

P.E.R.C. NO. 86-89

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-85-245-14

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Chairman of the Commission, pursuant to authority delegated by the full Commission and in agreement with a Commission Hearing Examiner's recommended decision, dismisses a Complaint filed by the Communications Workers of America, AFL-CIO against the State of New Jersey. The Complaint alleged that the State violated the New Jersey Employer-Employee Relations Act when it removed the Director of Psychology at Bordentown Correctional Institute in retaliation against his filing of grievances and success in arbitration and warned him to cease his union activities. Neither party filed exceptions to the Hearing Examiner's Recommended Report and Decision.

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Charging Party.

Appearances:

For the Respondent,
Honorable W. Cary Edwards, Attorney General
(Barbara A. Pryor, Deputy Attorney General)

For the Charging Party,
Adrienne R. Taylor, CWA Staff Representative

DECISION AND ORDER

On March 25, 1985, the Communications Workers of America, AFL-CIO ("CWA") filed an unfair practice charge against the State of New Jersey ("State"). The charge alleged that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it removed Dr. Paul Gerrish from his assignment as Director of Psychology at Bordentown Correctional Institute in retaliation against his filing of grievances and success in arbitration and warned him to cease his union activities.^{1/}

^{1/} I agree with the Hearing Examiner that even though no subsections of N.J.S.A. 34:13-5.4 were specifically alleged to

On July 18, 1985, a Complaint and Notice of Hearing issued. The State then filed an Answer denying the charge's allegations.

On September 9, 13 and 19, and November 1, 1985, Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On December 23, 1985, the Hearing Examiner issued his report and recommended decision, H.E. No. 86-28, 12 NJPER ____ (¶ ____ 1985) (copy attached). He concluded that CWA failed to prove Gerrish's protected activities were a "substantial" or "motivating" factor in the State's decision not to appoint him as Director of Psychology in September 1984, and that even if such

1/ Footnote Continued From Previous Page

have been violated, this case was litigated based upon the charging party's allegation that the State discriminated against Gerrish because of his protected activity which, if proved, would violate subsections 5.4(a)(3) and derivatively, 5.4(a)(1). See Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (1982) aff'd App. Div. Docket No. A-1652-82T2 (1983). I caution, however, that our rules require a charging party to specify the subsections allegedly violated, N.J.A.C. 19:14-1.1. Failure to do so subjects such charges to being dismissed.

Subsections 5.4(a)(1) and (3) 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."

illegal motivation has been established, the State demonstrated that it would not have appointed Gerrish in view of his past disciplinary record. He recommended that the Complaint be dismissed.

The Hearing Examiner served his report on the parties and notified them that exceptions, if any, were due on or before January 8, 1986. Neither party filed exceptions or requested an extension of time.

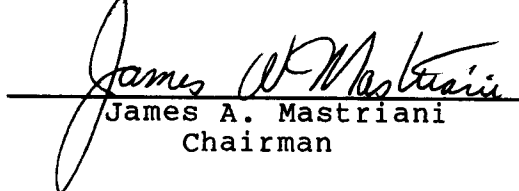
I have reviewed the record. The Hearing Examiner's findings of fact (3-10) are accurate. I adopt and incorporate them here. Under all the circumstances of this case, and in the absence of exceptions, I agree with the Hearing Examiner that CWA failed to prove by a preponderance of the evidence that the State violated §§5.4(a)(1) and (3) of the Act. In particular, I note that, even assuming that a prima facie case had been established, the State established that it would not have appointed Gerrish even absent his protected activities given his previous disciplinary record.

