

P.E.R.C. NO. 92-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY
(GARDEN STATE PARKWAY),

Respondent,

-and-

Docket No. CI-H-91-26

PAUL A. LINDER,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on an unfair practice charge filed by Paul A. Linder against the New Jersey Highway Authority (Garden State Parkway). The charge alleged that the Authority violated the New Jersey Employer-Employee Relations Act by reassigning Linder from director of personnel to print shop manager in retaliation for his effort to "organize and develop a union to represent the interests of all employees classified by letter pay grades." The Chairman concludes that Linder is undisputably a confidential employee and that he has not alleged facts specifically showing that his reassignment illegally interfered with any section 5.3 rights.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY
(GARDEN STATE PARKWAY),

Respondent,

-and-

Docket No. CI-H-91-26

PAUL A. LINDER,

Charging Party.

Appearances:

For the Respondent, Schwartz, Pisano, Simon, Edelstein & Ben-Asher, attorneys (Nicholas Celso, of counsel)

For the Charging Party, Schlesinger, Mintz & Pilles, attorneys (John F. Pilles, Jr., of counsel)

DECISION AND ORDER

On November 7, 1990, Paul A. Linder filed an unfair practice charge against the New Jersey Highway Authority (Garden State Parkway). Linder alleges that the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (3),^{1/} by reassigning him from director of personnel to print shop manager in retaliation

^{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."

for his effort to "organize and develop a union to represent the interests of all employees classified by letter pay grades."^{2/}

On December 26, 1990, a Complaint and Notice of Hearing issued. On January 14, 1991, the Authority filed its Answer admitting that it reassigned Linder but denying that the discipline was related to his "alleged efforts to organize a union." It also asserts that Linder is a confidential employee or managerial executive within the meaning of N.J.S.A. 34:13-3 and therefore any organizational activity was not protected.

At a hearing on June 13, 1991, Hearing Examiner Jonathon Roth determined that a memorandum filed by the Authority should be treated as a motion for summary judgment. The parties then filed briefs, documents and affidavits.

On August 28, 1991, the Hearing Examiner recommended granting the motion and dismissing the Complaint. H.E. No. 92-7, 17 NJPER ____ (¶____ 1991). He first found that Linder was a confidential employee within the meaning of N.J.S.A. 34:13A-3(g) and, therefore, not a public employee under the Act. He noted that any right he might have under Article I, paragraph 19 of the New Jersey Constitution would have to be enforced in the Superior Court.^{3/} Finally, the Hearing Examiner concluded that Linder was

^{2/} Linder was discharged on December 31, 1990.

^{3/} Article I, paragraph 19 provides, in part: "Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing."

not asserting "any organizational rights which were implicated by his allegedly unlawful discharge." He therefore recommended dismissing the subsection 5.4(a)(1) and (2) allegations.

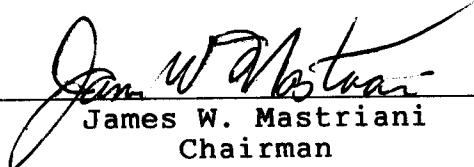
The Hearing Examiner served his decision on the parties and informed them that exceptions were due September 11, 1991. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. I incorporate the Hearing Examiner's undisputed findings of fact (H.E. at 4-8). Acting pursuant to authority granted to me by the full Commission in the absence of exceptions, I dismiss the Complaint. Linder is undisputably a confidential employee. He has not alleged facts specifically showing that his reassignment illegally interfered with any section 5.3 rights.^{4/} See Parker-Robb Chevrolet, Inc., 262 NLRB 402, 110 LRRM 1289 (1982), enf'd sub nom. Automobile Salesmen's Union v. NLRB, 711 F.2d 383, 113 LRRM 3175 (D.C. Cir. 1983).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: October 3, 1991
Trenton, New Jersey

^{4/} Section 5.3 establishes the right of public employees "freely, and without fear of penalty or reprisal, to form, join and assist any employee organization."

