P.E.R.C. NO. 81-142

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

-and-

Docket No. CI-80-18-132

SYLVESTER GRAY,

Charging Party.

SYNOPSIS

The Commission holds that the Township of Teaneck did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) when it suspended an employee for sixty (60) days for refusing to perform stand-by duty and for fining him two days loss of pay in lieu of suspension for violating a departmental policy. In light of the employee's past infractions and the nature of his repeated insubordination in failing to perform stand-by duty, the Commission finds that the sixty (60) day suspension is a reasonable disciplinary penalty and is not indicative of disparate treatment. In the absence of any specific evidence to establish that the suspension or the two day loss of pay was motivated even in part by a desire of the Township to retaliate against the employee for his exercise of protected rights, the Township actions were both reasonable and legitimate.

Additionally, though not controlling in this holding, the Commission finds that the charge concerning the sixty (60) day suspension was filed only after a Civil Service appeal had ended unsatisfactorily for the employee. Although the ALJ had not passed upon the employee's protected activities and their relations to the suspension, his claim of retaliation for organizational activities could have been raised in his Civil Service appeal. Under the holding found in City of Hackensack v. Winner, 77 N.J. 14 (1978), the Commission concludes that the employee was bound by the findings of fact in the Civil Service appeal, and that the employee should have been estopped from litigating his unfair practice claim with the Commission.

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In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

-and- Docket No. CI-80-18-132

SYLVESTER GRAY,

Charging Party.

Appearances:
For the Respondent, Dorf and Glickman, Esqs.
(Steven S. Glickman, of Counsel)

For the Charging Party, Margaret A. Holbrook, Esq.

DECISION AND ORDER

On December 18, 1979, an Unfair Practice Charge was filed with the Public Employment Relations Commission by Sylvester Gray (hereinafter "Charging Party" or "Gray") alleging that the Township of Teaneck (hereinafter the "Respondent" or "Township") 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"). Specifically, Gray alleged that the Respondent violated N.J.S.A. 34:13A-5.4(a)(1),(2) and (3)[1/] by suspending him for sixty (60) days for a disciplinary

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. (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." At the hearing the Hearing Examiner granted the Respondent's Motion to Dismiss the Subsection (a)(2) allegation on the ground that Gray as an individual did not have standing (continued).

incident in October 1978 and for suspending him for two (2) days without pay in July 1979, and that each of the foregoing suspensions was imposed because of Gray's activities on behalf of the employee organization of which he was the chief organizer and President.

It appearing that the allegations of the Unfair Practice Charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 26, 1980. Hearings were held on September 3 and 4, 1980 in Newark, New Jersey before Alan R. Howe, Hearing Examiner of the Commission, at which time both parties were represented by counsel and were given the opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. Oral argument was waived and the parties filed post-hearing briefs by October 20, 1980.

On January 7, 1981, the Hearing Examiner issued his Recommended Report and Decision,[2/] which included findings of fact, conclusions of law and a recommended order. The original of the report was filed with the Commission and copies were served upon the parties.

The Hearing Examiner recommended that the Commission find that the Township violated N.J.S.A. 34:13A-5.4(a)(3), and derivatively 5.4(a)(1), when it suspended Gray for 60 days

1/ (continued)
to allege such a violation: Borough of Shrewsbury, P.E.R.C. No. 79-42, 5 NJPER 45 (1979).
No exception has been taken to the dismissal of this allegation of the charge and we hereby adopt it.

2/ H.E. No. 81-22, 7 NJPER ___ (¶_____ 1981).

beginning on February 6, 1979 for refusing standby duty in October, 1978. The Examiner found that the Township's conduct was discriminatory and had been motivated in whole or in part by a desire to discourage Gray in the exercise of rights guaranteed by the Act. In addition, the Hearing Examiner found that the Township had violated N.J.S.A. 34:13A-5.4(a)(3) and 5.4(a)(1), when it fined Gray two days' loss of pay in lieu of suspension in July 1979 for violation of the departmental policy prohibiting leaving his road sweeper unattended while the motor of the vehicle was running, and then failing to adequately explain his reason for such activity.

By way of remedy for the 5.4(a)(1) and (3) violations, the Hearing Examiner recommended that the Township make Gray whole by payment to him of his 62 days' loss of pay at his regular annual or hourly rate which would represent the loss of pay suffered by Gray during his 60 day suspension from February 6, 1979 to April 6, 1979 and his fine of two days' pay in July 1979. The Hearing Examiner also recommended that the Township expunge from the personnel records of Gray any reference to the 60 day suspension and the two days fine in lieu of suspension. As a remedy tailored to the adverse effect upon the exercise of its employees' rights the Examiner recommended that the Township be required to post a remedial notice at all places where notices to employees are customarily posted.

Exceptions to the Hearing Examiner's Recommended Report, along with a supporting brief, were filed by the Respondent and the Charging Party filed a reply brief in response to the Respondent's exceptions.

The Township in its exceptions disputes many of the findings of fact of the Hearing Examiner. Generally, these relate to its awareness of Gray's protected activities at the time of the October 1978 incident and his subsequent suspension in February 1979, to an alleged statement by a Township negotiator relied upon by the Hearing Examiner to indicate animus toward Gray for the exercise of protected activy, and, more significantly to the finding that the severity of the discipline given Gray indicated disparate treatment and thus was indicative of a discriminatory motive. It, therefore, also excepts to the Hearing Examiner's conclusion that the record establishes that the Township was motivated by a desire to retaliate against Gray or discourage him in the exercise of protected rights when it suspended him on either occasion.

In addition, the Township excepted to the conclusions of law reached by the Hearing Examiner that the Township had waived its right to assert the six month statute of limitations pursuant to 5.4(c) of the Act as to the sixty (60) day suspension ending on April 6, 1979. Finally, the Respondent excepted to the Hearing Examiner's conclusion of law that he was not bound by the decision of an Administrative Law Judge on August 23, 1979 which sustained the imposition of the 60 day suspension of Gray.[3/]

3/ On March 23, 1979, Gray appealed his sixty day suspension without pay to the Civil Service Commission. The matter was transmitted to the Office of Administrative Law and a hearing (continued)

The Commission, after a thorough examination of the record, the exceptions, and the briefs submitted by both parties, has concluded that it cannot adopt the Hearing Examiner's Recommended Report and Decision. We find the Complaint herein must be dismissed.

