

P.E.R.C. NO. 87-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-86-250-138

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 389, AFL-CIO,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on an unfair practice charge filed by the Service Employees International Union, Local 389, AFL-CIO against the County of Passaic. The charge alleged that the County violated the New Jersey Employer-Employee Relations Act when it announced its intent to reorganize the Department of Public Works; issued notices of layoffs and disguised job titles offered Local 389 members to reduce their wages and eliminate the negotiations unit. A Hearing Examiner recommended that the Complaint be dismissed because the County was not obligated to negotiate over the reorganization of the Department of Public Works or the ensuing layoffs and that these actions were not motivated by anti-union animus. The Chairman, in the absence of exceptions, agrees with these conclusions.

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Appearances:

For the Respondent, Thomas F. Portelli, Esquire

For the Charging Party, Max Wolf, Secretary-Treasurer,
SEIU, Local 389, AFL-CIO

DECISION AND ORDER

On March 11, 1986, the Service Employees International Union, Local 389, AFL-CIO ("Local 389") filed an unfair practice charge against the County of Passaic ("County"). The charge alleged that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3), (5) and (7),^{1/} when it announced its intent to reorganize the

^{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

Department of Public Works ("DPW"); issued notices of layoffs; and disguised job titles offered Local 389 members to reduce their wages and eliminate the negotiations unit.

On March 24, a Complaint and Notice of Hearing issued. the County filed an Answer alleging that it was restructuring its DPW for reasons of economy and efficiency.

On June 20, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. The Hearing Examiner granted a motion to dismiss the portion of the Complaint alleging a violation of subsection 5.4(a)(7). The parties waived oral argument and post-hearing briefs.

On July 11, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 87-3, 12 NJPER 588 (¶17220 1986) (copy attached). He concluded that the County had no obligation to negotiate over the reorganization of its DPW or the ensuing layoffs, and that these actions were not motivated by anti-union animus.

The Hearing Examiner served his report on the parties and informed them that exceptions, if any, were due on July 24. Neither party filed exceptions or requested an extension of time.

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

I have reviewed the record. The Hearing Examiner's findings of fact (3-6) are accurate. I adopt and incorporate them here. Under all the circumstances of this case, and acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I also adopt his recommendation that the Complaint be dismissed.

ORDER

The Complaint is dismissed.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
October 15, 1986

H.E. NO. 87-3

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

In the Matter of

COUNTY OF PASSAIC

Respondent,

-and-

Docket No. CO-86-250-138

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 389, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent County did not violate §§5.4(a)(1), (3), (5) or (7) of the New Jersey Employer-Employee Relations Act when it commenced discussion in February 1986 of the reorganization of the Department of Public Works and thereafter on February 20 and April 8, 1986, sent notices of layoff to the 18 employees in the negotiations unit represented by the Charging Party. Following formal adoption of a resolution of reorganization of the Department of Public Works on April 16, 1986, the County reclassified the affected employees, none of whom were laid off, and none of whom suffered any change in job duties or a reduction in wages or salaries. The case involved only the managerial decision of the County to reorganize, the impact of which would not have been a violation of the Act, but notwithstanding this fact no employee in the unit represented by the Charging Party suffered in any manner whatsoever.

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.

H.E. NO. 87-3

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

In the Matter of
COUNTY OF PASSAIC

Respondent,

-and-

Docket No. CO-86-250-138

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 389, AFL-CIO,

Charging Party.

Appearances:

For the Respondent
Thomas F. Portelli, Esq.

For the Charging Party
Max Wolf, Sec'y-Treas.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 11, 1986, by the Service Employees International Union, Local 389, AFL-CIO (hereinafter the "Charging Party" or the "SEIU") alleging that the County of Passaic (hereinafter the "Respondent" or the "County") 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"), when on February 6, 1986, the County at a meeting regarding the Public Works

Department announced to representatives of its unions, including SEIU, its intention to reorganize the Department; at this meeting representatives of the County stated that none of the bargaining units, including SEIU, would suffer and that the agreements would be honored; on February 20, 1986, the County issued notices of layoff to members of the SEIU "for reasons of economy and efficiency," which is part of a campaign of animus against SEIU members, having originated with several unfair practice charges filed in 1985 (CO-85-153-112, CO-85-143 and CO-85-332); and finally, the County disguised the job titles offered to SEIU members in order to reduce their wages and eliminate the bargaining unit; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7) 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 March 24, 1986. Pursuant to the Complaint and Notice of Hearing, a

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

hearing was held on June 20, 1986, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. At the conclusion of the Charging Party's case, the County made a motion to dismiss on the record.^{2/} Oral argument and the filing of post-hearing briefs were waived by the parties at the hearing on June 20, 1986.

