

P.E.R.C. NO. 86-35

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF UNION CITY,

Respondent,

-and-

Docket No. CI-84-21-117

GERTRUDE LYNCH,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the City of Union City violated the New Jersey Employer-Employee Relations Act when it permitted its Treasurer to represent an employee in processing a grievance. The Commission found that a conflict of interest existed since the Treasurer was a managerial executive while also an officer of the employee's majority representative.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Respondent,

-and-

Docket No. CI-84-21-117

GERTRUDE LYNCH,

Charging Party.

Appearances:

For the Respondent, Edward J. Lynch, Esquire

For the Charging Party, McAlevy & Costello, Esquires  
(John D. Lynch, of Counsel)

DECISION AND ORDER

On September 15, 1983, Gertrude Lynch filed an unfair practice charge against the City of Union City ("City") with the Public Employment Relations Commission. The charge, as amended on September 29 and November 18, 1983, alleged that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (5) and (7)<sup>1/</sup> when it

---

<sup>1/</sup> Public employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing 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; and (7) Violating any of the rules and regulations established by the commission."

denied Lynch's grievance alleging that she had been working beyond the scope of her job title, but had not received proper compensation. The charge further alleges that a conflict of interest tainted the processing of this grievance since her union representative, Secretary of Council 2, was also the City's Treasurer, a managerial executive.

On March 8, 1984, a Complaint and Notice of Hearing issued. The City then filed an Answer. It asserted that Lynch had performed her duties voluntarily, that the City had treated her fairly, and that there was no conflict of interest in the processing of her grievance.

On October 2, 1984 and May 16, 1985, Hearing Examiners Mark Rosenbaum and Alan R. Howe, respectively, conducted hearings<sup>2/</sup>. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by June 14, 1985.

On June 15, 1985, Hearing Examiner Howe issued his report and recommended decision. H.E. No. 85-52,     NJPER     (¶          1985). He concluded that the City had violated subsection 5.4(a)(1) when it allowed its Treasurer, a managerial executive, to represent Lynch in the processing of her grievance. He recommended an order requiring the City to prohibit its Treasurer from representing employees in processing grievances and, upon demand, to reprocess this grievance without the treasurer's participation. He recommended dismissal of all other allegations in the Complaint.

---

<sup>2/</sup> Hearing Examiner Rosenbaum left the Commission's employ following the first hearing and the case was reassigned to Hearing Examiner Howe pursuant to N.J.A.C. 19:14-6.4.

The Hearing Examiner served his report on the parties and advised them that exceptions were due on or before July 8, 1985. Neither party filed exceptions or requested an extension of time.

We have reviewed the record. The Hearing Examiner's findings of fact are accurate. We adopt and incorporate them.<sup>3/</sup> Under all the circumstances of this case, we agree that the City's Treasurer should not have represented Lynch in the processing of her grievance. We adopt the Hearing Examiner's recommended remedy on that issue. We also dismiss the Complaint's remaining allegations.

ORDER

The City of Union City is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing fairly and impartially to process the grievance of Gertrude Lynch, filed January 17, 1983, for additional compensation and by permitting Evelyn Guerra, the City Treasurer, to participate in the grievance procedure as Secretary of Council 2.

B. Take the following affirmative action:

1. Forthwith refuse to permit its City Treasurer, Evelyn Guerra, to represent employees in grievance processing.

2. Upon demand, process fairly and impartially, and without any conflict of interest on the part of Evelyn Guerra, the grievance of Gertrude Lynch for additional compensation.

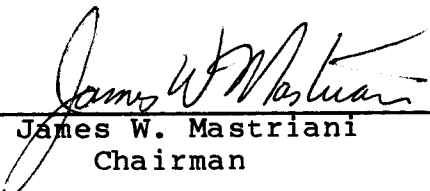
---

<sup>3/</sup> The statute referred to in finding No. 5 is N.J.S.A. 40:171-151 et seq.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent City has taken to comply herewith.

C. That the allegations that the Respondent City violated N.J.S.A. 34:13A-5.4(a)(5) and (7) be dismissed in their entirety.

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Graves, Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
August 27, 1985  
ISSUED: August 28, 1985

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of rights guaranteed to them by the Act, particularly, by failing fairly and impartially to process the grievance of Gertrude Lynch, filed January 17, 1983, for additional compensation and by permitting Evelyn Guerra, the City Treasurer, to participate in the grievance procedure as Secretary of Council 2.

