P.E.R.C. NO. 86-123

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CWA, LOCAL 1035,

Respondent,

-and- Docket No. CI-86-5-63

BARRY BOURQUIN & CAROLYN NEIGHBOR,

Charging Parties.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, pursuant to authority delegated by the full Commission and in the absence of exceptions, grants a motion for summary judgment dismissing a Complaint based on an unfair practice charge filed by Barry Bourquin and Carolyn Neighbor against the Communications Workers of America, Local 1035. The charge alleged CWA violated the New Jersey Employer-Employee Relations Act when it refused to agree to Hunderdon County's proposal to upgrade salaries of certain employees at the Planning Board (including Bourquin and Neighbor) and insisted, instead, on negotiating these and other salary upgrades with the County. The Chairman, in agreement with a Commission Hearing Examiner, concludes that the charging parties' factual allegations, even if true, do not establish that the CWA violated its duty of fair representation to Bourquin and Neighbor.

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Appearances:
For the Respondent, Steven P. Weissman, Esquire

For the Charging Parties, Barry Bourquin & Carolyn Neighbor, pro se

DECISION AND ORDER

On July 16 and December 11, 1985, Barry Bourquin and Carolyn Neighbor filed an unfair practice charge and amended charge against the Communications Workers of America, Local 1035 ("CWA"). The charge, as amended, alleges the CWA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") specifically subsections 5.4(a)(2), (3) and (4) and (b)(1), (3) and (4).[1/] when it refused to agree to Hunterdon County's proposal to

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1/ These subsections prohibit public employers, their representatives or agents from: "(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; and (4)

Footnote Continued on Next Page

upgrade salaries of certain employees at the Planning Board (including Bourquin and Neighbor) and insisted, instead, on negotiating these and other salary upgrades with the County. The charge alleged this refusal was motivated by CWA's animus against the Planning Board employees because they are not CWA members.

On October 22, 1985, a Complaint and Notice of Hearing issued. On December 27, 1985, CWA filed its Answer. It denies discriminating against Bourquin and Neighbor and states that it has proposed that the County upgrade other titles, in addition to those in the Planning Department.

On January 14, 1986, CWA filed a motion for summary judgment with me. On January 17, 1986, I referred it to Hearing Examiner Alan R. Howe pursuant to N.J.A.C. 19:14-4.8(a). On February 5, 1986, the charging parties advised that they would rely on the papers filed with the charge in opposition to the motion.

On February 14, 1986, the Hearing Examiner granted CWA's motion for summary judgment. H.E. No. 86-40, 12 NJPER ___ (¶_____

1/ Footnote Continued From Previous Page

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; and 5.4(b) (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; and (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

1986). He concluded there were no facts alleged to support a violation of subsections 5.4(a)(2), (3) and (4) or 5.4(b)(3) and (4). With respect to the 5.4(b)(1) allegation that the CWA violated its duty of fair representation to Bourquin and Neighbor, he said:

> [T]he record supports the undisputed finding that, contrary to the Charging Parties' allegations, CWA has not preferred union members over non-union members in discharging its negotiations obligation on behalf of all employees in the unit (see Findings of Fact Nos. 6 & 15, supra). As these findings indicate, which are undisputed, both members and non-members of CWA benefited from the upgrading in the Engineering Department. Further, in negotiations, which commenced on July 24, 1985, CWA sought the upgrading for all job titles in the unit. This plainly included the job titles of employees in the Planning Board Department (see Finding of Fact No. 16, supra).

The Hearing Examiner served his report on the parties and notified them that exceptions, if any, were due on or before February 27, 1986. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-7) are accurate. I adopt and incorporate them here. Under all the circumstances of this case, and in the absence of exceptions, I agree with the Hearing Examiner that there were no material facts in dispute and that summary judgment dismissing the Complaint was appropriate. In particular, the gravamen of the charge is that the CWA sought to negotiate upgrades for other unit employees in addition to those at the Planning Board. The charging parties' factual allegations, even if true, do

not establish that the CWA violated its duty of fair representation to Bourquin and Neighbor. PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (¶15023 1983).

Accordingly, acting under authority delegated to the Chairman by the full Commission, I dismiss the Complaint.

ORDER

The Complaint is dismissed.

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 1, 1986

H.E. NO. 86-40

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

In the Matter of

CWA, LOCAL 1035,

Respondent,

-and- Docket No. CI-86-5-63

BARRY BOURQUIN & CAROLYN NEIGHBOR,

Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission grant the Respondent's Motion for Summary Judgment on the ground that it did not violate §5.4(a)(2), (3) or (4) of the New Jersey Employer-Employee Relations Act nor did it violate §5.4(b)(1), (3) or (4) of the Act when it insisted on negotiations with the County of Hunterdon regarding the upgrading of certain job titles in the Planning Board Department where the Charging Parties are employed. The Respondent had in March 1985 agreed to the upgrading of certain job titles in the Engineering and Road & Bridges Departments, which involved both union and non-union members of CWA, but insisted on negotiating the upgrading of job titles in the Planning Board Department since these upgradings affected a larger number of employees in the unit. The Hearing Examiner found insufficient the allegations of the Charging Parties that they, as non-union member of CWA, were discriminated against and unfairly represented by the Respondent because of their non-union membership.

