

P.E.R.C. No. 85-109

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PREAKNESS HOSPITAL OF  
PASSAIC COUNTY,

Respondent,

-and-

Docket Nos. CO-84-336-11 and  
CO-84-352-12

AFSCME, COUNCIL 52, LOCAL  
2273, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Preakness Hospital of Passaic County violated the New Jersey Employer-Employee Relations Act when it issued Charles Kennedy, the local union president, an evaluation which stated that his union activity interfered with his job performance and denied him permission to have union meetings on the work site while permitting other employee organizations to have meetings. However, the Commission holds that the Hospital did not violate the Act when it discharged Frank Portella and Diane Sorrentino. The Commission finds that both employees were discharged for excessive absenteeism, not union activity. The Commission further holds that the Hospital did not violate the Act when it refused to grant the union president paging privileges and refused to provide him with transportation while on union business.

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AFSCME, COUNCIL 52, LOCAL  
2273, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Aron & Salsberg, Esqs.  
(Richard M. Salsberg, of Counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.  
(Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

On June 5, 1984, Council 52, AFSCME, Local 2273 ("Local 2273") filed an unfair practice charge (CO-84-336) against Preakness Hospital ("Hospital") with the Public Employment Relations Commission. This charge alleged that the Hospital violated subsections 5.4(a)(1) and (3)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")

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<sup>1/</sup> 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."

when it discharged Frank Portella and Diane Sorrentino and when it refused Renee Stephens' request for certain days off and threatened to blame the union in the event she was given the days off. The charge alleged these actions were taken in retaliation against the employees' support of Charles Kennedy for union president. The charge also alleged that Charles Kennedy received a negative evaluation for engaging in union business.

On June 18, 1984, Local 2273 filed a second charge against the Hospital (CO-84-352). This charge alleged that the Hospital violated subsections 5.4(a)(1), (2) and (3)<sup>2/</sup> of the Act when it discriminated against Kennedy, Local 2273's president. Specifically, it alleged that (1) the Hospital refused to permit Kennedy to have union meetings at the Hospital but permitted the opposing candidate to have a meeting; (2) refused to permit Kennedy to be paged, but permitted other employees to have paging privileges; (3) permitted a business agent of another union to meet on hospital property and (4) refused to transport Kennedy between two buildings but provided transportation for all other employees.

On August 1, 1984, the Administrator of Unfair Practice Proceedings consolidated the charges and issued a Complaint and Notice of Hearing. The Board then filed an Answer denying that it

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<sup>2/</sup> Subsection 5.4(a)(2) prohibits public employers, their representatives or agents from: "Dominating or interfering with the formation, existence or administration of any employee organization."

discriminated against any employees in retaliation for engaging in union activity.

On October 5 and 30, 1984, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They also filed post-hearing briefs.

On January 4, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-25, 11 NJPER 62 (Para. 16033 1985) (copy attached). The Hearing Examiner found that the Hospital did not violate the Act when it discharged Portella and Sorrentino. He found that both employees were terminated for excessive absenteeism, not for engaging in protected activity. He further found that a supervisor's statements that other employees would receive different days off as the result of agreeing to Stephens' request for Saturdays and Sundays off and that the union would have to bear responsibility were "innocuous" statements that did not violate the Act. The Hearing Examiner did find, however, that the Hospital violated subsections (a)(1) and (3) when Kennedy's protected activity as Local 2273's president motivated it to evaluate him negatively and to interfere with his conduct of "union business" by denying him access to meeting rooms, the hospital paging system and transportation between Units I and II of the Hospital.

On January 11, 1985, Local 2273 filed its exceptions. It contends that the Hearing Examiner erred in finding that Sorrentino and Portello were discharged for excessive absenteeism and not for

engaging in protected activity. It contends that Sorrentino was on an approved vacation at the time of her discharge and that the timing of the terminations close to the union election supports a finding that both employees were terminated in retaliation against union activity.

On January 30, 1985, after receiving an extension of time, the Hospital filed its response and also its cross-exceptions. It contends that the Hearing Examiner was correct in finding that the discharges of Portello and Sorrentino were because of excessive absenteeism and not in retaliation for union activity. It further contends, however, that the Hearing Examiner erred in finding that the Hospital violated subsections (a)(1) and (3) by negatively evaluating Kennedy and denying him transportation for union business, the use of the hospital paging system and access to meeting rooms to conduct union business.

