

P.E.R.C. NO. 85-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY PARK COMMISSION,

Respondent,

-and-

Docket No. CO-84-58-118

TEAMSTERS LOCAL 97 OF N.J.,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Passaic County Park Commission violated the New Jersey Employer-Employee Relations Act when its Director evicted a Teamsters Local 97 business representative from the Park Commission's golf course while the representative was processing a shop steward's grievance. A Hearing Examiner recommended this conclusion and, in the absence of exceptions, the Commission adopts it.

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Appearances:

For the Respondent, William F. Rabbat, Esquire

For the Charging Party, Goldberger & Finn, Esqs.
(Howard A. Goldberger, Of Counsel)

DECISION AND ORDER

On August 29, 1983, Teamsters Local 97 of New Jersey ("Local 97") filed an unfair practice charge against the Passaic County Park Commission ("Park Commission") with the Public Employment Relations Commission. The third paragraph of the charge alleged that the Park Commission violated subsections 5.4(a)(1), (3) and (4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when, on August 25, 1983, its Director had Local 97's business representative evicted from the Park Commission's golf course

1/ These subsections prohibit public employer, 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; and (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."

while the representative was processing a shop steward's grievance.^{2/}

On March 8, 1984, the Administrator of Unfair Practice Proceedings issued a Complaint and Notice of Hearing. The Park Commission then filed an Answer denying the Complaint's allegations.

On May 7 and September 24, 1984, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral and written argument.

On October 4, 1984, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-14, 10 NJPER ____, (¶ ____ 1984) (copy attached). He found that the Park Commission violated subsections 5.4(a)(1) and (5), but not subsections 5.4(a)(3) and (4), when, contrary to its agreement and past practice, its Director refused to allow Local 97's business representative to meet with a shop steward to process the latter's grievance.^{3/}

The Hearing Examiner served a copy of his report on the parties and informed them that exceptions, if any, were due on or before October 17, 1984. Neither party filed exceptions or requested an extension of time. The Park Commission has instead informed the Commission that it has complied with the recommended decision and order.

^{2/} The first two paragraphs of the charge made certain other allegations which the parties agreed would not be litigated in this proceeding.

^{3/} The Hearing Examiner noted that the parties had fairly and fully litigated the question of whether the Park Commission had violated subsection 5.4(a)(5), even though the Complaint had not been formally amended.

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

In the Matter of

PASSAIC COUNTY PARK COMMISSION,

Respondent,

-and-

Docket No. CO-84-58-118

TEAMSTERS LOCAL 97 OF N.J.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated Subsections(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when its Director on August 25, 1983 unilaterally abridged the longstanding visitation rights of a Business Representative of the Charging Party, who was on the premises in order to investigate a grievance of the shop steward. The past practice of visitation dated back to 1979 and 1980 and the Local's Business Representative had always been permitted to enter upon the premises of the Respondent without prior permission in order to investigate and adjust grievances. The Hearing Examiner relied upon Commission precedent, including West Deptford Board of Education, P.E.R.C. No. 79-41, 5 NJPER 44 (1979) and, additionally, several recent decisions of the NLRB in the private sector.

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

PASSAIC COUNTY PARK COMMISSION, ^{1/}

Respondent,

-and-

Docket No. CO-84-58-118

TEAMSTERS LOCAL 97 of N.J.,

Charging Party.

Appearances:

For the Respondent
William F. Rabbat, Esq.

For the Charging Party
Goldberger & Finn, Esqs.
(Howard A. Goldberger, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on August 29, 1983 by Teamsters Local 97 of N.J. (hereinafter the "Charging Party" or the "Local") alleging that the Passaic County Park Commission (hereinafter the "Respondent") is engaging in and 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. (hereinafter the "Act"), in that the Director of the Respondent on August 25, 1983 summoned an officer of the County Park Police to evict Patrick Nardolilli, a Business Representative of the Local, from the Respondent's golf course while Nardolilli was processing a grievance of the Local's Shop Steward, Carmen J. Liguori, ^{2/} all of which was

^{1/} As amended at the hearing.