Accordingly, acting under authority delegated to the Chairman by the full Commission, I hereby dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James A. Mastriani
Chairman

DATED: Trenton, New Jersey
February 19, 1986

H.E. NO. 86-28

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

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-85-245-14

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent State did not violate §§5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act when the Superintendent of the Bordentown Youth Correctional Institution refused to designate Paul Gerrish, a CWA Shop Steward, as Director of Psychology in September, 1984. The Hearing Examiner found that notwithstanding that Gerrish had been engaged in extensive protected activities as a Shop Steward for CWA for several year prior to September, 1984, he was involved in several disciplinary infractions of a serious nature which provided the Respondent with a legitimate business justification in not designating him as Director of Psychology: see Bridgewater Twp. v. Bridgewater Public Works Ass'n., 95 N.J. 235 (1984).

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

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-85-245-14

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Charging Party.

Appearances:

For the Respondent

Hon. Irwin I. Kimmelman, Attorney General
(Barbara A. Pryor, D.A.G.)

For the Charging Party

Adrienne R. Taylor, C.W.A. Staff Rep.

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 25, 1985, by the Communications Workers of America, AFL-CIO (hereinafter the "Charging Party" or "CWA") alleging that the State of New Jersey (hereinafter the "Respondent" or the "State") has 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 Paul Gerrish, a Principal Clinical Psychologist, who had been assigned as the Director of

Psychology of the Bordentown Correctional Institution since December, 1979, was, on or about September 28, 1984, removed as the Director of Psychology after filing several grievances and receiving a favorable arbitration decision; and on or about October 4, 1984, one Dr. Trivedi advised Gerrish to cease with his union activities as they were not in keeping with his role as a professional and as a supervisor; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act.^{1/}

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 July 18, 1985. Pursuant to the Complaint and Notice of Hearing, hearings were held on September 9, 13 and 19, 1985 and November 1, 1985, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by December 18, 1985.

^{1/} Although no subsections of the 5.4 of the Act were specifically alleged as having been violated, it is clear from the hearing which was subsequently held that §§5.4(a)(1) and (3) of the Act were the subsections involved and the subject matter was fully litigated on the basis of these subsections: See Commercial Twp Bd/Ed, P.E.R.C. No. 83-25, 8 NJPER 550 (1982), aff'd App. Div. Docket No. A-1642-82T2 (1983).

Section 5.4(a) prohibits 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."

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 after consideration of the post-hearing briefs of the parties, 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 State of New Jersey is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Communications Workers of America, AFL-CIO, is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Dr. Paul Gerrish, who has been a Principal Clinical Psychologist since 1979 at the Bordentown Youth Correctional Institution, is a public employee within the meaning of the Act, as amended, and is subject to its provisions.
4. Prior to December 5, 1979, Gerrish had been a Senior Clinical Psychologist at the Yardville Correctional Institution where he had been employed since March, 1974.
5. At the instance of Wade Johnston, who was leaving the Bordentown institution, and who had been the Director of Psychology since August, 1969, Gerrish was selected to replace Johnston as the

Director of Psychology at Bordentown (1 Tr 14-17; 2 Tr 46, 47, 49, 57).^{2/}

6. Gerrish had been a shop steward for the State Employees Association (SEA) prior to the Communications Workers of America (CWA) becoming the collective negotiations representative. Gerrish testified that when he was interviewed by Hicks in 1979, Hicks referred to the fact that Gerrish had been a shop steward and said that it would be, "...inappropriate...to be very active in the Union..." (1 Tr 17). Hicks, on the other hand, denied discussing Gerrish's union activities in the interview, notwithstanding that he was aware of these activities, adding that it made no difference or he would not have hired Gerrish at Bordentown in the first place (3 Tr 37, 38). The Hearing Examiner credits Hicks' version of what transpired at this interview, relying upon Hicks' demeanor and candor and the overwhelming likelihood that if Hicks had a disposition to discriminate against Gerrish at the outset he could well have done it by declining to hire him at Bordentown.