The record establishes that the Charging Party has been an employee of the Department of Public Works (DPW) of the Respondent Township for the past 16 years and for much of that period one of his chief responsibilities has been to be a road sweeper equipment operator. From approximately 1970 or 1971 until 1979, Local 97 of the International Brotherhood of Teamsters was the exclusive majority representative of the employees in the DPW. However, it is undisputed that Mr. Gray was disenchanted with Local 97's representation of the employees almost from the beginning and had withdrawn his dues deduction authorization by August of 1973.

In late 1978 or early 1979, Gray testified he began to investigate, apparently partly in response to inquiries and suggestions from fellow employees, the possibility of replacing

3/ (continued)
was held on May 8, 1979 before Administrative Law Judge Thomas Crawford. Judge Crawford ruled that based on Sylvester Gray's insubordination and neglect of stand-by duty, as well as his past employment record, that the suspension of Gray for 60 days effective February 6, 1979 through April 6, 1979 was proper and affirmed the Township's penalty.

The record does not indicate what further action was taken with respect to the Initial Decision of the Administrative Law Judge issued on August 23, 1979. However, the Commission's own inquiry of the Civil Service Commission revealed that the ALJ's decision was affirmed.

Local 97 as the employee representative. At some point thereafter, he decided that the advice of an attorney was required and arranged to retain one for this purpose. He made an initial payment to the attorney from his own funds and began to solicit "donations" from other DPW employees to reimburse him for the money he had already spent, to continue to pay the attorney and to defray the additional costs of the organizing effort. As part of his efforts to raise money, Mr. Gray posted a letter to the other employees at the DPW garage, signed by him, in which he requested "donations."4/

Mr. Gray's organizing efforts were successful and on July 25, 1979 the Association of Public Workers, Inc. was incorporated. On November 1, 1979, the Association filed a representation petition with PERC seeking to become the majority representative of the DPW employees. On December 18, 1979, PERC conducted an election which the Association won and on December 27, 1979, the Commission issued the certification making the Association the exclusive majority representative of the Township's DPW employees. Mr. Gray was elected President of the Association.

4/ The Hearing Examiner placed these initial efforts in 1978 and the posting of the letter in late 1978 or early 1979. The Township objects to this findings as to the dates for these activities. Our examination of the record causes us to agree with the Township that the time frame was somewhat later than that found by the Hearing Examiner. On direct examination, Mr. Gray indicated that these events occurred in 1978. However, on cross-examination, he corrected that to 1979. Given other events which are undisputed such as the incorporation of the Association and the filing of a representation petition with PERC which will be discussed infra, the 1979 time frame seems correct. Even given these later events, it is difficult to establish a specific time frame for the posting of the letter, particularly vis-a-vis the October 1978 incident and the February 1979 suspension. The Charging Party, however, bears the burden of proof on these items. See, N.J.A.C. 19:14-6.8.

The incident which lead to the first suspension of Mr. Gray which is the subject of this complaint, occurred on October 16, 1978. Mr. Gray was assigned to be on "stand-by" duty.[5/] However, he refused to accept the assignment and protested to the Superintendent of Public Works that the Township had no right to tell him how he would spend his time after regular working hours.

The Township immediately instituted disciplinary action for Mr. Gray's refusal to perform stand-by duty. The Superintendent concluded his report of the incident on that day and recommended a six month suspension. On November 13, 1978, Mr. Gray was served with a Notice of Disciplinary Action dated November 9, 1978 which set a date for a disciplinary hearing. The hearing was postponed from its initial date but was held on January 24, 1979 before the Assistant Township Manager who issued his decision on January 30, 1979 suspending Gray for 60 days beginning February 6, 1979 and ending April 6, 1979. As indicated in footnote 3 supra, Mr. Gray appealed the suspension to the Civil Service Commission which upheld the Township's action.

5/ Stand-by duty was the system in effect for DPW employees whereby they would be the employee subject to call during non-work time to handle emergencies requiring a department of public works employee. The employee would have to stay at home or some other location in the vicinity where he could be contacted by the police or other officials. Based upon the number of DPW employees each individual was assigned stand-by duty approximately two or three times a year for approximately a week at a time.

The Hearing Examiner relied heavily on the severity of the suspension for his finding of disparate treatment of Gray by the Township.[6/] It was this suspension which constituted the discriminatory treatment and its length evidence of a motive other than pure discipline. However, the Commission finds this to be its most fundamental disagreement with the Hearing Examiner. The Commission does not find that the Township's suspension of Gray for 60 days indicates disparate treatment when the entire factual context of Mr. Gray's conduct is considered.

When Gray was suspended in February 1979 for failing to perform mandatory stand-by duty, it was not the first time that he had to be disciplined for such an infraction. In fact, Gray had a long history of refusing the involuntary assignment to stand-by duty and had been suspended on several occasions. The first occurred in 1971 for a period of five days, which was consistent with the first offense penalties for the other employees. In 1976 he received a thirty day suspension and in March 1978, another five day suspension. In March 1978 the Township Engineer had posted a notice to all Department of Public Works employees reminding them of their responsibilities while on stand-by duty.

6/ The Hearing Examiner found that during the period from April 1978 to January 1980, a period for which the Township submitted evidence on all disciplinary actions taken, two other employees were also disciplined for failure to be available for stand-by duty. In June of 1978 an employee was suspended one day for failure to respond to an emergency call while on stand-by duty and in May of 1979 another employee was penalized one week's pay for being unavailable on his first day of stand-by duty. Thus, he found the penalty imposed upon Gray discriminatory. However, it appears from the record that this was the first disciplinary action against either of these employees. It was not for Mr. Gray.