H.E. NO. 92-7

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

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY,
GARDEN STATE PARKWAY,

Respondent,

-and-

Docket No. CI-H-91-26

PAUL A. LINDER,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission grants a motion for summary judgment, pursuant to N.J.A.C. 19:14-4.8. The Hearing Examiner determines that Linder is a confidential employee within the meaning of the Act and not entitled to protections under subsections 5.4(a)(1), (2) and (3). He rejects Linder's argument that the undisputed facts require the Commission to assert jurisdiction over Linder's constitutional right, set forth in Article I, Paragraph 19 of the State Constitution to "organize" and "make known" grievances. He also recommends that Linder has not alleged a violation of any organizational rights under subsection 5.4(a)(1), leaving inapposite private sector cases declaring that the firing of a non-unit employee (i.e., supervisor) is unlawful because it interfered with, restrained or coerced unit employees.

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

NEW JERSEY HIGHWAY AUTHORITY,
GARDEN STATE PARKWAY,

Respondent,

-and-

Docket No. CI-H-91-26

PAUL A. LINDER,

Charging Party.

Appearances:

For the Respondent, Schwartz, Pisano, Simon, Edelstein &
Ben-Asher, Attorneys (Nicholas Celso, of Counsel)

For the Charging Party, Schlesinger, Mintz & Pilles,
Attorneys (John F. Pilles, Jr., of Counsel)

HEARING EXAMINER'S DECISION ON
MOTION FOR SUMMARY JUDGMENT

On November 7, 1990, Paul A. Linder filed an unfair practice charge against the New Jersey Highway Authority (Garden State Parkway)("Authority"). Linder alleges that on or about October 15, 1990, the Authority disciplined him in retaliation for his efforts, in July and August 1990, to "organize and develop a union to represent the interests of all employees classified by letter pay grades." Linder also alleges that he was unlawfully reassigned from Director of Personnel to print shop manager, pending disposition of the charges. The Authority's acts allegedly violate

subsections 5.4(a)(1), (2) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A et seq. ("Act").

On December 26, 1990, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

On January 14, 1991, the Authority filed an Answer, admitting that it filed disciplinary action against Linder and that it reassigned him but denying that the discipline was related to his "alleged efforts to organize a union." It also asserts that Linder is a confidential employee or managerial executive within the meaning of N.J.S.A. 34:13-5.3, and that "he was not entitled to union affiliation" and could not have been engaged in protected organizational activity.

On April 25, 1991, I conducted a pre-hearing conference at which the Authority submitted a "memorandum" asserting that Linder is a confidential employee, is not entitled to protection of the Act, and that the charge must be dismissed. Attached to the memorandum were several exhibits, including the Director of Personnel job description, and pages extracted from four collective negotiations agreements identifying the Director of Personnel as the

^{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."

Authority representative at various steps of the grievance arbitration provisions.

Linder sought further discovery, pursuant to N.J.A.C. 1:1-10.1 et seq. I reserved ruling on the Authority's memorandum.

On June 13, 1991, I convened a hearing at which I initially regarded the Authority's memorandum as an affirmative defense to the charge. After listening to the parties' opening remarks and before hearing any testimony, I reversed my initial ruling and found the Authority's "memorandum" to be a motion for summary judgment, pursuant to N.J.A.C. 19:14-4.8. I asked the parties to address these issues; 1) Is Linder a confidential employee? and 2) if he is a confidential employee, does his confidential status dispose of the entire case?

On June 14, 1991, I referred the motion to the Commission Chairman, pursuant to N.J.A.C. 19:14-4.8. On June 17, the Chairman referred the motion to me for a decision.

On June 24 and July 15, 1991, the Authority filed original and supplemental briefs. On July 15, Linder filed his brief in opposition to the motion. On July 25 and 29 the Authority and Linder, respectively, filed reply briefs.^{2/} Additional responses were filed on August 2 and 6, 1991.

^{2/} Linder's July 29 brief includes his affidavit on various matters, including disciplinary charges, and a description of the "collective discussion" or "investigation" in which he was involved in August 1990.

It does not concern the two issues I asked the parties to address on the motion for summary judgment.

Based upon the papers filed by the parties, I make the following:

UNDISPUTED FINDINGS OF FACT

1. The New Jersey Highway Authority (Garden State Parkway) is a public employer within the meaning of the Act.
 2. In February 1985, Paul Linder was promoted from the position, Assistant Personnel Director to Director of Personnel. He remained in the title until October 15, 1990, when the Authority filed disciplinary charges against him and transferred him to the position of print shop manager.
 3. Some responsibilities included in the Director of Personnel job description are the "development and recommendation" of personnel policies to the Authority Executive Director; the "recruitment, selection and training" of technical and administrative personnel; the supervision of medical services, employee assistance program, employee benefit programs; performance ratings and suggestion system; and serving as "chairperson to personnel committee and labor contract negotiations committee."
- In the Authority organization chart, the Director of Personnel supervises the Personnel division, one of eight divisions in the "executive department." The division includes fourteen positions, all of which report to the Director of Personnel.

