

P.E.R.C. NO. 80-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON CITY,

Respondent,

-and-

Docket No. CO-79-157-83

NEW JERSEY CIVIL SERVICE
ASSOCIATION, BURLINGTON COUNTY
COUNCIL #16,

Charging Party.

SYNOPSIS

CSA failed to prove by a preponderance of the evidence that the City discriminatorily suspended Joseph Taranto for prohibited reasons. H.E. No. 80-13, 5 NJPER ____ (¶ ____ 1979), recommending dismissal is affirmed.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON CITY,

Respondent,

-and-

Docket No. CO-79-157-83

NEW JERSEY CIVIL SERVICE ASSOCIATION,
BURLINGTON COUNTY COUNCIL #16,

Charging Party.

Appearances:

For the Respondent, Gerald L. Dorf, P.A.
(Mr. Steven S. Glickman, of Counsel)

For the Charging Party, Dietz, Allen & Sweeney, Esqs.
(Mr. John A. Sweeney, of Counsel)

DECISION AND ORDER

The New Jersey Civil Service Association, Burlington County Council #16 (the "CSA") filed an Unfair Practice Charge with the Public Employment Relations Commission on December 21, 1978 and this charge was subsequently amended on March 15, 1979. The charge alleged that Burlington City (the "City") violated cited sections of the New Jersey Employer-Employee Relations Act (the "Act").^{1/} It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 20, 1979. Hearings were held on July 26 and 27, 1979 before Commission

^{1/} The charge now alleges violations of N.J.S.A. 34:13A-5.4(a)(1) and (3). The CSA withdrew allegations that the City violated subsections (a)(4) and (7) of the Act's unfair practice section.

Hearing Examiner Edmund G. Gerber who issued his Recommended Report and Decision ^{2/} on October 9, 1979.

The CSA had alleged that the City violated the Act by suspending Joseph Taranto, a City employee, on two separate occasions for the purpose of discouraging the exercise of protected rights under the Act.

The Hearing Examiner found that the CSA had failed to prove its allegations by a preponderance of the evidence and he recommended that the Complaint be dismissed in its entirety. The Hearing Examiner found that the two suspensions were job related and had nothing to do with the exercise of protected rights by Taranto.

Neither party filed exceptions to the Hearing Examiner's Recommended Report and Decision.^{3/} N.J.A.C. 19:14-7.3(b) provides that, "Any exception which is not specifically urged shall be deemed to have been waived." Noting the absence of exceptions to the Hearing Examiner's Recommended Report, we hereby adopt that Report and order the dismissal of the Complaint.

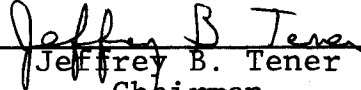
^{2/} H.E. No. 80-13, 5 NJPER _____ (¶ _____ 1979).

^{3/} On October 30, 1979, the Commission received a four-page handwritten letter from Mr. Taranto. That submission, if intended to constitute exceptions to the Hearing Examiner's Report, was untimely filed and fails to comply to the requirements of the Commission's Rules regarding the filing of exceptions. It also asserts facts not contained in the record. The arguments raised therein were considered by the Hearing Examiner.

ORDER

Upon the entire record in this proceeding, IT IS HEREBY ORDERED that the Complaint herein be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Newbaker and Parcels voted for this decision. Commissioner Hipp voted against this decision. Commissioner Graves was not present.

DATED: October 31, 1979
Trenton, New Jersey
ISSUED: November 1, 1979

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

In the Matter of

BURLINGTON CITY,

Respondent,

-and-

Docket No. CO-79-157-83

NEW JERSEY CIVIL SERVICE ASSOCIATION,
BURLINGTON COUNTY COUNCIL #16,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that a charge filed on behalf of Joseph Taranto by the New Jersey Civil Service Association be dismissed. It was alleged that Mr. Taranto was suspended for three days from his job on two different occasions because of his activities on behalf of the Association. The Hearing Examiner found, however, that the suspensions were related directly to Mr. Taranto's work performance.

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.

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

In the Matter of

BURLINGTON CITY,

Respondent,

-and-

Docket No. CO-79-157-83

NEW JERSEY CIVIL SERVICE ASSOCIATION,
BURLINGTON COUNTY COUNCIL #16,

Charging Party.

