

P.E.R.C. NO. 79-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JEAN F. EMMONS, SUPERINTENDENT,
TRENTON BOARD OF EDUCATION,

Respondent,

Docket No. CO-78-277-31

-and-

TRENTON EDUCATIONAL SECRETARIES
ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission adopts the findings of fact and conclusions of law contained in the Hearing Examiner's recommended report and dismisses unfair practice charges which were filed against the Trenton Board of Education by the Trenton Educational Secretaries Association. The Commission agrees that the charging party failed to meet its burden of proof as required under the law.

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ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Merlino, Andrew & Rottkamp, Esqs.
(Robert B. Rottkamp, of Counsel)

For the Charging Party, Greenberg & Mellk, Esqs.
(Arnold M. Mellk, of Counsel)

DECISION AND ORDER

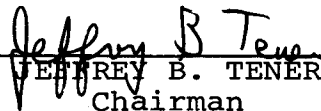
An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on May 22, 1978 by the Trenton Educational Secretaries Association alleging that Jean Emmons, Superintendent of the Trenton Board of Education had violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (7) by urging and advising Association members to illegally be absent from their jobs. A Complaint and Notice of Hearing was issued, and a hearing held by Hearing Examiner Edmund G. Gerber on January 8, 1979, and a brief submitted on February 9, 1978. The Hearing Examiner issued his Recommended Report and Decision on February 21, 1979, designated as H.E. No. 79-32, a copy of which is attached hereto.

Hearing Examiner Gerber found that the Charging Party had failed to meet its burden of proof under N.J.A.C. 19:14-6.8 and recommended dismissal of the complaint. Exceptions were filed by the Association and a request was made for oral argument before the Commission. The exceptions consist entirely of attacks on credibility determinations made by the Hearing Examiner and on the probative value he attached to the testimony of various witnesses. As we have stated repeatedly, we will normally not tamper with credibility determinations and will defer to the trier of fact's evaluation of the weight of the evidence in finding what has occurred. Based upon our review of the complete record herein, we again find no reason to disagree with the findings below. Consequently we find the exceptions to be without merit. Additionally, we find there is no need for oral argument which is granted only at the Commission's discretion. N.J.A.C. 19:14-8.2.

ORDER

For the reasons stated above, it is hereby ORDERED that the Complaint is dismissed.

BY ORDER OF THE COMMISSION


JEFFREY B. TENER
Chairman

Chairman Tener, Commissioners Parcels and Hartnett voted for this decision. None opposed. Commissioners Graves and Newbaker abstained. Commissioner Hipp was not present at the time of the vote.

DATED: Trenton, New Jersey
April 26, 1979
ISSUED: April 27, 1979

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

In the Matter of

JEAN F. EMMONS, SUPERINTENDENT,
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-and-

Docket No. CO-78-277-31

TRENTON EDUCATIONAL SECRETARIES
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends to the Public Employment Relations Commission that they dismiss an unfair practice charge alleging that the Trenton Board of Education Superintendent Jean Emmons intimidated and coerced members of the Trenton Educational Secretaries Association by ordering them to absent themselves from work on a regular workday. The Hearing Examiner found that there was no direct evidence attributing such an order to Emmons and he further found Emmons' testimony that he never made such an order credible.

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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ASSOCIATION,

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Appearances:

For the Respondent, Merline & Andrew, Esqs.
(Robert B. Rottkamp, of Counsel)

For the Charging Party, Greenberg & Mellk, Esqs.
(Arnold M. Mellk, of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The Trenton Educational Secretaries Association (Association) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) on May 22, 1978, claiming that Jean Emmons, the Superintendent of the Trenton Board of Education, violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (7) ^{1/} when on April 28, 1978, he "urged and advised members of the Association to illegally absent themselves from their assigned duties for reasons unrelated to his duties and responsibilities as Superintendent of Schools."

^{1/} These sections provide that employers, their representatives or agents are prohibited from: (1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (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; (7) violating any of the rules and regulations established by the commission.

The Director of Unfair Practices determined that the allegations of the Charge if true might constitute unfair practices and, accordingly, issued a Complaint and Notice of Hearing in this matter on November 17, 1978.

A hearing was held on January 8, 1979, in Trenton and all parties were given an opportunity to present evidence, examine and cross-examine witnesses and present briefs. A brief was submitted in this matter which was received in the Commission offices on February 9, 1978.

Upon the entire record the undersigned makes the following finding of fact.

In the evening of Thursday, April 27, the Trenton Board of Education (Board) met and discussed the possibility of terminating non-tenured clerical employees. On the following day, April 28, Patricia Vogt, the President of the Association, received several phone calls advising her that a number of people were not going to show up for work. These people included Juanita Smith and two nurses, Olivia Leggett and Maria Tysiak. Vogt was told that these people were not reporting to work in order to avoid receiving termination papers. A short time later that morning Vogt had left her office and saw a secretary named Sheila Johnson walking down the hall in her coat. Vogt asked Johnson why she had her coat on and Johnson replied that the Superintendent told her not to come to work that day to avoid receiving a letter of termination. Vogt also testified that she had heard that Superintendent Emmons talked with other secretaries after the Board meeting on the evening of April 27. Evelyn Joyner, the Board Supervisor of Nurses in the medical department, testified that in October of 1978 she had a conversation with Emmons about the question of terminating non-tenured secretaries. Emmons told Joyner that he "was sitting on a bar stool when a secretary approached him about being absent from or boycotting work. Emmons told the secretary that if she walked into the school and got the letter of intent she was hooked."

Ramona Moncova testified that she was at the Board of Education meeting on April 27th and during the Board's meeting there was banter to the effect that to avoid being laid off the secretaries should not bother to show up for work. Therefore they could not receive notice that they were to be terminated.

Ramona Moncova thought that not showing up for work might actually be

a good idea. Therefore on Friday, the 28th, she did not report for work as secretary to the Executive Director of Elementary Education, William Love. Further she contacted her sisters, Roberta Moncova and Juanita Smith, and suggested that they not attend work.

Superintendent Emmons testified and denied ever advising or instructing secretaries to absent themselves from work and maintained that any contact he had with any secretary was strictly on the level of social pleasantries.

With the exception of Joyner's testimony, the Association's case is pure hearsay and lacks any clear direct evidence that Emmons interfered with or coerced employees in the exercise of their rights.

Joyner's testimony is inconsistent with Emmons' but even so there is no intimation of intimidation or coercion in the remarks attributed to Emmons by Joyner. In spite of the inconsistency with Joyner's testimony, I find Emmons' direct testimony to be of far greater probative value than the hearsay evidence of the Association.

Accordingly, I find that the Association failed to prove its case by a preponderance of the evidence and will recommend to the Commission that they dismiss the Complaint in its entirety.

RECOMMENDED ORDER

It is recommended that the complaint alleging that the Superintendent of the Board violated §5.4(a)(1), (2), (3) and (7) be dismissed in its entirety.



Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
February 21, 1979