^{2/} The Charge sets forth allegations of violations of the Act in three paragraphs. By agreement only the third paragraph, involving the eviction of Nardolilli, was litigated before the Hearing Examiner.

alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (4) of the Act.^{3/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 8, 1984. Pursuant to the Complaint and Notice of Hearing, hearings were held on May 7 and September 24, 1984 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both oral argument and the filing of post-hearing briefs were waived.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and, in the absence of oral argument and the filing of post-hearing briefs which have been waived, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Passaic County Park Commission is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. Teamsters Local 97 of N.J. is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3/ 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.

"(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."

3. The Respondent has had a collective negotiations relationship covering its blue collar employees since 1969. The collective negotiations representative was initially Teamsters Local 286 and that representative entered into a series of collective negotiations agreements with the Respondent. In or around January 1983 Teamsters Local 286 was merged into Teamsters Local 97, the Charging Party herein. The first collective negotiations agreement between the Respondent and Teamsters Local 97 is effective from January 1, 1983 through December 31, 1984 (J-1). The date of execution of J-1 was August 19, 1983.

4. The following contractual provision has been in the collective negotiations agreement since at least 1979 with respect to the investigation of grievances:-

Article IV, Grievance and Arbitration, provides in Section 2(5) as follows:

"The Commission agrees to recognize the Union's authorized representatives for the adjustment of grievances, disputes, and controversies which may arise. Such representatives shall have the right to confer with employees whenever necessary during working hours with regard to any matter involving the relationship between the Commission and the Union, which may require attention, and the representatives shall be afforded such time off as may be required to transact such business; provided, however, that the representatives shall give reasonable notice to and secure permission from their supervisor when they desire to take such time off."
(J-1, p. 3)

5. Patrick Nardolilli, the current Business Representative of the Local, testified without contradiction that the past practice of business representatives of the Locals since 1979 or 1980, with respect to visiting the premises of the Respondent for purposes of grievance investigation, has been as follows: The representative would appear on the premises sometime between 8:00 a.m. and 9:00 a.m. or 3:00 p.m. and 3:30 p.m. and meet with the shop steward in the garage adjacent to the golf course where foremen of the Respondent were frequently present; no foreman ever objected to the presence of a business representative on the premises of the Respondent until just prior to August 25, 1983; and no permission was ever required. The Hearing Examiner finds as a fact that such a visitation past practice by business representatives of the Locals existed continuously and openly from 1979 or 1980 until August 1983.

6. In August 1983 the shop stewards of the Local at the Respondent were Carmen J. Liguori and Salvatore Iaculano. Liguori had been shop steward since in or around December 1982.

7. On August 24, 1982 Nardolilli received a telephone call from Liguori wherein Liguori claimed that he was being harassed in connection with the wearing of his uniform and it was agreed that they would meet the next day, August 25th, on Liguori's coffee break at about 9:00 a.m.

8. Nardolilli appeared at the garage on August 25th at about 8:15 a.m. and was confronted by a foreman, whom Nardolilli knew as "Jonesey." The foreman said that he did not want any hard feelings, but that the Respondent's Director, Ronald F. Dooney, had given an order that there was to be no union business on "company time." Nardolilli stated that he was going to see Liguori, to which "Jonesey" replied that Liguori was not in the garage, having left with his foreman, Andrew Andela. Before Nardolilli left the garage Dooney telephoned and Nardolilli was told by Dooney that he should not be there and that if he had a grievance he should put it in writing. Nardolilli's response was to "hang up" on Dooney.

9. Nardolilli next drove to the golf course (about 5 minutes distant) where Nardolilli met Liguori and Andela in a truck. Andela said to Nardolilli that Dooney had told him that he, Nardolilli, was not to talk to Liguori during working hours. Andela stated that he was told to keep a check on Liguori during working hours and that Liguori was not to be on "union business." Nevertheless, Nardolilli spoke to Liguori about Liguori's complaint regarding harassment.