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. 86-40

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

In the Matter of

CWA, LOCAL 1035,

Respondent,

-and- Docket No. CI-86-5-63

BARRY BOURQUIN & CAROLYN NEIGHBOR,

Charging Parties.

Appearances:

For the Respondent
Steven P. Weissman, Esq.

For the Charging Parties,
Barry Bourquin & Carolyn Neighbor, pro se

DECISION AND ORDER ON RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission on July 16, 1985, and amended on December 11, 1985, by Barry Bourquin and Carolyn Neighbor (hereinafter the "Charging Parties") alleging that CWA, Local 1035 (hereinafter the "Respondent" or "CWA") 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"). The initial Unfair Practice Charge alleged only conclusions, a summary of which indicates that the Charging Parties claim that CWA has: dominated and interfered with employee rights;

has discriminated against non-union members in regard to salary increases to discourage employees in the exercise of the rights guaranteed to them by the Act; has refused to negotiate in good faith with the County of Hunterdon by arbitrarily and capriciously agreeing to salary adjustments for union members but not for non-union members and; finally, has selectively reduced a negotiated agreement to writing which approves agreements (benefits) for union members but not for non-union members; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(2), (3) and (4) of the Act[1/] and N.J.S.A. 34:13A-5.4(b)(1), (3) and (4) of the Act.[2/]

In the amendment to the Unfair Practice Charge, which was allowed on December 11, 1985, the Charging Parties filed with the Commission a series of documents, the thrust of which is that CWA in

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1/ These subsections prohibit public employers, their representatives or agents from: "(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; and (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/ These subsections prohibit employee organizations, 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) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

March 1985, agreed to the upgrading of the salary ranges of certain employees in the Engineering Department of the County of Hunterdon; thereafter refused without negotiations to agree to the upgrading of certain employees in the Planning Board Department of the County, which would directly affect the Charging Parties; and that CWA's motivation in refusing to agree to the upgrading in the Planning Board Department was because the employees that department are not members of CWA whereas the employees in the Engineering Department are members of CWA. The subsections of the Act allegedly violated remain as alleged in the initial Unfair Practice Charge.

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 October 22, 1985. The Respondent filed an answer on December 27, 1985, and before the holding of a hearing, the Hearing Examiner was advised by the Respondent that it intended to file a Motion for Summary Judgment with the Chairman of the Commission. Such a motion was filed under date of January 13, 1986, together with a certification by Alan Kaufman, a Staff Representative of CWA.

Pursuant to N.J.A.C. 19:14-4.8(a), the Chairman of the Commission referred the Charging Parties' Motion for Summary Judgment to the instant Hearing Examiner under date of January 17, 1986. Thereafter the Hearing Examiner advised the Charging Parties that they had until February 6, 1986, to respond to the Motion for Summary Judgment. On February 5, 1986, Barry Bourquin, on behalf of

the Charging Parties, telephoned the Trenton office and stated that the Charging Parties would rest on the previously filed Unfair Practice Charge, as amended, supra.

Upon the record papers filed by the parties in the instant proceeding to date, the Hearing Examiner makes the following:

UNDISPUTED FINDINGS OF FACT

1. Barry Bourquin and Carolyn Neighbor are employees of the Planning Board Department of the County of Hunterdon, and are public employees within the meaning of the Act, as amended, and thus are subject to its provisions.

2. CWA, Local 1035 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. CWA has for several years represented a unit of blue and white collar employees of the County of Hunterdon (hereinafter the "County"). The most recent collective negotiations agreement was executed on February 26, 1985, effective during the term January 1, 1984 through December 31, 1985.

4. On June 13, 1984, the County proposed to a Fact Finder that it would like to upgrade the salary ranges of five job titles in the Engineering Department and, additionally, create three new job titles (Kaufman Certification, Exhibit "A" [hereinafter KC "A"]).[3/]

3/ There had been a series of upgradings of job titles by mutual agreement between the County and CWA and its predecessor between Sept. 14, 1978 and Sept. 23, 1981.

5. On September 25, 1984, the County by resolution authorized Clarence H. Bodine, Jr., the Director of Personnel, to proceed to upgrade certain job titles in the Engineering, Roads & Bridges and Planning Board Departments, which included three titles in Engineering, two titles in Roads & Bridges and four titles in the Planning Board (Amendment [Part I], August 6, 1985--pp. 3, 4).

