

P.E.R.C. NO. 86-103

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY (HEALTH
SERVICES CENTER),

Respondent,

-and-

Docket No. CI-85-105-29

LEWIS G. HURST,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, pursuant to authority delegated by the full Commission, dismisses a Complaint based upon an unfair practice charge filed by Lewis G. Hurst against Camden County (Health Services Center). The Complaint alleged that the County disciplined Hurst for engaging in protected activity. The Chairman concludes in agreement with the Hearing Examiner and in the absence of exceptions, that Hurst was not disciplined for engaging in protected activity, but for insubordination.

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Appearances:

For the Respondent, Howard L. Goldberg,
Assistant County Counsel

For the Charging Party, Emanuel Murray,
AFSCME Staff Representative

DECISION AND ORDER

On March 13, 1985, Lewis G. Hurst ("Hurst") filed an unfair practice charge against Camden County (Health Services Center) ("County"). The charge alleged the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1),(3),(4),(5) and (7),^{1/} when it disciplined him for engaging in protected activity.

^{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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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; and (7) Violating any of the rules and regulations established by the commission."

On August 9, 1985, a Complaint and Notice of Hearing issued. On August 23, 1985, the County filed its Answer. It admitted disciplining Hurst, but contends it had cause to do so and did not retaliate against Hurst for his protected activity.

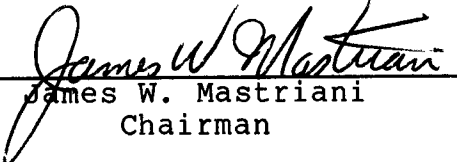
On October 30, 1985, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On January 15, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-34, 12 NJPER ____ (¶ ____ 1986) (copy attached). He found that Hurst was disciplined for insubordination unrelated to his protected activity. Accordingly, he recommended the Complaint be dismissed.

The Hearing Examiner served his report on the parties and informed them that exceptions were due by January 29, 1986. No exceptions were filed.

I have reviewed the record. The Hearing Examiner's findings of fact (3-7) are accurate. I adopt and incorporate them here. I conclude, in agreement with the Hearing Examiner, that Hurst was not disciplined for engaging in protected activity. Accordingly, acting pursuant to authority delegated to me by the full Commission, I dismiss the Complaint.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 17, 1986

H.E. NO. 86-34

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

In the Matter of

CAMDEN COUNTY (HEALTH SERVICES
CENTER),

Respondent,

-and-

Docket No. CI-85-105-29

LEWIS G. HURST,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent County did not violated §§5.4(a)(1), (3), (4), (5) or (7) of the New Jersey Employer-Employee Relations Act when it imposed a 45-day disciplinary suspension upon Hurst for his insubordinate conduct on February 25, 1985. Hurst, a shop steward, called a meeting of employees during working hours, which was protected under the collective negotiations agreement, but thereafter willfully refused a directive to terminate the meeting due to the urgent need for the employees to return to their respective work assignments. This was deemed insubordinate and formed the basis of the disciplinary suspension. The County was deemed to have had a legitimate business justification in imposing the discipline and the Hearing Examiner found that this discipline would have been imposed even in the absence of the exercise by Hurst of protected activity: Bridgewater Twp. v. Bridgewater Public Works Ass'n., 95 N.J. 235 (1984).

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. 86-34

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

In the Matter of

CAMDEN COUNTY (HEALTH SERVICES
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Docket No. CI-85-105-29

LEWIS G. HURST,

Charging Party.

Appearances:

For the Respondent

Howard L. Goldberg, Assistant County Counsel

For the Charging Party,

Emanuel Murray, AFSCME Staff Rep.

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 13, 1985, by Lewis G. Hurst (hereinafter the "Charging Party" or "Hurst") alleging that Camden County (Health Services Center)(hereinafter the "Respondent" or the "County") 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. (hereinafter the "Act"), in that the Respondent on three dates,

September 29, 1983, August 6, 1984, and February 25, 1985, disciplined Hurst for reasons related to his exercise of protected activity, namely, his functioning as a shop steward for AFSCME Local 2307, AFL-CIO; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) and (7) 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 August 9, 1985. Pursuant to the Complaint and Notice of Hearing, a hearing was held on October 30, 1985, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence ^{2/} and orally. Oral argument was waived and the parties filed post-hearing briefs by January 9, 1986.

