

P.E.R.C. NO. 82-114

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST ORANGE PUBLIC LIBRARY,

Respondent,

-and-

Docket No. CO-79-52-100

CONSTANCE TALIAFERRO,

Charging Party.

SYNOPSIS

Acting on authority delegated to the Chairman by the full Commission, the Chairman affirms a Hearing Examiner's recommended decision to dismiss an unfair practice charge based upon lack of prosecution. The instant charge had been remanded to the Commission by the Appellate Division for further hearings.

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Appearances:

For the Respondent, Green & Dzwilewski, Esqs.
(Ellen Harrison, of Counsel)

For the Charging Party
Constance Taliaferro, Pro Se

DECISION AND ORDER

On April 19, 1979, Constance Taliaferro ("Taliaferro") filed an unfair practice charge against the East Orange Public Library (the "Library") with the Public Employment Relations Commission. The charge alleged that the Library violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1), (2), (3), (4), (5) and (7), ^{1/} when on April 14, 1979, it terminated Taliaferro's

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; (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; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or
(Continued)

employment as exhibit artist and public information assistant in retaliation for her filing and processing a grievance before the Board of Trustees and for organizational activity on behalf of a union.

On June 11, 1979, the Director of Unfair Practices, determining that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, issued a Complaint and Notice of Hearing. The Library filed an Answer in which it asserted that Taliaferro was discharged because of her unsatisfactory work performance and not in retaliation for her having presented a grievance.

Evidentiary hearings were held on August 1, 2, 3, 14, 23 and 30, 1979, before Commission Hearing Examiner Alan R. Howe. Both parties were afforded the opportunity to examine witnesses, present evidence, and argue orally. Both parties waived their rights to file post-hearing briefs and instead argued orally on September 7, 1979.

On October 1, 1979, the Hearing Examiner issued a Recommended Report and Decision, H.E. No. 80-11, 5 NJPER 462 (¶10234 1979). He concluded that the Library had interfered with Taliaferro's right to present a grievance in December 1978 and by discharging her in April 1979.

The Commission affirmed this decision, P.E.R.C. No. 80-70, 5 NJPER 546 (¶10282 1979). On July 14, 1981, however, the Appellate Division reversed and remanded the matter for a further hearing consistent with its opinion. In re East Prange Public

1/ (Continued) refusing to process grievances presented by the majority representative, and (7) Violating any of the rules and regulations established by the commission."

Library and Constance Taliaferro, App. Div. Docket No. A-1728-79.

On September 28, 1981, the Chairman of the Commission remanded this matter to Hearing Examiner Howe.

After several settlement attempts failed, the Hearing Examiner scheduled a hearing for April 13, 1982. On April 13, the attorneys for both parties appeared; however, Taliaferro did not. Taliaferro's attorney made an application to be discharged and released as counsel. He introduced three letters indicating his efforts to communicate with her. These letters included a notice of the hearing and a reminder that she must attend or risk dismissal of her charge. Taliaferro never responded to any of the communication. The Hearing Examiner consequently granted the application. The Library then moved to dismiss the matter for want of prosecution. The Hearing Examiner reserved decision on this motion.

On April 15, 1982, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-46, 8 NJPER _____ (¶ _____ 1982) (copy attached). He found that Taliaferro had evidenced no interest in prosecuting this matter and accordingly recommended dismissal of the Complaint.

The Hearing Examiner served a copy of his report on all parties including Taliaferro, and notified them that Exceptions, if any, were due on or before April 28, 1982. No Exceptions were filed.

I have reviewed the **record**. Based on this review, and in the absence of Exceptions, I agree with the Hearing Examiner that the alleged unfair practice Complaint should be dismissed

for want of prosecution. Acting pursuant to authority delegated to me by the full Commission, I dismiss the Complaint.

ORDER

The Complaint is dismissed.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 27, 1982

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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In the Matter of

EAST ORANGE PUBLIC LIBRARY,

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-and-

Docket No. CO-79-52-100

CONSTANCE TALIAFERRO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss a Complaint alleging unfair practices by the Respondent Library for want of prosecution by the Charging Party. The Appellate Division on July 14, 1981 remanded the matter to the Commission for hearings consistent with an opinion rendered at that time. Since September 1981 the Charging Party has refused to cooperate with her attorney and has evidenced no desire to pursue the matter with or without an attorney. The Hearing Examiner set April 13, 1982 for hearing, at which counsel for the Charging Party appeared but the Charging Party herself did not. Counsel for the Charging Party requested that he be released as counsel and, after counsel for the Respondent moved to dismiss the matter for want of prosecution, the motion was granted.