6. On March 6 and March 8, 1985, Bodine for the County and Andrew J. Weiman, the President of CWA, Local 1035, executed a memorandum of agreement upgrading five job titles in the Engineering and Roads & Bridges Departments and creating two new job titles in the Engineering Department (KC "B"). Both members of CWA and non-members held such titles (¶4 of the Kaufman Certification, hereinafter KC ¶4).

7. On April 1, 1985, the attorney for the County wrote to Weiman, enclosing a proposed memorandum of agreement to upgrade four job titles in the Planning Board Department, which included the Charging Parties herein (KC "C").

8. On April 10, 1985, Weiman wrote to the attorney for the County, requesting negotiations on the ground that the issues involved were complex (KC "D"). CWA states that it was important to compare various job title specifications and requirements such as education and experience in order to ensure that the job titles were placed in the appropriate ranges. Additionally, employees in other job titles than the Planning Board Department had valid claims for salary upgrade (KC ¶7).

9. On May 10, 1985, the Charging Parties wrote to Weiman, stating their awareness that the County had approved upgrading for Planning Board Department job titles. The Charging Parties requested that Weiman execute the memorandum of agreement. (KC "E").

10. On May 16, 1985, Weiman wrote to the Charging Parties, explaining that CWA had requested negotiations with the County and that no response had been forthcoming. Weiman stressed the need for negotiations "...so that all ramifications can be investigated..." (KC "G").

11. On May 24, 1985, the Charging Parties again wrote to Weiman, explaining why they saw no reason not to implement the County's upgrading proposal in the Planning Board Department. The Charging Parties pointed out that there was no problem when upgrading was proposed in the Engineering Department and then posed the question as to whether or not this had something to do with the fact that one of the beneficiaries of the upgrading in the Engineering Department was the treasurer of the union and the rest were union members. (KC "F").

12. On May 30, 1985, Weiman again wrote to the Charging Parties reminding them of the necessity that the County negotiate its proposed upgrading changes (KC "H").

13. On May 24, 1985, Kaufman had written to Bodine, in which he made a second formal request to negotiate the upgrading of job titles in the Planning Board Department (KC "I").

14. On June 18, 1985, the Charging Parties again wrote to Weiman, in which they renewed their questioning as to why the Engineering Department had receive upgrading adjustments in salaries whereas those in the Planning Board Department had not. The Charging Parties renewed their allegation that CWA was favoring union members and were "...holding non-Union range increases hostage for negotiating a ransom of other Union demands...." Finally, the Charging Parties threatened to file the instant Unfair Practice Charge. (KC "K").

15. On June 25, 1985, Kaufman wrote to the Charging Parties, in which he defended the action of CWA, noting again that in the case of the Engineering Department both members and non-members of CWA benefited from the upgrading (KC "J").

16. On July 24, 1985, CWA commenced negotiations for a successor agreement and it included in its demands upgrading changes for all titles, including those in the Planning Board Department. On December 9, 1985, CWA formally proposed to the County in negotiations its demand for the upgrading for all job titles (KC ¶'s 11 & 12).

DISCUSSION AND ANALYSIS

Based on the foregoing undisputed findings of fact, it is clear that the instant proceeding is ripe for disposition on the Respondent's Motion for Summary Judgment: see analysis and discussion by the New Jersey Supreme Court in Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954) and the New

Jersey Civil Practice Rules, 4:46-2. Under these authorities a motion for summary judgment may properly be granted when the record papers disclose that "...there is no genuine issue as to any material fact...and that the moving party is entitled to a judgment or order as a matter of law...." The Hearing Examiner is satisfied that the requisites for the grant of the Respondent's Motion for Summary Judgment are met.

Based on the record papers and the legal memorandum submitted by the Respondent in support of its Motion for Summary Judgment, the Hearing Examiner hereby grants the Respondent's motion for the following reasons:

I.

It is first noted the Charging Parties have alleged a series of violations of the Act, three of which pertain to employer violations §§5.4(a)(2), (3) & (4), as to which the Respondent can in no way be involved. Therefore, the Hearing Examiner dismisses any allegations that these subsections of the Act were violated by the Respondent. Additionally, the Charging Parties have alleged violations by the Respondent of §§5.4(b)(3) and (4) of the Act. These subsections pertain to a refusal by the Respondent to negotiate with the County in good faith and a refusal by the Respondent to reduce a negotiated agreement to writing or to sign such an agreement. Plainly, on the record papers before the Hearing Examiner, there is nothing to support a finding that the Respondent violated §§5.4(b)(3) or (4) of the Act. The Respondent has in no

manner failed or refused to negotiate in good faith with the County nor has it refused to reduce a negotiated agreement to writing or sign it. Thus, the Hearing Examiner dismisses at the outset any alleged violation by the Respondent of these subsections of the Act.

