

E.D. No. 7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN

Respondent

and

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS LOCAL 788

Docket No. CE-25

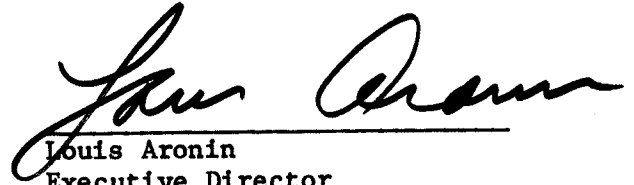
Complainant

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning charges alleging violations of the Act, a hearing was held on January 23, 1970 before Hearing Officer Theodore A. Winard, Esq., at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Thereafter, on April 10, 1970, the Hearing Officer issued a Report and Recommendations. Exceptions have not been filed to the Hearing Officer's Report and Recommendations. The Executive Director has considered the record and the Hearing Officer's Report and Recommendations and finds:

1. City of Camden is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. International Union of Firefighters, Local 788 is an employee representative within the meaning of the Act.
3. Charges having been filed with the Commission alleging coercion and unfair labor practices by the Public Employer a question concerning alleged violations of the Act exists and the matter is appropriately before the Commission for determination.

4. In the absence of Exceptions to the Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, the Commission adopts the Hearing Officer's Report and Recommendations, pro forma.
5. The Executive Director finds that the Complainant has failed to meet its burden proving the allegations by a preponderance of the evidence. Accordingly, the charge is hereby dismissed in its entirety.


Louis Aronin
Executive Director

DATED: July 10, 1970
Trenton, New Jersey

In the Matter of
CITY OF CAMDEN

Respondent

and

Docket No. CE-25

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 788

Complainant

Hearing Officer's Report and Recommendations

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission, a hearing was held on January 23, 1970 and February 6, 1970 before the undersigned Hearing Officer of the Commission to resolve questions concerning a charge alleging violations of the Act. The Hearing Officer has considered the entire record and finds:

1. The City of Camden is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

2. International Association of Firefighters, Local 788, is an employee representative within the meaning of the Act.

3. Charges having been filed with the Commission alleging a violation of the Act, a question concerning an alleged violation of the Act exists and this matter is appropriately before the undersigned for Report and Recommendations.

4. The pertinent facts distilled from a voluminous record indicates the following:

On the evening of September 16, 1969 between the hours of 6:00 p.m. and 9:00 p.m., a coordinated fire alarm directed city fire apparatus to the Hollingshead plant in the City of Camden. On or about October 15, 1969, James R. Asher, (hereinafter referred to as Asher) President of International Association of Firefighters, Local 788, sent

a letter to the Mayor of the City of Camden, which has been introduced into evidence as exhibit P-1. The relevant sections of the above exhibit state that the President of the Union be allowed to present a "grievance"^{1/} concerning the fire drill and that the statutes of the State of New Jersey 2A:17-9 provide any person who gives or causes to be given a false alarm is a disorderly person. Asher requested the Union be given the opportunity to interview in the Mayor's presence people who were present at the fire and police board on September 16, 1969 for the purpose of verifying or disproving certain reports; and that the Union might challenge the right of the City to send out fire apparatus in this fashion in the courts. Some time subsequent to the submission of the "grievance" to the Mayor, Asher testified he was approached by the Chief of the Fire Department and verbally told to submit to him a report containing the reason for the preparation of the "grievance". The written report of Asher was introduced into evidence as exhibit P-2. He, further, stated he was told by Chief Michalak that he was being investigated by members of the Camden Police Department. On or about October 22, 1969 Asher submitted a second letter to the Mayor indicating that subsequent to the presentation of the "grievance" of October 15, 1969, officers of the Union had been placed under police investigation and that copies of the investigation be made available to the aggrieved union representatives. The aforementioned was introduced into evidence as exhibit P-3. On October 24, 1969 Asher received a written response from the Mayor, introduced into evidence as exhibit P-4, stating that a copy of his letter of October 15, 1969 had been forwarded to the City

^{1/} The use of the word "grievance" by the Hearing Officer is not tantamount to a finding of a grievance within the meaning of the Act, but merely as a frame of reference for exhibit P-1.

Attorney, Business Administrator and Director of Public Safety for their attention and that the complained about incident is under investigation. The Mayor, also indicated that Asher direct **his** request for a copy of the investigation to the Director of Public Safety. Asher admitted in his testimony that as a result of the police investigation undertaken by the City of Camden, there have never been any charges or reprimand brought against him other than the fact the Chief told him he might not have the opportunity to act as Acting Deputy Chief at some time in the future.

Chief Michalak testified that the Director of Public Safety had suggested he find out the basis of the complaint contained in the correspondence of Asher, exhibit P-1, and that he told Asher there was a police investigation in progress. He indicated the Director had asked him to remove Asher as an Acting Deputy Chief but there has, in fact, been no ~~transfer~~.

The next witness, Spencer Smith, a Vice President and trustee of the complaining Union testified to having been told by a Councilman Marini of the City of Camden to use his influence to get Asher and the Union to drop its "grievance" concerning the fire drill, or else face possible criminal prosecution for the misuse of election funds. The substance of the evidence to prove this fact was presented in the form of an alleged phone conversation made by the Councilman to this witness in his home. There was strong objection voiced by the respondents to the weight to be attached to this type of hearsay evidence.