WE WILL forthwith refuse to permit our City Treasurer, Evelyn Guerra, to represent employees in grievance processing.

WE WILL upon demand process fairly and impartially, and without any conflict of interest on the part of Evelyn Guerra, the grievance of Gertrude Lynch for additional compensation.

CITY OF UNION CITY

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 85-52

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

In the Matter of

CITY OF UNION CITY,

Respondent,

-and-

Docket No. CI-84-21-117

GERTRUDE LYNCH,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent City violated Subsection 5.4(a)(1) of the New Jersey Employer-Employee Relations Act when it permitted its City Treasurer, a managerial executive under the Act, and Secretary of Hudson Council No. 2, CSA, to participate in the processing of the grievance of Gertrude Lynch for additional compensation. The Hearing Examiner relied upon Camden County, P.E.R.C. No. 83-113, 9 NJPER 156 (1983) where the Commission held that a managerial executive who was also an officer of the association was barred from participating in the processing of employee grievances due to a conflict of interest. The Hearing Examiner ordered that the City Treasurer be precluded from serving in both capacities in the processing of employee grievances and that the City fairly and impartially process the grievance of Lynch ab initio.

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. 85-52

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

In the Matter of

CITY OF UNION CITY,

Respondent,

-and-

Docket No. CI-84-21-117

GERTRUDE LYNCH,

Charging Party.

Appearances:

For the Respondent  
Edward J. Lynch, Esq.

For Gertrude Lynch  
McAlevy & Costello, Esqs.  
(John D. Lynch, Esq.)

HEARING EXAMINER'S  
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 15, 1983, and amended on September 29 and November 18, 1983, by Gertrude Lynch (hereinafter the "Charging Party" or "Lynch") alleging that the City of Union City (hereinafter the "Respondent" or the "City") 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 on January 17, 1983 Lynch submitted a grievance against the City through her union, Union City Civil Service Unit, Hudson Council No.



2 (hereinafter "Council 2"), which grievance alleged that Lynch involuntarily worked above her job title since 1980 and should have been compensated accordingly; the Council 2 representative was Evelyn Guerra, a managerial executive of the City with an apparent conflict of interest; the City on July 6, 1983 refused to adjust Lynch's compensation upward as requested, contrary to the provisions of Section 24.2 of the current collective negotiations agreement; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (5) and (7) of the Act.<sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 8, 1984. Pursuant to the Complaint and Notice of Hearing, hearings were held on October 2, 1984 and May 16, 1985<sup>2/</sup> in Newark, New Jersey, at which time the parties were given an

---

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; (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."

2/ The delay in convening the second hearing date was due to the reassignment of the case from Hearing Examiner Mark Rosenbaum to the instant Hearing Examiner, in addition to delay occasioned by an unsuccessful attempt to serve and have answered interrogatories directed to a witness in Florida.

opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by June 14, 1985.

An Unfair Practice Charge, as amended, 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 City of Union City is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. Gertrude Lynch is a public employee within the meaning of the Act, as amended, and is subject to its provisions.
3. The City and Council 2 were parties to a collective negotiations agreement effective January 1, 1983 through December 31, 1983 (J-1), which agreement governed the terms and conditions of employment of Lynch.
4. Evelyn Guerra has since June 1982 been the City Treasurer and, at all times material hereto, has been the Secretary of Council 2.
5. The position and duties of City Treasurer are defined by statute. The City adopted an ordinance, revised in 1975, which

describes in minute detail the duties of its City Treasurer (J-9). It is readily apparent from the statute and J-9 that the City Treasurer satisfies the definition of "managerial executive" in our Act: 34:13A-3(f). Accordingly, the Hearing Examiner finds as a fact that Guerra is a "managerial executive" within the meaning of the Act since she plainly formulates management policies and practices and directs their effectuation in the course of supervising the fiscal concerns of the City.

6. Lynch was hired by the City as a CETA employee in October 1977, and was assigned to work in the office of the Clerk of the Municipal Court. After taking a Civil Service examination she was certified as a Clerk Typist on January 2, 1980.

7. On January 17, 1983, Lynch filed a written grievance, in which she complained that the duties she was performing as a Clerk Typist, as enumerated therein, exceeded the normal duties of Clerk Typist under Civil Service (C-1, to which grievance is annexed). The grievance concluded with the allegation that under Section 24.2 of J-1 Lynch was entitled to a higher rate of compensation with back pay to January 2, 1980.

