

P.E.R.C. NO. 93-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(GLASSBORO STATE COLLEGE),

Respondent,

-and-

Docket No. CI-H-91-23

MARIE TERESA JUHRING,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Marie Teresa Juhring against her employer, State of New Jersey (Glassboro State College). The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act when Juhring was transferred, allegedly in retaliation for filing a grievance, to a library position where she had to do filing work outside her title. The Commission finds that the transfer was a good faith response to a difficult and deteriorating employment and interpersonal situation that had already led to a temporary transfer before the grievance was filed and that could have hindered the efficiency of the College's operation if left unabated.

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Appearances:

For the Respondent, Robert J. Del Tufo, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party at the hearing, Martin R. Pachman,
attorney (Joel G. Scharff, of counsel); on the exceptions
and reply, Marie Teresa Juhring, pro se

DECISION AND ORDER

On October 22 and December 10, 1990, Marie Teresa Juhring filed an unfair practice charge and amended charge against her employer, State of New Jersey (Glassboro State College). The charge, as amended, alleges that the employer violated subsections 5.4(a)(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when Juhring was transferred,

^{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."

allegedly in retaliation for filing a grievance, to a library position where she had to do filing work outside her title.^{2/}

On October 16, 1991, a Complaint and Notice of Hearing issued. The employer's Answer denies that Juhring was discriminatorily transferred and leaves the charging party to its proofs on other issues.

On February 11 and 20, and March 10, 1992, Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On August 14, 1992, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 93-7, 18 NJPER 424 (¶23193 1992). He found that the charging party had not proved that the transfer was motivated by her protected activity and that the employer would have transferred her in any event.

On September 10, 1992, Juhring filed exceptions.^{3/} She asserts that the employer was hostile to her protected activity; she was prevented from calling witnesses and submitting exhibits; and two exhibits may not have been placed in the right files.

^{2/} The charge also alleged that she had filed a worker's compensation claim; her employer had refused to grant her sick leave; and her doctor had told her she would never be able to return to work. The workers' compensation claim was later settled (R-1) and the Merit System Board denied sick leave (R-2). The charge also included allegations that subsections 5.4(a)(5) and (7) had been violated, but these allegations were later withdrawn.

^{3/} She also requested oral argument. We deny that request.

On September 14, 1992, the employer filed a response urging adoption of the Hearing Examiner's recommendations and objecting to the documents outside the record being attached to the exceptions. On September 25, 1992, Juhring filed a reply.

Juhring seeks to supplement the record. We grant part of this request and deny the rest.

At the hearing, Juhring testified that she had prepared a response to a January 2, 1990 memorandum (R-4) from her supervisor, Calvin Ellis, to the Director of Academic Support Programs, Elizabeth McCalla-Wiggins. It was agreed that this response would be produced by the charging party's attorney and then marked into evidence (1T107), but that was not done. We correct that oversight by incorporating Juhring's response into the record as R-4a. We also incorporate, as part of that exhibit, letters which are mentioned in her response and attached to it. We do not, however, accept as evidence any of the unsworn handwritten notations on these documents. We further note that we cannot accept uncorroborated hearsay evidence in any of these documents to prove the truth of the matters asserted therein.

The Hearing Examiner marked a July 30, 1990 grievance and an attached announcement of a vacancy for purposes of identification and would not admit it into evidence (CP-9). Although we agree this exhibit is of marginal relevance to the claim that Juhring's prior transfer was discriminatory, we will admit it into evidence.

Juhring has also sought to submit various documents in response to exhibits or the Hearing Examiner's findings. Thus, she has submitted her memorandum responding to the March 28, 1990 minutes (R-7) on managerial/clerical conflict; two letters from a CWA representative responding to a May 31, 1990 letter (R-9) regarding a grievance hearing; a June 11, 1990 memorandum regarding her request for time off on June 14, 1990; a purported agreement between her and her employer with handwritten notations; her evaluations for 1981-1990, and a doctor's note. We decline to admit these documents into evidence since they were not offered below and, unlike R-4a, there was no agreement to admit them when produced. With respect to the purported agreement between Juhring and her employer, it is also inadmissible under N.J.A.C. 19:14-6.13.

