P.E.R.C. NO. 91-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY JUDICIARY,

Respondent,

-and-

Docket Nos. CI-H-89-65
CI-H-89-75

DEREK L. HALL,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants, in part, a motion for summary judgment filed by the Atlantic County Judiciary. An unfair practice charge was filed by Derek L. Hall alleging that the employer violated the New Jersey Employer-Employee Relations Act when the assignment judge who reassigned him heard and denied his grievance contesting the reassignment, and did so because of Hall's protected activity. The Commission grants summary judgment on Hall's claims about the grievance procedure, but denies it on his claim of retaliation.

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Appearances:

For the Respondent, Robert J. Del Tufo, Attorney General (Michael L. Diller, Deputy Attorney General)

For the Charging Party, Derek L. Hall, pro se

DECISION AND ORDER

On January 23, 1990, Derek L. Hall filed an unfair practice charge (CI-H-89-65) against the Atlantic County Judiciary. The charge alleges that the employer violated subsections 5.4(a)(1) and (3)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when the assignment judge who reassigned him heard and denied his grievance contesting the reassignment.

On February 21, 1990, Hall filed a second charge (CI-H-89-75). This charge alleges that the employer violated

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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, 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."

subsections 5.4(a)(1) and (4),[2/] when it denied Hall a fair opportunity to apply for a job vacancy.

On March 29, 1990, the Director of Unfair Practices sent a letter to the parties stating his intention to dismiss CI-H-89-65 absent amended allegations or a statement of position.

On April 9, 1990, Hall submitted a statement claiming that he was reassigned because he engaged in protected activity. Specifically, he alleges that at a November 16, 1989 staff orientation meeting held by the trial court administrator, Hall expressed his concern about the manner in which performance ratings would be conducted under a new evaluation procedure being implemented in his vicinage. Hall apparently misunderstood the new procedures. When the administrator offered to discuss the matter in his office, Hall refused and stated that he did not trust him. Hall alleges that he was reassigned the next day in retaliation for this protected activity.

On September 10, 1990, the two cases were consolidated and a Complaint and Notice of Hearing issued. On September 20, 1990, the employer filed an Answer denying that it had violated the Act.

On October 16, 1990, the employer filed a motion to dismiss or, alternatively, for summary judgment. It argues that CI-H-89-65

2/ Subsection 5.4(a)(4) prohibits public employers, their representatives or agents from "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."

should be dismissed because it does not allege animus or that the assignment judge conducted the grievance proceeding arbitrarily.[3/] The employer also argues that Hall has no standing to claim that the grievance procedure itself violates the Act. With respect to the allegation added by Hall's April 9, 1990 submission, the employer contends that the activity described by Hall is not protected by the Act. It asserts that Hall was not a union officer or shop steward and that his remarks were not cast in terms of union goals or activities.

Since the employer has filed papers outside of the pleadings, we must treat its motion as one for summary judgment. See Reider v. New Jersey Dept. of Transportation, 221 N.J. Super. 547, 552 (App. Div. 1987). Under N.J.A.C. 19:14-4.8(d) a motion for summary judgment may be granted:

> if it appears from the pleadings, together with the briefs and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law.

In Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954), the Supreme Court stated that the movant must remove any reasonable doubt of a genuine issue of material fact and that "[a]ll inferences of doubt are drawn against the movant in favor of the opponent of the motion."

We grant summary judgment for the employer on Hall's claims about the grievance procedure. The mere fact that the assignment

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3/ The motion does not concern CI-H-89-75.

judge heard and decided Hall's grievance does not demonstrate interference with Hall's rights. The parties' collective negotiations agreement specifically names the assignment judge as the final step in the grievance procedure. There is no allegation that Hall was coerced or harassed because he filed a grievance.

We deny summary judgment with respect to Hall's retaliation claim. Hall has provided evidence of protected activity sufficient to withstand summary judgment. Hall expressed his concerns about a change in existing working conditions -- the manner in which evaluations were to be conducted. According to the trial court administrator's affidavit, the assignment judge was informed about Hall's statement and behavior and decided to reassign him. "[I]ndividual employee conduct, whether in the nature of complaints, arguments, objections, letters or other similar activity relating to enforcing a collective negotiations agreement or existing working conditions...constitutes protected activities under our Act." See North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451, 454 n.16 (¶4205 1978). Contrast State of New Jersey (Public Defender), 12 NJPER 12 (¶17003 1985) recon. den., P.E.R.C. No. 86-93, P.E.R.C. No. 86-67, 12 NJPER 199 (¶17076 1986), aff'd App. Div. Dkt. No. A-2435-85T6 (2/17/87). That Hall was not a shop steward or the union president is immaterial. He was not acting in conflict with his union. Compare City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28 (¶15017 1983). His union president allegedly informed the trial court administrator that she had advised the union membership

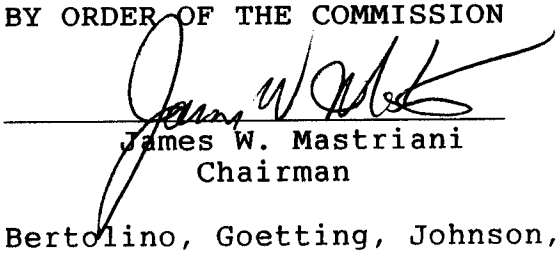
not to participate in the new program before the membership reviewed and approved it.

In a summary judgment motion, we review a limited record against strict standards that require us to draw all inferences of doubt in favor of the opponent of the motion. Hall claims that he was reassigned because of his protected activity. The employer's affidavit states that Hall was reassigned because of his statement and behavior at the November 16 staff meeting. Reviewing the limited record before us and applying the strict standards for reviewing summary judgment motions, we cannot find that the reassignment was not motivated by protected activity. A plenary hearing is required to evaluate Hall's action at the meeting to determine whether that action was protected.

ORDER

The Judiciary's motion for summary judgment is granted with respect to Hall's claim about the grievance procedure. The motion is denied with respect to the retaliation claim. The matter is remanded to the Hearing Examiner to conduct a hearing.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: April 19, 1991
Trenton, New Jersey
ISSUED: April 19, 1991