The Hearing Examiner's findings of fact are accurate (pp. 3-10) with the following modifications. For reasons to be stated in more detail below, we do not believe there is sufficient evidence to warrant finding of fact No. 14 that Kennedy was denied the privilege of being paged. We also reject the statement in finding of fact No. 16 that "...a representative of Teamsters Local 11, Lou Grasso, was granted permission by the Hospital to conduct a meeting among supervisors represented by AFSCME sometime in July or August 1984." On the basis of this record, there is insufficient evidence to find that the Hospital was aware, prior to the meeting, that Grasso would be in attendance.

We agree with the Hearing Examiner that the Hospital did not violate the Act when it discharged Sorrentino and Portella. It is quite evident that both were discharged for excessive absenteeism. In reaching this result, we have considered carefully the Association's exception that Sorrentino was on vacation at the time of her discharge for absenteeism. The Hearing Examiner, however, accepted the testimony of her supervisor that her approved vacation was only for three days and that her continued absence was not authorized. We will not disturb this finding. E.g., City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28, 30 n. 3 (Para. 15017 1984).

We also agree with the Hearing Examiner that the Hospital violated subsection 5.4(a)(1) of the Act when it denied Kennedy access to meeting rooms for union business. We reach this conclusion based on the Hearing Examiner's findings that Crespo, who was a member of AFSCME's Executive Board and Kennedy's rival for President, was permitted to hold a meeting during the same general period of time when Kennedy had been repeatedly denied the use of County facilities. Under the circumstances of this case, however, we do not believe an affirmative remedy is necessary to effectuate the policies of the Act since the Hospital has enacted a policy prohibiting the use of meeting rooms by any union, thereby curing the defect of discriminatory access. No further meetings have been held by any employee organization.

We now consider the remaining conclusions that the Hospital unlawfully discriminated against Kennedy in retaliation against his

union activity. We disagree with these conclusions for the following reasons.

First, with respect to the paging system, an employer does not violate our Act when it adopts a uniform policy prohibiting, except in an emergency, the use of its telephones and paging system for non-business reasons. It is further clear, however, that discriminating against an employee in the use of the phone system because of his union activity would violate the Act. There is no competent evidence, however, under the facts of this case to warrant such a finding. The only proffered evidence was Kennedy's testimony that a telephone operator advised him that the Assistant Administrator directed her not to page Kennedy. This hearsay testimony, by itself, is not sufficient to establish a violation of the Act. Weston v. State, 60 N.J 36 (1972). Further, Kennedy's testimony that others, including the rival candidate for union president, have been paged is not sufficient to find a violation. It would be speculative to assume that they were paged for personal, as opposed to business, reasons.

Further, we do not find that the Hospital violated the Act when it refused to transport Kennedy between hospital units when on union business. The Hospital had the right to limit the use of vehicles to those on official business. Moreover, the Hospital established a legitimate business reason: the recent elimination of the transportation department restricts the Hospital's ability to provide transportation. Moreover, while Kennedy testified that his

rival was transported in a County vehicle, there is no evidence to support a finding that Crespo was not then engaged in County business.

The final issue concerns the propriety of the issuance of the July 30, 1984 evaluation to Charles Kennedy. It reads, in pertinent part:

4-30 -- Employee is heavily involved in union activities. This has interfered with ability to carry out duties at times...

Evaluation -- Employee has met all standards of title as union activities will permit.

In disagreement with the Hearing Examiner, we do not believe this reprimand violated subsection 5.4(a)(3) because we cannot find, based on this record, any evidence of anti-union animus. The author of the reprimand testified that the position of union president should be full-time and should be provided with an office. Nevertheless, we believe the issuance of this reprimand independently violated of subsection 5.4(a)(1). Kennedy received an evaluation which criticized him for engaging in protected activity. An employer cannot grant time off and then criticize the employee for activity during the time off. See Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (Para. 12223 1982). Such criticisms interfere with protected activity.

#### ORDER

I. The Preakness Hospital of Passaic County is ordered to:

A. Cease and desist from interfering, with, restraining or coercing employees in the exercise of rights guaranteed to them by



the Act by evaluating Charles Kennedy negatively for his union activity and denying Kennedy access to meeting rooms for his union meetings while permitting another employee organization to hold meetings.

B. Take the following affirmative action:


1. Remove any reference to any activity protected by our Act in Charles Kennedy's evaluation;

2. 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 by the Respondent to assure that such notices are not altered, defaced or covered by other materials.

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

II. The remaining allegations contained in the Complaint are dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. Commissioer Hipp would also have found that a violation of subsection (a)(3) was made by the employer as found by the Hearing Examiner in his recommended report. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey  
April 25, 1985  
ISSUED: April 26, 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 employees in the exercise of rights guaranteed to them by the Act by evaluating Charles Kennedy criticizing him for his union activity and denying Kennedy access to meeting rooms for his union meetings while permitting another employee organization to hold meetings.