Juhring has submitted memoranda in response to the Hearing Examiner's report. We accept these memoranda as exceptions and arguments about the weight of the evidence. We do not accept them, however, to the extent they may seek to establish facts not in the record.

Juhring asserts that the Hearing Examiner abused his discretion in refusing to allow a CWA representative, Abby Demel, to testify. We see no abuse of discretion or harmful error in this ruling. Juhring's attorney offered to prove through Demel that administrators knew of Juhring's difficulties with her supervisor before her transfer and that when Juhring's grievance was presented, college officials elected to skip step one of the grievance

procedure. Other evidence in the record establishes both these points. College officials also explained that the first step was skipped because the hearing officer at step one had already been involved in the controversy (2T83; 3T17-3T18).

Juhring alleges that the Hearing Examiner told her attorney that he "did not want a circus" and therefore other witnesses were not called. There was no offer of proof below as to who would have testified and about what. Absent that offer or a valid explanation of why it was not made, we have no basis for reopening the record to take further testimony.

In response to a question raised in the exceptions, we note that Juhring's January 8, 1990 letter to Dr. Harley Flack, the Executive Vice-President/Provost, was marked into evidence and is in the "file" of exhibits (R-5).

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-9) are accurate. We adopt and incorporate them.^{4/}

We now come to the merits of Juhring's assertion that her transfer to the library was a discriminatorily motivated response to

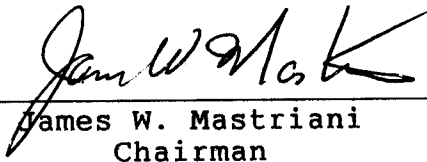
^{4/} The record establishes that there was an open position in the library when Juhring was transferred. Robert Zazzali, the Executive Assistant to Dr. Flack, testified that he ascertained that there was such an opening in conversations with various officials, including Dr. Kenneth Clay, the Director of Academic Administration (2T117-2T118, 2T132-2T133, 2T138-2T139). At one point, Zazzali got his syntax tangled in testifying that Dr. Clay "verified that there was not a position that was not filled." (2T138). But it is evident from the preceding testimony and the entire record that Dr. Clay in fact verified that there was a position that was not filled.

her grievance. See In re Bridgewater Tp., 95 N.J. 235 (1984). We agree with the Hearing Examiner that the preponderance of the evidence in the record does not support that assertion.^{5/} To the contrary, the transfer was a good faith response to a difficult and deteriorating employment and interpersonal situation that had already led to a temporary transfer before the grievance was filed and that could have hindered the efficiency of the College's operation if left unabated. We therefore dismiss the Complaint.^{6/}

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: October 22, 1992
Trenton, New Jersey
ISSUED: October 23, 1992

- ^{5/} According to Juhring, the College's Personnel Director told her she was transferred "because I ruffled some feathers, she had nothing to do with it, it was Doctor Flack's decision" (1T87). The Hearing Examiner implicitly declined to credit this testimony. In any event, this testimony, standing alone, does not prove a hostile link between the grievance and the transfer.
- ^{6/} To the extent that Juhring claims she was assigned to out-of-title work, that claim should be pursued before the Department of Personnel. To the extent she claims she was not timely notified of a vacancy, that claim should be pursued through contractual grievance procedures. Finally, we do not consider the wisdom of a disputed personnel action, but simply its motivation. The motivation behind this transfer was not discriminatory.