The last two contracts that the Township had entered into, one with the Teamsters and the second with the Association after it took over negotiations from the Teamsters, contained identical Articles pertaining to stand-by.[7/] Mr. Gray was President of the Association when the latter was negotiated and signed that agreement on behalf of the Association.[8/]

At all times Gray was aware or should have been, that continued refusal to be assigned to stand-by duty would result in a disciplinary action on the part of the Township. Apparently, Gray weighed his options and decided to refuse stand-by duty again even in light of the various suspensions he had already received for the same insubordination. In light of his past infractions, and the nature of his insubordination in this case, we find that the 60 day suspension was a reasonable disciplinary penalty and was not indicative of disparate treatment. In the absence of any specific evidence to establish that the suspension

7/ Article XXVII, Section A, of both contracts which were effective during the terms of January 1, 1977 through December 31, 1978 and January 1, 1979 through December 31, 1980 reads:

1. Stand-by shall be defined as being available for any emergency which may arise over and beyond the employee's normal weekly working period from Monday 4:00 p.m. to the following Monday at 7:00 a.m.

2. Employees assigned to stand-by shall be given extra compensation in the amount of $30.00 per week while on stand-by."

8/ Mr. Gray testified he signed the agreement "under protest", one reason being his objection to the Stand-by Time provision

When Mr. Gray refused stand-by on October 16, 1978, he stated that the contract was illegal. If he felt that the stand-by provision was either illegal or too onerous, he had the perfect opportunity as President of the Association to change it during the negotiations.

was imposed to punish Gray for his protected activity, we do not find this to be evidence of an improper motive on the part of the Township.9/

Regarding Gray's two day loss of pay in lieu of suspension, the Township had issued a directive during the summer of 1979 warning the employees to not leave their vehicles idling while unattended. It is not in dispute that Gray violated the directive. When questioned about the incident, Gray was ambiguous as to why he had violated the directive and the Township found him to be in violation of the rule for failing to account for his actions when questioned. There is no prior evidence of violations of this rule by any employee. Gray was given his employee reprimand notice which he refused to sign, and which stated that he would be suspended for two days. The next day, Gray arrived at work and was advised that he had been suspended and when asked to leave the premises he refused. His foreman

9/ The Hearing Examiner pointed to Mr. Gray's continued opposition to the stand-by clause as evidence of the Township's knowledge of his activities on behalf of employees. While admittedly opposition to work rules felt to be unfair can be considered protected activity in some circumstances, an employer is justified in disciplining an employee when that opposition takes the form of a refusal to comply with valid work rules even if the employee considers them unfair. We have previously held that an employee organization leader is not immunized from discipline for violations of existing work rules. In re City of Hackensack, P.E.R.C. No. 78-74, 4 NJPER 214 at 216 (¶4107 1978). Where the disciplinary action and the work rule are reasonable the employees must prove that the penalty was motivated by anti-union animus. They cannot simply rely on the exercise of protected activity to insulate them from disciplinary action taken for apparently valid reasons. In re City of Hackensack, H.E. No. 77-1, 2 NJPER 230, 237 (1976).
That point is particularly relevant here. The work rule on stand-by was memorialized in the negotiated agreement at the time Mr. Gray chose to violate it. Moreover, he subsequently executed a new agreement which contained the same provision.

told him that if he would not leave the police would be called. The police were notified and when they arrived they told Gray that he had to leave the premises. Ultimately, the foreman asked the police to leave, saying that he would take care of the situation. Respondent then elected to allow Gray to work, and in lieu of the suspension, fined him the equivalent of two days' pay.

The Charging Party alleges that this conduct constitutes a second incident of improper action by the Township in violation of N.J.S.A. 34:13A-5.4(a)(3). The Commission must disagree. We find that far from indicating animosity toward Gray by the Township it seems to show a commendable exercise of restraint in the face of a potentially disruptive situation.

The Hearing Examiner found that Gray had been engaged in protected activity and that the Township had knowledge of it. While we have indicated that we have some reservations as to whether the Township was aware of Gray's activities at the time of the first suspension, we will defer to the Hearing Examiner's finding on that point. However, these findings are not sufficient to sustain a violation in the face of the Township's proof of legitimate business justification for each of the suspensions.10/

10/ In certain limited cases we have found violations of N.J.S.A. 34:13A-5.4(a)(3) where the employee has established a prima facie case without any specific evidence of anti-union animus. However, in those cases, the employer's justification has been found to be completely pretextual and the employee's conduct provided no rational basis for the action taken. See, e.g., In re Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (¶4127 1978), aff'd App. Div. Docket No. A-4824-77 (1980) and In re Township of Clark, P.E.R.C. No. 80-117, 6 NJPER 186 (¶11089 1980), aff'd App. Div. Docket No. A-3230-79 (1981).

The Hearing Examiner correctly quoted from our decision in In re Cape May City Board of Education, P.E.R.C. No. 80-87, 6 NJPER 45,46 (¶11022 1980), that if the Charging Party establishes the elements necessary to prove a prima facie violation of N.J.S.A. 34:13A-5.4(a)(3), the burden then shifts to the Respondent to demonstrate that its actions were taken for legitimate reasons. If the evidence indicates that the Respondent's justification is valid, then it becomes the obligation of the Commission, as trier of fact, to determine if the action was motivated in whole or in part in retaliation for the employee's exercise of protected rights, bearing in mind that the Charging Party has the burden of proof. Assuming that the Charging Party did establish a prima facie case herein, we find that the Township has established that its justifications for its actions were valid and we further find that the Charging Party has not established that the susupensions were motivated, even in part, by a desire to retaliate against Mr. Gray for his exercise of protected rights.[11/]

11/ In his Recommended Decision, the Hearing Examiner discussed in a footnote, the NLRB's recent decision, Wright Line, A Division of Wright Line, Inc., 251 NLRB No. 150, 105 LRRM 1169 (August 1980), in which it modified slightly its test in Section 8(a)(3) cases, which are the equivalent of our 5.4(a)(3) matters. It now holds that after an employee has established "a prima facie case of employer reliance upon a protected activity, the burden shifts to the employer to demonstrate that the decision would have been the same in the absence of protected activity." (105 LRRM at 1173). This constitutes a change from the Board's prior policy of finding a violation if the evidence showed in that situation that the employer was motivated in whole or in part by anti-union animus. This could haveincluded cases where the employer would have taken the same action for the legitimate reasons. (continued).