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 in the absence of oral argument or post-hearing briefs, 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 County of Passaic is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Service Employees International Union, Local 389, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

^{2/} The County's motion to dismiss was granted as to the §5.4(a)(7) allegation only. Decision was reserved on the remaining allegations and the County proceeded to present its defense without prejudice. By this decision the Hearing Examiner denies the balance of the County's motion to dismiss and, thus, is rendering a decision on the merits based upon the entire record.

3. The SEIU represents a unit of 18 employees, who work on bridge construction and storm drain repair, and who are referred to collectively as the "Bridge Department." The other major union, representing employees in the "Road Department," is Teamsters Local 11.

4. As background evidence of anti-union animus the record establishes the following:

a. Three years ago the job of General Foreman was posted and John J. Sincimer, Jr., Director of Human Resources, was alleged to have said that if anyone from the Bridge Department (SEIU) applied they would have to take a test but if the applicant was from the Road Department (Local 11) it would be considered a promotion. Al Lombardi, an SEIU member from the Bridge Department, applied and was appointed provisionally without a test. The Hearing Examiner finds as a fact that even assuming that Sincimer made the statement attributed to him, supra, the SEIU has failed to prove any negative impact upon it from the provisional appointment of Lombardi, a member of the SEIU's Bridge Department.

b. In fiscal year 1985 of the Commission three unfair practice charges were filed against the County, namely, CO-85-143, CO-85-153-112 and CO-85-332. Also, at that time, the County filed a unit clarification petition as to the SEIU unit (CU-85-66). The genesis of these charges and the CU petition was the County's awarding of snow removal

work to the employees in the Road Department, represented by Teamsters Local 11. Ultimately, all of the charges and the CU petition were resolved without the necessity of hearing or Commission decision, the underlying dispute having been amicably resolved.

c. There was some testimony regarding whether or not Gaetano Farina, the County Engineer and Director of Public Works, told representatives of the SEIU late in 1985 that pending grievances would be put over for discussion until after the "problem with the unions" is solved. Farina testified that his reference to grievances was over duplication of services between the Bridge Department (SEIU) and the Road Department (Local 11). The Hearing Examiner finds no anti-union animus involved on the part of the County as to this matter. The SEIU grievance procedure allows for automatic movement of grievances up to and including arbitration which the SEIU never pursued.

5. On February 6, 1986,^{3/} Max Wolf, the Secretary-Treasurer of the SEIU, attended a meeting of the County Board of Freeholders where the subject under discussion was the reorganization of the Department of Public Works into one department to be called the Department of Operations. At that time the

3/ This date is taken from the Unfair Practice Charge, based on the fact that all parties agreed that the date in question occurred during the first or second week of February 1986.

Department of Public Works consisted of the Road Department, the Bridge Department, the Engineering Department and the Public Buildings Department. Wolf asked the Freeholders if the SEIU bargaining rights would be protected. County Counsel Thomas F. Portelli replied, "Yes," adding that he could not put it in writing. This colloquy is not disputed. On April 16, 1986, the County formally approved a resolution for reorganization of the Department of Public Works into one department.

6. On February 20, 1986, the County sent to all 18 SEIU unit members both individual and general notices of layoff, the individual notices giving specific dates. Due to a failure to comply with the 45-day rule of Civil Service, a second set of layoff notices was sent on April 8, 1986, extending the date of individual layoffs to May 27, 1986. For reasons never made clear, all 18 employees in the SEIU unit were laid off for one day on April 17th having been rehired on April 18th into new classifications with no actual change in job duties or functions and no wage or salary reduction.^{4/}

DISCUSSION AND ANALYSIS

The SEIU Has Failed To Prove That The County Violated Any Of the Subsections Of The Act Alleged.