H.E. NO. 93-7

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

In the Matter of

GLASSBORO STATE COLLEGE,

Respondent,

-and-

Docket No. CI-H-91-23

MARIE TERESA JUHRING,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Sections 5.4(a)(1) or (3) of the New Jersey Employer-Employee Relations Act when it permanently transferred the Charging Party from her prior position in the Department of Cooperative Education to the Savitz Library, effective May 29, 1990, notwithstanding that she had filed a grievance on April 17, 1990, protesting alleged harassment by her supervisor. While the Charging Party admittedly had engaged in the protected activities of registering complaints about her supervisor and filing a grievance against him, the Charging Party failed to prove, by any quantum of evidence, that there had been any hostility or animus manifested by representatives of the College toward her in the several years prior to the College's transfer of May 25th. Thus, one of the three prime requisites of Bridgewater was not met and the proofs were therefore defective.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 93-7

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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Appearances:

For the Respondent, Hon. Robert J. Del Tufo, A.G.
(Stephan M. Schwartz, D.A.G.)

For the Charging Party, Martin R. Pachman, Esq.
(Joel G. Scharff, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on October 22, 1990, and amended on December 10, 1990, by Marie Teresa Juhring ("Charging Party" or "Juhring") alleging that Glassboro State College ("Respondent" or "College") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), in that Juhring, a clerical employee of the College, filed six grievances on the dates of April 17, May 31, July 9 and July 30, 1990, involving issues of harassment, discrimination, working out of title and under unsafe working conditions; as a result she was removed from her position

and transferred to the Savitz Library on May 29, 1990, which followed the filing of her first grievance on April 17th; additionally, this transfer occurred because Juhring had spoken out against her supervisor; thereafter she filed Workers' Compensation claims due to a work-related injury on June 13, 1990, and has since learned that she will never be able to return to work; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.41(a)(1), (3), (5) and (7) of the Act.^{1/}

A Complaint and Notice of Hearing was issued on October 16, 1991. The original hearing dates in December 1991 were adjourned by agreement. Thereafter hearings were held on February 11, February 20 and March 10, 1992,^{2/} in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence^{3/} and argue orally. The parties waived

^{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. (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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

^{2/} The hearing transcripts correspond by number to the hearing dates seriatim.

^{3/} At the conclusion of the Charging Party's case in chief, the allegations that the Respondent had violated Sections 5.4(a)(5) and (7) of the Act were withdrawn (2 Tr 75).

oral argument (3 Tr 29) and filed post-hearing briefs simultaneously on May 19, 1992.

* * * *

Upon the entire record, I make the following:

FINDINGS OF FACT

1. Glassboro State College is a public employer within the meaning of the Act, as amended, and Marie Teresa Juhring is a public employee within the same Act.

2. Juhring was hired in 1980 as a part-time clerical and achieved full-time status as a Clerk-Typist within six months. Thereafter she was employed in the Department of Elementary Education for one year before moving to the Department of Home Economics where she remained through 1988. During this six-year period Juhring had become a Senior Clerk-Typist. Between 1988 and March 1989, Juhring had been a "floater," working in a variety of light clerical assignments. [1 Tr 14-17].

3. In March 1989, Juhring was temporarily assigned to the Department of Cooperative Education, where her supervisor was Calvin H. Ellis. Her position of Principal Clerk-Typist became permanent in July 1989. Juhring's status continued there until December 1989. [1 Tr 21-24, 34; 2 Tr 38].

4. During the course of Juhring's clerical duties in the Department of Cooperative Education under Ellis, serious problems arose in their working relationship between July 1989 and December 1989. Juhring later claimed that these problems constituted

harassment. Illustrative of the problems were the following: the statement of Ellis to Juhring that if he had known that she wished to take vacation, he never would have hired her; Ellis was argumentative and made false accusations against her on many occasions; Ellis falsely accused Juhring of "forgetting a lot"; without provocation, Ellis several times called Juhring "a mess"; and Ellis created a problem for Juhring in the manner in which he arranged for her to receive visitors. [1 Tr 24, 25, 27-33; 2 Tr 10-17, 24-36, 60-62].