WE WILL remove any reference to any activity protected by the Act in Charles Kennedy's evaluation.

PREAKNESS HOSPITAL OF PASSAIC COUNTY

(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) 292-0820

STATE OF NEW JERSEY  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PREAKNESS HOSPITAL OF PASSAIC COUNTY,

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-and-

Docket Nos. CO-84-336-11  
CO-84-352-12

AFSCME, COUNCIL 52, LOCAL 2273, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Hospital did not violate Subsections 5.4 (a) (1) and (3) of the New Jersey Employer-Employee Relations Act when it terminated Frank J. Portella and Diane Sorrentino in May and July, 1984, respectively, because of excessive absenteeism. The Hearing Examiner concluded that there was no showing that the exercise of protected activity was the reason for the terminations, notwithstanding that Portella had supported a certain slate for the election of union officers in April, 1984 and that Sorrentino had been a candidate for the office of Secretary-Treasurer. It was also concluded that the Respondent did not violate the Act by granting the requested transfer of Renee Stephens and, additionally, granting her Saturdays and Sundays off.

However, the Hearing Examiner recommends further that the Commission find that the Respondent violated Subsections 5.4 (a) (1) and (3) of the Act by its actions and conduct towards Charles J. Kennedy, who has been the President of the Local for three years. For the first time in 21 years Kennedy was evaluated in April, 1984, which evaluation was largely negative, making specific reference to Kennedy's engaging in union activities. Further, the Hospital discriminated against Kennedy with respect to denying him access to the paging system and meeting rooms for union business. Finally, the Hospital discriminatorily denied Kennedy the use of transportation facilities in the conduct of "union business."

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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AFSCME, COUNCIL 52, LOCAL 2273, AFL-CIO,

CO-84-352-12 1/

Charging Party.

Appearances:

For the Respondent  
Aron & Salsberg, Esqs.  
(Richard M. Salsberg, Esq.)

For the Charging Party  
Oxford, Cohen & Blunda, Esqs.  
(Sanford R. Oxford, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge, Docket No. 84-336-11, was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 5, 1984 by AFSCME, Council 52, Local 2273, AFL-CIO (hereinafter the "Charging Party," The "Local" or "AFSCME") alleging that Preakness Hospital of Passaic County (hereinafter the "Respondent" or the "Hospital") 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"), in that the Respondent harassed and subjected to discipline three of its employees, who supported Charles Kennedy in an internal union election campaign in or around April 1984, those employees being Frank Portella, Diane Sorrentino and Renee Stephens; and, further, when the Respondent evaluated Charles Kennedy on May 31, 1984, the evaluation stated that he spent too

1/ Docket No. CU-84-47 was withdrawn at the hearing.

much time on union business; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4 (a) (1) and (3) of the Act. <sup>2/</sup>

A second Unfair Practice Charge, Docket No. CO-84-352-12, was filed with the Commission on June 18, 1984 by the Charging Party, alleging that the Respondent also engaged in unfair practices within the meaning of the Act, in that the Respondent refused to allow Local President, Charles Kennedy, to have meetings at the Hospital, whether or not related to union business, notwithstanding that the Hospital has allowed the recently defeated candidate for Local President to hold meetings with AFSCME members on the Hospital premises, the most recent refusal having occurred on May 14, 1984; the Hospital will not page Local President Kennedy, notwithstanding that other employees like situated are granted that privilege; the Hospital will not provide transport for Local President Kennedy, notwithstanding that it provides such transport for other employees between two separate locations of the Hospital; and on June 7, 1984 the Hospital allowed a business agent from another union to meet on Hospital property with supervisors, who are also represented by AFSCME, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a) (1), (2) and (3) of the Act. <sup>3/</sup>

It appearing that the allegations of the Unfair Practice Charges, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on August 1, 1984. Pursuant to the Complaint and Notice of Hearing, hearings were held on October 5 and October 30, 1984 in Newark, New Jersey,

<sup>2/</sup> 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."

<sup>3/</sup> This additional Subsection prohibits public employers, their representatives or agents from:

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

at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by December 18, 1984.