The Complaint is therefore dismissed in its entirety.

As indicated earlier, the Township also excepted to the Hearing Examiner's conclusions that the Township waived its right to assert the six month statute of limitation contained in N.J.S.A. 34:13A-5.4(c), as a bar to Gray's charge on the 60 day suspension;[12/] and that he was not bound to uphold the validity of the 60 day suspension because Gray appealed it and lost in the proceeding before the Administrative Law Judge assigned by the Civil Service Commission.

Given our thorough review of the record in this case, and our conclusion that it requires us to dismiss the complaint, we do not deem it necessary to now pass upon the waiver issue

11/ (continued)
Given our finding that the Charging Party has not established that the employer was motivated at all by improper animus toward Gray, we do not deem this a proper case to consider the application of Wright Line to 5.4(a)(3) cases under our Act. However, we would note that our finding would certainly necessitate a conclusion of no violation under the NLRB's modified standard.

12/ Gray was suspended from February 6, 1979 to April 6, 1979 and did not file his charge until December 18, 1979.
It is undisputed that the Township did not raise the untimeliness of the charge in its answer, at the hearing or in its post-hearing brief. The Hearing Examiner raised it on his own, apparently because it was clearly presented by the facts. However, relying on his reading of certain NLRB precedent on an analogous section of the NLRA, he deemed the Township's failure to assert it as a waiver.
The Township has now asserted the defense in its exceptions and has disputed the Hearing Examiner's interpretation of the NLRB cases urging that it can raise the defense at any time, and certainly in exceptions to the recommended decision.

as it pertains to the timeliness question under N.J.S.A. 34:13A-5.4(c). We would note, however, that we do believe it appropriate for the Director of Unfair Practices during his processing of a charge, N.J.A.C. 19:14-1.6, or during his review of the charge for the issuance of a complaint, N.J.A.C. 19:14-2.1, to raise with the parties the issue of timeliness if such a problem appears on the face of the charge. Similarly, again without passing on the Hearing Examiner's handling of the issue in this case or the question of waiver, we also believe that it is not inappropriate for a Hearing Examiner to raise the issue sua sponte with the parties when it appears during the course of the hearing on an unfair practice complaint.

Of more concern to us in this case, though again given our earlier holding, not essential to our decision to dismiss the complaint, is the relevance of Mr. Gray's Civil Service appeal to this proceeding. Perhaps, because the Township never asserted the time bar of N.J.S.A. 34:13A-5.4(c), no explanation is given in the record of why Mr. Gray waited from February 1979 until December to file the charge contesting his 60-day suspension. One reasonable explanation, at least in part, is that he was awaiting the outcome of the Civil Service appeal and after having lost that, he decided to pursue his case through the instant charge, rather than appeal the Civil Service decision.

Regardless of the motive, we do not agree with the Hearing Examiner that there is "no problem raised by the fact that an

Administrative Law Judge on August 23, 1979 sustained the imposition of the 60-day suspension upon Gray." The problem of dual filings by an allegedly aggrieved party at two separate agencies, particularly PERC and Civil Service, which arose out of the same series of events has been the subject of extensive and complex litigation leading to at least two recent decisions of our Surpeme Court. Hinfey v. Matawan Regional Board of Education, 77 N.J. 514 (1978) and City of Hackensack v. Winner, 82 N.J. 1 (1980). Both of these cases dealt at length with the very real problems caused when two agencies have concurrent jurisdictions over the same course of conduct. While all the ramifications of this problem and the Court's approach to it have yet to be fully resolved, one message is clear: Parties and, certainly, the agencies themselves should try to minimize the potential problems by avoiding piecemeal adjudication of the issues. Principles of res judicata, collateral estoppel and the single controversy doctrine were held to be selectively applicable to administrative proceedings to foster the goal of intergovernmental agency harmony and efficient adjudication of disputes. See Hackensack, supra at 82 N.J. at 31-33 and Hinfey, supra at 77 N.J. at 532.

The conduct of the Charging Party in filing this unfair practice charge only after the Civil Service appeal had ended unsatisfactorily, not only put him out of time under N.J.S.A. 34:13A-5.4(c); it also put the Commission in the position of having to pass upon conduct by the Township which had already been upheld by the Civil Service Commission. Notwithstanding the Hearing Examiner's finding that the ALJ had not passed upon

Gray's organizational activities, the entire situation bears a marked similarity to City of Hackensack v. Winner. Moreover, under the holding of that case, there is little doubt that Mr. Gray could have raised his claim of retaliation for organizational activity in his Civil Service appeal.

Under all these circumstances, we would conclude that the Charging Party was bound by the findings of fact in the Civil Service appeal. We would further hold, given the fact that the charge was filed after the six month period of limitations, after the Civil Service proceeding was concluded, that the Charging Party was not otherwise precluded from filing the unfair practice charge in a timely fashion, or from seeking to litigate all his claims in one forum, or at least, from permitting the agencies to conduct some form of consolidated hearing,[13/] that the Charging Party should be estopped from litigating his unfair practice claim before this Commission and that the Complaint should be dismissed.

ORDER

For all of the foregoing reasons, the Unfair Practice Complaint against the Township of Teaneck in this proceeding is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Hipp, Newbaker, Parcells and Suskin voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 10, 1981

13/ See, e.g., the Rules on the consolidation of contested cases promulgated by the Office of Administrative Law. N.J.A.C. 1:1-14.1 et seq.