4. The Director of Personnel represents the Authority at Step 2 of several grievance arbitration provisions in collective negotiations agreements with majority representatives.

In the 1989-91 agreement with Local 196, IFPTE, covering toll collectors, utility persons, maintenance personnel, mechanics and others, the Director of Personnel represents the Authority at Step 2. Step 3 is binding arbitration.

In the 1990-92 agreement with Local 193B, Garden State Parkway Craftspersons and Technicians Union, covering electrical and mechanical craft persons and equipment technicians, the Director of Personnel represents the Authority at step 2 and "answers the grievances in writing within ten working days" of their submissions.

In the 1990-92 agreement with Local 193C, IFPTE, covering maintenance, garage, landscape, pavement-marking, and painting crew supervisors, the Director of Personnel represents the Authority at step 2, again answering any grievance within ten days of its submission. Step 3 is binding arbitration.

In the 1989-91 agreement with Local 196, IFPTE, covering senior citizen toll collectors, the Director of Personnel represents the Authority at Step 2.

Supporting affidavits filed by the Authority's Deputy Executive Director and labor counsel to the Authority from 1983-1990 reveal that Linder formulated and implemented negotiations strategies, had access to data regarding negotiations proposals, and had authority to resolve or reject resolution(s) of Authority and majority representative disputes.

5. In a representation case (dkt no. RO-88-155), based upon a petition filed in March 1988 by IFPTE seeking to represent a unit of "electrical craftsmen, mechanical craftsmen and equipment technicians," Linder signed a consent agreement for a secret ballot election on behalf of the Authority. He also filed the list of employees eligible to vote in the election.

In a representation case (dkt. no. RO-90-155), based upon a petition filed in April 1990 by IFPTE seeking to represent a unit of "office, clerical and technical employees," Linder signed a consent agreement for a secret ballot election on behalf of the Authority.

6. In a closed unfair practice charge case (dkt. no. CI-87-48), filed by a unit employee, a June 17, 1986 memorandum from Linder to the Executive Director recommends a disposition of an informal hearing, pursuant to a step in a collective negotiations agreement grievance procedure.

7. On or about July 20, 1990, Linder conferred with his attorney of record to "discuss the legal rights which letter-grade employees have to make their dissatisfaction known to the Authority." Another letter-grade employee attended the meeting. A petition was "prepared and circulated" in an attempt to gather the required 30% showing of interest. (N.J.A.C. 19:11-1.2(8)).

8. Linder scheduled a meeting of letter-grade employees to begin at 5 p.m. on August 6, 1990 at a motor inn in Woodbridge Township. Linder had earlier distributed flyers stating that the meeting was to "discuss the pros and cons for forming an

Administrative Assembly." An August 3, 1990 Star Ledger newspaper article emphasized "sinking morale" among department heads as a reason to begin a "drive for a union."

9. Linder informed the Authority's Acting Executive Director of the upcoming meeting.

10. Only three of the more than twenty letter-grade employees attended the August 6 meeting. On August 7, an article emphasizing the meeting's low attendance appeared in the Star Ledger.

11. On October 15, 1990, the Authority's Acting Executive Director mailed Linder a notice of disciplinary hearing, a notice of assignment as "additional manager of the print shop," and a list of eight charges.

The charges concern Linder's alleged improper treatment of employee Charles Comito, dating to April 1988. Linder allegedly failed to have Comito sign a performance evaluation; failed to counsel him regarding that evaluation; failed to "demonstrate proper consideration " by "intemperate, castigating, explosive, belittling and authoritarian treatment of Comito"; that Linder improperly discontinued Comito's temporary disability benefits, all of which caused a "severe psychological reaction" resulting in a "job-related major depression," leaving the Authority exposed to "protracted litigation, embarrassment and potential legal liability."

Linder denied the charges.

12. On December 7, 1990, after a hearing, the Acting Executive Director mailed Linder a letter and a twenty-three page

decision sustaining seven of the eight charges. Linder was discharged on December 31, 1990.