7. There was considerable testimony and documentary evidence offered to establish that there was such an in-house position as "Director of Psychology" at Bordentown and that Gerrish

^{2/} Sidney Hicks, the Superintendent at Bordentown since April 15, 1974, testified that the in-house title of "Director" did not exist but he nevertheless permitted the title to be utilized by Johnston and subsequently by Gerrish, thus, Hicks' signature appears on the "ID" of Gerrish when Gerrish was hired in December, 1979 (CP-1; 1 Tr 17, 18, 25; 3 Tr 34, 35, 41).

held this title on and after December, 1979. As will be apparent hereinafter, the question of whether or not Hicks recognized the in-house title of "Director of Psychology" at Bordentown, and that Gerrish held such title de facto, there came a time when the State Director of Psychological Services, Dr. John A. Belton, informed Hicks in unequivocal terms that there must be a Director of Psychology at Bordentown pursuant to "Standards 520" of the State Department of Corrections (CP-20 & 2 Tr 82-84; CP-18, R-25, R-26 & CP-9).

a. Gerrish testified at length regarding the duties he performed as Director of Psychology in the Civil Service classification of Principal Clinical Psychologist (R-2) wherein he submitted monthly and annual reports to Hicks, supervised and evaluated a Senior Clinical Psychologist named Kit L. Wong, prepared budget requests and sat on the Classification Committee (1 Tr 26-29, 31, 35-37, 42-46, 72; 2 Tr 9; CP-3, CP-4, CP-5 & CP-15).

b. The following exhibits were offered in evidence as establishing that Gerrish held the title of Director of Psychology on and after December, 1979: CP-2, CP-3, CP-4, CP-10, CP-11, CP-12, CP-13, CP-15, CP-19, CP-21, CP-22, CP-23, CP-25 & CP-26. See also, 1 Tr 55-58; 2 tr 69-71, 81-84.

c. On December 30, 1981, Hicks designated Paul L. Alberti, the Director of Professional Services at Bordentown, to assume responsibility for the "administrative aspects of the Psychology Department," which Hicks testified was necessary because

of problems of productivity in the department under a recent revision of the Criminal Code (R-5; 2 Tr 13-14; Tr 42-45).

8. Gerrish became a Shop Steward for CWA in or around May 18, 1982, having previously served as a Shop Steward for SEA (2 Tr 28-31). Additionally, Gerrish was elected Branch President of Local 1040 of CWA in May, 1983 (1 Tr 49, 50; CP-8). Between November 4, 1981 and October 1, 1984, Gerrish filed 14 grievances on behalf of himself and others, no one of which went to arbitration, but several of which were resolved in favor of CWA (1 Tr 50-52, 111-115; 2 Tr 20-24; R-3, R-7 through R-19).

9. Between June 21, 1982 and August 10, 1984, Gerrish was the subject of three disciplinary suspensions, ranging from one day to five days in duration, for infractions involving incompetence and inefficiency, unauthorized use of State property and unauthorized use of medical records of inmates (2 Tr 34-42; R-20, R-21, R-22, R-23A & R-23B).

10. Standards 520 (CP-20, supra), dealing with "Psychological Services Applicable to the Department of Corrections," specifically mandates that in institutions of the Department of Corrections there shall be a "Department Director of Psychological Services." Standards 520 delineates in great detail on the first two of five pages the duties and responsibilities of each institution's Director of Psychology. The Respondent introduced no evidence that the Youth Correction Institution at Bordentown and Superintendent Hicks were not governed by Standards 520.

11. On May 23, 1983, Belton, as Director of Psychological Services for the State Department of Corrections, conducted an annual program audit as to compliance by Bordentown with Standards 520. In a memorandum to Hicks on July 18, 1983, Belton noted that Bordentown was in compliance with "most of the Standards..." (R-6). However, Belton made a comment that it was not clear who was the Director of Psychology as the two staff psychologists on duty "were not sure..." (R-6, p. 2).^{3/}

12. On July 28, 1983, Hicks sent a memorandum to Belton, in which he stated that the Director of Professional Services also functions as the Director of Psychology, noting his qualifications for the performance of both functions (R-24). The matter of compliance by Hicks with Standards 520 at Bordentown continued into 1984. On June 5, 1984, Belton again made an annual program audit of psychological services at Bordentown and on June 26, 1984, Belton sent a memo to Hicks, first noting compliance with most of the Standards, but then stating that the clarification of the roles of the Director of Professional Services and the Director of Psychology "...have not been completely resolved..." (CP-18). Belton concluded by stating that he wanted to be kept advised of the steps taken to ensure compliance.