5. On December 19, 1989, a meeting was convened by Elizabeth McCalla-Wriggins, the Director of Academic Support Programs, to discuss the problems between Ellis and Juhring. A CWA representative was also present. Afterwards, Ellis sent a memorandum to Wriggins, dated January 2, 1990. In it Ellis stated as his continuing concerns: (1) the policy of Juhring taking vacation; (2) the obligation of a secretary to receive visitors; (3) Juhring's alleged fear of him as her supervisor; (4) Ellis's opportunity to supervise; and (5) several recommendations, the thrust of which were that Juhring should have sensitivity training. [1 Tf 103-105; 2Tr 8, 9; R-4].

6. Robert A. Zazzali, the Executive Assistant to Harley E. Flack,^{4/} did not attend Wriggins' December 19th meeting, but he was aware at this time that Juhring was to be temporarily

^{4/} The Executive Vice-President/Provost of the College.

transferred from the Department of Cooperative Education to the Department of Continuing Education (the Triad Building). Based on conversations with the administration, Zazzali had formed an opinion, dating back to the fall of 1989, that the temporary transfer should take place. Zazzali had spoken to Flack and to Dolores Harris, the Associate Vice President/Provost, about the transfer. [2 Tr 99-102].

7. By December 1989, it had been determined that Juhring was to be temporarily transferred to the Triad Building because the relationship between Ellis and Juhring had deteriorated to the point where "some space" was advisable. At some point in December, Juhring received a telephone call from Flack, in which he informed her that she was being temporarily transferred to the Triad Building. The actual date of transfer was January 5, 1990. [1 Tr 21-24, 34; 2 Tr 38, 102-105, 106].

8. Juhring's transfer and assignment to the Triad Building within the Department of Continuing Education spanned the period from January 5, 1990 to March 28, 1990. Two weeks after Juhring's transfer to the Triad Building, she found herself without any work to do. It was ultimately determined that she would be returned to the Department of Cooperative Education under Ellis and this occurred on March 29th.^{5/} The only reason ever given to Juhring regarding her transfer on January 5th from the Department of

^{5/} See ¶'s 9 and 10, infra.

Cooperative Education to the Department of Continuing Education (Triad) was offered by Zazzali, who told her that her transfer was for security reasons (2 Tr 40, 41). Zazzali recalled such a conversation (2 Tr 109). [1 Tr 23, 24; 2 Tr 39, 41, 46, 48, 106].

9. While Juhring was still assigned to the Department of Continuing Education, two meetings were held in late March 1990 in order to facilitate her return to the Department of Cooperative Education where she would once again be supervised by Ellis. The first of these meetings occurred on March 22nd. Those present were Harris, Juhring, a CWA representative and several College administrators. Ellis was not present. On behalf of Juhring, the CWA representative raised five points for consideration by the College, which are set forth in minutes of the meeting. After some discussion, nothing was resolved, but it was agreed that a second meeting would be held on March 28th. [1 Tr 109-113; R-6].

10. The second meeting was held as scheduled. This time Ellis was present. The same persons who attended the March 22nd meeting were also present. The minutes of this meeting disclose that six points, pertaining to past problems between Ellis and Juhring, were under discussion. The next day, March 29th, Juhring was transferred back to the Department of Cooperative Education.^{6/} [2 Tr 48-58; 106, 107; R-7].

^{6/} In a 20-minute meeting with Juhring on March 29th, Ellis reviewed the minutes of the meeting of March 28th and insisted that the minutes indicated that he had prevailed. He did not allow Juhring to make any response. [2 Tr 57-59].

11. On April 17, 1990, some 19 days after she was transferred back into the Department of Cooperative Education, Juhring filed a grievance, based upon everything that had happened to date vis-a-vis Ellis. She complained that Ellis had a history of harassing secretaries and that she wanted to be able to earn a living without being harassed.^{7/} Ellis was aware of the grievance but did not discuss it with Juhring. [CP-1; 1 Tr 35-38, 53; 2 Tr 63].

12. Zazzali had a role in the final transfer of Juhring from the Department of Cooperative Education to the Savitz Library. There was general agreement among those in the administration on the need to transfer Juhring. Again, the reason was the continuing deterioration in the relationship between Juhring and Ellis. It was considered impractical to transfer Ellis because of financial considerations. Zazzali had learned of a vacancy in the Library and spoke to Kenneth Clay who was in charge. Juhring's transfer to the Library was to be "in title." [2 Tr 115-117, 121, 125-128, 138, 139].