Two Unfair Practice Charges 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. Preakness Hospital of Passaic County is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. AFSCME, Council 52, Local 2273, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

FINDINGS AS TO DOCKET NO. CO-84-336-11

3. Charles J. Kennedy is a Laundry Foreman at the Hospital and was elected to a two-year term as President of the Local in 1982. Victor Crespo was elected Financial Secretary of the Local in 1982 and served with Kennedy. In the election of officers, which was conducted on April 25, 1984, Kennedy ran for re-election as President and was opposed by Crespo. Kennedy was re-elected as President on that date.
4. Also running on the Kennedy slate for election in April 1984 were Diane Argenziano Sorrentino - Secretary-Treasurer and Renee Stephens <sup>4/</sup> - Recording Secretary among others.
5. Frank J. Portella was hired as a Building Maintenance Worker on July 21, 1982 and was terminated on July 17, 1984. Portella had an extensive disciplinary history prior to his termination. Due to Portella's total inability to recall his

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<sup>4/</sup> Stephens gave her name at the hearing as Elsie Rena Stephens.

disciplinary history the Hearing Examiner credits the proofs of the Respondent in this regard. The disciplinary history is as follows: Portella was issued a Preliminary Notice of Disciplinary Action on January 24, 1983 for abuse of sick time (R-7). After a hearing he was suspended for one day by Thomas A. Lauricella, the Assistant Hospital Administrator. On October 11, 1983 Portella received a Final Notice of Disciplinary Action and was suspended again for one day (R-8). Another Final Notice of Disciplinary Action was issued to Portella on January 30, 1984 for failure to carry out housekeeping services and a chronic absenteeism record and he was again suspended for one day (R-9). On May 14, 1984 Portella was issued another Final Notice of Disciplinary Action and was advised that any further absenteeism could result in immediate termination (R-1). On this occasion he was suspended for three days, commencing May 22, 1984. When his abuse of sick time continued, a Final Notice of Disciplinary Action was issued on July 3, 1984 and he was terminated effective July 17, 1984 (R-10). Given the foregoing disciplinary history, which was adequately documented by the Respondent in the attachments to the several exhibits, supra, the Hearing Examiner finds as a fact that Portella was terminated for good and sufficient reason, namely abuse of sick time over a two-year period. The Hearing Examiner does not credit the testimony of Portella that he was terminated because he had endorsed the Kennedy slate for election in April 1984. This fact is found notwithstanding that Lauricella admitted that he was aware that Portella had endorsed the Kennedy slate. The Hearing Examiner attaches no significance to the testimony of Portella that Crespo had something to do with his discharge, Crespo being Fortella's foreman, but without authority to discipline or discharge.

6. Diane Argenziano Sorrentino was hired in January 1982 as a Senior Clerk Typist in the Respondent's Personnel Department. Sorrentino's supervisor was Nancy Ackerman. Although Sorrentino had an extensive history of absenteeism she was never suspended. She was the subject of several verbal and written warnings and memos

were placed in her personnel file. Sorrentino was absent eight days in 1982 and received a verbal warning on March 17, 1983 (R-2). She was again warned and admonished on June 30, 1983 by Ackerman for excessive absenteeism (R-3). On October 11, 1983 Ackerman issued a written warning to Sorrentino for absenteeism (R-6). On November 21, 1983 Sorrentino was issued a Preliminary Notice of Disciplinary Action for, among other things, continued excessive absenteeism (R-4). This was followed by a written memo from Lauricella on November 30, 1983, which constituted a written warning and was placed in her personnel file (R-5).

7. As found above, Sorrentino ran on the Kennedy slate for the office of Secretary-Treasurer in the election conducted on April 25, 1984. On either April 16 or April 17, 1984 Ackerman discussed with Sorrentino her running for union office, stating that she did not think that it was a "good idea" since Sorrentino worked in the Personnel Department. Although Ackerman denied using the term "conflict of interest," as testified to by Sorrentino, Ackerman testified that she did think there was a conflict. Ackerman stated that she never discussed this with Lauricella. Ackerman was under the impression that Sorrentino was not going to run for office, and only learned to the contrary from a "sample ballot." <sup>5/</sup>

8. Sorrentino became "Sorrentino" by virtue of marriage on April 27, 1984. During the first year of her employment in 1982 she was entitled to five vacation days and the permission to take vacation was granted orally by Ackerman. During the year of 1983 she was entitled to 10 vacation days with the same procedure regarding the taking of vacation. Sorrentino's last day at work prior to her marriage and a honeymoon was to have been Monday, April 23, 1984. <sup>6/</sup> Sorrentino testified that

<sup>5/</sup> The Charging Party's evidence was conclusive that there was no sample ballot used in the election. There was, however, a leaflet issued by the Kennedy slate, which clearly identified "Diane Argenziano" as running for Secretary-Treasurer (CP-1).

