

P.E.R.C. NO. 85-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO, LOCAL 225,

Respondent,

-and-

Docket No. CI-84-38-45

CHARLES T. METROS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge that Charles Metros filed against Transport Workers Union of America, AFL-CIO, Local 225. The charge alleged that Local 225 breached its duty of fair representation to Metros. The Commission holds, in agreement with the Hearing Examiner, that Metros did not establish, by a preponderance of evidence, that Local 225 breached this duty.

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Appearances:

For the Respondent, O'Donnell & Schwartz, Esqs.
(Malcolm A. Goldstein, of Counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.
(Mark J. Blunda, of Counsel)

DECISION AND ORDER

On November 2, 1983, Charles T. Metros ("Metros"), a custodian employed by the Howell Township Board of Education ("Board"), filed an unfair practice charge against the Transport Workers of America, AFL-CIO, Local 225 ("Local 225"), his majority representative, with the Public Employment Relations Commission. Metros alleges that Local 225 violated subsections 5.4(b)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it allegedly breached its duty of

^{1/} These subsections prohibit employee organizations, 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 (5) Violating any of the rules and regulations established by the commission."

fair representation to him. Specifically, the charge alleged that (1) Ray Reed, a head custodian and Local 225 Section Chairman, supplied information to the Board which resulted in Metros' discipline; (2) Local 225 refused to arbitrate his grievance concerning this discipline which resulted in a two-day suspension without pay; (3) Reed refused to permit discussion of the handling of Metros' grievance or of a motion to recall Reed from his union office at union meetings; and (4) Reed threatened Metros, stating that he was "dead with the union."

On November 18, 1983, the Administrator of Unfair Practice Proceedings issued a Complaint and Notice of Hearing.

On March 28 and April 2, 1984, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses and introduced documents. At the conclusion of the Charging Party's case, the Hearing Examiner granted, in part, Local 225's motion to dismiss those portions of the Complaint pertaining to Reed's role in the discipline of Metros and in Local 225's handling of his related grievance. The Hearing Examiner, resolving all inferences in favor of the Charging Party, held that Metros had failed to present a prima facie case on these allegations. He concluded that the controversy stemming from the Board's decision to discipline Metros (based on information passed on by Reed) arose not out of Reed's position in the union, but out of Reed's doing his job as head custodian. Finally, he concluded that the record lacked any indication that Local 225 acted in an arbitrary, capricious or

bad faith manner in the handling of Metros' grievance. However, the Hearing Examiner denied the motion as it related to Reed's comments and conduct toward Metros. The hearing then continued.

On October 24, 1984, Chief Hearing Examiner Gerber issued his report and recommended decision with respect to the remaining allegations of the Complaint, H.E. No. 85-18, 10 NJPER ____ (Para. ____ 1984) (copy attached). He concluded that Metros failed to prove he was threatened by the union and recommended dismissal of the Complaint.

On February 15, 1985, after receiving an extension of time, Metros filed his exceptions. He asserts the Hearing Examiner erred in: (1) not crediting the testimony of other witnesses that corroborated Reed's animus toward Metros; (2) finding that Reed was a credible witness; (3) concluding that Reed was not acting as a union agent; and (4) excluding handwritten notes of a union meeting from evidence.

We have reviewed the record. The Hearing Examiner's findings of fact (pgs. 1-4) are accurate^{2/} and his credibility determinations are supported by the record. We adopt them.

This charge alleges that Local 225 failed in its duty to represent Metros fairly. A breach of this duty occurs when a

2/ The Hearing Examiner inadvertently referred to a witness as "Russell." No one by that name testified at the hearing and it is evident that he meant Reed.

union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith. Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (Para. 15163 1984); In re Johnstone, P.E.R.C. No. 84-60, 10 NJPER 12 (Para. 15007 1983). We hold that Metros did not establish that Local 225 breached this duty.

Local 225's handling of Metros' grievance reveals no evidence of bad faith or arbitrary conduct. He was represented at the first step of the grievance by Ken Walsh and, according to Metros, was represented "fully and fairly." The Local appealed the adverse determination to the second step where Metros was represented by Frank Caiazzo, the union president. Metros was also satisfied with Caiazzo's representation. Significantly, Raymond Reed, who had played a role in the discipline of Metros, had no involvement in the union representation of Metros. Therefore, any possible conflict of interest between his position in the union as Section Chairman and his position with the Board never came into play and cannot establish that the union's actions violated its duty towards Metros. Compare Camden County, P.E.R.C. No. 83-113, 9 NJPER 156 (Para. 14074 1983) (breach of duty of fair representation established where union president is permitted to process grievance while serving as employer's personnel assistant handling the grievance). We also see no violation in the decision of the union not to proceed to binding arbitration. While this decision obviously disappointed Metros, the record is devoid of any evidence that the decision was reached in bad faith. It was considered in

the normal course of union business by the union committee with the jurisdiction to handle such matters. Reed did not play a role in this decision. The mere failure to submit a grievance to arbitration, which is all the record reveals, does not violate the union's duty of fair representation. E.g. Fair Lawn, supra.