ANALYSIS

N.J.A.C. 19:14-4.8(d) provides that 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 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 New Jersey 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. The papers supporting the motion are closely scrutinized and the opposing papers indulgently treated..." See also New Jersey Civil Practice Rules, 4.46-2.

The Authority asserts that Linder is a confidential employee and is not entitled to the protections of the Act.

Linder argues that confidential employees are "afforded at least the protection of making inquiry as to rights and status under the law"; that a question of fact exists as to whether Linder was "forming, joining or assisting" an employee organization; that the Commission has concurrent jurisdiction with State courts to adjudicate and remedy unlawful retaliation against a confidential employee; and an unfair practice may have occurred "from the perspective of and impact upon co-employees."

The Act defines confidential employees as those,

...whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

[N.J.S.A. 34:13A-3(g)]

The Act also states,

...public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees....

[N.J.S.A. 34:13A-5.3]

The Commission narrowly defines the term, "confidential employee." See State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985); mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985). "A determination that an employee is confidential and therefore excluded from the Act's protections, N.J.S.A. 34:13A-5.3, should not be based on speculation..." Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989). The Commission has frequently stated its inquiry:

We scrutinize the facts of each case to find for whom each employee works, what he does and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [State of New Jersey, 11 NJPER 507]

See also State of NJ (OER) and Council of NJ State College Locals, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd App. Div. Dkt. No. A-1445-89T1 (1/22/91); Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd App.Div. Dkt. No. A-4297-87T1 (4/21/89); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88).

Linder does not contest that he is a confidential employee. His undisputed leadership role on collective negotiations committees, participation on behalf of the Authority at step 2 of the grievance procedure in several collective negotiations agreements, and apparent authority to sign consent agreements for secret ballot elections on behalf of the Authority prove his responsibility for and knowledge of the Authority's positions on labor negotiations matters in advance of their disclosure to employee representatives. The Director of Personnel's inclusion in any negotiations unit is incompatible with its duties.

Linder argues that the "protected" activities in which he was engaged were not forming, joining or assisting an employee organization within the meaning of section 5.3 of the Act. Linder maintains he was "inquiring" about rights under the law and that his inquiry is protected by the Act. Specifically, he alleges that the Commission has concurrent jurisdiction (along with the court) to enforce Article I, paragraph 19 of the New Jersey Constitution.

An undisputed fact in the charge is that on or around July 20, 1990, a petition was circulated for the purpose of gathering signatures of 30% of the employees in the incipient unit. N.J.A.C. 19:11-1.2(a)(8) states:

A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate.

Although the circulation of the petition does not necessarily mean that Linder "joined" an employee organization, it may mean that he was "forming" or "assisting" an organization.

Assuming that Linder was neither "forming" nor "assisting," I believe that his "inquiry" is not protected by the Act. Any protection for Linder is rooted in Article I, paragraph 19 of the New Jersey Constitution. It states:

Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

In Lullo v. International Assn. of Fire Fighters, 55 N.J. 409, 414 (1970) the New Jersey Supreme Court stated that the philosophy of the framers of the 1947 Constitution, "was to create a document which would be sufficiently descriptive and expressive to serve the needs of a basic charter and yet remain free of the detail and methods of implementation that might best be left to the legislative process." The Court also stated that the 1968 Employer-Employee

Relations Act legislatively implemented rather than abrogated the constitutional rights of public employees. This notion was confirmed in Red Bank Reg. Ed. Assn. v. Red Bank Reg. High Sch. Bd. of Ed., 78 N.J. 122, 134 (1978) and in COTA v. Molinelli, 114 N.J. 87 (1989).

In Tp. of West Windsor v. PERC, 78 N.J. 98, 112 (1978), the Court stated:

New Jersey public employees possess a constitutional right by virtue of their government employment which they would not otherwise possess as citizens - the right to compel government, in its capacity as their employer, to sit down and listen to their grievances and proposals. In addition, the Legislature has granted them a statutory right under N.J.S.A. 34:13A-5.3 to engage in collective negotiations with their employer.

[78 N.J. 112]

One must delineate constitutional and statutory rights because among the "details" and "methods" in the Act for implementing Article 1, paragraph 19 of the Constitution is the provision declaring that confidential employees (among others) are not to "have" nor to be "protected in" the exercise of the right...to form, join and assist any employee organization N.J.S.A. 34:13A-5.3. The Commission has stated more emphatically that "confidential employees as defined by N.J.S.A. 34:13A-3(g) are not public employees within the purview of the Act." Passaic Cty. Reg. H.S. District No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

I find that this statutory swearing-off leaves Linder without any rights and remedies under the Act. Linder did not

allege that he was denied the opportunity to make known his grievance(s) to the Authority. If he was denied that right, he may seek to enforce it in Superior Court.