<sup>6/</sup> According to Exhibit CP-3, a Preliminary Notice of Disciplinary Action, Sorrentino was absent on April 18, April 19 and April 23rd. Thus, she did not work on Monday, April 23rd. CP-3 states that when a supervisor tried to contact her at home on April 19, 1984, there was no answer and that during a later conversation on April 23rd, in regard to her paycheck, Sorrentino was insubordinate. A hearing on the Notice was scheduled for May 3, 1984.



she had asked Ackerman for seven or eight days off (vacation) about a month or two previously and that Ackerman approved this request. The credible testimony of Ackerman is that Sorrentino asked for three vacation days, Friday April 27 through Tuesday May 1, 1984. This request was approved by Ackerman, who acknowledged that Sorrentino had a balance of seven vacation days. On Wednesday, April 25, 1984, Sorrentino was issued a Preliminary Notice of Disciplinary Action, supra, which specified continued absenteeism, failure to call back and speak to a supervisor when calling in sick and insubordination (CP-3). CP-3 was sent with a cover letter by Lauricella on the same date, April 25 (CP-4). When Sorrentino did not appear on May 3rd, Lauricella sent Sorrentino a Final Notice of Disciplinary Action for not having reported for duty for five consecutive days without notice and the approval of her supervisor, which amounted to an automatic resignation (CP-5). This Final Notice was mailed on May 4, 1984. The Hearing Examiner finds as a fact that Sorrentino's "resignation" for absence for five consecutive days was due to her own conduct, the pattern of which extended over a substantial period of time, and that the Hospital's administration was not discriminatory or in violation of Sorrentino's rights under the Act.

9. Renee Stephens is a Nurses Aide and has been employed by the Hospital for fifteen years in that capacity. At the time of the hearing she was on the third shift (11 p.m. - 7 a.m.). Stephens ran for the office of Recording Secretary on a slate with Kennedy at the Local's election on April 25, 1984. The alleged unfair practices involving Stephens revolve around her request for a change in shift due to a babysitting problem. Her claim that the Respondent violated the Act relates directly to her having been a candidate for the office of Recording Secretary. The pertinent facts are as follows:

a. On March 12, 1984 Stephens made a written request to the Director of Nursing for a change of shift. She was told that she should try to change with

another Nurses Aide, which was unsuccessful. Stephens stated that if she was not successful in changing shifts she needed a leave of absence. On March 22, 1984 the Director of Nursing granted Stephens' request for a transfer to the second shift.

b. Prior to March 22nd Stephens had had Saturdays and Sundays off but, after the transfer, her days off were moved to Sunday and Monday. Stephens went to Kennedy, who said that he would talk to Bertha Hudak, the Assistant Administrator in charge of Health Services. Hudak denied Stephens' request for a change back to Saturdays and Sundays off. Thereafter Stephens went to Elizabeth Baker, the AFSCME Staff Representative, and on April 16, 1984 Stephens and Baker met with Hudak. Hudak claimed that she could not give Stephens Saturdays and Sundays off because of staffing problems. After some discussion, Hudak agreed to Stephens' request for Saturdays and Sundays off, stating that she would have to take a day from everyone else and that Stephens should not be doing this as a "newly elected officer of the union" (1 Tr. 55). Baker confirmed that Hudak made such a statement, adding that Hudak made reference to having "blamed the union." The Hearing Examiner credits the testimony of Hudak that, in granting the request of Stephens for Saturdays and Sundays off, she said, "Well, you realize that this is going to have an impact on the rest of the staff? If we give you Saturdays and Sundays off, we're going to have to bump somebody back who has Fridays and Saturdays and the union has to bear as much responsibility for that as I do" (1 Tr. 119). Hudak's version of the event appears more persuasive.

FINDINGS AS TO DOCKET NO. CO-84-352-12

10. There are two buildings at the Hospital known as Unit I and Unit II. They are located, respectively, at Haledon and at Wayne. The distance separating the two Units is 3 1/2 miles.

11. Kennedy is a Laundry Foreman who works two days at Unit I and three days at Unit II. His supervisor is Frank Petriello. There are thirteen employees in the Laundry and Kennedy is the Foreman. Kennedy assumes the duties of Petriello in

his absence. In Kennedy's 21 years at the Hospital he was never evaluated until Petriello's evaluation for the period December 1983 to November 1984 (CP-2). In this evaluation Petriello noted certain alleged deficiencies between January 17 and March 20, 1984 and, on April 30, 1984, he stated that Kennedy, "...is heavily involved in union activities. This has interfered with ability to carry out duties at times" (CP-2). Petriello then added that Kennedy "has met all standards of title as union activities will permit."