^{3/} This comment by Belton tends to undermine CWA's position that Gerrish was the Director of Psychology until 1984.

13. On August 17, 1984 Hicks sent a memorandum to Belton in response to CP-18, in which he insisted that he could not "...justify a Director of Psychology position..." (R-25). Hicks stated flatly that Bordentown does not have a Director of Psychology and that it remained his position that in order to justify the creation of such a title there would have to be additional psychological staff, which the budget does not permit at this time.

14. On August 28, 1984, Belton sent a memo to Hicks in response to R-25, in which he stated categorically that the Standards provide that a Staff Psychologist "shall be designated as the institution's Director of Psychology..." and that all institutions "...have a 'Director of Psychology' for your information..." (R-26). Belton again asked that he be kept informed of the steps to be taken to "insure full compliance with these Standards."^{4/}

16. The dispute between Belton and Hicks, supra, was finally resolved when Hicks sent a memorandum to Belton on September 20, 1984, in which he advised that Dr. Amritlal Trivedi was being designated as the Director of Psychology (CP-9). Hicks testified that his reasons for selecting Trivedi over Gerrish were threefold: Trivedi's record at the institution without incident; his

^{4/} Note: The nature and extent of the disagreement between Belton and Hicks over the appointment of a Director of Psychology at Bordentown was the subject of considerable testimony by Hicks and is totally consistent with the content of Exhibits R-6, R-24, R-25, R-26 & CP-18 (3 Tr 61-80).

good work performance; and his having had the respect of staff and inmates (3 Tr 81). In rejecting Gerrish, Hicks considered that Gerrish had had to be disciplined in order to become productive and his insensitivity to inmates as evidenced by the use of a racial epithet in March, 1984 (3 Tr 81-86; R-20, R-23A & R-23B). Hicks testified credibly that the grievances filed by Gerrish had no affect on his decision to designate Trivedi as Director of Psychology (3 Tr 86, 87).

17. The evidence with respect to alleged anti-union animus on the part of Hicks is as follows: Gerrish testified without contradiction that on October 4, 1984, Gerrish spoke to Trivedi about the latter's taking over the position of Director of Psychology and that Trivedi said that he had met with Hicks on the subject and that Hicks told Trivedi that he could not change the assignment because Gerrish had already signed a grievance on it (1 Tr 77, 78). Gerrish also testified without contradiction that Trivedi in the same conversation said that Hicks "...felt that as a CWA official, I wasn't loyal enough to the institution (1 Tr 78). Finally, according to Gerrish, Trivedi told Gerrish that he should cease his union activities, adding that it was all right to be a union member but that Gerrish should not be a shop steward (1 Tr 78).^{5/} Hicks in his testimony did not respond in any manner to

^{5/} The Hearing Examiner does not credit the equivocal denial of Trivedi that he did not tell Gerrish to cease his Union activities (4 Tr 62).

the foregoing testimony of Gerrish. George F. White, Jr., a CWA representative, testified that at a grievance hearing in January, 1984, Hicks said that the workers at Bordentown were "brazen" and that Gerrish filed 90% of the grievances (3 Tr 5, 6). Hicks denied saying that the workers were "brazen" but did not respond to White's testimony regarding Gerrish having filed 90% of the grievances (3 Tr 94). Given the respective demeanors of White and Hicks on the question of the use of the term "brazen," the Hearing Examiner credits White.^{6/}

18. Gerrish acknowledged on cross-examination that during his tenure at Bordentown he had never been denied an increment and that since Trivedi was appointed Director of Psychology in September, 1984, there has been no change in his office location, his hours or his salary (2 Tr 31, 32).