10. About twenty minutes after Nardolilli had spoken to Dooney on the telephone in the garage, Dooney arrived at the golf course.^{4/} When Andela and Liguori indicated that they were leaving Dooney told them to stay. Dooney stated to Nardolilli that he had told him to terminate the matter one-half hour earlier and that he cannot have "men off the truck." Nardolilli insisted that he was there on union business and was not going to be interfered with when Dooney asked him to leave. Dooney and

^{4/} Dooney came to the golf course as the result of a radio call from Andela, who told Dooney that Nardolilli and Liguori were meeting.

Nardolilli exchanged "nasty names" according to Andela. Nardolilli said that he would not leave and told Dooney that he should call the Park Police. Officer DeMarzo was summoned in or around 9:25 a.m. and Nardolilli left with him after he arrived at the golf course.

THE ISSUE

Did the Respondent violate the Act on August 25, 1983 when its Director caused the Local's Business Representative to be removed from the premises during the investigation of a grievance?

DISCUSSION AND ANALYSIS

The Respondent Violated The Act
On August 25, 1983 By The Conduct
Of Its Director In Causing The
Local's Business Representative
To Be Removed From The Premises
During The Investigation Of A
Grievance

It is first noted preliminarily that the Charging Party has alleged a violation by the Respondent of Subsections(a)(1), (3) and (4) of the Act, but has not alleged a violation by the Respondent of Subsection(a)(5). As will be apparent hereinafter, the operative Subsection is 5.4(a)(5) of the Act in terms of analyzing the Respondent's conduct herein. Notwithstanding the failure of the Charging Party to allege a violation of Subsection(a)(5) of the Act, the Hearing Examiner will dispose of the instant matter as if a Subsection(a)(5) allegation had been made since the parties fully and fairly litigated the essential facts pertinent to a Subsection(a)(5) violation at the hearing: Commercial Township Board of Education, P.E.R.C. No. 83-25, 8 NJPER 550, 553 (1982), aff'd App. Div. Docket No. A-1642-82T2 (1983).

The decision in this case must necessarily turn upon two significant facts: (1) the contractual provision in Article IV, Section 2(5), J-1 supra, which has since 1979 been incorporated into the collective negotiations agreements between the parties, and which, by its terms clearly applies to the Local's authorized representative's right to confer with employees "...whenever necessary during working

hours with regard to any matter involving the relationship between the Commission and the Union..."; and (2) the clear and consistent past practice of non-employee business representatives of the Locals visiting the premises of the Respondent without permission since 1979 or 1980 for the purpose of investigating or adjusting grievances.

The Hearing Examiner finds and concludes that, based upon the language of Article IV, Section 2(5) of the current agreement and its predecessors (J-1, p. 3) and the clear and consistent past practice of non-employee business representatives of the Local visiting the Respondent's premises, there exists a term and condition of employment with respect to visitation in the collective relationship between the Local and the Respondent, and that any change in this term and condition of employment must be mutually agreed upon.

In New Brunswick Board of Education, P.E.R.C. No. 78-47, 4 NJPER 84 (1978), aff'd App. Div. Docket No. A-2450-77 (1979) the Commission, in applying Section 5.3 of the Act, regarding proposed new rules or modifications of existing rules, said:

"...Where, during the term of an agreement a public employer desires to alter an established practice governing working conditions... employer must first negotiate such proposed change with the employees' representative prior to its implementation." (4 NJPER at 85)

Further, in New Brunswick the Commission, in finding an unlawful unilateral action on the part of the employer, said:

"...This unilateral alteration of an existing term and condition of employment during the term of an agreement constituted an unfair practice complete in itself..." (4 NJPER at 85).

Thus, it is clear that the Commission decision in New Brunswick stands for the proposition that an employer may not unilaterally abridge an "established practice" governing working conditions, but must first negotiate prior to implementation.