81-14

H. E. No. 81-22

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

In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

Docket No. CI-80-18-132

- and -

SYLVESTER GRAY,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Township violated Subsection 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act when it suspended Sylvester Gray for 60 days in February 1979 and fined him two days' loss of pay in lieu of suspension in July 1979. The Hearing Examiner found that Gray had been active in opposing the incumbent collective negotiations representative, Local 97, International Brotherhood of Teamsters, over the course of several years and had been seeking to displace it by an independent representative, the Association of Public Workers, Inc., which Gray succeeded in incorporating on July 25, 1979, becoming its President. Gray had in the latter part of 1978 and the beginning of 1979 sought to raise monies on behalf of a new collective negotiations representative, as to which a Township representative stated he could have had Gray "arrested." The Hearing Examiner also noted that Gray had been the subject of disparate treatment with respect to discipline for refusing to perform involuntary stand-by duty.

By way of remedy, the Hearing Examiner recommended that Gray be made whole for all monies lost as a result of having suffered 62 days' loss of pay. The Hearing Examiner also recommended that any references to these disciplinary actions in Gray's personnel file be expunged.

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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STATE OF NEW JERSEY
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Docket No. CI-80-18-132

SYLVESTER GRAY,

Charging Party.

Appearances:

For the Township of Teaneck
Dorf, Wallace & Glickman, Esqs.
(Steven S. Glickman, Esq.)

For Sylvester Gray
Margaret A. Holbrook, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 18, 1979 by Sylvester Gray (hereinafter the "Charging Party" or "Gray") alleging that the Township of Teaneck (hereinafter the "Respondent" or the "Township") 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 suspended Gray for sixty (60) days following the latter's refusal in October 1978 to accept an assignment to "standby duty," which was an alleged unilateral change in his terms and conditions of employment, and further, that the Respondent in July 1979 suspended Gray for two (2) days without specifying a reason therefor, and that each of the foregoing suspensions was imposed because of Gray's activities on behalf of the Association of Public

Employees, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4 (a)(1),(2) 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 June 26, 1980. Pursuant to the Complaint and Notice of Hearing, hearings were held on September 3 and 4, 1980 in Newark, New Jersey, 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 October 20, 1980.

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 post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

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

2. Sylvester Gray is a public employee within the meaning of the Act,

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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.
"(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."

At the hearing the Hearing Examiner granted the Respondent's Motion to Dismiss the Subsection (a)(2) allegation on the ground that Gray as an individual did not have standing to allege such a violation: Borough of Shrewsbury, P.E.R.C. No. 79-42, 5 NJPER 45 (1979).

as amended, and is subject to its provisions.

3. Local 97 of the International Brotherhood of Teamsters was the collective negotiations representative for employees of the Respondent's Department of Public Works (DPW) from 1970 or 1971 until 1979.

4. Gray has been an employee in the DPW for 16 years. He commenced employment as a Laborer and for the past 14 years has been a Sweeper Equipment Operator.

5. Shortly after Local 97 became the collective negotiations representative for the Respondent's DPW employees Gray became disenchanted with their representation and on August 22, 1973 Gray withdrew his authorization for dues deductions to Local 97.

6. In 1978 other DPW employees began approaching Gray with respect to removing Local 97 as collective negotiations representative. The alternative decided upon was to form an independent public employee representative. Gray arranged for the retaining of an attorney for this purpose in 1978 and, after paying the attorney a retainer from his own funds, Gray began soliciting "donations" from other DPW employees for this purpose.

7. During the latter part of 1978 and the beginning of 1979 Gray posted a letter, which he had signed, on the premises of the Respondent, in which he requested donations from other DPW employees to defray the expenses of an attorney.

8. The independent public employee representative sought by Gray and other DPW employees was incorporated on July 25, 1979 as the Association of Public Workers, Inc..

9. During the period of Gray's effort's in 1978 and 1979 to displace Local 97 as collective negotiations representative for the Respondent's DPW employees, Gray represented himself and other employees in complaints or grievances, which Gray presented to Warren Ridley, the Respondent's Public Works Superintendent. In so doing, Gray refrained from utilizing the representation of Local 97's Shop Steward, D. Bisig, who was ultimately "voted out" as Shop Steward by the DPW employees.

10. As a result of a representation election conducted by the Commission on December 18, 1979 the Association of Public Workers, Inc. was substituted as the certified collective negotiations representative for the Respondent's DPW employees. 2/

11. The most recent collective negotiations agreement between Local 97 and the Respondent was effective during the term January 1, 1977 through December 31, 1978 (J-1). After the certification by the Commission of the Association of Public Workers, Inc. it entered into a collective negotiations agreement with the Respondent effective during the term January 1, 1979 through December 31, 1980 (J-2).

12. Article XXVII, Section A of both J-1 and J-2 provides as follows under the heading "Stand-by-Time:"

> "1. Stand-by shall be defined as being available for any emergency which may arise over and beyond the employee's normal weekly working period from Monday 4:00 p.m. to the following Monday at 7:00 a.m.
>
> "2. Employees assigned to stand-by shall be given extra compensation in the amount of $30.00 per week while on stand-by." (p.34)

13. Stand-by duty was voluntary until 1969 or 1970, after which employees were subject to involuntary assignment and received notice of such stand-by duty through notices posted to all DPW employees approximately every three months. Based upon the number of employees in the Department of Public Works each affected employee is assigned stand-by duty approximately two or three times per year.

14. Until early 1979 an employee on stand-by duty was given the keys to the Shop and stayed at home subject to call from the Police Department in cases of emergency. Early in 1979 the Respondent, for purposes of efficiency and to overcome objections of employees to having possession of the keys to the Shop, assigned possession of the keys to a supervisor.

2/ A representation petition was filed on November 1, 1979 and certification issued on December 27, 1979 (RO-80-91).

15. Gray testified as to a long history of protesting the involuntary assignment of himself and other employees to stand-by duty (see, for example, R-13). Notwithstanding that Gray is the President of the Association of Public Workers, Inc., he testified that he signed J-2 "under protest," one reason being his objection to the provisions of Article XXVII, Section A with respect to "Stand-by-Time" (see Finding of Fact No. 12, supra).

16. Because of Gray's objections to involuntary assignments of stand-by duty he has been suspended on several occasions, the first occurring in 1971. In 1976 he received a 30-day suspension and in March 1978 a five-day suspension (see CP-1, R-5 through R-10 and R-12).

