

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY UTILITIES AUTHORITY  
& OIL, CHEMICAL AND ATOMIC WORKERS  
UNION,

Respondents,

-and-

Docket No. CO-81-212-106

AMALGAMATED LOCAL UNION 355,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority which the Commission delegated to him and N.J.A.C. 19:14-1.5, grants a request of the Amalgamated Local Union 355 to withdraw an unfair practice charge it had filed against the Ocean County Utilities Authority and Oil, Chemical and Atomic Workers Union. The Complaint based upon this charge is dismissed.

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Charging Party.

Appearances:

For the Ocean County Utilities Authority, Aron,  
Till & Salsberg, Esqs. (David A. Wallace, of Counsel)

For the Oil, Chemical and Atomic Workers Union  
(Mr. Thomas V. Dooley)

For Amalgamated Local Union 355, Schneider, Cohen,  
Solomon & DiMarzio, Esqs. (J. Sheldon Cohen, of Counsel)

DECISION AND ORDER

On January 22, 1981, Amalgamated Union Local 355  
("Local Union 355") filed an unfair practice charge against the  
Ocean County Utilities Authority ("Authority") with the Public  
Employment Relations Commission. The charge alleged, inter alia,  
that the Authority violated the New Jersey Employer-Employee  
Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specific-  
ally subsections 5.4(a)(1), (3), and (5),<sup>1/</sup> when, after taking

1/ These subsections prohibit public employers, their representa-  
tives 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; and (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."

over the operations of the Dover Municipal Utilities Authority ("DMUA"), it refused to negotiate with Local Union 355 over the terms and conditions of employment for the unit of employees formerly employed by the DMUA.

On February 23, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

On April 21, 1981, Local Union 244 filed an amended charge against the Authority and a new respondent: the Oil, Chemical and Atomic Workers Union ("OCAW"). Local Union 355 added allegations that the Authority violated subsection 5.4(a) (2)<sup>2/</sup> when it unlawfully assisted the OCAW in its attempt to gain the right to represent the employees in question and that OCAW violated subsections 5.4(b)(1) and (2).<sup>3/</sup>

After the amendment of the charge, the parties engaged in discovery and settlement negotiations. As a result, hearings scheduled for first April 27 and 28, 1981, then May 7 and 8, 1981, then October 14 and 15, 1981, and finally November 20 and December 1981 were postponed.

On February 6, 1982, the attorney for Local Union 355 informed Commission Hearing Examiner Alan R. Howe that the parties

<sup>2/</sup> This subsection prohibits public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization."

<sup>3/</sup> 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 (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

had settled the matter, but had not yet reduced the settlement to writing. He stated he would keep the Hearing Examiner apprised of developments. On March 11, 1982, after unsuccessful attempts to communicate with the attorney for Local Union 355, the Hearing Examiner recommended dismissal of the Complaint sua sponte based upon the failure of Local Union 355 to keep him informed of the status of settlement talks, H.E. No. 82-42, 8 NJPER 247 (¶13108 1982).

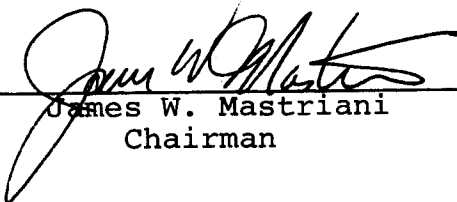
On March 25, 1982, Local Union 355 filed a Motion for Reconsideration with the Hearing Examiner as well as Exceptions to the initial decision with the Commission. Counsel for Local Union 355 argued that his failure to communicate with the Hearing Examiner was excusable based upon his existing workload and, in particular, since he had been involved in interim relief proceedings in a protracted and volatile labor dispute.

On April 12, 1982, the Hearing Examiner denied the Motion for Reconsideration, H.E. No. 82-45, 8 NJPER 271 (¶13117 1982).

Local Union 355 has now filed a request to withdraw its Exceptions and the instant unfair practice charge pursuant to N.J.A.C. 19:14-1.5. The full Commission has delegated to the Chairman the authority to act on its behalf. I grant the instant request and therefore do not consider the merits of the Hearing Examiner's decision dismissing the Complaint or the legitimacy of Local Union 355's proffer. The Complaint is dismissed and the case is closed.

ORDER

The request to withdraw is hereby granted and the Complaint is dismissed with prejudice.

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
September 2, 1982

STATE OF NEW JERSEY  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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AMALGAMATED LOCAL UNION 355,

Charging Party.

SYNOPSIS

A Hearing Examiner denies a Motion for Reconsideration of dismissal of charges of unfair practices for want of prosecution. The Motion for Reconsideration offered no persuasive reasons why the Charging Party could not have communicated with the Hearing Examiner between mid-January 1982 and March 11, 1982, the date of issuance of H.E. No. 82-42, which recommended dismissal for want of prosecution.