The remaining portions of the charge concern Reed's alleged comments and conduct. The thrust of Metros' exceptions is that the Hearing Examiner failed to consider testimony corroborating alleged reprisals and threats that Reed directed at Metros. Metros refers to testimony suggesting that Reed threatened to undermine a transfer requested by Metros so that Reed could keep him under control and that Reed gave Metros a poor evaluation because Metros insisted on processing his grievance. Regardless of whether these actions would be attributable to Local 225, the Hearing Examiner simply did not believe this testimony. Rather, he credited the testimony of Reed, who flatly denied that he threatened Metros, prevented his transfer, or gave him a poor evaluation for any reason other than poor job performance. It is well-settled that the Commission, absent the most compelling evidence to the contrary, will not substitute its second-hand reading of the transcript for a Hearing Examiner's credibility judgments based on observation of the demeanor of each witness. We find no compelling reason to secondguess the Hearing Examiner's decision to credit the testimony of Reed. In re Township of Clark, P.E.R.C. No. 80-117, 6 NJPER 186 (Para. 11089 1980); In re City of Trenton, P.E.R.C. No. 80-90. 6 NJPER 49 (Para.

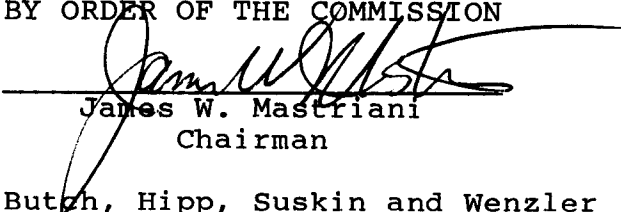
11025 1980); In re Long Branch Bd. of Ed., P.E.R.C. No.77-70, 3 NJPER 300 (1977). Accordingly, we conclude that Metros failed to prove by a preponderance of the evidence that Reed threatened him, gave him a poor evaluation because of his reluctance to drop the grievance, or took any steps to prevent his transfer.

In his final exception, Metros asserts that the Hearing Examiner improperly refused to accept the notes of Leroy Walsh into evidence. The Hearing Examiner excluded the notes, which concerned Metros' grievance hearing, because a proper foundation was not established to qualify the notes as an exception to the hearsay rule (Walsh did not take the notes in the ordinary course of his business as a Section Chairman). Although the Hearing Examiner was not bound to strict adherence to the rules of evidence at hearing, his refusal to accept Walsh's notes into evidence appears on the record to be a reasonable exercise of discretion. Further, the content of Walsh's notes was fully covered in his testimony. We conclude that the exclusion of the notes from evidence was neither erroneous nor prejudicial.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves abstained.

DATED: Trenton, New Jersey
March 15, 1985
ISSUED: March 18, 1985

H.E. NO. 85-18

STATE OF NEW JERSEY
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Respondent,

-and-

Docket No. CI-84-38-45

CHARLES T. METROS,

Charging Party.

SYNOPSIS

The Hearing Examiner recommends that the Commission dismiss in its entirety the charge brought by Charles T. Metros, an individual, against the Transport Workers Union of America, AFL-CIO, Local 225. Mr. Metros alleged that the Head Custodian who initiated disciplinary action against Metros and who was also an official in Local 225, violated the union's duty of fair representation. The undersigned found, however, that Reed did not participate in the representation of Metros in any way and the union provided adequate representation of Metros.

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For the Charging Party
Rothbard, Harris & Oxfeld
(Mark J. Blunda, Of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

Charles Metros was a night custodian employed by the Howell Township Board of Education. ("Board"). Local 225 of the Transport Workers Union represents the custodians employed by the Board. Metros brought the instant action complaining that the TWU violated its duty of fair representation to him and, further, restrained and coerced Metros in the exercise of his protected rights.