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.

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Appearances:

For the East Orange Public Library
Green & Dzwilewski, Esqs.
(Ellen Harrison, Esq.)

For the Charging Party
Oscar J. Miller, Esq.
Constance Taliaferro, Pro Se

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on April 19, 1979 by Constance Taliaferro (hereinafter the "Charging Party" or "Taliaferro") alleging that the East Orange Public Library (hereinafter the "Respondent" or the "Library") 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 Library terminated Taliaferro's employment, effective April 14, 1979, and in so doing was motivated in part by Taliaferro having filed and processed a grievance before the Board of Trustees in December 1978 and also by her involvement in union activities on behalf of the Communications of Workers of America, all of which was alleged to

be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, might constitute unfair practices within the meaning of the Act, as amended, a Complaint and Notice of Hearing was issued on June 11, 1979. Thereafter hearings were held in Newark, New Jersey during July, August and September 1979 before the undersigned Hearing Examiner, at which time the parties were given an opportunity to present relevant evidence, examine witnesses and argue orally. Post-hearing briefs were waived by the parties and, in lieu thereof, the parties argued orally on September 7, 1979.

On October 1, 1979 the undersigned Hearing Examiner issued his Recommended Report and Decision,^{2/} in which he found that the Respondent had violated Section 5.4(a)(1) of the Act by interfering with Taliaferro's right to present a grievance in December 1978 and by discharging her in April 1979.

Thereafter, the Commission affirmed the Hearing Examiner in a decision issued December 5, 1979, P.E.R.C. 80-70, 5 NJPER 546 (1979). An appeal was taken by the Library and on July 14, 1981 the Appellate Division reversed the Commission and remanded the matter for further hearing: East Orange Public Library v. Taliaferro,

^{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.

"(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.

"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

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

^{2/} H.E. No. 80-11, 5 NJPER 462 (1979).

180 N.J. Super. 155. As will be apparent hereinafter, the reasons for the remand are not germane at this time.

Under the date of September 28, 1981 the Chairman of the Commission remanded the matter to the undersigned Hearing Examiner for further proceedings pursuant to the opinion of the Appellate Division, supra. The Hearing Examiner, in an effort to resolve the matter amicably, conducted an informal hearing with counsel for the parties and thereafter engaged in extensive correspondence, all of which was directed toward concluding the matter without the necessity of a further hearing and the issuance of a written decision. When these efforts failed the Hearing Examiner peremptorily scheduled a hearing for April 13, 1982 in Newark, New Jersey. The parties were put on notice that failure to appear, particularly as to the Charging Party, would be a basis for dismissal of the proceedings.

On April 13, 1982 the parties appeared by counsel. However the Charging Party failed to appear personally. Counsel for the Charging Party offered in evidence three exhibits, ^{3/} all of which indicated his efforts to communicate with the Charging Party personally without success since the remand of the matter to the undersigned Hearing Examiner. Counsel then made an application to be discharged and released as counsel for Charging Party.

On the basis of the foregoing, the Hearing Examiner granted counsel for the Charging Party's application to withdraw as Taliaferro's counsel in this proceeding. Thereupon counsel for the Respondent moved to dismiss the proceedings for want of prosecution. The Hearing Examiner reserved decision on the Motion.

3/ CP-61, a letter dated November 30, 1981 from counsel for the Charging Party to Taliaferro requesting information regarding settlement of the matter; CP-62 a letter dated January 18, 1982 from counsel for the Charging Party to Taliaferro requesting information and asking her if she wished to continue prosecuting the matter; and CP-63, a letter dated March 16, 1982 from counsel for the Charging Party to Taliaferro giving her notice of the hearing of April 13, 1982 and advising her of the risk of dismissal.

* * * *

The Hearing Examiner, after considering fully the history of these proceedings since the remand by the Appellate Division and by the Chairman of the Commission, and considering the efforts of counsel for the Charging Party to communicate and obtain a response from the Charging Party from October 1981 through April 1982, finds and concludes that Taliaferro has evidenced no interest in the prosecution of this matter before the undersigned and the Commission. Accordingly, the Hearing Examiner makes the following:

RECOMMENDED ORDER

It is recommended that the Commission ORDER that the Complaint be dismissed in its entirety for want of prosecution.



Alan R. Howe
Hearing Examiner

Dated: April 15, 1982
Trenton, New Jersey