^{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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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/} Evidence was taken on two incidents, which led to two separate suspensions of Hurst by the Respondent, the first incident having occurred on September 29, 1983 and the second incident having occurred on August 6, 1984. Since each incident is

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. Camden County (Health Services Center) is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. Lewis G. Hurst is a public employee within the meaning of the Act, as amended, and is subject to its provisions.
3. Hurst was hired on October 3, 1977 as an attendant at the Respondent's Health Services Center. Hurst has been a shop steward for AFSCME, Local 2307, AFL-CIO for 3-1/2 years. There are approximately 340 employees in the unit represented by Local 2307. The applicable collective negotiations agreement was received in evidence as Exhibit J-1 and is effective during the term January 1, 1983 through December 31, 1985.

2/ Footnote Continued From Previous Page

untimely under §5.4(c) of the Act, this evidence was received only for purposes of "background" to the timely incident of February 25, 1985, as set forth in the Unfair Practice Charge: see Local 1424, IAM v. NLRB (Bryan Mfg. Co.), 362 U.S. 411, 45 LRRM 3212 (1960).

4. Article XIX, §I provides, in part, that employees designated as shop stewards "...will be permitted to confer with other Unions, employees, and with employer representatives regarding the matter of employee representation during working hours without the loss of pay for periods not in excess of one (1) hour per day..." (J-1, p. 18).

5. On September 29, 1983, Hurst telephoned Albert P. Mancini, Jr., the Assistant County Comptroller, and requested his pay check and that of a co-employee, who would not be working the next day. When Hurst was advised that the checks had not yet been sorted, Hurst became very agitated over the telephone. A few minutes later Hurst came into Mancini's office and began shouting and yelling that the two pay checks had to be delivered forthwith. According to Hurst, he noticed that Joseph Discher, the Chief Security Officer, appeared to have his pay check in his pocket, at which point an argument ensued between Hurst, Discher and Mancini. The incident lasted approximately 20 minutes, at the end of which time three Sheriff's Officers arrived, one of whom ordered Hurst to leave the premises and Hurst complied. See Exhibits "C" and "D" attached to Respondent's Answer (C-2) and R-2. A disciplinary hearing on this incident was held on October 24, 1983. Hurst raised the issue of his having been acting as a shop steward who interceded on behalf of a co-employee, but the hearing officer found no justification for Hurst's behavior, labeling it "deplorable" (R-2, p. 7). The hearing officer recommended that Hurst be suspended for 20 days, which suspension was served (R-2).

6. The next incident occurred on August 6, 1984,^{3/} involves a 30-day suspension, which Hurst received and served for insubordination to Lillian Diaz, the Nurse Supervisor in charge of the 3:00 p.m. to 11:00 p.m. shift. On August 6th, Diaz determined that there was a need to transfer an attendant from one unit to another and, on the basis of rotation, it was Hurst's turn. When Hurst refused Diaz's request to accept the transfer, Diaz asked Hurst if he was refusing an order, to which Hurst replied that she could characterize his response in any way that she saw fit. Based on the foregoing, and other facts not germane to the instant proceeding, the ALJ concluded that Hurst's actions were insubordinate. The ALJ also found that Hurst having been a shop steward in no way insulated him from the consequences of his refusal to accept an order.

7. The final incident of February 25, 1985, which is timely under §5.4(c) of the Act, involves the following:

^{3/} The subject matter of this incident was litigated in a Civil Service OAL proceeding before ALJ Walter F. Sullivan, who on February 6, 1985, issued a decision, in which he made a series of Findings of Fact (Exhibit "A" attached to Respondent's Answer [C-2]), which findings may not be relitigated in the instant unfair practice proceeding since the doctrine of collateral estoppel clearly applies: see Newark Board of Education, P.E.R.C. No. 84-156, 10 NJPER 445, 446 (1984) where the Commission found that the doctrine bars relitigation of the particular question of fact or facts when the issue has been thoroughly and fully litigated in a prior action between the same two parties, regardless of whether the causes of action were identical.

