

H.E. NO. 2016-10

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

In the Matter of

STATE OF NEW JERSEY,  
DEPARTMENT OF CORRECTIONS,

Respondent,

-and-

Docket No. CI-2014-007

GROVER JACKSON,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint alleging that the State (Department of Corrections) denied a corrections officer and unit employee a training officer position, despite that employee's successful bid for it, in retaliation for conduct protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Hearing Examiner found that the employee had engaged in protected conduct by invoking a right -- to seek reassignment or promotion -- set forth in the applicable collective negotiations agreement. The Hearing Examiner rendered credibility determinations and found the charging party failed to demonstrate that the Respondent was hostile to protected conduct. In re Bridgewater Tp., 95 N.J. 235 (1984).

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent  
John J. Hoffman, Acting Attorney General  
(Adam Verone, Deputy Attorney General)

For the Charging Party  
(Grover Jackson, pro se)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On July 30, 2013, Grover Jackson (Jackson), a corrections officer assigned to Northern State Prison, filed an unfair practice charge against his employer, the State of New Jersey, Department of Corrections (State). The charge alleges that on July 11, 2013, Jackson was summoned to the office of Northern State Prison Administrator, Paul Lagana, and was informed that he would not receive a "training officer" position, despite his having successfully "bid" for the position on June 3, 2013. The charge alleges that Lagana told Jackson that he would be ". . . subjected to being written up for disciplinary actions

by the unit supervisor, Lieutenant Andre Graham." Lagana also allegedly offered Jackson "other positions" within the jail. The charge alleges that on July 15, 2013, the training officer position was "re-posted" as a "temporary bid" and that another officer was assigned to the position, violating the collective negotiations agreement [signed by the State and New Jersey State PBA Local No. 105]. The State's actions allegedly violate section 5.4a(1), (2), (3) and (4)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

On May 5, 2014, a Complaint and Notice of Hearing issued on allegations that the State violated section 5.4a(1) and (3) of the Act. On June 10, 2014, the State filed an Answer, denying allegations in the Complaint. On September 22 and October 27, 2014 and on January 13, 2015,<sup>2/</sup> I conducted a hearing at which

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1/ These provisions 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

2/ On September 22, I granted the State's motion to dismiss the Complaint after Jackson concluded his presentation of evidence. The next day, September 23, I wrote to the

(continued...)

the parties examined witnesses, testified and presented exhibits. The record closed on March 9, 2015.

Upon the record, I make the following:

FINDINGS OF FACT

1. Grover Jackson is a corrections officer employed by the State and assigned to Northern State Prison. In 2011 or earlier, Jackson was employed as a "training officer" at the facility. Within about six consecutive weeks at that time, Jackson retired, rescinded his retirement and returned to work at the prison. In that interim, the training officer position Jackson filled and vacated was posted and awarded to another unit employee (3T8).

2. Jackson is included in a collective negotiations unit of corrections officers, parole officers and others represented by New Jersey State PBA Local No. 105 (Local 105). The most recent collective negotiations agreement signed by the State and Local 105 extends from July 1, 2011 through Jun 30, 2016 (J-1). Article XXXI (Job Posting) provides in a pertinent part:

A. To keep employees within a Department or organizational unit informed of positions in which they may be interested for reassignment or promotion and to provide an opportunity to

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2/ (...continued)  
parties, advising that I wished to hear additional argument on the Motion and reopened the record for that purpose. N.J.A.C. 19:14-6.3(a)8. I heard argument on October 27, 2014, and reversed my decision on the motion. I ordered that the case proceed on the record. On January 13, 2015, the State presented its case, rested and Jackson was provided an opportunity for rebuttal.

apply, existing or planned job vacancies shall be posted prominently for seven (7) calendar days. The posting shall include a description of the job, . . .

Article XI (Grievance Procedure) permits "the individual employee to use this procedure and to be represented by [Local 105] upon his request . . ." Under section XI D ( "General Rules and Procedures"), all unit members, ". . . must orally present and discuss his complaint with his immediate supervisor on an informal basis prior to filing a formal grievance at Step One." Specified procedures for "written" grievances are set forth at paragraph nos. 2-7 (J-1).