8. Section 24.2 of the collective negotiations agreement, supra, provides as follows:

The employer agrees that should an employee be assigned to perform duties other than his/her normal job classification, he/she shall be paid the higher rate of pay whether it be his own job title or that of the person for whom he is substituting for more than thirty (30) working days.

9. The job description for Clerk Typist was received in evidence as J-4.

10. By way of background to the filing of the grievance by Lynch, supra, Lynch approached Guerra in the Fall of 1982, claiming that she had been working out of title in the Municipal Court and felt that she should have a title change and additional compensation. According to Lynch, Guerra stated that she could not be paid for working above her job title. Guerra testified that she spoke to the President of Council 2, Mary Clerici, and together they met with C. Harrison Hultman, the Director of the Department of Revenue and Finance. Hultman told Guerra and Clerici that when a promotion occurred Lynch would be in line for it. At the hearing, Hultman testified that it was not the practice of the City to pay above the Civil Service range, adding, however, that it would not be illegal. Significantly, Hultman agreed that Lynch did not receive a salary commensurate with the duties she was performing (1 Tr. 121).

11. On February 18, 1983, shortly after receiving Lynch's grievance, Guerra wrote to John Lazzarotti, the President of the Civil Service Association in Trenton, in which she summarized Lynch's grievance and the background to its filing (J-6). Lynch also wrote to Lazzarotti on February 20, 1983, explaining that she was not seeking a promotion but only additional retroactive compensation for working "well above my job title" (CP-1).

12. Council 2 held a regular meeting on March 17, 1983, where those present were advised by Frank Bassillo, the President,

that Lynch had filed a grievance, which was read at the meeting. One Rita Furniss, an officer of Council 2, stated that Lynch was not unique and that no Civil Service employee has the right to seek backpay but could only request a desk audit, which would not be retroactive. (See R-1).

13. On June 2, 1983, Clerici wrote to Hultman, referring to Lynch's grievance and a conversation with the attorney for Council 2 (CP-2). Clerici stated that while Council 2 did not wish to pursue the grievance, an adjustment should be made to bring the matter to a close.

14. On July 6, 1983, Hultman responded to Clerici's letter of June 2nd, stating that the City Commissioners had determined that there was no adjustment due (CP-3).

15. The Unfair Practice Charge was filed on September 15, 1983, alleging that the City's denial of compensation was "arbitrary, capricious and unreasonable."

#### DISCUSSION AND ANALYSIS

The Respondent City Violated Subsection (a)(1) Of The Act When It Permitted Evelyn Guerra, The Secretary Of Council 2 And A Managerial Executive, To Participate In The Processing Of The Grievance Of Gertrude Lynch Thereby Tainting The Grievance Procedure.<sup>3/</sup>

---

3/ The allegation that the Respondent City violated Subsection (a)(5) of the Act cannot be sustained due to the fact that  
(Footnote continued on next page)

The decision in this case is governed by Camden County etc. & Camden Council #10, H. E. No. 83-13, 8 NJPER 654 (1982), aff'd. P.E.R.C. No. 83-113, 9 NJPER 156 (1983). In that case a conflict of interest was found under the circumstances of the president of the union being employed by the county as a Personnel Assistant, a position which was found to be that of a managerial executive under the Act. Because the union was charged and held to have violated Subsection (b)(1) of the Act, Camden County was deemed to have violated Subsection (a)(5) of the Act by the collusive handling of a grievance processed by an individual employee, in which the president of the union was involved. There, as here, the grievance of the individual employee sought a monetary remedy.

The Hearing Examiner and the Commission in Camden County, supra, relied upon precedent from the federal sector in applying the test, which defines a managerial executive as one who is so closely aligned with management and its labor policies as to place that employee in a position of potential conflict of interest between the

---

(Footnote continued from previous page)

Council 2 is not named as a party, which is a condition precedent to an individual employee successfully alleging a violation of Subsection (a)(5) of the Act: see Jeffrey Beale & N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 570 (1980), aff'd App. Div. Docket No. A-1263-80T3 (1981). Also the Charging Party failed to adduce any evidence that the Respondent City violated Subsection (a)(7) of the Act. Accordingly, the Hearing Examiner will recommend dismissal of both of these allegations.

employer and its other employees: NLRB v. Bell Aerospace Co., 416 U.S. 267, 85 LRRM 2945 (1974). In Camden County the president of the union, as its Personnel Assistant, was deemed to have such a conflict of interest, and thus the County violated, inter alia, Subsection (a)(1) of the Act when it permitted the president as Personnel Assistant to serve both the County and the employee organization in the administration of the collective negotiations agreement.