The instant charge revolves around the Metros' relationship with, and the status of, the Head Custodian, Ray Reed. The Head Custodian is included in the custodian's unit. Reed also held office in the TWU Local as Section Chairman. (The Section Chairman is head of the section of the local which represents the custodial work of the Board)

Rosemary Bechtol, the Night Head Custodian at the school where Metros worked, complained to Reed about Metros' excessive use of the telephone, his failure to properly secure the building at night, and his failure to communicate with her in a civil manner. Reed confronted Metros with these accusations. Metros became upset and told Reed that he cannot work, he was becoming agitated, was taking sick leave and going home.

Reed then reported this conduct to Herbert Massa, Assistant Superintendent and Board Secretary to the Howell Twp. Public Schools. Subsequently, Metros provided the Board of Education with a doctor's note explaining his use of sick leave and the Board did not attempt to discipline Metros for leaving the school. The Board did, however, schedule a formal hearing concerning Metros' alleged misconduct, as reported by Bechtol. The hearing was held on April 26, 1983 and Metros was found to have engaged in misconduct and was suspended for two days.

The union challenged the suspension by way of a grievance filed on behalf of Metros. There was a grievance meeting between the Board representative, Mason, the President of TWU Local 225, Frank Caiazzo and Metros. The grievance was denied and Metros, by way of a letter to Caiazzo, requested that the union bring the matter to arbitration.

Pursuant to the by-laws of the Association, Caiazzo referred this request to the local's grievance committee to decide whether to demand arbitration. (This is the unions regular procedure) Caiazzo discussed the matter with the members of the grievance committee and, further, discussed Metros' letter which outlined his complaint both against the School Board and Reed. The committee decided not to proceed to arbitration in this matter.

At the Unfair Practice Hearing, I granted the TWU Motion to Dismiss the Unfair Practice concerning all allegations of the unions failure to properly represent Metros before the employer.

Although Metros, in his arguments, relied on Reed's dual position as Board Head Custodian and Union Section Chairman, the Charging Party failed to demonstrate a prima facie case. ^{2/} There was no evidence that Reed ever participated in any manner in this entire controversy in his capacity of union representative. He acted solely as Head Custodian.

Metros testified that a union representative, Leroy Walsh, represented him at the Board's disciplinary hearing and Metros was satisfied with Walsh's representation. Metros also was satisfied with Caiazzo's representation of him at the grievance meeting. Finally, Reed took no part in the union's decision not to bring this matter to arbitration.

I declined to grant the Motion to Dismiss as to certain alleged misconduct by Reed at union meetings. Specifically, there was a motion made at a section union meeting to have Reed removed from office because he brought the complaint against Metros to the Board. Reed was conducting the meeting and refused to entertain such a motion. At the hearing, Reed testified that he had consulted with Caiazzo about the motion. It was Caiazzo's opinion that such a motion is an improper one, for under the union by-laws, a union official cannot be removed by motion at a section meeting. It is not for this Commission to determine, if Reed was acting properly in refusing to entertain the motion, such procedures are purely internal matters and

^{1/} All inferences were resolved in favor of the Charging Party.

are not within the jurisdiction of the Commission. Internal matters can shed light on improper motivations and I did consider this conduct as to question of credibility and motivation.

Metros also alleged that Russell threatened him by stating that: "If you (Metros) keep pushing this then you're dead with the union."


Russell, who no longer holds a position in the union, testified that he never made the alleged threat.

Metros' testimony was disjointed and confused. He testified about the conversation when the threats were allegedly made several times, but only mentioned the threats the third time his testimony touched upon the conversation.

Reed's testimony was more coherent and forthright. Reed was far more credible. Accordingly, I credit Russell's testimony and find that Metros failed to prove that he was threatened.

None of the union conduct testified to at the hearing demonstrated an abrogation of the union's duty of fair representation. (That is, a union cannot act in a manner that is arbitrary, capricious or in bad faith). See Lawrence Tp. PBA Local 119 and David E. Burns, et al, P.E.R.C. No. 84-76, 10 NJPER 41 (¶ 15023 1983), In re City of Union City and FMBA Local 12, P.E.R.C. No. 82-65, 8 NJPER 98 (¶ 13040 1982), Hamilton Twp. Ed. Assoc. and Hamilton Twp. School Social Workers Assoc., P.E.R.C. No. 79-20, 4 NJPER 476 (¶ 4215 1978).

Accordingly, I recommend that the complaint in this matter be dismissed in its entirety.


Edmund G. Gerber
Chief Hearing Examiner

DATED: October 24, 1984
Trenton, New Jersey