3. Sometime in May, 2013, Jackson filed a "bid" on a posted assignment at Northern State Prison (1T14). On June 3, 2013, Major Patrick McWilliams issued a one-page list of awarded "job bids" for five vacant positions, including the names of employees awarded the bids (CP-1). Jackson was awarded the "training officer" position, Monday through Friday (1T16; CP-1). On the same date, a Sergeant Mintz, the "training sergeant," told Jackson that he had "won" the bid for training officer (1T14).

4. Jackson testified that on June 4, 2013, "training sergeant" Mintz told him: "You're not going to get the bid. [Lieutenant] Graham doesn't want you in there. We're going to put the bid back up and you'll stay in Tower 3" (1T26). Sergeant Mintz is the "operational supervisor" responsible for scheduling of corrections officers in the operations unit (1T25).

Lieutenant Graham served as the "training supervisor" at that time (1T26, 1T62). In the absence of any conflicting testimony or documents, I credit Jackson's testimony. I do not find, however, that Lieutenant Graham said that he did not want Jackson in the training officer position. Neither Mintz nor Graham testified in the hearing. Jackson's testimony about Graham's statement is double hearsay and is inconsistent with unrebutted credible testimony that Jackson, while previously employed in the training officer post, was supervised by Graham for a substantial period without incident (see finding no. 8). I find that Mintz's statement implies that the permanent training officer position would be re-posted to solicit other candidates.

Jackson also testified that on the same date, an unnamed "calling officer" told him that ". . . the bid had been pulled" without explanation (1T14). In the absence of any conflicting evidence, I credit his testimony.

5. On Monday, July 1, 2013, the Northern State Prison, "daily schedule for Monday" issued. (I infer that such schedules are prepared and printed for each day). It reports "first shift" absences of unit employees, those out sick, away on vacation, on a "regular day off," etc. It also reports that unit employee Trent Norman's status that day was "separated" (CP-3). Norman had been President of Local 105 for an undisclosed period of time and was the permanently appointed training officer at Northern

State Prison (3T9-3T10). Norman's employment status on that date was apparently unresolved, in light of then-pending litigation, In the Matter of Trent Norman, Northern State Prison, Dept. of Corrections, CSC Dkt. No. 2011-4789, OAL Dkt. No. CSV-07465-11 (CP-5).

6. On July 2, 2013, Kenneth Little, a Local 105 vice-president assigned to Northern State Prison, wrote a letter on Local 105 letterhead to Major Patrick McWilliams regarding, ". . . Trent Norman's bid as training officer." Little wrote a request that, ". . . the training bid be posted as a temporary assigned bid until the outcome of [Norman's] return to work or retirement decision is finalized" (R-3). The exhibit also sets forth a printed "fax" number and date, "August 22, 2013."

7. Former Northern State Prison Administrator Paul Lagana supervised all staff, totalling about 850 employees, including Major McWilliams, from June, 2010 through December 31, 2013 (3T6, 3T15). The facility has an annual budget of about \$80,000,000 (3T6). Lagana testified that he received Little's July 2 letter from either McWilliams or Jackson (3T15). Lagana conceded that seniority determined outcomes in job bidding, except for "specialized posts," of which the training officer position was not one (3T31). He also acknowledged that a voluntary "removal" from an awarded bid would be prompted by "a request to come out" and that involuntary removal would be prompted by retirement,

termination, promotion or a successful bid on another position (3T32-3T33).

In Jackson's voir dire examination of Lagana about the letter, the witness acknowledged that he probably received it from McWilliams sometime in July, 2013 (3T16, 3T18). He also testified that if McWilliams approved such a request, he would write "approved" on the document and send it to him [Lagana] for review (3T18). The word "approved" does not appear on the exhibit; I do not infer from its absence that the request was rejected. In the absence of any facts implicating the authenticity of the exhibit, I credit Lagana's testimony and the date and request set forth in the document.

8. Sometime on or before July 11, 2013, Jackson met with Lagana. Jackson testified that Lagana, ". . . called [him] to his office" (1T60). Lagana testified that Jackson had requested to speak with him about an incarcerated son or stepson (3T11). I credit their testimonies. On July 11, Lagana ordered Jackson to come to his office because he knew of Jackson's request and did not want to wait because he was intending to leave the facility promptly for an undisclosed purpose. Jackson arrived at Lagana's office before the officer's shift ended (3T37).

