

P.E.R.C. NO. 85-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MT. HOLLY TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-84-344-40

MT. HOLLY TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Mount Holly Board of Education did not violate the New Jersey Employer-Employee Relations Act when it transferred a teacher from seventh grade to fourth grade. The Commission finds that there was insufficient evidence to establish that anti-union animus motivated the transfer and that the Board established a legitimate business reason for the transfer.

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MT. HOLLY TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Parker, McCay & Criscuolo, Esqs.
(Jerem M. Gordon, of Counsel)

For the Charging Party, Katzenback, Gildea & Rudner, Esqs.
(Arnold M. Melik, of Counsel)

DECISION AND ORDER

On June 8, 1984, the Mount Holly Township Education Association ("Association") filed an unfair practice charge against the Mount Holly Township Board of Education ("Board") with the Public Employment Relations Commission. The Association alleges that the Board violated subsections 5.4(a)(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A1 et seq. ("Act"), when, allegedly in retaliation for pro-union activity, it transferred Roberta Long from a seventh grade to a fourth grade teaching position.

^{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; 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."

On September 6, 1984, a Complaint and Notice of Hearing was issued.

On September 10, 1984, the Board filed an Answer denying that Long's transfer was discriminatorily motivated.

On November 19, 1984, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They waived the filing of post-hearing briefs.

On November 27, 1984, the Hearing Examiner issued a report recommending dismissal of the Complaint. H.E. No. 85-23, 10 NJPER ____ (¶ ____ 1984) (copy attached). Applying Bridgewater Twp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984) ("Bridge-water"), he found that the Association had failed to demonstrate that the transfer was illegally motivated and that the Board had established that it had a legitimate business reason for transferring Long.

On December 14, 1984, the Association filed a letter in lieu of exceptions. The Association challenges certain credibility determinations and claims that the Hearing Examiner failed to give due weight to certain exhibits.

We have reviewed the record. The Hearing Examiner's findings of fact (at 2-7) are accurate. We incorporate them here. We specifically accept the Hearing Examiner's credibility determinations based on his observations of the witnesses' demeanor. City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28 (¶15017 1983);

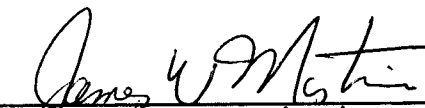
City of New Brunswick, P.E.R.C. No. 83-26, 8 NJPER 555 (¶13254
Township of Clark, P.E.R.C. No. 80-117, 6 NJPER 186 (¶11089 1980);
City of Trenton, P.E.R.C. No. 80-90, 6 NJPER 49 (¶11025 1980).

Applying Bridgewater to the particular circumstances of this case, we hold that the transfer did not violate the Act. There was insufficient evidence to establish that anti-union animus motivated the transfer ^{2/} and, in any event, the Board established that it would have transferred Long even absent her protected activity. Accordingly, we dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Suskin and Wenzler voted in favor of this decision. Commissioner Graves opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
January 22, 1985
ISSUED: January 23, 1985

^{2/} We specifically do not agree with the Association that the principal's observations about Long's dominance, intensity and abruptness and the effect of these characterizations on staff/student morale and inter-personal/professional relationships established anti-union animus.

H.E. No. 85-23

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

In the Matter of

MT. HOLLY TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. C0-84-344-40

MT. HOLLY TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate §§5.4(a) (1) and (3) of the New Jersey Employer-Employee Relations Act when its Superintendent transferred Roberta H. Long from the seventh grade at the Holbein School to the fourth grade at the Folwell School for the 1984-85 school year. The Charging Party failed to prove any antiunion animus on the part of the Respondent's administration and, thus, this did not remotely satisfy the test enunciated by the New Jersey Supreme Court in Bridgewater Township v. Bridgewater Public Works Association, 94 N.J. 235 (1984). The Respondent Board demonstrated a legitimate business justification for the transfer of Long, namely, the need for her instructional services in the fourth grade of the Folwell school due to another teacher in that school taking a sabbatical leave for the 1984-85 school year.