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Aron, Till and Salsberg, Esqs.  
(David A. Wallace, Esq.)

For the Oil, Chemical and Atomic Workers Union  
Mr. Thomas V. Dooley

For Amalgamated Local Union 355  
Schneider, Cohen, Solomon & DiMarzio, Esqs.  
(J. Sheldon Cohen, Esq.)

HEARING EXAMINER'S DECISION ON  
MOTION FOR RECONSIDERATION

On March 11, 1982 the Hearing Examiner issued H.E. No. 82-42, which recommended that the Public Employment Relations Commission (hereinafter the "Commission ") dismiss charges of unfair practices, filed by the Charging Party, for want of prosecution. The charges against each Respondent were summarized and set forth together with a history of the proceedings since the issuance of the Complaint and Notice of Hearing on February 23, 1981. This history will not be repeated herein. Suffice it to say that on January 6, 1982 counsel for the Charging Party telephoned the Hearing Examiner to advise that the matter was settled but had yet to be reduced to writing and that he would call again in two weeks. No telephone call was ever received again from counsel for the Charging Party until March 18, 1982, three days after receipt of a copy of H.E. No. 82-42, supra. In the intervening period the Hearing Examiner had telephoned counsel for the Charging Party on four

separate occasions between February 23 and March 2, 1982 without any response. Additionally the Hearing Examiner personally requested counsel for the Charging Party, who was nearby, to meet with him in his office to discuss the status of the matter, but there was no response. This request was made on March 1, 1982.

Counsel for the Charging Party filed a Motion for Reconsideration with the Hearing Examiner on March 25, 1982. A copy was also addressed to the Chairman of the Commission, in the alternative, as exceptions to the Hearing Examiner's Recommended Report and Order, which is pending before the Commission.

Counsel for the Charging Party acknowledged the correctness of the Hearing Examiner's efforts to communicate with him as set forth in H.E. No. 82-42, supra. Counsel for the Charging Party then proceeded to offer excuses for his neglect to communicate, among which are listed a "busy trial schedule resulting from the injury of an associate which resulted in a doubling of counsel's case load for a period of time" and counsel having become "involved as an advisor to the Englewood Teachers' Association during the currency of a long and embroiled labor dispute and was required to prepare response for interim relief motions ...before this Commission."

The Hearing Examiner finds the excuses offered by the Counsel for the Charging Party to be unpersuasive. Counsel was not asked to appear at a hearing before the undersigned nor was he asked to prepare and file a brief or other papers necessitating substantial consumption of time. All that counsel for the Charging Party was asked to do was to return at least one of four telephone calls to his office involving the expenditure of a minute or two.

Even if the Hearing Examiner treats the instant Motion for Reconsideration under the standards for opening judgments as set forth in the New Jersey Civil Practice Rules (R. 4:50-1) the instant motion would fail since there is not involved any "mistake, inadvertence, surprise or excusable neglect." Plainly, the neglect herein involved was inexcusable.




\* \* \* \*

For all of the foregoing reasons, the Hearing Examiner makes the following:

ORDER

The Charging Party's Motion for Reconsideration is denied.

  
\_\_\_\_\_  
Alan R. Howe  
Hearing Examiner

Dated: April 12, 1982  
Trenton, New Jersey

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SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the Charging Party for want of prosecution. A Complaint and Notice of Hearing was issued on February 23, 1981 and, following numerous adjournments, including the institution of discovery proceedings, the matter has languished during settlement discussions and there has been no report to the Hearing Examiner since January 1982. In view of the inordinate lapse of time since the Complaint and Notice of Hearing was issued and the failure of counsel for the Charging Party to report to the Hearing Examiner on the status of settlement, the Hearing Examiner concluded that the Charge of unfair practices should be dismissed for want of prosecution.

A Hearing Examiner's recommended report and order 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 order and any exceptions thereto filed by the parties and issues a decision which may adopt, reject or modify the Hearing Examiner's conclusions and recommendations.