12. Whenever Kennedy goes on "union business" he routinely calls Superintendent Victor Kattak. Kennedy has never been disciplined in connection with "going on union business."

13. Kennedy, as President of the Local, has asked for permission to hold meetings of the Local Executive Board in Unit I where there are meeting rooms. Lauricella has refused several requests of Kennedy, the last request having been made shortly before the April 1984 election of Local officers. Tessie Christiano, a past President of the Local for ten years, regularly held meetings on the premises of Unit I. Kennedy testified that he knew this as a fact because he attended such meetings as a Shop Steward for the Local. Gloria May, currently the Vice-President of the Local, testified in corroboration of Kennedy that Christiano had held meetings in a classroom in Unit I. Under Kennedy's administration as President of the Local the holding of such meetings ceased during the first year of his Presidency in 1982. May also testified without contradiction that Victor Crespo had held meetings at Unit I before the 1984 election of officers. May had been present at one such meeting at the invitation of Crespo in or around this time period. Kennedy testified without contradiction that since December 1983 he had made four requests for meetings in rooms in Unit 1, all of which have been refused.

14. Kennedy also complained that he was denied access to the Hospital paging system. He testified that Victor Crespo, who is a foreman as is Kennedy, has been

paged many times per day whereas Kennedy has been denied this privilege. Lauricella acknowledged the possibility that Kennedy is the only one not being paged.

15. On February 9, 1984 Lauricella issued a memo to Kennedy, which stated that union hearings would be conducted at Units I and II on certain days during the week, and that the Hospital has informed all supervisors that the transport of employees will no longer be provided except for the Nursing Department (R-11). The effect of this memo upon Kennedy was severe, inasmuch as he has a known medical restriction, which makes traversing between the two Units difficult in the absence of transportation by a Hospital vehicle. Kennedy testified without contradiction that Crespo has been provided with transportation, at least during the period just prior to the Local election, and that other supervisors have also been transported. Petriello testified that transportation between Units I and II is provided to employees in the course of Hospital duties, but that Kennedy should not be so provided while on union business. Lauricella acknowledged that it was he who told Petriello that Kennedy could not use Hospital vehicles for transportation between Units I and II on union business. Petriello had also testified that his direction as to Kennedy came from Lauricella.

16. As a result of Hospital supervisors asking for a meeting room, a representative of Teamsters Local 11, Lou Grasso, was granted permission by the Hospital to conduct a meeting among supervisors represented by AFSCME sometime in July or August 1984. The meeting occurred on non-working time and was conducted in a classroom in Unit I. Lauricella testified that immediately after Grasso's meeting the administration decided that no space was to be made available for any union and that this was not aimed at Kennedy.

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate  
Subsections (a) (1) And (3) Of The  
Act By Its Discharge Of Portella And  
Sorrentino And By Its Agreeing To  
Grant Stephens Saturdays And Sundays Off

The New Jersey Supreme Court in Bridgewater Township v. Bridgewater Public Works Association, , 95 N.J. 235 (1984) adopted the "causation test" first enunciated by the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980), which, in turn, has been adopted by the United States Supreme Court in NLRB v. Transportation Management Corp., \_\_\_ U.S. \_\_\_, 113 LRRM 2857 (1983). The Wright Line test involves the following requisites in assessing employer motivation: (1) 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; and (2) 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.

The Court in Bridgewater refined the test further by adding that the protected activity engaged in must have been known by the employer and, further, it must be established that the employer was hostile towards the exercise of protected activity (95 N.J. at 246). The Hearing Examiner also notes that it is not enough for the Charging Party to demonstrate that employees were exercising rights guaranteed to them by the Act with the knowledge of the employer; the Charging Party must also establish a nexus between the exercise of protected activity and the employer's conduct in response thereto: North Brunswick Township, P.E.R.C. No. 80-69, 5 NJPER 544 (1979).

FRANK J. PORTELLA

As Finding of Fact No. 5, supra, discloses, Portella had an extensive disciplinary history for abuse of sick time between the date of his hire on July 21, 1982 and the date of his termination on July 17, 1984. Portella's disciplinary history is set forth in full on page 4, supra, and will not be recited again. Suffice it to say that the Respondent had an ample basis to terminate Portella, completely independent of any protected activity engaged in by him.

The Hearing Examiner does not credit the testimony of Portella that he was terminated because he had endorsed the Kennedy slate for election in April 1984. This protected activity was minimal to say the least, and the Charging Party has shown no real nexus between Portella's engaging in protected activity and his termination on July 17, 1984. The Hearing Examiner's conclusion is not altered by the fact that Lauricella acknowledged his awareness that Portella had endorsed the Kennedy slate. Accordingly, there was no violation of the Act by the Respondent when it terminated Portella.