Mayor Nardi testified at length concerning his reaction to the "grievance" submitted by the Union:

A. "I specifically cannot recall if I took it as singling out any individual. The most important thing to me was, number one, that a violation of the law had been cited; number two, an attempt was being made to use my office as a place to conduct some kind of hearing and I didn't believe that it should be done in that fashion. There is no provision, there is no requirement in the law for any conduct of that kind where a violation of the law has been committed. but rather, it should be directed as I did in this case." (Tr 203, 204)

Q. "Mayor, did you ask an investigation be undertaken?"

A. I directed it to the three men that I mentioned, the Business Administrator, the City Attorney, and to the Director of Public Safety. I talked directly with the Business Administrator and my recollection is that I discussed that an investigation --

Q. Your recollection is what?

A. My answer specifically would have to be that I did not in writing direct any investigation to be made. I directed a copy of the letter of October 15, P-1, to each of the individuals that I have mentioned.

I also discussed orally, with the Business Administrator, and the City Attorney that such an investigation should be conducted." (Tr 218, 219)

The Mayor, however, later testified that he was unsure whether he did in fact authorize the Director of Public Safety to initiate a police investigation. In summary, the record reveals the concern of the Mayor with the reference to the disorderly persons statute and the request to interview persons in his presence to prove or disprove charges. He forwarded the same to the Business Administrator, Director of Public Safety and the City Attorney. Mr. Steinberg, City Attorney testified that he did receive an opinion request from the Mayor concerning the merits of the allegations contained in the "grievance".

Exhibit P-1 was, thereupon, forwarded to the Business Administrator and to the Director of Public Safety. Director Melleby testified:

Q. "Do you recall who you got it from?"

A. Yes, sir; to the best of my recollection the Business Administrator, Mr. Joseph Dorris, my immediate supervisor.

Q. You didn't get it from Chief Michalak?

A. No, sir.

Q. And as a result of that letter what did you do?

A. An investigation was instituted.

Q. Why was an investigation instituted?

A. Because of this allegation of the Commission of a possible criminal offense or quasi-criminal offense.

Q. Is this a standard procedure to have an investigation when there is an allegation of a possible quasi criminal offense?

A. It's not only procedure, it's law.

Q. Is it standard procedure even though the allegation contained is with respect to the conduct of a member of the Department of Public Safety?

A. Yes, it is.

Q. Did you conduct the investigation?

A. I personally conducted the investigation?

Q. Yes.

A. No, sir.

Q. Who conducted the investigation?

A. Captain Frank Senatore." (Tr 244, 245)

The Director denied that he had ever authorized a transfer of Asher and that he did have some reservation about Asher's acting as Acting Deputy Chief due to the fact he had not shown the required capability in the examination.

At the request of the Director, Captain Frank Senatore of the Camden Police Department undertook an investigation into the merits of the alleged violation of law and the matters contained in exhibit P-1. He interviewed several witnesses and asked the Chief to have his subordinates including Asher and Clark submit a report to him concerning the circumstances surrounding the fire alarm. He testified neither Asher or Clark were the subject of his investigation and his interrogation of them was designed to develop facts concerning the fire alarm and other related matters.

The complainant contends based on all of the aforementioned facts that the respondent has purposefully instituted a police investigation of Union officials as a direct reprisal for the submission of a grievance concerning a test or false fire alarm in the City of Camden. Accordingly, it is argued the respondent harassed and intimidated the officials and has thereby interfered with, restrained and coerced employees in the exercise of their right to present grievances and to form and join employee organizations. Additionally, it is urged that a Councilman of the City of Camden has threatened reprisal in the guise of a criminal prosecution of a Vice President of the Union for his failure to attempt to have the "grievance" withdrawn.^{2/}

In the opinion of the undersigned, the Complainant has failed to meet its burden of proving the allegations of the charge by a preponderance of the evidence. The weight of the credible evidence developed herein reveals that a police investigation was undertaken, not as a reprisal against Union officials for filing a grievance, but rather to inquire into possible violations of the criminal law or the rules and regulations of the Fire Department, insofar, as the merits of the grievance were concerned. There have been no reprisals taken by the respondent. The record is quite clear that there have been no charges brought, no official reprimand, no removal or transfer in fact instituted.

^{2/} The Hearing Officer does not give this allegation much weight. The proof presented with respect thereto was hearsay in nature and not corroborated by direct or circumstantial evidence.

Considering all the facts herein, the circumstances surrounding the submission of the "grievance" and the action taken by the respondent in response thereto are not sufficient to warrant a finding of anti-union motivation or a penalty or reprisal for engaging in organizational activities guaranteed by Section 7 of the Act or by Article 1, Section 19 of the New Jersey Constitution.

5. Based on the above, it is recommended the Charge be dismissed.

Theodore A. Winard
Theodore A. Winard
Hearing Officer

DATED: *April 10, 1970*

Trenton, New Jersey