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Schneider, Cohen, Solomon & DiMarzio, Esqs.  
(J. Sheldon Cohen, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 22, 1981 by Amalgamated Local Union 355 (hereinafter the "Charging Party") alleging that the Ocean County Utilities Authority (hereinafter the "Respondent Authority") 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 Respondent Authority in November 1980 purchased all of the assets and took over the operations of the Dover Municipal Utilities Authority and continued the employment of certain employees represented by the Charging Party and thereafter considered said employees as its own and covered by a collective negotiations agreement between the Respondent Authority and the Oil, Chemical and Atomic Workers Union, infra, as a result of which the said employees represented by

the Charging Party have suffered unilateral changes in their terms and conditions of employment, including, but not limited to, reductions in salary and, further, the Respondent Authority has refused to negotiate with the Charging Party for the unit of employees formerly employed by the Dover Municipal Utilities Authorities, all which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) of the Act.<sup>1/</sup>

On April 21, 1981 the Charging Party amended its Unfair Practice Charge to allege that the Oil, Chemical and Atomic Workers Union (hereinafter the "Respondent OCAW") had asserted representation rights concerning the terms and conditions of employment of employees previously represented by the Charging Party, supra, and that the Respondent Authority by unlawfully assisting the Respondent OCAW additionally violated N.J.S.A. 34:13A-5.4(a)(2)<sup>2/</sup> and, further, that the Respondent OCAW violated N.J.S.A. 34:13A-5.4(b)(1) and (2)<sup>3/</sup> by interfering with the rights of the employees represented by the Charging Party and by asserting representation rights concerning the terms and conditions of employment of employees previously represented by the Charging Party.

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.

"(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.

"(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."

2/ This Subsection prohibits public employers, their representatives or agents from:

"(2) Dominating or interfering with the formation, existence or administration of any employee organization."

3/ These Subsections prohibits public employee representatives, 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) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

It appearing that the allegations of the original Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 23, 1981. The Notice of Hearing set April 27 and April 28, 1981 as dates for hearing in Newark, New Jersey. As noted previously, the original Unfair Practice Charge was amended on April 21, 1981 to include allegations against the Respondent OCAW.

At the request of counsel for the Respondent Authority the original hearing dates were rescheduled to May 7 and May 8, 1981. Under date of April 15, 1981 counsel for the Charging Party sought to initiate discovery by way of written interrogatories, which was resisted by counsel for the Respondent Authority, as a result of which the May 1981 hearing dates were cancelled.

Following a meeting of counsel for the Respondent Authority and the Charging Party on July 7, 1981 with the Hearing Examiner the mechanics of discovery were amicably resolved. A schedule was established for the production of certain documents by the Respondent Authority and the deposing of witnesses in August and September 1981 with the hearing dates rescheduled to October 14 and October 15, 1981. The representative of the Respondent OCAW was apprised of these developments and the October hearing dates.

At the request of counsel for the Respondent Authority and the Charging Party the October hearing dates were cancelled and rescheduled to November 20 and December 9, 1981. Thereafter the November 20 hearing date was cancelled by agreement and the date of December 9, 1981 was confirmed. However, the December 9, 1981 hearing date was eventually cancelled due to the pendency of settlement discussions.

On January 6, 1982 counsel for the Charging Party telephoned the Hearing Examiner to advise that the matter was settled but had yet to be reduced to writing. Counsel said that he would call the Hearing Examiner in two weeks.

Under date of January 7, 1982 counsel for the Respondent Authority addressed

a letter to the counsel for the Charging Party, which confirmed the terms of a proposed settlement and requested that a Mr. William Higgins of the Respondent OCAW indicate in writing whether or not the Respondent OCAW approved the proposed settlement. Under date of January 15, 1982 counsel for the Charging Party confirmed the correctness of the proposed settlement between the Respondent Authority and the Charging Party.

On February 23, 1982 the Hearing Examiner telephoned counsel for the Charging Party for a status report. Counsel was not in and a message was left to return the call. No return telephone call was ever received, notwithstanding that the Hearing Examiner telephoned again on February 24 and February 25, 1982. On March 1, 1982 the Hearing Examiner personally requested counsel for the Charging Party, who was nearby, to meet with him in his office to discuss the status of the matter, but there was no response. On March 2, 1982 the Hearing Examiner made one final telephone call to counsel for the Charging Party. No response has been received to date.

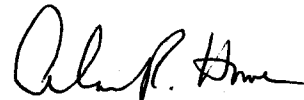
\* \* \* \*

In view of the fact that counsel for the Charging Party has failed, refused and neglected to report to the Hearing Examiner on the status of settlement of the instant Unfair Practice Charge, as amended, since mid-January 1982, the Hearing Examiner is of the opinion, and concludes, that there should be a final disposition of this matter. Accordingly, the Hearing Examiner recommends that the instant Unfair Practice Charge, as amended, be dismissed for want of prosecution, it being more than one year since the issuance of the Complaint and Notice of Hearing on February 23, 1981.

RECOMMENDED ORDER

In view of the failure, refusal and neglect of the Charging Party to proceed

to hearing, or to withdraw the instant Charge of unfair practices, the Hearing Examiner ORDERS that the instant charge of unfair practices be dismissed for want of prosecution.



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Alan R. Howe  
Hearing Examiner

Dated: March 11, 1982  
Trenton, New Jersey