Appearances:

For Burlington City
Gerald L. Dorf, P.A.
(Steven S. Glickman, Esq.)

For New Jersey Civil Service Association, Burlington Co. Council #16
Dietz, Allen & Sweeney, Esqs.
(John A. Sweeney, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The New Jersey Civil Service Association, Burlington County Council #16 (CSA) filed two charges with the Public Employment Relations Commission (PERC) on December 21, 1978, and March 15, 1979, alleging Burlington City (City) violated the New Jersey Employer-Employee Relations Act, subsections 5.4(a)(1) and (3).^{1/ 2/} It appearing that the allegations of these charges, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued by the Director of Unfair Practices on April 20, 1979. The hearings were held on July 26 and 27, 1979, in Trenton. Both parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. Briefs were submitted by both sides by September 7, 1979.

^{1/} Subsections (a)(1) and (3) provide that employers, their representatives or agents are prohibited from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; and 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.

^{2/} It was also alleged in the initial charges that the City violated subsections (a)(2), (4) and (7). At the hearing the Charging Party dropped its allegations concerning those subsections.

The complaint in this matter consolidated the two separate charges. Both charges involved Joseph Taranto, an employee of Burlington City (City). It was claimed by the CSA that he was given two separate suspensions which were motivated for the purpose of discouraging the exercise of protected rights. The City maintained that the suspensions were strictly job related and had nothing to do with the exercise of protected rights by Taranto. The facts in this matter are by and large undisputed.

Taranto is the Local president and chairman of the negotiating committee for the CSA. At the time of the first incident the CSA and the City were engaged in negotiations for a new contract. It is undisputed that Taranto is very aggressive in his duties on behalf of the CSA. On August 30, the City Clerk, David Vechesky, wrote a letter to Richard D'Elena, the president of Burlington County Council #16, stating that "it is increasingly difficult to hold union employee discussions with representative Joseph Taranto." The letter went on to state that the City recognizes his rights to serve in his position as President of the City of Burlington Local but they found him "biased and non-communicative. The Council (feels) Mr. Taranto's presence is disruptive and serves no fruitful purpose and impedes negotiations." It is noted the CSA took no actions in response to this letter.

On Tuesday, October 10, 1978, an article appeared in the local Burlington City newspaper which quoted Taranto as stating the City was bargaining in bad faith and "if we file (sic) grievances there will be so many they'll reach the ceiling!" The article went on to quote Mr. Taranto and another employee, Thomas Napier, who were both very critical of the City's negotiations postures and the salary offers made by the City. The first incident occurred the day after this article was published, October 11, 1978. Mr. Taranto was on duty as a driver of a garbage truck. Two laborers, Richard Rencewicz and Jeffrey Borthwick, worked on the back of the truck. One of their first scheduled stops that morning was at 518 Columbus Road. Garbage was piled in front of the house on top of the trash cans and was neither bundled nor bagged. Rencewicz and Borthwick felt that the garbage was not set out in compliance with City ordinance establishing how garbage is to be prepared for collection. They believed they had no duty to collect the garbage and waved to Taranto to drive on, indicating that they were refusing to stop. The garbage was not picked up and Taranto returned to the City garage for lunch at 11:45. Howard Sozio, the

Superintendent of Public Works, approached Taranto and handed him a slip of paper with the address 518 Columbus Road. Taranto asked Sozio if he had seen the condition of the trash and Sozio said, "There isn't a damn thing wrong with that trash. I am ordering you to get back there there and pick that trash up."

Sozio testified that earlier that morning he had received a complaint that the garbage in front of 518 Columbus Road was not collected. He went out about 11 a.m. to take a look at the garbage. He found the garbage preparation was satisfactory.

After Sozio told Taranto to pick up the trash, Taranto asked that Sozio contact Councilman William Freck, Chairman of the Public Works Committee, and asked him to come down to look at the garbage. Taranto and his crew returned to work at one o'clock. They drove pass 518 Columbus Road. Once again Borthwick and Renciewicz waved Taranto on. Taranto told the men what Sozio said but the men wouldn't pick up the trash. However, nothing was said when the men returned in the truck to the garage that evening.