Jackson testified that Lagana, ". . . [said] a few things. I knew what he was talking about. And he brought up the bid process." Jackson testified that Lagana said to him: "You're



not going to get the bid . . . If you bid on the training job, you're going to be disciplined. You're going to be written up. Why do you want to go back in there and get written up?" (1T60-1T61). Jackson testified that Lagana then offered him another [unspecified] position and said: "Lieutenant Graham is going to be out of here in five months. Bid on it then. Wait until he leaves. You are not going to get the job" (1T62).

Lagana testified that he and Jackson first discussed Jackson's incarcerated son or stepson and then the rescission of the "permanent" training officer bid. Lagana testified that Jackson raised the subject of the bid (3T11). I credit Lagana's testimony that they first discussed Jackson's incarcerated relative in part because Jackson's testimony deliberately obscures the subject. Although one may ordinarily sympathize with a relative's reticence to identify such a subject, I note that credibility is always at issue in a proceeding, particularly when it is rooted in a contested conversation in which a charging party alleges that the respondent's representative has threatened him with discipline. I also credit Lagana's testimony that Jackson raised the subject of the training officer bid. Lagana testified:

But he did bring up about the job [that] was rescinded because the union requested that the job be rescinded, based on the fact of the gentleman [i.e., Trent Norman] that was in the job had not retired. He was talking about retirement, and he hadn't retired. And

the union sent us a letter . . . sent a letter to the Major requesting that it be held off until they can find out whether [Norman] was going to retire or not. And subsequently I told him that the Major was handling that because that was one of his duties. [3T11-3T12]

The Major's duties included oversight of the bidding process and determining whether a bid would be rescinded or pended and what remedy(ies) might be available (3T12). At the time of their discussion, Jackson was aware of Norman's uncertain employment status. Jackson did not rebut Lagana's testimony. I credit it.

Lagana denied that he told Jackson not to bid on the training officer position; denied that he threatened to discipline him if he bid for the position; denied that he told Jackson that Lieutenant Graham did not want him to bid on the training officer position; denied that he told Jackson to wait because Graham was retiring in six months; denied that he asked Jackson, "why would you want to work in a place you're not wanted"; and denied that he offered Jackson another position if he did not bid on the training officer position (3T26-3T29). Lagana testified that Graham was Jackson's supervisor during the several years Jackson was employed as the training officer and that he believed the Lieutenant had never disciplined him (3T29). Jackson did not rebut Lagana's testimony. I credit it. He also testified that Graham remains employed by the State, to the best of his knowledge (3T29). Jackson did not rebut Lagana's

testimony about Graham's employment status. I credit it and find that Graham remained employed for an unspecified period after Lagana's retirement.

Lagana was asked on direct examination if he had instructed any of his staff to advise Jackson that he would be disciplined if he bid on the training officer position. Lagana answered:

Sir, in the title that I had, the work responsibility that I had, this minor stuff was not on the radar for me -- to be worried about a job bid or disciplining folks. I had too many things to worry [about] -- this is not what I do. I have no time for this . . . My responsibilities were very global and very tough; it was a strenuous job, and this minor, minutiae stuff, I couldn't get involved in this stuff; I really couldn't.

And my door was open and I converse with several staff members all the time, but I would never get -- I have no time to worry about who got what job as long as jobs were getting done. I could[n't] care less who had them, when they had them, as long as the jobs were getting done. [3T27-3T28]

Lagana's testimony is non-responsive. Even if I were not to credit Lagana's testimony, I find that the only possible threat articulated by any superior officer to Jackson was an August 9, 2013 "instruction" from Sergeant Mintz to Jackson to rescind his bid for the "temporary" training officer position (see finding no. 10). Jackson did not testify that Mintz threatened an adverse employment action if he refused to rescind the bid.

Jackson has proffered no credible evidence sufficient to overcome Lagana's consistent denials of his alleged specific

remarks to him in their July 11, 2013 meeting. Some of those alleged remarks are set forth in the Complaint and most are in Jackson's narrative testimony. I find that his testimony stands in equipoise with Lagana's denials. In this case's broader factual context, Jackson's testimony cannot be reconciled with his bidding for the position, despite Lagana's threats; his failure to testify about his concern for (or indifference to) retaliation in response to his bid; and the apparent absence of an adverse employment action for the duration of his bid. Later in cross-examination, Lagana credibly reiterated that in his July 11 conversation with Jackson, he told him:

I have nothing to do with job bids. And I told you that your union had requested to put that on hold. And I believe the Major approved it and I was fine with it. [3T44]

Jackson did not rebut Lagana's testimony.