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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For the Respondent
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(Jerem M. Gordon of counsel)

For the Charging Party
Katzenbach, Gildea & Rudner, Esqs.
(Arnold M. Mellk of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 8, 1984 by the Mt. Holly Township Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Mt. Holly Township Board of Education (hereinafter the "Respondent" or the "Board") 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 the Respondent on April 30, 1984 notified Roberta Long that she was being transferred from the Holbein School, where she is the head union representative, and active in the filing of numerous grievances, to the Folwell School, which

transfer is the second in two years, and which transfers are intended to coerce Long in the exercise of her right to assist unit members, 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. ^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on September 6, 1984. Pursuant to the Complaint and Notice of Hearing, a hearing was held on November 19, 1984 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and waived the filing of post-hearing briefs.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the oral argument of the parties the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

FINDINGS OF FACT

1. The Mt. Holly Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Mt. Holly Township Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

^{1/} These Subsections prohibit public employer, 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."

3. Grades K-4 are housed in the Folwell School and grades 5-8 are housed in the Holbein School. Roberta H. Long, the putative discriminatee herein, was hired by the Board as a fifth grade teacher in the Holbein School in September 1973. In addition to teaching the fifth grade, Long has taught the fourth grade in Folwell and the seventh and eighth grades in Holbein. Long has had an extensive history of transfers between grades and the two schools, as follows: she was transferred in the 1977-78 school year from Folwell to Holbein where she taught seventh grade Social Studies; in 1981-82 she was transferred to eighth grade Social Studies, also in Holbein; in 1982-83 she was transferred to the fourth grade at Folwell; in 1983-84 she was transferred back to seventh grade Social Studies in Holbein; and in 1984-85 she was again transferred to the fourth grade, which transfer is the subject of the instant Unfair Practice Charge.

4. During the years that Long has taught at the Holbein School she has been the appointed Association Representative, sometimes known as Building Representative. She most recently served in this capacity during the 1983-84 school year. Serving with Long as Association Representatives during the 1983-84 school year at Holbein were Elaine Leonardi and Marie Urso. The responsibility of an Association Representative is to meet monthly with the administration and to raise and attempt to resolve any problems, which may exist among unit members. These meetings were referred to as liaison meetings.

5. The Holbein School has Co-Principals, one being Carol Street and the other being Karen Springer.

6. At a liaison meeting on March 15, 1984, where Long brought up a certain disciplinary matter to Street and Springer, Springer's response was to the effect that they were tired of the Association telling them what to do. This was in the context of a complaint by administration that the teachers were taking them to task.

7. Thereafter, on March 26, 1984, a meeting was convened between the administration and the Association at Holbein with the following persons present: For the Association - Barbara Williams, President; Linda C. Deighan, Vice-President; and Long, Leonardi and Urso. For the Administration: John A. Mengel, Superintendent; Nick Margiotta, Assistant Superintendent; Thomas Morgan, Board Secretary; and Street and Springer. At this meeting Long read a handwritten prepared statement (CP-1), which, in summary, said that the Association had a concern regarding the relationship with the Board; that unwarranted comments were made by the administration to the teaching staff; that there should be a professional relationship between the administration and the teaching staff; that there had been criticism of the Association for bringing alleged petty matters to the liaison meetings; and that the teaching staff was not receiving proper credit. There was no testimony adduced as to what, if any, response the administration representatives made or what, if any, dialogue transpired.

8. On April 19, 1984, Springer made an observation of Long in her classroom, with which Long took issue because Springer had made "Additional Remarks" (CP-2). Long claimed that these remarks were extraneous to the observation. It was Long's contention that the purpose of the observation, and the completed form (CP-2), is to

observe a particular lesson in a particular classroom at a particular time. Springer testified to the contrary, claiming that she has the authority to add additional information based on out-of-classroom observations and that she properly put this information under "Additional Remarks" on the form CP-2, namely, a negative reference to student rapport. ^{2/}

9. On April 30, 1984, Superintendent Mengel sent a letter to Long advising her that she was being reassigned to the fourth grade at the Folwell School for the 1984-85 school year (CP-3). In order to satisfy the requirement for a reason for the reassignment or transfer of Long, Mengel sent her a memo on May 7, 1984, in which he stated as his reason that it would be a more appropriate assignment (CP-4).