13. On May 25, 1990, Flack sent a letter to Juhring, advising her that she was being reassigned (transferred) from the Department of Cooperative Education to the Savitz Library, effective May 29, 1990, stating, inter alia, that this would be in the best interest of all parties involved. Gregory Potter was to be her

^{7/} Juhring testified that no particular event caused her to file the grievance on April 17th (2 Tr 63).

supervisor and her transfer was being made without any reduction in pay. Juhring objected to the fact that the assignment entailed 90% filing and that she was working "out of title."^{8/} [CP-4; 1 Tr 53-59].

14. On May 31, 1990, after her transfer, Juhring filed three additional grievances under Article IIA "Non-Discrimination," Article XLIV, Appendix, and, finally, Article XIIIA. (CP-5, CP-6 & CP-7; 1 Tr 61-63). After the four grievances were investigated, the College decided to submit the three grievances of May 31st, which involved Juhring's transfer to the Library, to a second step hearing before Peter Hutchinson. This hearing took place on June 6, 1990.^{9/} Hutchinson resolved CP-5 through CP-7 in favor of the College on the basis that the College was seeking to accommodate Juhring's out-of-title complaint and that under Article XXXVII of the agreement the College "...may transfer any employee without obtaining the employee's consent..." This decision appears in

^{8/} Juhring's description of her duties at the Library are deemed irrelevant since the issue under inquiry is alleged retaliation against her for filing her April 17th grievance (but see, 1 Tr 65-69).

^{9/} The reason that only the three May 31st grievances were heard by Hutchinson was that he had earlier disposed of Juhring's April 17th grievance in a letter to Juhring's union representative on May 31, 1990. In this letter he stated that he had learned that the College had reassigned Juhring to a different location with a different supervisor and that "...this has the effect of being the remedy...sought as well as a reasonable solution..." (R-9).

Hutchinson's letter of August 9, 1990 (R-8).^{10/} [1 Tr 38, 62-64; 3 Tr 7-10, 12, 14-26].

ANALYSIS

Both parties are in agreement that this case turns upon the motivation of the College when it transferred Juhring from the Department of Cooperative Education to the Savitz Library, effective May 29, 1990. Further, the parties are in agreement that the issue is whether Juhring has proven discriminatory retaliation under the Bridgewater^{11/} analysis, i.e., did the College transfer Juhring to the Library in retaliation for her having filed a harassment grievance against Ellis on April 17, 1990?

The Charging Party appears to contend that since three administrators of the College knew that Juhring had filed a grievance on April 17th, and because these administrators then decided to transfer her to the Library "...there is every reasonable inference that the decision to transfer Ms. Juhring came about because she filed the harassment grievance..." (Juhring Brief, p. 7). In other words, according to the Charging Party, when the College transferred Juhring to the Library on May 29th, this action must have been taken because she had filed a grievance on April 17th. The Charging Party also argues that the College failed

^{10/} This Finding No. 14 is made, notwithstanding, that the events after the fact of May 29th are essentially irrelevant.

^{11/} Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984).

in its proofs "...that Ms. Juhring would have been transferred even had she not filed a grievance..." [Juhring's Brief, p. 8].

The argument of the College meets the basic question in the case, namely, whether Juhring has met her burden under Bridgewater of having proven that representatives of the College were hostile to or manifested animus toward Juhring because she exercised rights protected by the Act, *i.e.*, her complaints to College officials regarding her relationship with Ellis and her having filed a grievance on April 17th against Ellis's alleged harassment. Since Juhring has failed to prove that the College was hostile to her exercise of protected activities, the Complaint should be dismissed under the authority of Bridgewater. Further, even assuming that the hostility/animus component of Bridgewater, infra, was satisfied, the College is still exonerated from a violation of Sections 5.4(a)(1) and (3) of the Act since the College has proven by a preponderance of the evidence that the assignment of Juhring to the Library on May 29th would have occurred even in the absence of her protected activities.