17. Under date of March 28, 1978 the Township Engineer posted a notice to all DPW employees on the subject of "Stand-by-Duty Requirements" (R-2). In this notice the Township Engineer quoted from the contractual definition of stand-by, following which the said notice provided, in pertinent part, as follows:

> "To assure being available, men on standby are expected to notify the Teaneck Police Department of their whereabouts at all times. If the man is not available when called, he shall not receive any compensation for standby duty and he may be subject to disciplinary action. If a conflict arises which prevents a man from being on Standby during the period he is assigned, it is his responsibility to provide a substitute to take his place and for him to notify his foreman of the change, at least one full week prior to the scheduled date. If a substitute is not available, the Township will re-schedule standby assignments, provided at least one full week's notification is given to the Superintendent of Public works."

18. Gray was scheduled for stand-by duty for the week commencing Monday, October 16, 1978. On that date Gray refused to accept the keys from his Foreman, Gerry Caruso. On the same date Gray protested to Warren Ridley, the Superintendent of Public Works, that the contract was illegal, that the Township had no right to tell him how he would spend his own time after regular working hours and that he would

only go on stand-by when he volunteered to do so. (See R-14).[3/]

19. On November 13, 1978 Gray was served with a Preliminary Notice of Disciplinary Action for his conduct on October 16, 1978, supra, and it was recommended that he be suspended for six (6) months (CP-1). Following an administrative hearing on January 24, 1979, which was conducted by the Assistant Township Manager, Gray was suspended for 60 days beginning February 6, 1979 and ending April 6, 1979 (R-3).[4/] The 60-day suspension was affirmed on appeal, pursuant to Civil Service rules and regulations, by an Administrative Law Judge on August 23, 1979 (R-4).

20. On June 25, 1979 Gray was observed by a Township resident in Phelps Park away from his sweeper, having left the engine running in violation of a Township memo to DPW employees. When the resident questioned him about the possible wasting of fuel, he responded that he had "a lot of gas in it anyway." After David Merz, the Superintendent of Parks, conducted an investigation of this incident Gray was suspended for two days in July 1979 for unbecoming conduct and insubordination. Due to Gray's insistence on reporting for work he was permitted to do so but was "fined" two days' loss of pay. (See R-1 and 1 Tr. 32, 35-27, 132-139).

21. A fellow DPW employee, Samuel Cook, testified that when he was a Shop Steward for Teamsters Local 97 he also served for three or four years on Local 97's negotiating team. At one of the last negotiations meetings in 1979 involving the Teamsters, Milton Robbins, the Township Engineer, who served on the negotiating team for the Respondent, said to Cook, in referring to Gray, either that he, Robbins, "... could have him arrested because of taking up monies for different types of unions..."

3/ The Hearing Examiner moreover credits Gray's testimony that the reason that he refused stand-by duty on October 16, 1978 was that he was not going to be available on the following weekend due to a prior personal commitment.

4/ Gray credibly testified without contradiction that unlike the practice in instances of past suspensions, he was not permitted on Township property during this 60-day period. (1 Tr. 28).

(2 Tr. 3.4) or "...that for taking the money, he (Robbins) could have him arrested for getting money for another type union..." (2 Tr. 6).[5/] There was no testimony indicating that Gray was present when Robbins made the statement to Cook or that Cook ever told Gray of Robbins' statement to Cook.

22. The Respondent introduced as Exhibit R-11 a series of monthly memos from Robbins, the Township Engineer, to the Township Fiscal Officer from April 1978 through January 1980, the contents of which included all "disciplinary actions" taken against named DPW employees. In addition to the five-day and 60-day suspensions of Gray for stand-by duty infractions,[6/] two other DPW employees were the subject of disciplinary actions pertaining to stand-by duty, as follows: (1) memo of June 1, 1978 - P. Jones suspended for one day (May 3, 1978) and loss of stand-by pay for failure to respond on April 5, 1978; and (2) Memo of May 1, 1979 - W. Bassett sustained loss of one weeks' stand-by pay for being unavailable on first day of stand-by duty, March 10, 1979.[7/]

THE ISSUE

Did the Respondent Township violate Subsections (a)(1) and (3) of the Act by its 60-day suspension of Sylvester Gray in February 1979 and by fining Sylvester Gray two days' loss of pay in lieu of suspension in July 1979?

5/ The Hearing Examiner does not credit Robbins' denial that such a statement was made (1 Tr. 109).

6/ In March 1978 and February 1979, respectively: see Findings of Fact Nos. 16, 18 and 19, supra, and R-11 (memos of April 6, 1978 and March 1, 1979).

7/ R-11 also indicates that a discernible number of other DPW employees received written reprimands, losses of pay, suspensions and/or terminations involving various infractions other than stand-by duty. For reasons unexplained, R-11 does indicate Gray's loss of two days's pay in July 1979 (see Finding of Fact No. 20, supra).

DISCUSSION AND ANALYSIS

The Positions Of The Parties

1. The Respondent

The Respondent, citing the Commission's decisions in Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71 (1977) and City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977),[8/] contends that the Charging Party has failed to proved by a preponderance of the evidence that there has been a violation of Subsection (a)(3) of the Act, i.e., the Township's conduct was not discriminatory as to Gray and was not motivated in whole or in part by a desire to encourage or discourage Gray in the exercise of rights guaranteed by the Act nor did the Township's conduct have the effect of so encouraging or discouraging Gray.[9/] Further, there is no proof of a Subsection (a)(1) violation. (Brief, p.p. 13-16,18,19,22).

The Respondent contends that both the 60-day suspension of Gray in February 1979 and the two-day fine in July 1979 were "reasonable and proper." The first because stand-by duty had been mandatory since 1970 and Gray had a history of discipline for stand-by duty infractions, and the second because Gray violated a directive regarding the idling of his sweeper and was insubordinate by failing to respond to questions regarding the incident. (Brief, p.p. 11-13, 20,21).

Finally, the Respondent argues that there was no disparate treatment of Gray as evidenced by the discipline meted out to other DPW employees for like and other infractions. (Brief, p. 13).