10. Sometime at the beginning of May 1984 Long and Deighan went to Springer's office regarding the negative comments of Springer under "Additional Remarks," (CP-2), supra. Springer refused to discuss the matter with Deighan present. The meeting adjourned until 3:00 p.m. on the same day when Street was present with Springer. Deighan asserted her right to be present with Long as a representative under the Association's agreement. Springer told Long that she would not change Exhibit CP-2 and that Long had a disquieting effect on the teaching staff, and also referring to one student incident.

^{2/} The Charging Party introduced a series of observations of Long by several Principals covering the period 1977-1982, in each of which the observers stated that Long had "excellent," "good" or "positive" pupil rapport (CP-5, CP-6, CP-7, CP-8 and CP-9). According to Long, CP-2, supra contained the first reference to a negative relationship with students. However, Springer had also included on CP-2 the statement that Long's "Rapport was good during lesson." Additionally, Springer gave Long a "satisfactory" Annual Performance Report on June 11, 1984 (CP-10).

11. On May 11, 1984 Long and Deighan met with Superintendent Mengel regarding Long's transfer to the Folwell School in order to get his reason for the transfer first hand. Mengel said that the transfer was the "best slot" for Long considering her "strengths." According to Deighan, who the Hearing Examiner credits, Mengel then added that it was about time for management to show its strength.

12. The Charging Party adduced no evidence of anti-union animus by the administration toward representatives of the Association except for an incident involving Marilyn Pasiiecznyk, who was President of the Association from 1981 through 1983. She testified that at some point during the 1982-83 school year she received a written reprimand from Springer and Street for having called a meeting of the Holbein faculty. The meeting notice, which was placed on the faculty bulletin board, stated that no administrators were to be present. The reprimand was based on the ground that there was no authority in the Association to call faculty meetings. Pasiiecznyk filed a grievance, which resulted in a meeting between Mengel, Street and Springer where Mengel apologized to Pasiiecznyk and removed the reprimand from her personnel file. Pasiiecznyk testified that Street and Springer gave her the impression that they did not agree with Mengel.

13. Mengel took full responsibility for his decision to transfer Long from the Holbein School to the Folwell School for the 1984-85 school year. He testified that the decision originated with the request of the second grade teacher at Folwell, Paula Solomon, to take a sabbatical leave for the 1984-85 school year. He determined that the fourth grade teacher in Folwell, Janet Shinn, was best suited for transfer to the second grade and that this left a vacancy

in the fourth grade. He testified further that Long had taught the fourth grade during the 1982-83 school year and was best suited for the transfer due to her prior experience in that grade plus the fact that she showed strengths toward young children. The Superintendent and Springer testified to several incidents involving Long and students and faculty at the Holbein School as fortifying the decision of Mengel that Long was better equipped to teach in the fourth grade at Folwell than in the seventh grade at Holbein.^{3/} The testimony in this regard (see footnote 3, supra) clearly is not germane to the engaging by Long in activities on behalf of the Association nor does it in any way impact on Mengel's clear managerial prerogative to transfer Long for non-discriminatory reasons of educational policy. Neither Mengel nor the Association's witnesses testified as to any matter indicating that the decision to transfer was discriminatory. Indeed, Mengel testified affirmatively that at liaison meetings Long fulfilled her role extremely well and always spoke effectively on behalf of the teaching staff.

THE ISSUE

Did the Respondent Board violate §§(a)(1) and (3) of the Act and the Bridgewater^{4/} standard when it transferred Roberta H. Long from the Holbein School to the Folwell School for the 1984-85 school year?