The Respondent College Did Not Violate Sections 5.4(a)(1) And (3) Of The Act Since Juhring Failed To Adduce Even A "Scintilla" Of Evidence That The College Manifested Hostility Or Animus Toward Her Exercise Of Protected Activities.

In analyzing Section 5.4(a)(3) of the Act, the New Jersey Supreme Court in Bridgewater, supra, held that the following requisites would be utilized in assessing employer motivation in

"dual motive" cases:^{12/} (1) The Charging Party must make a showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision to terminate; and (2) once this is established, then the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected activity (95 N.J. at 242).

The Court in Bridgewater also refined this test by adding that there must be proof that protected activity had been engaged in and that this activity was known by the employer. Significantly, the Court also required the Charging Party to establish that the employer was hostile towards the exercise of the protected activity, i.e., that it manifested anti-union animus (95 N.J. at 246).

Finally, the Court stated that no violation may be found unless the Charging Party has proved by a preponderance of the evidence, on the record as a whole, that protected activity was a substantial or a motivating factor in the employer's adverse action.

It is undisputed that over the course of many months from July 1989 through March 1990, when Juhring was under the supervision of Ellis in the Department of Cooperative Education, she registered many complaints with the College administration regarding the treatment she had received from Ellis in the workplace. The College

^{12/} Adopting the analysis of the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980).

was fully aware of these complaints.^{13/} The Commission many years ago decided that "...individual employee conduct whether in the nature of complaints, arguments, objections, letters or other similar activity relating to enforcing a collective negotiations agreement or existing working conditions of employees in a recognized or certified unit, constitute protected activities under our Act...": North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (at fn. 16) [¶4205 1978]. See, also, Atlantic Cty. Judiciary, P.E.R.C. No. 91-96, 17 NJPER 251, 252 (¶22115 1991). With this precedent, and Juhring's complaints against Ellis, spanning some nine months, which were known to the College, she has clearly satisfied the first two requisites of Bridgewater, i.e., engaging in protected activities under the Act and employer knowledge.

Juhring engaged in another protected activity when she filed her harassment grievance against Ellis on April 17, 1990, together with the three additional grievances of May 31, 1990.^{14/} The Commission has long held that the filing of a grievance is a protected activity and so it is here. For example, see Lakewood Bd. of Ed., P.E.R.C. No. 79-17, 4 NJPER 459, 461 (¶4208 1978); Dover

^{13/} See Findings of Fact Nos. 4-7.

^{14/} See Findings of Fact Nos. 11 & 14. Only the first grievance of April 17th is relevant to the issue since the May 31st grievances were filed after the fact of the May 25th transfer letter from Flack to Juhring (CP-4).

Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333, 338 (¶15157 1984); Pine Hill Bd. of Ed., P.E.R.C. No. 86-126, 12 NJPER 434, 437 (¶17161 1986); Hunterdon Cty. Sheriff, P.E.R.C. No. 87-13, 12 NJPER 685 (¶17259 1986); and Trenton Bd. of Ed., P.E.R.C. No. 88-135, 14 NJPER 452 (¶19187 1988), adopting H.E. No. 88-52, 14 NJPER 319, 322 (¶19117 1988).

Finally, Court and Commission precedent regarding a public employer's right to transfer an employee must be considered since this is at the core of the instant case. It will be recalled that in Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) the Supreme Court held, inter alia, that "...the issue of teacher transfers is one on which negotiated agreement would significantly interfere with a public employer's discharge of inherent managerial responsibilities. Accordingly, it is not a matter as to which collective negotiations is mandatory..." (78 N.J. at 156). However, the result of a transfer becomes altogether different if the Charging Party can prove by a preponderance of the evidence that the public employer was motivated in its decision to transfer by "...discriminatory intent...": Essex County Vocational Schools, P.E.R.C. No. 82-32, 7 NJPER 585, 587 (¶12263 1981). See also, Boro of Carteret, P.E.R.C. No. 88-81, 14 NJPER 238 (¶19086 1988) and Mt. Olive Bd. of Ed., P.E.R.C. No. 90-66, 16 NJPER 128, 132 (¶21050 1990).