8/ Reversed on other grounds, 162 N.J. Super. 1 (App. Div. 1978), affirmed as modified, 82 N.J. 1 (1980)

9/ There was no "anti-union animus" manifested nor was the Respondent's conduct "inherently destructive" of guaranteed rights: City of Hackensack, supra, 3 NJPER at 144.

2. The Charging Party

With respect to engaging in protected activity, the Charging Party cites Gray's efforts to organize an independent union during the past two years, finally incorporating it and becoming its President. Additionally, the Charging Party points to Gray's continuing objections to mandatory stand-by duty and speaking up on behalf of the other men in attempting to present grievances to supervision. The Charging Party contends that the Township had knowledge of Gray's activities, particularly his having posted on the bulletin board "during the latter part of 1978 requests for financial assistance in starting the union." Also, it is noted that since there are fewer than 50 men in the collective negotiations unit, the Respondent must be presumed to have known that Gray was "an organizer" under "the small shop theory." (Brief, p.p. 1,2).

With respect to animus, the Charging Party cites Cook's testimony that Robbins said he "would have Mr. Gray arrested if he continued to collect money for the union." Also, it is contended that when Gray was suspended for 60 days in February 1979, he was ordered "to stay off Township property while he was on suspension" and that "the purpose of this order was to keep him away from his organizing activities at this time, the peak of such activities." (Brief, p.p. 2,3).

The Charging Party concludes with the contention that R-11 indicates "discriminatory treatment" of Gray with respect to discipline for stand-by duty infractions in relationship to other DPW employees and that the overall instances of the discipline of Gray were "pretextual." By way of remedy, the Charging Party, in addition to back pay, requests that Gray's personnel file "be cleared of improper and prejudicial disciplinary records." (Brief, p.p. 3-8).

The Respondent Township Violated Subsection (a)(3) Of the Act, and Derivatively Subsection (a)(1) Of the Act, When It Suspended Sylvester Gray For 60 Days in February 1979 And Fined Him Two Days' Loss Of Pay In Lieu Of Suspension In July 1979

Based upon the foregoing Findings of Fact, the Hearing Examiner finds and concludes that the Charging Party has proven by a preponderance of the evidence that the Respondent Township violated Subsection (a)(3) of the Act because its suspension of Gray in February 1979 and its fining of Gray in lieu of suspension in July 1979 were "...motivated, at least in part, if not exclusively, by (anti-) union animus:" Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (1978),[10/] aff'd. App. Div. Docket No. A-4824-77 (January 9, 1980).

It is noted first that the Charging Party preliminarily proved that he was exercising rights guaranteed to him by the Act and that the Respondent Township had actual or implied knowledge of such activity: Haddonfield, supra (3 NJPER at 72). In this connection the Hearing Examiner points to Gray's long standing opposition to Teamsters Local 97 and the withdrawal of his dues deduction authorization; his activity in soliciting donations from other DPW employees in 1978 and 1979 for the purpose of forming an independent union, which was accomplished by July 25, 1979 with the incorporation of the Association of Public Workers, Inc.; Gray's representation of other DPW employees and himself in complaints and grievances during 1978 and 1979; and his long standing opposition to involuntary stand-by duty, which continued after he became President of the Association. (See Findings of Fact Nos. 5-9, 15 and 16, supra).

10/ As precedent, the Commission cited its standard for a Subsection (a)(3) violation in Haddonfield, supra, and City of Hackensack, supra. Further, for such a violation to be found the actions of the public employer must be "discriminatory" (see Haddonfield) and must have been committed with a "discriminatory motive" (see Cape May City Board of Education, P.E.R.C. No. 80-87, 6 NJPER 45, 46 (1980).

The Hearing Examiner predicates his finding and conclusion that the Respondent was in its disciplinary actions against Gray "...motivated, at least in part, if not exclusively" by anti-union animus upon the following:

1. The credited testimony of Cook that, at one of the last negotiations meetings in 1979 involving Local 97, Robbins said, in reference to Gray, that he could have Gray arrested "...because of taking up monies for different types of unions..." or "...for getting money for another type union..." (See Finding of Fact No. 21, supra.) 11/
2. When Gray was suspended for 60 days in February 1979 he was not permitted on Township property unlike the prior practice in instances of past suspensions. (See footnote 4, supra). 12/
3. The Respondent's disparate treatment of Gray with respect to stand-by duty infractions in relationship to other DPW employees. (See Finding of Fact No. 22, supra). 13/

The Hearing Examiner is fully satisfied that the two 1979 actions of the Township with respect to Gray were "discriminatory" and were committed with a "discriminatory motive." (See footnote 10, supra).

11/ Whether or not Gray was present when Robbins made the statement to Cook or whether or not Cook told Gray of Robbins' statement is irrelevant to the issue of animus.

12/ The denial to Gray of access to the premises during the 60-day period from February to April is significant in the context of the organizational activity on behalf of the Association by Gray and other DPW employees, which was taking place both prior to and subsequent to the 60-day suspension period.

13/ Although R-11 indicates that a number of DPW employees other than Gray were disciplined for infractions other than stand-by duty, the Hearing Examiner is impressed by the fact that P. Jones was suspended for only one day in May 1978 with loss of stand-by pay while W. Bassett was not suspended although he sustained a loss of one weeks' stand-by pay in March 1979.

As previously set forth, the Respondent contends that both the 60-day suspension of Gray in February and the two-day fine in July 1979 were "reasonable and proper." In other words, the Respondent argues that it had a legitimate business justification for twice disciplining Gray during the first half of 1979.