DIANE SORRENTINO

The case of Sorrentino has a bit more substance to it than that of Portella. Here, Sorrentino ran for union office on the Kennedy slate for Secretary-Treasurer in the election conducted on April 25, 1984. Admittedly, her supervisor, Nancy Ackerman, on either April 16 or April 17, 1984, discussed with Sorrentino her running for union office. Ackerman stated that she did not think it was a "good idea" since Sorrentino worked in the Personnel Department and Ackerman thought there was a "conflict." Ackerman ultimately acquired independent knowledge that Sorrentino did run for office.

Sorrentino's problem is that she had an extensive disciplinary history

of absenteeism, notwithstanding that she had never been suspended (see Finding of Fact No. 6, supra). Sorrentino elected to place herself in jeopardy, in terms of her continued employment, by asking for three days of vacation for her honeymoon and then unilaterally exceeding the allotted time. Sorrentino should have returned to work on Wednesday, May 2, 1984, and when she did not appear on May 3rd, Lauricella sent Sorrentino a Final Notice of Disciplinary Action for not having reported for five consecutive days without notice and approval of her supervisor. This Final Notice was mailed on May 4, 1984.

The Hearing Examiner has previously found as a fact that Sorrentino's "resignation" for absence for five consecutive days was due to her own conduct, the pattern of which had extended over a substantial period of time (page 6, supra). Accordingly, the Hearing Examiner finds that the action of the Hospital's administration was not discriminatory and, thus, was not in violation of Sorrentino's rights under the Act.

RENEE STEPHENS

Stephens ran for the office of Recording Secretary on a slate with Kennedy at the April 25, 1984 election. Although the Unfair Practice Charge is cast in terms of discrimination by the Respondent in terms of a request by Stephens for a transfer, the testimony at the hearing disclosed that the crux of the problem was her inability to obtain Saturdays and Sundays off after the request for a transfer was granted. The dispute in the testimony regarding Saturdays and Sundays off is set forth in Finding of Fact No. 9(b), supra. The Hearing Examiner finds no objectionable conduct on the part of the Respondent by Bertha Hudak, its Assistant Administrator. Hudak agreed to Stephens' request for Saturdays and Sundays off, stating only, and perfectly innocuously, that she would have to take a day from everyone else and that Stephens should

not be doing this as a "newly elected officer of the union." The Hearing Examiner has credited the testimony of Hudak that, in granting the request of Stephens for Saturdays and Sundays off, she said inter alia, "...we're going to have to bump somebody back who has Fridays and Saturdays and the union has to bear as much responsibility for that as I do" (1 Tr. 119). Accordingly, there has been no discrimination on the part of the Respondent as to Stephens in connection with her having successfully obtained from Hudak Saturdays and Sundays off.

\* \* \* \* \*

In summary, the Charging Party has failed to meet the Bridgewater standard for either a Subsection (a) (1) or a Subsection (a) (3) violation of the Act by the Hospital. In the case of Portella, the protected activity was so minimal as not to constitute a prima facie showing that it was a motivating or a substantial factor in the Respondent's decision to terminate. In the case of Sorrentino, even assuming that there was a prima facie showing that protected activity was a motivating or a substantial factor in the Respondent's decision to terminate, the Respondent plainly demonstrated that the same action of termination would have taken place even in the absence of Sorrentino's protected activity of running for union office. Finally, the Respondent's action as to Stephens does not arise to an unfair practice since Stephens obtained her transfer and Saturdays and Sundays off, her only claim being that Hudak made a reference to having "blamed the union" in granting Stephens' request.

The Respondent Violated Subsections

(a) (1) And (3) Of The Act By Its

Conduct With Respect To Kennedy

During His Term As President Of The Local .....

The Hearing Examiner is satisfied that the Charging Party has met its burden of proof by a preponderance of the evidence that the Respondent was



discriminatorily motivated in its actions against Kennedy during his term as President of the Local. Thus, it is concluded that the Charging Party has made a prima facie showing sufficient to support an inference that Kennedy's protected activities as President of the Local were a "substantial" or a "motivating" factor in the Respondent's decision to evaluate Kennedy negatively for the first time in 21 years, and to interfere with his conduct of "union business" by denying him access to meeting rooms, the hospital paging system and transportation between Units I and II.