DISCUSSION AND ANALYSIS

The State Did Not Violate
§§(a)(1) And (3) Of the Act When
It Designated Amritlal Trivedi As
Director Of Psychology At Bordentown
On September 20, 1984.

In analyzing whether or not the Charging Party has established a violation of §§(a)(1) and (3) of the Act in the case

^{6/} The finding that Hicks used the term "brazen" is not conclusive on the ultimate question as to whether or not Hicks manifested any anti-union animus. For example, Hicks testified credibly that he has no general problems with unions at Bordentown and that he meets with representatives of these unions every third Thursday, adding that Gerrish has resisted attendance (3 Tr 88).

of Gerrish, the Hearing Examiner must necessarily refer to the two-fold test established by the New Jersey Supreme Court in Bridgewater Twp. v. Bridgewater Public Works Ass'n., 95 N.J. 235 (1984). First the Charging Party must establish that Gerrish was engaged in protected activity, which indeed it has established. When Gerrish was hired at Bordentown in December 1979, he had previously been a shop steward for the SEA at the Yardville Correctional Institution and, upon CWA becoming the collective negotiations representative at Bordentown, Gerrish became a shop steward for CWA in or around May 18, 1982, and was elected Branch President of Local 1040 in May, 1983 (see Findings of Fact Nos. 6 & 8, supra). Further, Gerrish's activities as shop steward resulted in his filing 14 grievances on behalf of himself and others between November 4, 1981 and October 1, 1984 (Finding of Fact No. 8, supra).

Another aspect of the Bridgewater test is that the public employer must have had knowledge of Gerrish's protected activities. Plainly, Hicks and others in the administration at Bordentown either knew or should have known that Gerrish was a shop steward, first for SEA and, subsequently, for CWA, and that he filed some 14 grievances through October 1, 1984. Thus, the State had knowledge of the exercise by Gerrish of protected activities over a substantial period of time.

Additionally, the Charging Party, in establishing its prima facie case as the first part of the Bridgewater test, must demonstrate that the State (Bordentown) was hostile towards the

exercise by Gerrish of protected activities, i.e., that Gerrish's exercise of protected activities was a "substantial" or a "motivating" factor in Bordentown's decision not to appoint Gerrish as Director of Psychology in September, 1984. The Hearing Examiner finds and concludes that CWA has failed to make a prima facie showing that this aspect of the Bridgewater test has been satisfied.

In having concluded that CWA failed to show that Hicks and the administration in Bordentown were hostile toward Gerrish's exercise of protected activity, the Hearing Examiner finds the proofs as to alleged anti-union animus lacking. Regarding any animus manifested by Hicks at or around the time of the hire of Gerrish in December, 1979, the Hearing Examiner has credited Hicks' testimony that if he had a disposition to discriminate against Gerrish at the outset he could well have done it by declining to hire him at Bordentown. Hicks had an apparently satisfactory relationship with other unions at the institution as evidenced by his regularly monthly meetings with them. However, Gerrish declined to participate. The Hearing Examiner finds as insufficient to establish illegal motivation the testimony that Hicks said that Gerrish's activities indicated that he was not loyal enough to the institution, that Gerrish filed 90% of the grievances and that the workers at Bordentown were "brazen," (see Finding of Fact No. 17, supra).