The Hearing Examiner recognizes that the Charging Party has at all times the burden of proving its case by a preponderance of the evidence. However, when a prima facie Subsection (a)(3) violation has been established:

> "...The burden then shifts to the Respondent which must demonstrate that its actions were taken for legitimate reasons. If the evidence produced at (the) hearing indicates that the rationale offered by Respondent is merely pretextual, a violation of the Act may be found. However, if the evidence indicates that the Respondent's justification is valid, then it becomes the obligation of the trier of fact to determine, bearing in mind that the Charging Party has the burden of proof by a preponderance of the evidence, that the action was taken, at least in part, in retaliation for the employee's exercise of protected rights." (Emphasis supplied).
>
> Cape May City Board of Education, supra (6 NJPER at 46) 14/

The Hearing Examiner finds and concludes that the Respondent's actions in disciplining Gray in 1979 during the period of the Association's organizational campaign were not motivated by a legitimate business justification and were, if not pretextual, "...taken, at least in part, in retaliation for (Gray's) ...exercise of protected rights." 15/

14/ See also, Belvidere Board of Education, P.E.R.C. No. 81-13, 6 NJPER 381, 382 (1980).

15/ In so finding and concluding, the Hearing Examiner has considered that stand-by duty has been involuntary since 1969 or 1970 and that on March 28, 1978 the Township posted a notice regarding "Standy-By-Duty Requirements." (See Findings of Fact Nos. 13 and 17, supra). The Hearing Examiner has also considered Gray's prior stand-by suspensions in 1971, 1976 and 1978. (See Finding of Fact No. 16, supra).

Further the Hearing Examiner would reach the same conclusion by applying the "Mt. Healthy test" recently adopted by the NLRB in Section 8(a)(3) cases in Wright Line, A Division of Wright Line, Inc., 251 NLRB No. 150, 105 LRRM 1169 (August 27, 1980). There the Board said at one point "...that after an employee... makes out a prima facie case of employer reliance upon protected activity, the burden shifts to the employer to demonstrate that the decision would have been the same in the absence of protected activity..." (105 LRRM at 1173). See Mt. Healthy City School District Bd. of Ed. v. Doyle, 429 U.S. 274 (1977).

Having found a Subsection (a)(3) violation, it is also found that Respondent has derivatively violated Subsection (a)(1) of the Act. 16/

There remains for discussion two matters. First, the fact that the Unfair Practice Charge was filed on December 18, 1979 and included the 60-day suspension of Gray on February 6, 1979. This disciplinary action might have been attacked by the Respondent as being barred by the six-month statute of limitations in Section 5.4(c) of the Act. However, the Respondent did not in its Answer (C-2), nor at the hearing nor in its post-hearing brief elect to assert the defense of the six-month limitation as to the 60-day disciplinary suspension of February 1979. The defense of the statute of limitations not having been asserted, it is deemed waived. 17/

Secondly, the Hearing Examiner sees no problem raised by the fact that an Administrative Law Judge on August 23, 1979 sustained the imposition of the 60-day suspension upon Gray. (See Finding of Fact No. 19, supra). An examination of his decision (R-4) indicates clearly that no issue of Gray's organizational activities on behalf of the Association was raised before him and his adjudication does not dispose of the issue of anti-union animus, as to which the Hearing Examiner has made an affirmative finding and conclusion in the instant proceeding. Cf., City of Hackensack v. Winner et al., 82 N.J. 1 (1980).

Therefore, based upon all of the foregoing, the Respondent Township violated Subsections (a)(1) and (3) of the Act by its 60-day suspension of Sylvester Gray in February 1979 and by fining Sylvester Gray two days' loss

16/ See Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976).

17/ See A. H. Belo Corp. v. NLRB, 411 F. 2d 959, 71 LRRM 2347, 2443, 2444 (5th Cir. 1969) and Barton Brands Ltd. v. NLRB, 529 F. 2d 793, 91 LRRM 2441, 2246, 2247 (7th Cir. 1976).

of pay in lieu of suspension in July 1979, and an appropriate remedy will be recommended hereinafter.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Township violated N.J.S.A. 34:13A-5.4(a)(3), and derivatively 5.4 (a)(1), when it suspended Sylvester Gray in February 1979 for 60 days and fined him two days' loss of pay in lieu of suspension in July 1979.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Township 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 suspending Sylvester Gray in February 1979 for 60 days and by fining him two days' loss of pay in lieu of suspension in July 1979.

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 suspending Sylvester Gray in February 1979 for 60 days and by fining him two days' loss of pay in lieu of suspension in July 1979.

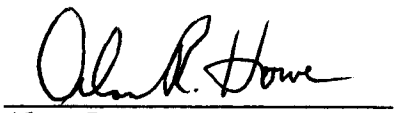
B. That the Respondent Township take the following affirmative action:

1. Forthwith make Sylvester Gray whole by payment to him of 62 days' pay at his regular annual or hourly rate which payment represents the loss of pay suffered by Sylvester Gray during his 60-day suspension from February 6, 1979 to April 6, 1979 and his fine of two days' pay in July 1979.

2. Forthwith expunge from the personnel records of Sylvester Gray any reference to the 60-day suspension from February 6, 1979 to April 6, 1979 and the two days' fine in July 1979. 18/

3. Post at 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 receipt thereof, and after being signed by the Respondent's authorized representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Township to insure that such notices are not altered, defaced or covered by other material.

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



DATED: January 7, 1981
Trenton, New Jersey

Alan R. Howe
Hearing Examiner

18/ The Hearing Examiner cites as Commission precedent for such expunging of disciplinary records in an employee's personnel file the case of Belvidere Board of Education, supra (6 NJPER at 383).

"APPENDIX A"

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 suspending such employees as Sylvester Gray in February 1979 for 60 days and by fining him two days' loss of pay in lieu of suspension in July 1979.

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 suspending Sylvester Gray in February 1979 for 60 days and by fining him two days' loss of pay in lieu of suspension in July 1979.

WE WILL forthwith make Sylvester Gray whole by payment to him of 62 days' pay at his regular annual or hourly rate, which payment represents the loss of pay suffered by Sylvester Gray during his 60-day suspension from February 6, 1979 to April 6, 1979 and his fine of two days' pay in July 1979.

WE WILL forthwith expunge from the personnel records of Sylvester Gray any reference to the 60-day suspension from February 6, 1979 to April 6, 1979 and the two days' fine in July 1979.

TOWNSHIP OF TEANECK
(Public Employer)

Dated _____ By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James W. Mastriani, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780