Thus, the ultimate question is whether or not Flack's decision, on behalf of the College, to transfer Juhring, effective May 29th, was discriminatorily motivated within the Bridgewater

analysis by Juhring's history of complaints against Ellis and her grievance of April 17th.*

* * * *

The flaw in the Charging Party's case is the absence of even a "scintilla" of evidence that any representative in the administration of the College manifested hostility or anti-union animus toward Juhring at anytime. In other words, I find no evidence sufficient to support an inference that Juhring's protected activities were a "substantial" or a "motivating" factor in the decision of the College to transfer her to the Library in May of 1990. Because of this, it was not incumbent upon the College to demonstrate that the same action of transfer would have taken place even in the absence of Juhring's protected activities.

Not only did Juhring fail to adduce any evidence whatsoever of hostility or anti-union animus toward her, but the efforts of the College to resolve the multitude of complaints which she levelled against Ellis appear to have been made in good faith and were untainted by any discriminatory motivation. Consider the following:

1. The December 19th meeting between Wriggins, Juhring and Ellis in an effort to alleviate the problems then existing between Ellis and Juhring (Finding of Fact No. 5).

2. On March 22, 1990, a meeting was held, which was attended by Juhring, her CWA representative, Harris and other representatives of the College. The CWA representative raised five points that they wished the College to consider. Ellis was not present. [Finding of Fact No. 9].

3. A second meeting was held on March 28th, which was attended by Ellis, Juhring, a CWA representative and two representatives from the College administration. According to the minutes, six problem areas were identified and discussed. [Finding of Fact No. 10].^{15/}

4. Zazzali's opinion, supporting the May 25th decision of Flack to transfer Juhring from the Department of Cooperative Education to the Savitz Library was based upon an assessment by Harris that the relationship between Juhring and Ellis had deteriorated such that it was irreparable and a permanent transfer was needed. Before Flack's letter of May 25th to Juhring, Zazzali had explored possible openings into which she might be transferred, and it was decided to transfer Juhring to the Library. [Finding of Fact No. 12].

* * * *

Based upon this record, I have no doubt but that the actions of the College administration between December 19, 1989, and April or May 1990, were completely devoid of any hostility or animus toward Juhring within the meaning of Bridgewater. I find complete neutrality in the actions of the College when it attempted to resolve the obviously difficult interpersonal problems between Juhring and Ellis. Thus, the College was in no way discriminatorily

^{15/} Juhring acknowledged that the two March meetings were called to facilitate her return to the Department of Cooperative Education (2 Tr 69-72).

motivated when it decided to transfer Juhring to the Library, in May 1990.

The Charging Party has failed to adduce any evidence which would support an inference that a discriminatory nexus existed between Juhring's grievance filing of April 17th and Flack's transfer letter of May 25th. Recall that a public employer has a managerial right to transfer an employee so long as the employer is not discriminatorily motivated within the meaning of Section 5.4(a)(3) of the Act.^{16/}

Therefore, I must recommend that the Complaint be dismissed.

* * * *

Upon the foregoing, and upon the entire record in this case, I make the following:

CONCLUSION OF LAW

The Respondent College did not violate N.J.S.A. 34:13A-5.4(a)(1) or (3) when it permanently transferred Marie Teresa Juhring from the Department of Cooperative Education to the Savitz Library, effective May 29, 1990, notwithstanding that Juhring had filed a harassment grievance against her supervisor on April 17, 1990.

^{16/} See Essex County Vocational Schools, supra.

RECOMMENDED ORDER

I recommend that the Commission **ORDER** that the Complaint be dismissed.



Alan R. Howe
Hearing Examiner

Dated: August 14, 1992
Trenton, New Jersey