

P.E.R.C. NO. 91-121

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JOHN J. TEEHAN,  
Appellant,

OAL DKT. NO. CSV 2806-89

v.

MONMOUTH COUNTY PROBATION  
DEPARTMENT,

Respondent.

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MONMOUTH COUNTY BOARD OF CHOSEN  
FREEHOLDERS AND ASSIGNMENT  
JUDGE OF MONMOUTH COUNTY,

Respondents,

PERC DKT. NOS. CI-89-90 and  
CO-89-328

-and-

JOHN J. TEEHAN AND  
OPEIU, LOCAL 32,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Monmouth County Board of Chosen Freeholders and the Assignment Judge of Monmouth County based on an unfair practice charge filed by John Teehan ~~and OPEIU Local 32~~. The charge alleged that the County and the Assignment Judge violated the New Jersey Employer-Employee Relations Act when Teehan was interviewed about allegations which resulted in his suspension, allegedly in violation of his right to union representation.

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Appearances:

For the Charging Parties, Sills, Cummis, Zuckerman,  
Radin, Tischman, Epstein & Gross, attorneys  
(Mark J. Blunda, of counsel)

For the Respondent, Robert J. Hrebek, Assistant County  
Counsel

DECISION AND ORDER

John J. Teehan, a Monmouth County Probation officer,  
appealed to the Merit System Board ("MSB") concerning a six month  
disciplinary suspension for falsification of an employment  
application, intentional misstatements of material facts in

connection with an employment interview, and falsification of matters pertaining to the obtaining of employment in July 1988. The matter was transmitted to the Office of Administrative Law as a contested case.

Teehan and OPEIU, Local 32 filed unfair practice charges against the Monmouth County Board of Chosen Freeholders and the Assignment Judge of Monmouth County alleging violations of N.J.S.A. 34:13A-5.4(a)(1), (3) and (7)<sup>1/</sup> when Teehan was interviewed about the allegations which resulted in his suspension, allegedly in violation of his right to union representation.

The matters were consolidated and in a Joint Order of the Merit System Board and the Commission, it was determined that the Commission would first issue a final decision solely on the allegations in the unfair practice charges and that the Merit System Board would then issue a final determination on the appeal of the decision of the Monmouth County Probation Department.

On May 14, 1990, a consolidated pre-hearing conference was conducted and on May 18 an order issued. The pre-hearing order provided that the employer would first proceed on the disciplinary charge and then Teehan would present proofs in opposition and with regard to the unfair practice charge. The employer would then have

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

the opportunity to present proofs in opposition to the unfair practice charge and rebuttal, if appropriate. The pre-hearing order also provided for a plenary hearing on September 11 and 12, 1990. Local No. 32 did not appear at the pre-hearing conference and on June 1, 1990, a consent order was executed dismissing its charge with prejudice. The plenary hearing was conducted and final submissions were made on October 26, 1990.

On January 8, 1991, Judge Monyek issued his initial decision. He found Teehan guilty of all charges set forth in the final notice of disciplinary action and sustained the six-month suspension. He also found that because Teehan failed to present any evidence in support of his unfair practice allegations, his charges have not been sustained by any competent proofs and therefore must be dismissed.

On March 6, 1991, Teehan filed exceptions. He argues that the judge erred by failing to exclude evidence gained from an investigatory interview. He further argues that the judge erroneously concluded that the employer did not commit an unfair practice by continuing to interview him after he had repeatedly inquired concerning representation.

On March 7, 1991, the employer filed a reply. It argues that the judge's finding that the interview complained of was "declaratory rather than investigatory" is entirely consistent with the facts found. It further argues that since all of the facts necessary to commence the disciplinary action were known before the meeting, since the notice of suspension was prepared before the

meeting, and since the purpose of the meeting was either to suspend or obtain a resignation, the judge properly found that the interview was not investigatory and that no right to representation attached.

We have reviewed the record including a transcript of the proceedings. The judge's findings of fact are accurate. We summarize them here.

The chief probation officer was notified of Teehan's ownership interest in a bar and a check was made with the municipality to confirm that allegation. An investigation confirmed that Teehan was an owner, officer and stockholder of the corporation holding the liquor license. Copies of the liquor license and license renewal form confirming Teehan's ownership were forwarded to the chief. Because of Teehan's involvement as owner of the corporation holding the liquor license, the chief prepared a letter suspending Teehan and notifying him of his right to a departmental hearing.

The chief testified that he had made up his mind to suspend Teehan before meeting with him -- the meeting was merely to advise Teehan of his suspension or, in the alternative, to obtain his resignation. At the meeting, the chief informed Teehan that he had been suspended from his position as of that morning. The chief did not notify the union prior to meeting with Teehan and did not advise Teehan regarding representation because the meeting was not for the purpose of investigating the facts surrounding his outside position. Those facts had previously been established.

Teehan did not testify or present any proofs contradicting the chief's testimony or the supporting documents. Based on the un rebutted testimony, the judge found no interference with any protected rights under the Act.

We agree with the judge that the charging party failed to prove that the employer violated his right to union representation.<sup>2/</sup> The charging party did not show that he requested union representation and was denied that right. Nor did he show that his January 20, 1989 meeting with the chief was investigatory. The chief prepared a letter suspending Teehan before the meeting and testified, without contradiction, that the purpose of the meeting was merely to advise Teehan of the suspension or to obtain his resignation.

Accordingly, we dismiss the unfair practice allegations and transfer the record to the Merit System Board so that it may render a final decision on the appeal of the decision of the Monmouth County Probation Department (OAL Dkt. No. CSV 2806-89).

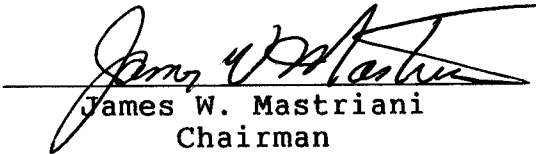
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<sup>2/</sup> Under NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975) and East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in part App. Div. Dkt. No. A-280-79 (6/18/80), an individual has a right to union representation at any investigatory interview that the employee reasonably believes could lead to discipline.

ORDER

The Complaint is dismissed.

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: June 20, 1991  
Trenton, Ne Jersey  
ISSUED: June 21, 1991