

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST WINDSOR REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-83-258-107

EAST WINDSOR SUPPORT STAFF
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge the East Windsor Support Staff Association filed against the East Windsor Regional School District Board of Education. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when it suspended and then discharged a maintenance supervisor, allegedly because he had executed an authorization and designation card on behalf of the Association. The Commission agrees with its Hearing Examiner that the Association failed to prove its allegations by a preponderance of the evidence.

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Appearances:

For the Respondent, Turp, Coates, Essl & Driggers
(Donald S. Driggers, Of Counsel)

For the Charging Party, Sterns, Herbert & Weinroth
(Mark D. Schorr, Of Counsel)

DECISION AND ORDER

On March 22, 1983, John Senesy and the East Windsor Support Staff Association ("Association") filed an unfair practice charge against the East Windsor Regional School District Board of Education ("Board") with the Public Employment Relations Commission. The charge alleged that the Board violated subsections 5.4(a)(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it suspended and then discharged Senesy, its maintenance supervisor, allegedly because he

^{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; and (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."

executed an authorization and designation card on behalf of the Association.

On June 10, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Board filed an Answer denying that Senesy's suspension and discharge were motivated by anti-union animus or his Association affiliation and asserting instead that he was suspended and discharged because of insubordination and unsatisfactory performance.

On August 4 and 5, 1983, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses, introduced exhibits, and argued orally. They did not file post-hearing briefs.

On December 15, 1983, the Hearing Examiner issued his report and recommended decision. H.E. No. 84-31, NJPER (¶ 1983). He found that Senesy and the Association had failed to prove the alleged unfair practices by a preponderance of the evidence.

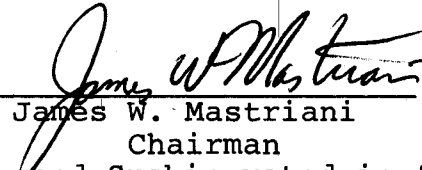
The Hearing Examiner served his report on the parties and informed them that exceptions, if any, were due on or before December 29, 1983. Neither party filed exceptions.

We have reviewed the record. The Hearing Examiner's findings of fact are accurate. We adopt and incorporate them here. Based on these findings of fact and the Hearing Examiner's specific credibility determinations, we agree that Senesy and the Association have not proved by a preponderance of the evidence

that the Board suspended or discharged Senesy because of his Association affiliation. Accordingly, the Complaint is dismissed.

ORDER

The Complaint is dismissed.


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch and Suskin voted in favor of this decision. Commissioners Hipp and Newbaker abstained. Commissioners Graves and Hartnett were not present.

DATED: Trenton, New Jersey
January 18, 1984
ISSUED: January 20, 1984

STATE OF NEW JERSEY
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SYNOPSIS

In an Unfair Practice Charge brought by the East Windsor Support Staff Association, a Hearing Examiner of the New Jersey Public Employment Relations Commission found that the Association failed to prove that the East Windsor Regional School District Board of Education discharged John Senesy, who served as the Board's Supervisor of Buildings and Grounds, because he joined the Association.

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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(Donald S. Driggers, Esq.)

For the Charging Party
Sterns, Herbert & Weinroth
(Mark D. Schorr, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On March 22, 1983, John Senesy and the East Windsor Support Staff Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the East Windsor Regional School District Board of Education ("Board or Respondent") violated subsections 5.4(a)(1) and (3) ^{1/} of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically, Senesy alleged that he was suspended on the same day that it was disclosed to an administrator

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of the Board that he had signed an Association Authorization card.

It is further alleged, that Senesy was told that "his employment with the Board would depend on the wishes of representatives of Service Master, Inc., a private subcontractor, which had been retained by the Board to supervise and administer (the Board's) maintenance and custodial service" and at a meeting with the representative of Service Master, Senesy was criticized by said representative for his desire to be represented by the Association. Further, it is alleged that, Service Master effectively recommended Senesy's discharge because of the exercise of his protected rights.