^{3/} This testimony related to Long's occasional problem with students and teaching staff. It centered around an incident with a music teacher in the Fall of 1983, Robert Bell, a bilingual teacher, Carmen Colon, in early 1983-84 and two students during 1983-84, one involving the refusal to remove a hat and another involving a student having left the auditorium.

^{4/} See Bridgewater Township v. Bridgewater Public Works Association, 95 N.J. 235 (1984).

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate §§(a)(1) and (3) Of The Act When It Transferred Long From The Holbein School To The Folwell School For The 1984-85 School Year

In Bridgewater, supra, the New Jersey Supreme Court adopted the causation test enunciated by the National Relation Board in "dual motive" cases: Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980). In so doing, the New Jersey Supreme Court followed the United States Supreme Court decision in NLRB v. Transportation Mgt. Corp., ___ U.S. ___, 113 LRRM 2857 (1983).

This 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 (here transfer); (2) once this is established the employer has the burden of demonstrating by a preponderance of the evidence that the same decision would have been made even in the absence of protected activity.

It must first be noted that a public employer, here the Board, has a non-negotiable managerial prerogative to transfer an employee: Ridgefield Park Education Association v. Ridgefield Board of Education, 78 N.J. 144 (1978). Thus, absent any discriminatory intent or motivation on the part of the public employer, it has an unfettered right to transfer an employee from one position to another or from one location to another.

The facts in Bridgewater involved, inter alia, a transfer, which the Commission held to have been discriminatory and in retaliation against Anthon Longo because of his exercise of activities protected by the Act. This was affirmed by the Appellate Division and at the Supreme Court level the so-called Bridgewater test supra, was enunciated. The Supreme Court in Bridgewater stated that, "Mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or a substantial reason for the employer's action..." (95 N.J. at 242).

The Charging Party's problem in the case at bar is that it has not established by a preponderance of the evidence that there was any anti-union animus manifested by the Board toward the Association. The only proof that even remotely resembles animus is found in Finding of Fact No. 12, supra, where Pasiecznyk was reprimanded during the 1982-83 school year. This event is too remote in time to have any evidentiary impact on the transfer of Long in April or May 1984. Plainly, there was no proof whatsoever of any anti-union animus having been manifested by the administration toward Long. It is noted that, contrary to the allegations in the Charge, the Charging Party adduced no evidence that Long filed any grievances, let alone "numerous" grievances. Given this lack of proof of anti-union animus there is no way in which the Hearing Examiner can conclude that the activity of Long as an Association Representative at the Holbein School over several years supports an inference that her activity was a "motivating factor" or a "substantial factor" in the Superintendent's decision to transfer Long to the fourth grade at the Folwell School for the 1984-85 School year.

Even if the Hearing Examiner was to assume arguendo that the Association and Long had met the first part of the Bridgewater test, the Board has met its burden of proving by a preponderance of the evidence that the transfer would have occurred even in the absence of any protected activity by Long on behalf of the Association. In other words, the Hearing Examiner concludes that the Board has demonstrated that it had a legitimate business justification in transferring Long, who had been transferred previously on many occasions. Superintendent Mengel testified credibly as to why the transfer occurred, namely, that the second grade teacher, Solomon, was granted a sabbatical and that he determined that the fourth grade teacher should be transferred to the second grade, thereupon creating a vacancy in the fourth grade. The Superintendent testified credibly that he considered Long's having previously taught the fourth grade at Folwell and, since she was eminently qualified, she was the logical person to transfer. ^{5/}

The Charging Party having failed to satisfy the requisites of the Bridgewater test, supra, the Hearing Examiner must recommend dismissal of the Complaint.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a) (1) and (3) when it transferred Roberta H. Long from the seventh grade

^{5/} The Hearing Examiner has not attached any significant weight to Long's alleged problems with students and faculty at the Holbein School during the 1983-84 school year. See footnote 3, supra.

in the Holbein School to the fourth grade in the Folwell School for the 1984-85 school year.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

DATED: November 27, 1984
Trenton, New Jersey