

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MATAWAN,

Respondent,

-and-

Docket No. CI-76-9-92

DOROTHY ZANGHI,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law of the Hearing Examiner's Recommended Report and Decision in an unfair practice proceeding. The Charging Party, Dorothy Zanghi, an employee of the Township of Matawan, alleged that the Township discriminated against her by lowering her salary because of her exercise of the statutory right to help form, join and assist an employee organization. The Hearing Examiner found, and the Commission affirms, that Zanghi had not established by a preponderance of the evidence that the Township's actions in lowering her salary were motivated by her union activities. The Commission therefore concludes that the Complaint must be dismissed.

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DOROTHY ZANGHI,

Charging Party.

Appearances:

For the Respondent, Feldman & Schwartz, Esqs.
(Mr. Richard T. Schwartz, of Counsel)

For the Charging Party, Felix A. DeSarno, Esq.

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 16, 1975 by Dorothy Zanghi, an individual. Said Charge was amended by the filing of an Amended Charge on March 31, 1976, and supplemented with additional exhibits filed on June 8, 1976. The Charge alleged that the Township of Matawan (the "Township") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), by its actions in reducing her salary because of her activities in seeking representation by an employee association.

It appearing that the allegations of the Charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 29, 1976.

Pursuant to the Complaint and Notice of Hearing, a hearing was held before Edmund G. Gerber, Hearing Examiner of the Commission on November 1, 1976, at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. At the close of the hearing both parties waived their right to file briefs. On February 15, 1977 the Hearing Examiner issued his Recommended Report and Decision, which Report included findings of facts and conclusions of law and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.2.

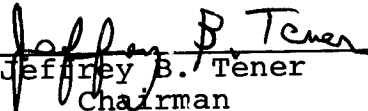
Upon careful consideration of the entire record herein, the Commission adopts the findings of facts and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him. The Commission therefore finds and determines that Ms. Zanghi has failed to meet her burden of proof by a preponderance of the evidence. N.J.S.A. 34:13A-5.4(c) and N.J.A.C. 19:14-6.8.

ORDER

For the reasons hereinbefore set forth, the Commission hereby adopts the aforementioned Hearing Examiner's Recommended

Order and hereby dismisses the Complaint in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hurwitz and Parcels
voted for this decision.
Commissioner Forst voted against this decision.
Commissioner Hipp was not present.

DATED: Trenton, New Jersey
March 16, 1977

ISSUED: March 17, 1977

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

In the Matter of

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Respondent,

-and-

Docket No. CI-76-9-92

DOROTHY ZANGHI,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner recommends the dismissal of a complaint in an unfair practice proceeding. The Charging Party, Dorothy Zanghi, an employee of the Township of Matawan, alleged that the Township discriminated against her by lowering her salary because she had acted as a spokesperson for her fellow employees and was instrumental in seeking employee representation by Monmouth Council No. 9 of the Civil Service Employees Association.

The Hearing Examiner finds that although Zanghi's salary was lowered by the Township it was done because Zanghi, by her own admission, was overworked and unable to do her job properly. Accordingly, she was relieved of performing two duties for the Township which carried separate annual salaries of \$300 each. The Hearing Examiner notes that one of these duties was taken away prior to any of Zanghi's activities relating to employee representation by Monmouth Council No. 9.

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.

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

In the Matter of

TOWNSHIP OF MATAWAN,

Respondent,

-and-

Docket No. CI-76-9-92

DOROTHY ZANGHI,

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Appearances:

For the Township of Matawan,
Feldman & Schwartz, Esqs.
(Richard T. Schwartz, Of Counsel)

For Dorothy Zanghi
Felix A. DeSarno, Esq.

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

Dorothy Zanghi, an individual, filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") alleging that her employer, the Township of Matawan (the "Township") had committed an unfair practice within the meaning of the New Jersey Public Employer-Employee Relations Act (the "Act") ^{1/} by its actions in reducing her salary because of her activities in seeking representation by an employee association.

1/ It is specifically alleged that the employer violated N.J.S.A. 34:13A-5.4 (a)(1),(3),(4) and (7). These subsections provide that an employer, its representatives or agents are prohibited 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.

"(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.

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

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 29, 1976, and a hearing was held before the undersigned on November 1, 1976. ^{2/}

Dorothy Zanghi has been a clerical employee with the Township since 1967. In the autumn of 1974, she, in conjunction with other clerical employees, composed a petition asking the Township for increased employee benefits. Zanghi personally submitted the petition to the Township Manager, Guluzzy. Zanghi asked Guluzzy to circulate the petition among the Mayor and Council. The Council reviewed the document but did not act on it. The clerical employees then asked Monmouth Council No. 9 of the Civil Service Employees Association if they would represent them. Zanghi discussed this move with Guluzzy.

In early January 1975, a proposed Township budget for 1975 granted all clerical employees an 8% raise. The said proposal specifically provided that Zanghi would receive \$8,600 in the coming year.

In 1974 Zanghi received an approximate \$8,000 in salaries from the Township for the four positions she held -- \$7,300 as Purchasing Agent, \$300 as Secretary to the Planning Board, \$300 as Mass Transit Secretary and \$100 as Deputy Township Clerk.