Sozio called Freck that evening ^{3/} and told him that Taranto would like to see him about the trash.

On the following morning, Freck was at the garage when Taranto arrived. Freck called Taranto to meet with him in the office. Taranto said that the garbage at Columbus Road was not packed in compliance with the ordinance. Freck replied that they had been given an order to pick up the trash and he had refused to do so. The conversation continued and after Freck told Taranto two or three time that Taranto had to follow orders, Freck said that if it happened again Taranto would receive a three-day suspension.^{4/} Taranto became, as he testified, "hot under the collar," lost his temper and began shouting and gesticulating. Freck repeatedly told Taranto to go back to work for it was after 7 a.m. and Taranto repeatedly refused. Taranto finally started to walk away and then turned back and started to shout at Freck again. At this point Freck turned to Sozio and said, "I'm giving him a three-day suspension for insubordination." Taranto was then ordered to take three days off.

The second incident occurred on January 26, 1979. Taranto was driving his truck with Borthwick and Robert Craft on the back. The truck was scheduled to stop and pick up trash at a used car lot. The lot had a long private drive and

^{3/} Sozio tried to call him that afternoon but was not able to do so.

^{4/} This same warning was given to Borthwick and Renciewicz who were not members of CSA.

the trash was at the far end of the drive. Taranto felt that the drive was obstructed with cars from the lot and he could not safely negotiate the drive, therefore, he left the trash and continued on his route.

In the meantime, Sozio received a call from the used car lot. Someone complained that the garbage was not picked up. Sozio drove out to the lot and looked at the garbage. He then drove on to tell Taranto to pick up the garbage. He followed Taranto's route and found Taranto's truck by the Sit 'N Sip bar, the last stop on the route. There was no one in the truck and after waiting outside for several minutes Sozio went inside the bar. Taranto testified that after picking up the trash outside the Sit 'N Sip bar the men on the truck went into the bar to use the men's room. The men's room is small and they were in the bar for several minutes. After each man in turn used the men's room he would sit down at a table in back of the bar while he waited for the others, but when the last man finished in the men's room, instead of leaving, he sat down. No one was drinking but they were watching the three go-go dancers in the bar. They sat there for only a minute or two when Sozio walked into the bar.

Everyone left immediately but nothing was said. When they went outside Sozio said only that he got a call from the used car lot that the trash was not collected. He directed the men to return to the lot and collect the garbage.

Although he did not discuss this with the men, Sozio contacted the City Clerk about the incident. A hearing was scheduled concerning discipline for this incident. All the men were notified of the hearing. A hearing was presided over by Freck and each one of the men was given a three-day suspension for sitting at the bar watching go-go dancers on work time.

Analysis

The hearer's function here is not to pass on the merits or appropriateness of the two suspensions but only to determine if they were motivated by an unlawful purpose within the meaning of the Act. Here the CSA has not demonstrated any unlawful motivation. It is true that Taranto's conduct in negotiations was resented by the City, witness the August 19 letter. Also, the article sympathetic to Taranto was in the paper two days before the first suspension. But in both incidents the suspensions were directed at conduct unrelated to union activity. The first suspen-

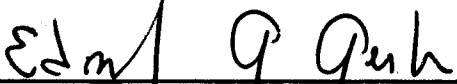
sion arose directly out of Taranto's argument with Freck. Freck repeatedly told Taranto to return to work and Taranto repeatedly refused. An employer has a right to maintain discipline and Taranto refused to obey an appropriate directive. There is no evidence to support the contention that this suspension was motivated by anti-union animus. Freck's response was reasonable considering Taranto's insubordination. Further, Freck was not directly involved in the negotiations process.

Again with the second incident all three men, one of whom was not even a member of CSA, were punished in the same manner for obviously improper conduct. In no way was Taranto singled out because of his union activity. Again, there was no evidence to demonstrate that this suspension was unlawfully motivated.

Accordingly, it is hereby recommended that the Commission issue the following order.

Recommended Order

For the reasons set forth above it is hereby recommended that the Complaint in this matter be dismissed in its entirety.



Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
October 9, 1979