The question is whether or not there is any evidence whatever that the County violated §§5.4(a)(1), (3), (5) or (7) of the Act by

^{4/} As previously found, the County adopted a resolution on April 16, 1986, approving the reorganization of the

its conduct herein. First, as to §§5.4(a)(1) and (3) there must be proof of anti-union animus or hostility toward SEIU coupled with SEIU having engaged in activity protected under the Act:

Bridgewater Twp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). Although the Hearing Examiner permitted the SEIU to adduce background evidence, which might be used as a basis for inferring anti-union animus or hostility on the part of the County, the proofs adduced plainly do not meet the Bridgewater test.

First, the incident involving Sincimer and Lombardi three years ago failed to provide evidence upon which an inference of animus can be drawn. As previously found, even if Sincimer said that employees from the Bridge Department would have to take a test while Road Department employees would not, there was no illegal discrimination as to Lombardi, who was given a provisional appointment without a test, he being a member of the SEIU's Bridge Department. All of the unfair practice charges and the CU petition, which were filed in fiscal year 1985, were amicably settled, thus, allowing no inference to be drawn that the County engaged in illegal activity under the Act. The matter of the processing of grievances and the statement attributed to Farina likewise afford no basis for imputing anti-union animus to the County. The mere fact that Farina wanted to put over grievances to some later date did not in any way

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Department of Public Works. This resulted in some savings but there were no SEIU layoffs, several employees in the affected departments having retired or resigned.

impede SEIU in having these grievances processed to arbitration since the contract allowed for automatic movement from step to step including arbitration. Finally, there is no evidence of anti-union animus toward SEIU by the County having decided in February 1986 to reorganize its Department of Public Works into one department and thereafter following through on the reorganization by sending out notices of layoff to SEIU members. Recall that following the reorganization, these employees incurred no change in job duties or reduction in wages or salary.

The County had a managerial prerogative to reorganize its Department of Public Works. The Commission has held on a number of occasions that the impact of decisions of public employers to reorganize is not evidence of an unfair practice: Point Pleasant Bd. of Ed., P.E.R.C. No. 80-145, 6 NJPER 299 (¶11142 1980); Cherry Hill Twp. Bd. of Ed., P.E.R.C. No. 81-90, 7 NJPER 98 (¶12040 1981) and Tenafly Bd. of Ed., P.E.R.C. No. 83-123, 9 NJPER 211 (¶14099 1983).

The §§5.4(a)(1) and (5) allegations in the SEIU's Unfair Practice Charge do not fare any better. There is absolutely nothing in the instant record, which indicates to the Hearing Examiner any theory of an "(a)(5)" violation. The SEIU has not advanced any independent theory in this regard. What we have at most is a decision by the County to reorganize, the sending out of notices of layoff on two occasions, followed by the layoff of the 18 employees in the SEIU unit for one day and thereafter a reclassification that resulted in no change in job duties nor any reduction in wages or

salaries. Plainly, the County's actions surrounding the decision and implementation of the reorganization of the Department of Public Works is free from any taint of a violation of the Act either as a refusal to negotiate in good faith under §§5.4(a)(1) and (5)^{5/} or as discrimination in regard to terms and conditions of employment under §§5.4(a)(1) and (3).

Based on all of the foregoing, the Hearing Examiner will recommend that the alleged violations by the County of §§5.4(a)(1), (3), (5) and (7) of the Act be dismissed.

* * * *

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

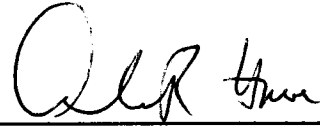
CONCLUSION OF LAW

The Respondent County did not violate N.J.S.A. 34:13A-5.4(a)(1), (3), (5) or (7) when it reorganized the Department of Public Works on April 16, 1986, following discussion on February 6, 1986, and thereafter sent out notices of layoff to the 18 employees in the SEIU unit on February 20 and April 8, 1986, which ultimately resulted in the reclassification of the affected employees in the SEIU unit, however, involving no change in job duties nor any reduction in wages or salaries.

^{5/} The cases of Point Pleasant, Cherry Hill and Tenaflly, supra, apply with equal force to the §§5.4(a)(1) and (5) allegations in the Complaint.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: July 11, 1986
Trenton, New Jersey