Linder also asserts in his brief that the Authority violates section 5.4(a)(1) because its acts have "an impact upon co-employees." The chilling of organizational rights allegation is ostensibly set forth in paragraph 13 of count one and in paragraph 7 of count two. Paragraph 13 states in pertinent part:

With the intent to discourage employees in the exercise of rights guaranteed to them by law and to retaliate against the petitioner for his publicized efforts in spearheading the unionization movement, disciplinary action was initiated by respondent against Paul Linder on October 15, 1990.

Paragraph 7 of count 2 states in pertinent part:

...respondent's decision to relocate petitioner to markedly inferior accommodations and to reassign him job duties other than that previously performed as Personnel Director is intended to discourage employees in the exercise of rights guaranteed to them by law...

Linder also cites private sector cases under Labor Management Relations Act, 29 U.S.C. §141 et seq., in which discharged supervisors (non-unit employees) were reinstated so that unit employee rights would not be chilled. Parker-Robb Chevrolet, Inc., 272 NLRB 58, 119 LRRM 1289 (1982); Delling v. NLRB, ___ F.2d ___, 130 LRRM 2909 (10th Cir. 1989)

N.J.A.C. 19:14-1.3 requires "the full name, address and telephone number of the public employer, public employee or public employee organization making the charge." The charge is filed by Linder only - no other employees, employee organizations or even "nameless individuals" appear in the "charging party" space on the

form. The first paragraph of the charge begins, "Paul Linder, the charging party herein..." I must conclude that Linder is seeking redress only of his statutory rights.^{3/}

The private sector cases cited concern the circumstances under which an employer's conduct toward a supervisor violates section 8(a)(1) of the LMRA. Although "supervisors" are excluded from the statutory definition of "employee" (29 U.S.C. §152(3)), an unfair practice and appropriate remedy will be found, 1) when a supervisor is disciplined for testifying before the NLRB or during an employee's grievance; 2) when a supervisor is disciplined for refusing to commit an unfair practice; and 3) when a supervisor who has hired a crew is discharged as a pretext for terminating his pro-union crew. Delling v. NLRB. None of these circumstances are apparent in this case.

The Commission has found violations of subsection 5.4(a)(1) of the Act when employers discipline employees in order to discourage others from engaging in organizational activity. See Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985); NJ Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Linder does not assert any organizational rights

^{3/} I must look askance at the inconsistency of charging party seeking to rely, for example, on paragraph 13 of count one, to show that the employer has violated subsection (a)(1) of the Act while also seeking to have me ignore (for purposes of this motion) the allegation that the Authority was "retaliating" against him for "spearheading the unionization drive." Only by ignoring this allegation (and others in the charge) did I seriously consider the argument that Linder was not "forming, joining or assisting" an employee organization within the meaning of section 5.3 of the Act.


which were implicated by his allegedly unlawful discharge.^{4/}

Parker-Robb Chevrolet (the other private sector case cited) undercuts Linder's argument, if one substitutes "confidential employee" for "supervisor." The Board stated:

...all supervisory discharge cases may be resolved by this analysis: The discharge of supervisors is unlawful when it interferes with the right of employees to exercise their rights under Section 7 of the Act, as when they give testimony adverse to their employer's interest or refuse to commit unfair practices. The discharge of supervisors as a result of their participation in union or concerted activity - either by themselves or when allied with rank-and-file employees - is not unlawful for the simple reason that employees, but not supervisors, have rights protected by the Act. (emphasis added)

[110 LRRM 1291-92]

Based on all the papers filed in this case, I believe there are no issues of material fact and that the Authority is entitled to relief as a matter of law. Accordingly, I grant the motion and dismiss the complaint.


Jonathon Roth
Hearing Examiner

Dated: August 28, 1991
Trenton, New Jersey

^{4/} Linder also does not allege facts which show interference with the formation, existence or administration of an employee organization. Accordingly, I recommend dismissing the 5.4(a)(2) allegation. See Borough of Carteret, P.E.R.C. No. 88-81, 14 NJPER 238 (¶19086 1988).