Admittedly, any one of these acts of discrimination in and of themselves might not have arisen to an unfair practice. However, when considered together, and placed in the context of the acts having occurred during Kennedy's three years as President of the Local, it is clear to the Hearing Examiner that the Respondent has violated Subsections (a) (1) and (3) of the Act. In so concluding, the Hearing Examiner has rejected, by implication, any defense of legitimate business justification on the part of the Respondent.

Considering first the evaluation (CP-2), which was given to Kennedy on July 30, 1984, it is noted that it follows by several months the April 25, 1984 Local election and, additionally, was the first evaluation that Kennedy had ever received in his 21 years of employment with the Hospital. It is true that the evaluation is not totally negative. On the other hand, it clearly states that on April 30, 1984 Kennedy was heavily involved in union activities and that this has interfered with his ability to carry out duties "at times." Grudgingly, the evaluator acknowledged that Kennedy has met all of the standards of his title, but then adds "as union activities will permit." Given the fact that Kennedy had been President of the Local for three years at the time of the evaluation, it strikes the Hearing Examiner as highly suspect that "heavy involvement in union activities" would suddenly rise to the fore

five days after the union election of April 25, 1984. On balance, the Hearing Examiner concludes that the evaluation was intended to discourage and inhibit Kennedy in the conduct of "union business" on behalf of the Local.

It is true that Kennedy has never been disciplined in connection with "going on union business," but the Respondent has made life difficult for Kennedy in regard to denying him transportation under the circumstances of Kennedy having a known medical restriction. Kennedy testified without contradiction that Victor Crespo has been provided with transportation, at least during the period prior to the 1984 Local election, and that other supervisors, such as Kennedy, have also been transported. Plainly, the Hospital could have accommodated Kennedy's transportation needs between Units I and II at those times when it was necessary for Kennedy to make the trip between the two Units on "union business."

As to Kennedy having been denied access to the Hospital paging system unlike Victor Crespo, the Hearing Examiner notes, in finding a violation of the Act, that Lauricella acknowledged the possibility that Kennedy is the only one not being paged.

Finally with regard to meeting rooms, although Lauricella and the administration have since decided that no meeting space is to be made available to any union, following the Grasso incident in July or August 1984, the practice of the Hospital had previously been to grant meeting rooms for union use, upon proper application, as witness the experience of Tessie Christiano, a past President of the Local for ten years, who regularly held union meetings on the premises of Unit I. Thus, the Charging Party's proof was overwhelming that the practice of granting the Local meeting rooms existed over a period of at least ten years. Withdrawing this right from Kennedy and the Local, based on the Grasso incident, is arbitrary in the extreme. Kennedy testified

without contradiction that since December 1983 he had made four requests for meeting rooms in Unit I, all of which have been refused. On the other hand, Crespo was given the privilege of holding meetings in Unit I before the 1984 election of Local officers.

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

CONCLUSIONS OF LAW

1. The Respondent Hospital did not violate N.J.S.A. 34:13A-5.4 (a) (1) and (3) by its termination of Frank J. Portella and Diane Sorrentino, or by the conduct of its Assistant Administrator, Bertha Hudak, in connection with the granting of Saturdays and Sundays off to Renee Stephens.

2. The Respondent Hospital violated N.J.S.A. 34:13A-5.4 (a) (1) and (3) by negatively evaluating Charles J. Kennedy, the President of the Local, in or around April 1984, and by denying Kennedy transportation for "union business," the use of the Hospital paging system and access to meeting rooms.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent 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 negatively evaluating Charles J. Kennedy, the President of the Local, and by denying to Kennedy transportation for "union business," the use of the paging system and access to meetings rooms.

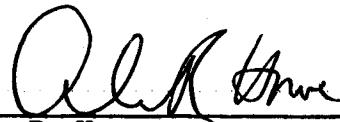
2. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly, by negatively

evaluating Charles J. Kennedy, the President of the Local, and by denying to Kennedy transportation for "union business," the use of the paging system and access to meeting rooms.

B. That the Respondent take the following affirmative action:

1. 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 by the Respondent to assure that such notices are not altered, defaced or covered by other materials.

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



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Alan R. Howe  
Hearing Examiner

Dated: January 4, 1985  
Trenton, New Jersey

# 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 negatively evaluating Charles J. Kennedy, the President of the Local, and by denying to Kennedy transportation for "union business," the use of the paging system and access to meeting rooms.

WE WILL NOT discriminate 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 the Act, particularly, by negatively evaluating Charles J. Kennedy, the President of the Local, and by denying to Kennedy transportation for "union business," the use of the paging system and access to meeting rooms.

PREAKNESS HOSPITAL OF PASSAIC COUNTY

(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  
Chairman, Public Employment Relations Commission,  
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780