On June 10, 1983 the Director of Unfair Practices issued an Order Consolidating Cases and a Complaint and Notice of Hearing. Hearings were conducted on August 4 and 5, 1983 at which time the parties were given an opportunity to examine and cross-examine witnesses, present evidence and argue orally. ^{2/}

John Senesy worked for the Board for approximately 18 years. From 1978 until 1982 Senesy was the Supervisor of Buildings and Grounds. It was conceded by the Board that Senesy was diligent and resourceful in his position. However, the record reveals that Senesy had a real problem in terms of his inter-personal relationships and personnel skills. When Senesy assumed his supervisory position his evaluations were outstanding. However, beginning with his 1980 evaluation Senesy's evaluations contain references to personality conflicts. The June 2, 1981 evaluation for 1980-1981, begins, "John's evaluation again remains difficult. In many respects, John's perfor-

^{2/} The parties were given an opportunity to file post-hearing briefs. The Transcripts were received by September 15, 1983.

mance can be rated superior, in other aspects it is unsatisfactory."

Later in the evaluation appears:

John is constantly the center of controversy with staff - either his own, or central office. The end result is too many hours of Chief School Administrator's and Assistant Superintendent's time spent in mediating skirmishes between John and Clarence, John and the architect, John and Pat Brown, etc. This must improve next year or the position and/or John will be changed. We have already had to make too many modifications in the management structure of Buildings and Grounds to accommodate poor supervisory skills. We have hoped the supervisory aspect of John's performance would improve. Although showing some improvement, more rapid growth is a must. The "people skills" part of John's performance is unsatisfactory.

Senesy's evaluation for 1981-1982 reflected the same shortcomings.

On June 2, 1982, Senesy was involved in an incident with a fellow supervisor, Clarence Taylor. ^{3/} Senesy discovered that Taylor did not inform Senesy of a meeting that was to take place that evening in the schools that required extra work. Senesy became very upset and, in the presence of other employees, made racial slurs about Taylor and broke the name plate on Taylor's desk. Senesy admitted this conduct at the hearing. However, he initially denied using racial epithets when the incident was investigated by the Board. ^{4/} As a result of this incident Senesy received a three day suspension.

On October 16, 1982 at approximately 2:30 a.m. Senesy was called at his home by the local Police Department; there had been an apparent break in at one of the Board's schools. Senesy responded and

3/ Who is referred to in the June 2, 1981 evaluation as "Clarence".

4/ See R4 in evidence.

- 4 -

went into the building with the local police. Although a door was open, there was no damage, nor was anything in the building stolen. Senesy went into the school office to use the phone and he crossed a photo-electric beam that set off an alarm in Clarence Taylor's home. When Senesy testified he would not state whether or not he deliberately set off the alarm. In any event, Senesy made no attempt to call Taylor to tell him not to respond to the alarm. Senesy was upset because security for the building was the responsibility of Clarence Taylor and he believed Taylor should have been called to the school, not himself. Taylor drove the 15 miles from his home in Trenton to Hightstown at a high rate of speed only to discover there was a false alarm. Senesy was given a letter of reprimand for his "use of poor judgement."

In the summer of 1982 the Board contracted with Service Master, Inc. for the delivery of its maintenance and custodial management service. Although, at first, Senesy was enthusiastic about Service Master, incidents developed between Senesy and the personnel of Service Master. Senesy testified that it was the people from Service Master that caused all the problems. George Hepbron, the Assistant Superintendent of Schools for the Board, ordered that Senesy report to Service Master personnel as his supervisors. Senesy bridled at this. Subsequently, some of Senesy's duties were taken away and he received a new job description.

On December 28, 1982, Senesy received a letter from Hepbron, which stated, in part:

This is to officially warn you that, as of this date, your effectiveness as a supervisor on the management team of the East Windsor Regional

School District has been evaluated as "unsatisfactory." Unless there is immediate and substantial improvement, your services to the district will be terminated.

Some time in mid-December Senesy, along with other supervisory personnel, approached the president of the Association, William Sweeny and signed an "A&D" card, i.e. a card stating they wished to be represented by the union.