Also on cross-examination and raising the specific event for the first time in the hearing, Jackson asked Lagana if he recalled that Local 105 representative Kenneth Little walked into [Local 105's] office during their July 11 conversation (3T45). Lagana answered affirmatively, testifying that, "[Little] thought it was a disciplinary matter and you told him, 'This is personal, can you please leave?'," after which Little promptly departed (3T45). Jackson did not rebut Lagana's testimony. I credit it, notwithstanding that Lagana had summoned Jackson to his office for their July 11 meeting. Also asked on cross-examination why

he didn't provide Jackson a copy of Little's July 2 letter (see finding no. 6) during their meeting, Lagana replied in testimony: "It had nothing to do with you" (3T46). I do not credit Lagana's testimony; Lagana had previously testified that in their meeting, he told Jackson that, ". . . the union had requested to put that [i.e., the "permanent" bid] on hold," demonstrating Lagana's belief that Local 105's request was directly and immediately relevant to Jackson's queries about the position. Finally, Lagana denied that he was aware of a grievance Jackson purportedly filed regarding the changed bid or the bid he was first awarded and then assertedly denied (3T48). Jackson did not testify that he filed a contractual grievance regarding his bid, nor did he testify about the results of it or about a change in the bid. (See finding no. 11, however).

9. On July 15, 2013, Major McWilliams issued a one-page "posting of temporary job bids (1st shift) Northern State Prison," available as a reassignment to all senior corrections officers. The closing date provided was July 26, 2013. The only "post" on the page was for "training officer," Monday through Friday (CP-2; 1T18). Jackson had never before observed the training officer post listed as a "temporary" bid (1T19). I infer from other exhibits that Jackson bid on and was awarded the "temporary" training officer post (R-1, R-2; see finding nos. 10 and 11).

10. On August 9, 2013,<sup>3/</sup> Jackson handwrote a "special custody report" to an unnamed "operations supervisor" regarding the "training bid." Jackson wrote: "Per instruction I desire to rescind the training bid awarded as of 8/10/2013" (R-2). I infer that "operations supervisor" refers to the Sergeant Mintz identified in finding no. 4 and that Jackson intended that his bid be considered rescinded on August 10, 2013. Jackson testified that, "Sergeant Mintz ordered me to write it because I wasn't getting the bid" (1T79).

11. Jackson wrote another "special custody report" to the "operations unit/supervisor" regarding the "temporary" training "awarded bid" (R-1). On the form's printed line soliciting the "date of incident," Jackson wrote, "8/10/2013." On the printed line soliciting "date of report," Jackson wrote, "August 5, 2013" (R-1). Jackson did not testify about either date on the document.

Jackson wrote that he was awarded the training bid; that in June, 2013, he was informed that he would not be awarded the bid, without written notice; that in July, 2013, he was awarded the training officer position again, ". . . this time, 'temporary

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3/ Facts set forth in finding nos. 10-13 occurred after the unfair practice charge was filed in this case. Jackson did not seek to amend the Complaint and the State did not object to the proffer of evidence. The State was provided the opportunity to cross-examine Jackson on all testimony and documents. I consider these facts as part of the record. N.J.A.C. 19:14-6.3.

bid;" that in July, 2013, he filed a grievance regarding "the past and present matter, the bidding process, its effect and procedure now being practiced." He wrote of his request for a hearing within 20 days and requested that the bid be "held in abeyance" until "a final determination is made and the grievance is settled" (R-1).

Jackson did not testify about nor present any other exhibits purported to be or related to a contractual grievance contesting any aspect of the training officer bid process. Lagana credibly testified that he was unaware of any grievance that Jackson had filed about the bid and would not ordinarily be aware of such or similar grievances because they would be routed to "employee relations and Human Resources" (3T48). Jackson did not testify about any result of or response to his "special custody report" seeking a hearing.