As to Subsection (a)(1) of the Act and the requisites for finding an independent violation thereof, the Commission in N.J. Sports & Exposition Authority, P.E.R.C. 80-73, 5 NJPER 550 (1979) determined that proof of anti-union motive or anti-union animus is not an essential element to establishing an independent violation of this subsection. The Commission stated that it shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of animus, tend to interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act absent a legitimate and substantial business justification on the part of the employer. Thus, the test is whether employer conduct tends to interfere with the exercise of employee rights.

The Commission has long recognized that the filing of a grievance by a public employee constitutes protected activity under the Act: Lakewood Board of Education, P.E.R.C. No. 79-17, 4 NJPER 459, 461 (1978) and Dover Municipal Utilities Authority, P.E.R.C.

No. 84-132, 10 NJPER 333, 338 (1984). Clearly, the right to file a grievance carries with it the right to have it processed impartially, fairly and without taint of collusion between the parties to the collective negotiations agreement. It is this lack of impartiality and fairness, resulting from the conflict of interest of Guerra, that gives rise to a violation of the Act by the City in this case. It is true, of course, that the grievance of Lynch may be lacking in merit on the bottom line. However, Lynch is owed a duty by the City to give her grievance a full and fair hearing and a responsive answer. This did not occur previously due to the intervention of Guerra, who had told Lynch that she had no grievance or claim to additional compensation as evidenced by Exhibits J-6 and CP-2, the February 18, 1983 letter from Guerra and the June 2, 1983 letter from Clerici. Obviously, if Council 2 was perfunctory in moving Lynch's grievance to Hultman, then Hultman's negative response to the grievance comes as no surprise.

The Respondent City having interfered with, coerced and restrained Lynch in the processing of her grievance for additional compensation, the Hearing Examiner will recommend that the Respondent City thereby violated Subsection (a)(1) of the Act.

\* \* \* \*

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



CONCLUSIONS OF LAW

1. The Respondent City independently violated N.J.S.A. 34:13A-5.4(a)(1) when it permitted Evelyn Guerra to serve as Secretary of Council 2 contemporaneously while acting as City Treasurer, a managerial executive position thereby tainting the processing of the grievance of Gertrude Lynch, filed January 17, 1983.

2. The Respondent City did not violate N.J.S.A. 34:13A-5.4(a)(5) and (7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER;

A. That the Respondent City cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing fairly and impartially to process the grievance of Gertrude Lynch, filed January 17, 1983, for additional compensation and by permitting Evelyn Guerra, the City Treasurer, to participate in the grievance procedure as Secretary of Council 2.

B. That the Respondent City take the following affirmative action:

1. Forthwith preclude Evelyn Guerra from acting as City Treasurer with respect to employee grievances at the same time that she serves as Secretary or any other officer of Council 2.

2. Upon demand, process fairly and impartially, and without any conflict of interest on the part of Evelyn Guerra, the

grievance of Gertrude Lynch for additional compensation ab initio.<sup>4/</sup>

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission with twenty (20) days of receipt what steps the Respondent City has taken to comply herewith.

C. That the allegations that the Respondent City violated N.J.S.A. 34:13A-5.4(a)(5) and (7) be dismissed in their entirety.



---

Alan R. Howe  
Hearing Examiner

Dated: June 25, 1985  
Trenton, New Jersey

---

4/ The Hearing Examiner has no authority to grant the relief requested by Lynch in her grievance for retroactive compensation since this is the function of an arbitrator: Ridgefield Park Ed. Ass'n. v. Ridgefield Park Bd. of Ed., 78 N.P. 144, 155 (1978)

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing fairly and impartially to process the grievance of Gertrude Lynch, filed January 17, 1983, for additional compensation and by permitting Evelyn Guerra, the City Treasurer, to participate in the grievance procedure as Secretary of Council 2.

WE WILL forthwith preclude Evelyn Guerra from acting as City Treasurer with respect to employee grievances at the same time that she serves as Secretary or any other officer of Council 2.

WE WILL, upon demand, process fairly and impartially, and without any conflict of interest on the part of Evelyn Guerra, the grievance of Gertrude Lynch for additional compensation ab initio.

CITY OF UNION CITY

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey 08618 Telephone (609) 292-9830.