On the morning of January 13, 1983, Sweeny met with George Hepbron, who was then serving as Acting Chief School Administrator. At that meeting Sweeny mentioned to Hepbron that a number of custodial and maintenance supervisors had joined the Association. Hepbron testified that he did not recall Sweeny specifically mentioning Senesy's name. However, Sweeny testified that he did specifically mention Senesy and moreover, in a position letter to the Commission dated March 29, 1983, the Board's Attorney admitted that Sweeny stated that Senesy signed such a card. Accordingly, I so find that Hepbron knew that Senesy signed the A&D card.

Later that same afternoon, Senesy was making photostatic copies of minutes of a staff meeting held the week before between supervisory personnel and representatives of Service Master. The minutes were to be handed out at a staff meeting scheduled for that same day.

John Parsons of Service Master approached Senesy. Parsons did not testify at the hearing. Hepbron and Jeffery Elmer, another Service Master employee, testified that Parsons told both of them that Senesy was insubordinate: that Parsons asked for a copy of the minutes

but Senesy argued with Parsons and refused to turn over a copy of the minutes. Senesy testified that Parsons was agitated, hostile, gave him a hard time and blew up at him for no apparent reason.

That afternoon Senesy was called into Hepbron's office. Hepbron suspended Senesy and told him whether or not he would get his job back depended upon the people from Service Master, for they were the people who he had to work with and were functioning as his supervisors. He told Senesy that if he wanted his job, go to people from Service Master and plead for it. Hepbron testified that he believed this final act of insubordination caused him to take the action he did and the knowledge of Senesy's filing of the A&D card was irrelevant.

Senesy claimed that at this meeting Hepbron talked about his lack of "loyalty", apparently referring to the signing of the Association A&D card. Hepbron denied this.

Senesy then made arrangements to meet with Mike Lagneese and Jeffrey Elmer of Service Master. Senesy testified that at the meeting Lagneese kept talking about the Union and how a supervisor cannot have divided loyalties between the union and employer. Elmer testified that the only time the question of the union came up was when Senesy asked if there was animosity toward John because he joined the Association and Lagneese said no.

In East Orange Public Library v. Taliaferro, 180 N.J. Super 155 (1981). The Appellate Division affirmed the Commission's use of the (a)(3) standard enunciated in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980) and which in turn was adopted by the United States Supreme Court in NLRB v. Transportation Mgt. Corp. ___ U.S. ___, 113 LRRM 2857 (1983).

First, the charging party must make a prima facie showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision to discipline, herein the discharge of Senesy; and second, once this is established, the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected activity.

Here the charging party has failed to make a prima facie showing. Senesy was simply not a credible witness. He denied to school officials that he used racial epithets about Clarence Taylor, only to admit he used them at the hearing. Senesy would not testify as to whether or not he intentionally set off the alarm in Clarence Taylor's home. Such discrepancies and lack of candor call into question Senesy's credibility as to his testimony as to both his meeting with Hepbron on January 13 and the following meeting with the representatives of Service Master, Inc. Yet what happened at these two meetings is critical to the Association's case.

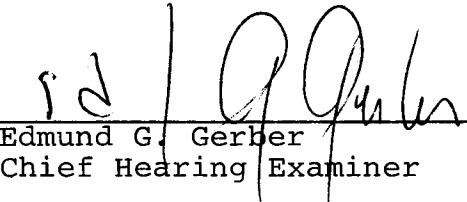
Senesy's version of what happened on the afternoon of the 13th cannot be credited. In contrast, there is nothing to demonstrate that the testimony of either Hepbron or Elmer was not credible.

Senesy was in danger of losing his job, witness the warning letter of December 28. At the time this letter was written, there was simply no connection between Senesy's protected activity i.e. signing the A&D card, and any disciplinary actions on the part of the Board. Given this situation, a final act of insubordination could very well provide the motivation for the discharge.

Although the timing of events on the 13th is evidence of animus, Senesy was suspended on the same day Hepbron became aware of Senesy's Association activity, standing by itself this fact does not prove animus. Absent other credible evidence, I find that the charging parties failed to prove by a preponderance of evidence that the East Windsor Regional School District Board of Education violated N.J.S.A. 34:13A5.4(a)(1) and (3).

RECOMMENDED ORDER

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



Edmund G. Gerber
Chief Hearing Examiner

Dated: December 15, 1983
Trenton, New Jersey