Turning now to Commission precedent on the issue of the use of employer facilities for communicating with employees, the Hearing Examiner first notes the decision in Union County Regional Board of Education, P.E.R.C. No. 76-17, 2 NJPER 50 (1976) where the issue involved the use by the incumbent collective

negotiations representative of school bulletin boards in communicating with its members. The Commission held that the use of bulletin boards was a term and condition of employment, stating: "...The School Boards thus have an obligation to negotiate over access to school facilities by its employees in furtherance of their legal collective activities..." (2 NJPER at 52). In another Commission decision, West Deptford Board of Education, H.E. 79-26, 4 NJPER 492 (1978), aff'd. P.E.R.C. No. 79-41, 5 NJPER 44 (1979), the Commission found a violation of Subsections(a)(1) and (5) of the Act where the employer sought to terminate the Association's longstanding use of school facilities for meetings during the school year. In so finding, the Commission cited its decision in Union County, supra.

Any doubt about the adequacy of precedent for finding a Subsection(a)(5) violation of the Act by the conduct of Director Dooney in unilaterally terminating the term and condition of employment of non-employee visitation in this case is laid to rest by resort to Federal precedent in the private sector: Granite City Steel Co., 167 NLRB No. 35, 66 LRRM 1070 (1967; Peerless Food Products, Inc., 236 NLRB No. 23, 98 LRRM 1182 (1978); Tom's Ford, Inc., 253 NLRB No. 19, 106 LRRM 1063 (1981); and Houston Coca-Cola Bottling Co., 265 NLRB No. 106, 112 LRRM 1286 (1982).

In Granite City, supra, the employer violated Section 8(a)(5) of the National Labor Relations Act when it failed to negotiate with the union before it restricted a business representative's access to the plant. Such access was supported by a 15-year past practice. Although the employer discussed the unilateral change with the union after it was made, the NLRB held that the statutory duty to bargain requires that discussion precede unilateral action by an employer.

In Tom's Ford, supra, the employer was held to have violated the NLRA when, after the union's business agent entered the employer's shop to investigate a complaint, the employer ordered the agent to leave and caused the police to escort him from the premises in the presence of bargaining unit employees. This contract

granted shop visitation rights to the union. The business agent did not forfeit his right to visitation by the use of an obscenity, which was provoked by the employer's order to the business agent to "...get the f--- out of here..."

It is apparent that the Granite City and Tom's Ford cases bear a substantial factual resemblance to the facts in the instant case. These NLRB cases, together with the applicable Commission precedent cited above, plainly support a finding and conclusion by the Hearing Examiner that the Respondent violated Subsections(a) (1) and (5) of the Act by the conduct of Director Dooney on August 25, 1983. Since the Charging Party did not adduce any evidence to support a finding that the Respondent violated Subsections(a)(3) and (4) of the Act, the Hearing Examiner will recommend dismissal as to these allegations.

* * * *

Upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when its Director unilaterally abridged the visitation rights of the Local's Business Representative on August 25, 1983.
2. The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(3) and (4) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

- A. That the Respondent cease and desist from:
 1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refraining from abridging the visitation rights of the Local's Business Representatives to investigate grievances during working hours.
 2. Refusing to negotiate in good faith with the Local before unilaterally changing a term and condition of employment such as the right of the Local Business Representative to visit the premises for the purpose of investigating grievances during working hours.

B. That the Respondent take the following affirmative action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by other materials.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.



Alan R. Howe
Hearing Examiner

Dated: October 4, 1984
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refraining from abridging the visitation rights of the Local's Business Representatives to investigate grievances during working hours.

WE WILL NOT refuse to negotiate in good faith with the Local before unilaterally changing a term and condition of employment such as the right of the Local Business Representative to visit the premises for the purpose of investigating grievances during working hours.

PASSAIC COUNTY PARK COMMISSION

(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with
Chairman, Public Employment Relations Commission,
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780