This leaves solely the question as to whether or not the Respondent has violated §5.4(b)(1) of the Act by its conduct herein.

II.

This case is governed by a decision of the United States Supreme Court in Ford Motor Company v. Huffman, 345 U.S. 330 (1953) and decisions of the Commission, which have cited Huffman with approval: City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (1982) and PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (1983). See also, Belen v. Woodbridge Twp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976).

The facts before the United States Supreme Court in Huffman, supra, involved a collectively negotiated agreement that caused certain unit members to experience a diminution in benefits, etc. The Court said:

> Inevitably, differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. (345 U.S. at 338)(emphasis supplied).
>
> See also, Hamilton Twp. Ed. Ass'n., P.E.R.C. No. 79-20, 4 NJPER 476 (1978).

In the instant case, the undisputed facts reveal that on March 6 and March 8, 1985, the County and the CWA executed a memorandum of agreement, which upgraded five job titles in the Engineering and the Roads & Bridges Departments (see Finding of Fact No. 6, supra). At that time there was nothing to indicate on the record that CWA was aware of the fact that the County on September 25, 1984, also authorized upgrading for four job titles in the Planning Board Department (see Finding of Fact No. 5, supra).

Then on April 1, 1985, the attorney for the County wrote to Weiman, the President of CWA, proposing that a memorandum of agreement be executed to upgrade four job titles in the Planning Board Department (see Finding of Fact No. 7, supra). CWA, for what the Hearing Examiner finds as good and sufficient reason, requested negotiations for the upgrading of these four titles in the Planning Board Department on the ground that other employees in that department had valid claims for a salary upgrade and that it was important to compare various job title specifications, etc. in order to ensure that job titles are placed in the appropriate ranges (see Finding of Fact No. 8, supra).

Thereafter, CWA and the County were at an "impasse" since the County refused to respond to CWA's request to negotiate the upgrading of job titles in the Planning Board Department. When the Charging Parties learned of the willingness of the County to upgrade the Planning Board Department job titles, which would directly affect them, they engaged in correspondence with CWA, the bottom

line of which was the charge by Bourquin and Neighbor that CWA was favoring its members and discriminating against non-members (see Findings of Fact Nos. 11 & 14, supra).

The Hearing Examiner notes that the record supports the undisputed finding that, contrary to the Charging Parties' allegations, CWA has not preferred union members over non-union members in discharging its negotiations obligation on behalf of all employees in the unit (see Findings of Fact Nos. 6 & 15, supra). As these findings indicate, which are undisputed, both members and non-members of CWA benefited from the upgrading in the Engineering Department. Further, in negotiations, which commenced on July 24, 1985, CWA sought the upgrading for all job titles in the unit. This plainly included the job titles of employees in the Planning Board Department (see Finding of Fact No. 16, supra).

The instant undisputed facts clearly distinguish this case from Union City, supra, the Commission there stated that a breach of the duty of fair representation by a public employee representative occurs when it "...makes a deliberate decision in bad faith to cause a unit member economic harm. An employee representative which lacks any reason, besides the desire to punish, for its refusal to seek a compensation increase for a certain position per force operates outside the wide range of reasonableness." 8 NJPER at 100 (emphasis supplied).

The Hearing Examiner can under no circumstance conclude that CWA has made a "deliberate decision" to cause "economic harm"

to the Charging Parties. As noted previously, CWA has advanced sufficient reasons, evidencing good faith in its approach to negotiate the issue of upgrading of job titles in the Planning Board Department. Thus, CWA has here operated within the "wide range of reasonableness" to which a collective negotiations representative is entitled under decisions of the Commission[4/] and the decision of the United States Supreme Court in Huffman, supra.

Accordingly, the Hearing Examiner concludes that the Respondent has not breached its duty of fair representation as to the Charging Parties by its conduct herein.

* * * *

Upon the foregoing, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent's Motion for Summary Judgment is granted.

2. The Respondent, by its conduct herein, has not violated N.J.S.A. 34:13A-5.4(a)(2), (3) or (4) nor has the Respondent violated N.J.S.A. 34:13A-5.4(b)(1), (3) or (4).

4/ See also the decision of the Director of Unfair Practices in I.B.E.W. Local 210, D.U.P. No. 83-11, 9 NJPER 300 (1983) where the issuance of a complaint was refused since there were no specific factual allegations which could support a claim that the majority representative had acted in an arbitrary, discriminatory or bad faith manner in the negotiation of an agreement which provided for different benefits for different unit members.

RECOMMENDED ORDER

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

Alan R. Howe
Hearing Examiner

Dated: February 14, 1986
Trenton, New Jersey