12. On Friday, August 23, 2013, State (Department of Corrections) Director of Employee Relations Kenneth Green wrote a letter to Luretha Stribling, Esq., Jackson's attorney for an unspecified and lapsed period of time (CP-5; 1T46). Green initially referenced Stribling's August 12, 2013 letter about Jackson that was referred to him. (That letter was not proffered as an exhibit).

Green wrote that Jackson's "concerns" about contractual job posting requirements of his title are subject to the "negotiated

grievance procedure," of which, ". . . it was [his] understanding that your client chose not to exercise his rights in that regard." He also wrote that the training officer position is "properly" a "temporary or permanent job posting," noting that job assignments are a "managerial prerogative," subject to "procedural requirements" of the contract. Green wrote that the training officer position was "re-posted" as a "temporary position at the express request of [Local 105] who is the legally authorized bargaining agent on your client's behalf." Green also wrote that the request, ". . . was due to developments in In the Matter of Trent Norman, Northern State Prison, Dept. of Corrections, CSC Dkt. No. 2011-4789, OAL Dkt. No. CSV-07465-11, that could have returned Mr. Norman to the training officer position." Finally, Green wrote that the litigation had resolved, ". . . and the position has been re-posted as a permanent position. Your client [Jackson] has the opportunity to respond to that posting" (CP-5). Jackson did not rebut any representation or purported fact set forth in Green's letter.

13. On August 26, 2013, Major McWilliams issued a "posting of a job bid" for the training officer position, Monday through Friday with a "[bid] closing date" of September 6, 2013 (CP-4). I infer that the posting was for a "permanent" position (CP-4; IT38). The posting specifies four qualifying criteria.



Jackson represented that in September, 2014, he learned from Supervisor of Operations, Lieutenant Mitchell Douglas, that a corrections officer Bush was awarded the training officer position on August 26, 2013 and commenced his duties on September 14, 2013 (1T39-1T41). Jackson did not explain the proffered circumstance of the training officer bid having been awarded before the bid "closing date." Even if I credit Jackson's representation as a fact, Jackson did not testify if he read the posting on or after August 26, 2013 and whether he placed his bid for the position on the posting date or on any date.

#### ANALYSIS

The issue in this case is whether corrections officer and unit employee Jackson was denied a training officer position, for which he successfully bid, in retaliation for engaging in protected activity, thereby violating section 5.4a(3) and derivatively a(1) of the Act. In re Bridgewater Tp., 95 N.J. 235, 244 (1984), sets forth the elements a charging party must prove to establish a violation of 5.4a(3).

Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this

activity and the employer was hostile to the exercise of protected rights. Id. at 246.

If the employer did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is a sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both unlawful motives and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proved on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action.

Conduct protected by our Act is not limited to an individual's participation in collective negotiations, grievance processing or contract interpretation. In State of New Jersey (Office of the Public Defender), P.E.R.C. No. 2006-11, 31 NJPER 276 (¶109 2005), the Commission wrote:

Our Act gives public employees the right, without fear of penalty or reprisal, to form, join or assist any employee organization, N.J.S.A. 34:13A-5.3. The Act also covers concerted activity engaged in for employees' mutual aid and protection. [citation omitted] Drawing on case law interpreting 29 U.S.C. §157 of the National Labor Relations

Act (NLRA), we have held that protected activity may include individual conduct -- such as complaints, arguments, objections, letters or similar activity -- related to enforcing a collective negotiations agreement or protecting working conditions of employees in a recognized or certified unit. North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 454 n. 16 (¶4205 1978), aff'd NJPER Supp.2d 63 (¶45 1979). [31 NJPER 279]

The U.S. Supreme Court has found that an individual employee's invocation of a right set forth in a collective bargaining agreement constitutes concerted activity within Section 7 of the NLRA, 29 U.S.C. §157. NLRB v. City Disposal Systems, Inc., 465 U.S. 822, 115 LRRM 3193 (1984). (This precept, known as the "Interboro doctrine," was first articulated in Interboro Contractors, Inc., 157 NLRB 1295, 61 LRRM 1537 (1966), enforced, 388 F.2d 495, 67 LRRM 2083 (2nd Cir. 1967)). In City Disposal Systems, Inc., the Supreme Court observed:

