (T113-T114). In circumstances involving snowfall, employees were normally allowed to go home at the end of the workday and told to be available to return to work if weather conditions warranted. In those circumstances, employees called by the supervisor would return to work (T83-T84). In situations involving unforeseeable emergencies, e.g., tornadoes or floods, employees who could not be contacted by the supervisor were not disciplined for failing to return to work (T26-T28; T93-T94; T102).

15. In Natale's June 18, 1987 offer of employment, Shannon advised that "[y]ou will be required to participate in sanding stand-by, as well as overtime work for snow plowing and sanding" (R-2). Prior to the Thanksgiving snowstorm, there were other instances where employees, who were not serving on a posted stand-by list, were contacted by phone but did not return to work. Such employees were not terminated (T93; T98).

16. Chapter 33, "Stand-by Time," in the collective agreement provides, in relevant part as follows:

1. Public Works Department employees shall be required to be on "stand-by" every other week during the winter as per the superintendent's rules for sanding and/or plowing during weather conditions which make the roads hazardous for driving. Employees shall be paid \$80 in 1988 and \$85 in 1989 for each week they are on "stand-by". "Stand-by" time shall commence at the discretion of the superintendent and shall run for a minimum of ten (10) weeks" (J-1).

The stand-by list for the 1989-1990 winter season was prepared on December 13, 1989, however, it was not posted and, therefore, not

effective until December 18, 1989 (T23-T24; T28-T29; T92; CP-6). The collective agreement is silent regarding the obligations of Wyckoff or the employees concerning stand-by prior to the time the list is posted (T96).

17. During the summer of 1989, Natale became active in the Association (T40). Negotiations for a successor agreement began in the fall, 1989. Natale was the chief spokesperson for the Association's team (T14). This was Natale's first exposure to the negotiations table (T74-T75).^{4/} Natale believed that Wyckoff was fooling with the Association and him during the negotiations (T43). However, it did not appear to John Ruit, another member of the Association's negotiating team who had served as a negotiator previously, that negotiations would take any more time than was required in prior years (T76).

18. Before Natale's termination, two negotiations sessions were conducted: November 11 and December 11, 1989 (T63; T73; T142-T143). Shannon represented Wyckoff as chief spokesperson. (T142-T143). Natale, on behalf of the Association, presented

^{4/} Natale believed that his appearance on the Association's negotiating team made Wyckoff nervous because "...they [Wyckoff] knew in no uncertain terms that I wasn't just going to settle for the first thing thrown at me. I intended to go to the negotiations to negotiate a contract and I was there to do that, and I insisted upon certain things being answered and certain procedures being taken care of before I would even start negotiating a new contract" (T42-T43). However, Township Administrator Shannon testified that Wyckoff was not nervous with Natale as the Association's negotiator because Wyckoff had historically enjoyed a good relationship with the Association (T144).

Wyckoff with a list of 47 demands (T143). Natale told Shannon that he wanted a copy of the collective agreement covering police officers and raised several examples of contract violations which the Association wanted settled before starting negotiating for a successor collective agreement (T14-T15).^{5/} One of the examples raised during negotiations was that unit members did not receive winter jackets as required by the collective agreement (T15; T61). When Shannon found out that winter jackets had not been provided, he directed Corbett to purchase and distribute them promptly (T145).

19. The minutes of the December 12, 1989 negotiations session prepared by Shannon, referred to the Association's demands as "Ed Natale's #27" or "Ed Natale's #41", and so forth (T15-T16; CP-1).

ANALYSIS

The New Jersey Supreme Court has set forth the standard for determining whether an employer's actions violate subsection 5.4(a)(3) of the Act in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). In order to determine whether an

^{5/} Examples of violations alleged by the Association include failure of Wyckoff to notify the Association of (1) new employees, (2) new and vacant positions and (3) new work rules issued by the superintendent (T15). I make no finding with respect to whether the examples of violations raised by Natale during the negotiations constitute violations of the collective agreement.

employer has illegally discriminated against employees in retaliation for participation in protected activity,

...the employee must make a prima facie showing sufficient to support the inference that the protected union conduct was a motivating factor or a substantial factor in the employer's decision. Mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or a substantial reason for the employer's action. [Citation deleted.] Once that prima facie case is established, however, the burden shifts to the employer to demonstrate by a preponderance of evidence that the same action would have taken place even in the absence of the protected activity. [Bridgewater at 224].

Thus, under Bridgewater, no violation will be found unless the Charging Party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected activity. Id. at 246.

In this case, there is no direct evidence of anti-union motivation. Consequently, the Charging Party must rely on circumstantial evidence to show that his protected conduct was a substantial or motivating factor in his discipline. Clearly, Natale was engaged in protected activity and Wyckoff knew of this activity. Natale was President of the Association and Chief Spokesperson in negotiations being conducted during the fall, 1989. Wyckoff was aware of Natale's activities on behalf of the Association.