It is true that prior to the hiring of Gerrish as a Principal Clinical Psychologist in 1979, his predecessor, Wade

Johnston, had had the in-house title of Director of Psychology. Gerrish assumed the same in-house title when he was hired in December, 1979. There was substantial documentation offered by CWA to support this fact (see Finding of Fact No. 7, supra). However, on December 30, 1981, Hicks designated Alberti to assume responsibility for the "administrative aspects of the Psychology Department," which Hicks said was necessary because of problems of productivity. [See Finding of Fact No. 7(c), supra]. Thereafter it was anything but clear that Gerrish was the in-house Director of Psychology inasmuch as Belton was continually after Hicks to designate a Director of Psychology, which Hicks claimed was not justified and that budget was lacking (see Findings of Fact Nos. 11-16, supra). Belton ultimately prevailed upon Hicks to designate a Director of Psychology and Hicks sent a memorandum to Belton on September 20, 1984, advising that Trivedi was being designated as Director of Psychology (Finding of Fact No. 16, supra).

Thus, the situation as of September, 1984, was that CWA had proven that Gerrish was the in-house Director of Psychology at Bordentown from the date of his hire in December, 1979, through December, 1981, when Alberti, according to Hicks, assumed that responsibility. From that date until September, 1984, the situation as to a Director of Psychology at Bordentown was clouded by the ongoing dispute between Belton and Hicks over whether such a title was required by Standards 520, which was ultimately resolved against Hicks.

In September, 1984, Hicks selected Trivedi over Gerrish, giving as his reasons that Trivedi's record at the institution was without incident and that he had good work performance and the respect of staff and inmates. In rejecting Gerrish, Hicks considered that Gerrish had to be disciplined in order to become productive and demonstrated an insensitivity to inmates. Hicks testified credibly that the grievances filed by Gerrish had no affect on his decision to designate Trivedi. (See Finding of Fact No. 16, supra).

Even assuming arguendo that the Charging Party has fully satisfied the requisites of Bridgewater vis-as-vis establishing a prima facie case of illegal motivation on the part of the State (Bordentown) against Gerrish and the CWA, the Hearing Examiner must conclude that the State has by its prooofs fully satisfied the second part of the Bridgewater test, namely, that Hicks' failure to have appointed Gerrish as Director of Psychology in September, 1984, would have taken place even in the absence of the exercise by Gerrish of protected activities. In other words, the Hearing Examiner is persuaded that the State had a legitimate business justification in making the decision that it made to appoint Trivedi as Director of Psychology in September, 1984.

Here, consider again Hicks' stated reasons for selecting Trivedi over Gerrish, and particularly, the reasons for rejecting Gerrish. Hicks considered that Gerrish had had to be disciplined in order to become productive and was insensitive to inmates as

indicated by the use of a racial epithet in March, 1984. It was undisputed that Gerrish had been the subject of three disciplinary suspensions, ranging from one day to five days in duration, for infractions involving incompetence and inefficiency, unauthorized use of State property and unauthorized use of medical records of inmates (Finding of Fact No. 9, supra). Plainly, this disciplinary history of Gerrish weighed heavily in the decision by Hicks not to designate Gerrish as Director of Psychology. On the other hand, Trivedi had an exemplary record at the institution which, obviously, weighed heavily in the decision of Hicks to appoint him as Director of Psychology. The Hearing Examiner cannot inquire into the exercise of the managerial prerogative to designate, promote or otherwise prefer one employee over another for the position of Director of Psychology at Bordentown. For unless the decision was somehow tainted by anti-union animus, which the Hearing Examiner has found did not exist, he has no authority to look behind the reasons for the decision. The Hearing Examiner being clear that the decision to designate Trivedi as Director of Psychology over Gerrish in September, 1984, would have occurred even in the absence of protected activities by Gerrish, the State (Bordentown) has fully satisfied the second part of the Bridgewater test and, thus, the Hearing Examiner must recommend dismissal of the Complaint.

* * * *

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

CONCLUSION OF LAW

The Respondent State (Bordentown) did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) when Sidney Hicks, the Superintendent, refused to designate Paul Gerrish as Director of Psychology in September, 1984.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: December 23, 1985
Trenton, New Jersey