The invocation of a right rooted in a collective bargaining agreement is unquestionably an integral part of the process that gave rise to the agreement. That process -- beginning with the organization of a union, continuing into the negotiation of a collective bargaining agreement, and extending through the enforcement of the agreement -- is a single, collective activity . . . [W]hen an employee invokes a right grounded in the collective bargaining agreement, he does not stand alone. Instead, he brings to bear on his employer the power and resolve of all his fellow employees. [115 LRRM at 3197-3198]

Jackson has demonstrated the first two elements of a circumstantial Bridgewater case. He engaged in protected conduct

each time he bid on or applied for the training officer position at Northern State Prison. His May and July, 2013 bids were invocations of "an opportunity to apply [for] existing or planned job vacancies" set forth in Article XXXI of the collective negotiations agreement. The State's knowledge of his protected conduct is established (most notably) by Major McWilliams' June 3, 2013 promulgated roster of awarded job bids that listed Jackson as the recipient of the "permanent" training officer post and in Jackson's July 11, 2013 conversation with Administrator Lagana, who testified that his "bid" was among the topics discussed.

Jackson engaged in other protected activity not alleged in the Complaint, though uncontested on the record. On or about August 10, 2013, Jackson filed a "special custody report" with an unspecified supervisor, complaining that he was not awarded the training officer post, despite his successful bid for it and that the bid was re-posted as a "temporary" position. Jackson's filing is protected within the meaning of such conduct described in State of New Jersey (Office of the Public Defender). The report also alludes to a grievance Jackson purportedly filed, though no evidence independently corroborates that conduct. I do not find that Jackson filed a grievance. N.J.A.C. 1:1-15.5(b).

The decision on whether the charging party has proved hostility to protected conduct is based upon consideration of all

the evidence, including that offered by the public employer and the credibility determinations and inferences drawn by the hearing examiner. Rutgers Medical School, P.E.R.C. No.87-87, 13 NJPER 115 (¶18050 1987). I find that the evidence does not prove that the State was hostile to Jackson's protected conduct by not awarding him the training officer post at Northern State Prison.

The chronology of credited evidence first shows that the day after Major McWilliams issued the list of awarded job bids naming Jackson as the successor to the "permanent" training officer position, a sergeant (Mintz) informed Jackson that he wasn't being awarded the position and it would be "re-posted." No adduced facts readily explain that rapid turn of events, leaving in its wake an undisclosed path through the chain of command. If the record supports any inference, it would be that Norman's employment status at that time was in flux, rendering the permanency of the training officer post doubted or doubtful.

About one month later, on July 2, 2013, a Local 105 vice-president wrote to the Major, requesting that the vacancy for the training officer position be designated, "temporary," befitting Norman's unclear employment status. Jackson was apparently unaware of Local 105's letter. Jackson submitted into evidence the printed July 1, 2013 "daily schedule" at the facility, confirming Norman's unique "separated" employment status,

(unintentionally) corroborating the circumstance prompting Local 105's request.

More than one week later, on July 11, 2013, Jackson met with Administrator Lagana, at the officer's request. I have not found that Lagana threatened to discipline Jackson if he were to bid for the training officer position (see finding no 8). Jackson did not establish a single exception to Lagana's stated disavowal of personnel matters directly concerned with correction officer job bids. Nor did Jackson testify why, despite Lagana's alleged threats, he bid on the "temporary" training officer post, and why he was or was not concerned about being disciplined in retaliation for that bid. Jackson was not disciplined for bidding on the temporary training officer position.

About one month later, on August 9, 2013, Jackson filed a request to rescind his training officer bid, ". . . per instruction" from Sergeant Mintz. I am inclined to find that the "instruction" contemplated a rescission of the "temporary" training officer position and a new posting for a "permanent" one, in light of a resolution (i.e., retirement) of Norman's employment status. If Jackson argues that he was coerced to rescind his bid, he did not testify why he yielded to a sergeant's threat and not to a[n alleged] threat from Administrator Lagana. Uncontested evidence shows that later in

August, 2013, the "permanent" training officer bid was posted for interested corrections officers and that Jackson did not apply.

For all of these reasons, I find that Jackson has not demonstrated hostility to his protected conduct and recommend that the Complaint be dismissed.

/s/Jonathan Roth  
Hearing Examiner

DATED: November 25, 2015  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by December 7, 2015.