On January 22, 1975 a local newspaper published a front-page article, stating that the Township clerical employees have petitioned Monmouth Council No. 9 of the CSEA for representation. The article discussed a "move to unionize" among these employees and named Dorothy Zanghi as their spokesperson and on February 3, 1975 Zanghi also addressed the Township council as the clerical employees unofficial representative. In middle or late January 1975, Zanghi discovered that her salary in the revised 1975 budget was listed at \$7,885. Zanghi maintains the Township has, in reducing her salary, discriminated against her.

^{2/} All parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Both parties waived their right to file briefs. There is no dispute and, accordingly, I find that the Township is a Public Employer within the meaning of the Act and is subject to its provisions and that Dorothy Zanghi is a public employee within the meaning of the Act and is subject to its provisions. An Unfair Practice Charge having been filed with the Commission alleging that the Matawan Township Board of Education has engaged in or is engaging in unfair practices within the meaning of the Act, as amended, a question concerning alleged violations of the Act exists and this matter is appropriately before the Commission for determination.

However, no direct evidence was presented by the Charging Party that the Township's actions were motivated by an intent to discourage the exercise of protected rights within the meaning of § (a)(3) of the Act. ^{3/} One could argue that the totality of the Township actions raised a presumption of such an intent pursuant to In re Haddonfield Board of Education, P.E.R.C. No. 77-36, 2 NJPER ____ (1977), and In re N.J. College of Medicine and Dentistry, P.E.R.C. No. 76-46, 2 NJPER 219 (1976). These cases provide a twofold test for discrimination cases -- an employer's conduct would be a violation of the Act if it was, in part, motivated by an intent to discourage the exercise of protected rights. If said conduct is inherently destructive of employee rights, the existence of such motivation as one of the factors in the employer's decision may be presumed and need not be proved. Such a presumption would normally be rebuttable by evidence of legitimate and substantial business justification for the employer's conduct.

The employer maintains that Zanghi did receive an 8% raise in 1975 and her salary as Purchasing Agent went from \$7,300 to \$7,885. The reduction in her salary was because the work for the two secretarial positions was assigned to other employees. Further, the method of compensation for the position of Deputy Township Clerk was changed. Zanghi no longer would receive a flat annual rate of \$100 for the position. Rather, she would receive \$50 for every evening worked as Deputy Clerk. In 1975 Zanghi worked as Deputy Clerk for three nights and earned \$150, \$50 more than in 1974, although this money was not reflected in the figure for Zanghi's salary stated in the revised budget.

Zanghi testified that while she served as Planning Board Secretary and Secretary of Mass Transit, she was overworked -- she had to take work home with her in the evenings and on weekends and still could not do her job properly.

^{3/} Zanghi testified that she "received all kinds of threats" (Tr. page 48), but she never identified who made them, when they were made, or what was said. Accordingly, I cannot credit this testimony.

Guluzzy testified that Zanghi had complained to him about her workload. Zanghi did not recall whether or not she talked to Guluzzy about her workload but she knew that Guluzzy was aware of the problem. In response to her complaints, Guluzzy relieved Zanghi of the two secretarial positions. He maintained that Zanghi's efforts for representation had no bearing on this decision. Zanghi had mixed emotions about being relieved of the two positions. Although she was upset about the money, she was pleased that she had additional time for now, as she testified, she can do her job properly.

Further, by Zanghi's own admission, the position of Secretary to the Planning Board was taken away from Zanghi in the summer of 1974, prior to any of the protected activity in question and therefore the Township action could not have possibly been motivated by an intent to discourage the exercise of protected rights. 4/ 5/

Guluzzy admitted the original 1975 budget proposal of early January states Zanghi was to receive a salary of \$8,600 and his revised budget proposal states a salary of \$7,885. He claims that the salary misstatement was due to his own error for, when he first wrote the proposal, the figures were based on income, rather than positions with the Township as in the subsequent budget proposals. I find Guluzzy's testimony credible as to this mistake. Zanghi testified Guluzzy knew about her efforts to promote employee representation prior to the original budget proposal, and no evidence was introduced at the hearing to demonstrate any other reason why Guluzzy would suddenly reduce Zanghi's salary. 6/

4/ Zanghi testified that other employees in the past have had positions taken away but were allowed to retain the salary for that position. She was able to identify only one such individual, however. The Township introduced evidence that a number of employees had position reassignments where the employees did not keep the salary.

5/ It was never established at the hearing exactly when Zanghi was advised she would be relieved of the position of Mass Transit Secretary.


6/ It is noted that the newspaper story appeared at this time, but it was never established at the hearing whether the article came out before or after the revised budget schedule.

Assuming, arguendo, the conduct of the Township was inherently destructive of employee rights, it has introduced sufficient evidence of legitimate and substantial business justification for their conduct to overcome a presumption of an intent to discourage the exercise of protected rights.

I therefore find that the employer has not violated § (a)(1) and (3) of the Act. Further, no evidence was introduced at the hearing concerning alleged violations of § (a)(4) and (7).

RECOMMENDED ORDER

Accordingly, for the reasons set forth, it is recommended that the charge in this matter be dismissed in its entirety.



Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
February 15, 1977