Timing is an important factor in assessing motivation. City of Margate, H.E. No. 87-46, 13 NJPER 149 (¶18067 1987), adopted P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987); Boro of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986); Dennis Tp. Bd. of Ed., P.E.R.C. No. 86-69, 12 NJPER 16 (¶17005 1985). Natale points out that his termination came soon after negotiations began. Natale, on behalf of the Association, presented Wyckoff with 47 negotiations proposals. Natale demanded that several alleged violations of the collective agreement be resolved before negotiations commenced. He claims that Wyckoff personalized the negotiations by referring to the Association's demands as, for example, "Ed Natale's demand #27" or "Ed Natale s demand #41" and so forth. Natale contends that Wyckoff's personalization of the negotiations, violation of the collective agreement and timing of his termination to coincide with what Wyckoff realized would be a long and difficult round of negotiations demonstrates that Wyckoff was hostile to his exercise of protected activity. I disagree.

Although Natale alleges that several violations of the collective agreement were ongoing, the evidence shows that no grievances were filed by the Association, or by Natale on behalf of the Association, contesting such alleged violations. With regard to the delivery of winter jackets to unit employees, Shannon, after learning of the problem, immediately directed Corbett to promptly obtain and distribute winter jackets in compliance with the collective agreement. Thus, I find insufficient evidence to

establish that Natale's attempt to enforce the collective agreement was a substantial or motivating factor in Wyckoff's decision to terminate him or demonstrates that Wyckoff was hostile toward his participation in protected activity.

I do not find that the timing of Natale's termination in relation to the conduct of negotiations establishes hostility. Only two negotiations sessions had been conducted when Natale was terminated. John Ruit, a member of the Association's negotiations team with more experience than Natale, did not find the conduct of the negotiations different than previous negotiations. Consequently, I find that the conduct of negotiations was not a causal factor in Natale's termination and does not establish hostility on Wyckoff's part.

While the evidence shows that Wyckoff referred to the Association's demands as, for example, "Ed Natale's #27" or "Ed Natale's #41" in the minutes of a negotiations session prepared by Shannon, I find that such references are insufficient to establish that Wyckoff personalized the negotiations and was hostile toward Natale's conduct of activity protected by the Act.

Consequently, I find that Natale failed to make a prima facie showing sufficient to support the inference that Natale's protected activity was a substantial or motivating factor in Wyckoff's decision to terminate him. Accordingly, I recommend the Complaint issued in this matter be dismissed.

Even assuming that Wyckoff was hostile toward Natale's exercise of activity protected by the Act, I find that it would have taken the same disciplinary action against Natale even in the absence of his protected activity. From the outset of Natale's employment, he was advised in writing that he would be required to participate in snow plowing operations. The past practice in the assignment of emergency work provided for the superintendent to recall employees from their home to respond to emergencies. Chapter 18 of the collective agreement appears to convey to Wyckoff the right to recall employees after the completion of their regularly scheduled workday. Employees ordered by their supervisor to return to work are obligated to comply with that directive. During snowstorms, as is the case in this matter, employees are normally allowed to go home at the end of the workday and are told to be available to return to work if weather conditions warrant. Thus, in accordance with the collective agreement and applicable past practice, Wyckoff was justified in expecting that Natale would be available to return to work in the snow emergency.

Natale points out that the stand-by list did not become effective until after the December 15, 1989 snowstorm, consequently, he was under no contractual obligation to return to work that night. I disagree. Natale's position runs contrary to the established practice. Natale's argument amounts to his interpretation of Article 33 of the collective agreement. Disputes concerning the interpretation of collective agreement terms must be

resolved through the negotiated grievance procedure, not through unfair practice litigation. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Furthermore, Natale was treated no differently than Slodycska, another unit employee who was not active in the Association. Both Natale and Slodycska failed to return to work for the snow emergency on Thanksgiving. Both employees were told by Corbett that such actions would not be tolerated in the future. Both employees were specifically told on December 15, 1989 that they would be recalled if the predicted snowstorm materialized that evening and must make themselves available for such emergency work. When they failed to return to work, both employees were terminated on the same day and in the same manner.^{6/} Consequently, I find that on the basis of the facts of this case Natale's protected activity was not a motivating or substantial factor in Wyckoff's decision to terminate Natale.

Natale also alleges that Wyckoff violated section 5.4(a)(1), (2), and (4) of the Act. However, Natale has introduced no evidence showing that Wyckoff has interfered with, restrained or

^{6/} Natale argues that there were previous instances where other employees not serving on a posted stand-by list were recalled but did not respond. Since these employees were not terminated, Natale asserts that he was disparately treated. However, I find that the record does not contain sufficient detail regarding the circumstances pertaining to the treatment of such other employees to conclude that Natale was discriminated against by Wyckoff because of his protected activity.

coerced him in the exercise of the rights guaranteed to him by the Act; dominated or interfered with the formation, existence of administration of the Association; or discharged or otherwise discriminated against him because he has signed or filed an affidavit, petition or complaint or given any information or testimony under the Act.

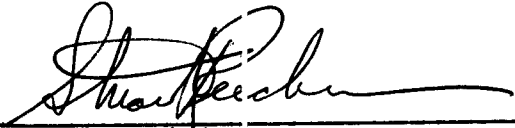
Accordingly, on the basis of the entire record and the analysis set forth above, I make the following:

CONCLUSIONS OF LAW

The Township of Wyckoff did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (3) or (4) by terminating Edward W. Natale, Jr.

RECOMMENDATIONS

I recommend that the Commission **ORDER** that the Complaint be dismissed.



Stuart Reichman
Hearing Examiner

Dated: March 12, 1991
Trenton, New Jersey