a. On February 25th, there were between 15 and 20 attendants, including Hurst, on the psychiatric wing on the 3:00 p.m. to 11:00 p.m. shift under the supervision of Chita Marquez, the Assistant Nursing Supervisor; Cora Morrell, the Head Registered Nurse; and Edith Land, the LPN Charge Nurse.

b. In response to employee concerns about safety on the psychiatric unit, Hurst called a meeting in the "Client" dining room area, which lasted about 35 minutes from 7:00 p.m. to 7:35 p.m. and was attended by eight or nine of the attendants. Such attendance had come about as a result of Hurst having telephoned each area in the psychiatric unit and told the attendants that a meeting was to take place on safety. Hurst testified that he made clear that attendance was voluntary.

c. Hurst testified that he had permission to hold such a meeting from Marquez and Morrell. It was stipulated that Marquez, if called as a witness, would have testified that Hurst spoke to her on the telephone regarding the holding of the meeting and that she did not state that he could not do so. Also, it was stipulated that Diaz, if called as a witness, would have testified that she was not opposed to the Union having meetings and that she had discussed this matter with Hurst, stating that any meeting held would be permissible so long as the units were quiet. Hurst, in asking permission to hold the meeting on February 25th, told Marquez of his earlier conversation with Diaz, supra, adding that the unit was quiet on February 25, 1985.

d. During the course of the meeting (between 7:00 p.m. and 7:35 p.m.) Land telephoned the "Client" dining room area and told Hurst that she needed the attendants back on the unit. Hurst testified that he refused Land's directive.

e. By way of background to the safety question, Hurst testified regarding one incident involving Rebecca Moore, who was pulled to the floor by her hair by a patient. This occurred in 1985, sometime prior to February 25th.

8. A disciplinary hearing on the February 25, 1985 incident was held on March 18, 1985 where the County sought a 45-day suspension for Hurst. Hurst again contended that he was acting as a shop steward. The decision of the hearing officer was rendered on May 17, 1985, in which he recommended a 20-day suspension (Exhibit "B" Respondent's Answer [C-2]). The County refused to accept the recommendation and Hurst ultimately served a full 45-day suspension.

9. The collective negotiations agreement provides in Article XIX, §F that:

Upon prior notice to and authorization of the Labor Relations Committee, the designated Union Representatives shall be permitted as members of the Grievance Committee to confer with employees and the County on specific grievances in accordance with the grievance procedure set forth herein during work hours of employees, without loss of pay, provided the conduct of said business does not diminish the effectiveness of the County...(J-1, p. 17)(emphasis supplied).

DISCUSSION AND ANALYSIS

The County Did Not Violate Any
Subsection of the Act When It
Suspended Hurst For 45 Days As
A Result Of The Incident Of
February 25, 1985.

Preliminarily, there was no proof whatsoever adduced by the Charging Party, which would implicate the County in any alleged violation of §§(a)(4), (5) or (7) of the Act. Accordingly, the Hearing Examiner will recommend dismissal of any allegations by Hurst that the County violated these subsections.

Thus there remains the question of whether or not the County violated §§(a)(1) and (3) of the Act when it suspended Hurst for 45 days as a result of the incident of February 25, 1985, when Hurst called a meeting of employees during working hours. The Hearing Examiner first notes that the background incidents of September 29, 1983 and August 6, 1984, offer no support whatever to Hurst's contention that his 45-day suspension, which resulted from the February 25, 1985 incident, violated the Act.

Plainly, the September 29th incident did not involve the engaging by Hurst in any activity protected by the Act since he precipitated the 20-day suspension for that incident based on his conduct, which the hearing officer labeled as "deplorable." (See Finding of Fact No. 5, supra.) Hurst does not fare better in contending that the August 6th incident, which involved a 30-day suspension, involved his having engaged in protected activity as a shop steward. Hurst refused a direct order and was found to have

been properly disciplined for insubordination. The Hearing Examiner finds no basis on the instant record to make a contrary finding and, thus, the incident of August 6, 1984 did not involve discipline for engaging in protected activity under our Act.

Turning now to the final incident of February 25, 1985, which is timely under the Act, this involved Hurst's having called a meeting of employees on the psychiatric wing during the course of the 3:00 p.m. to 11:00 p.m. shift. The Hearing Examiner first notes that the agreement provides in Article XIX, §F that upon prior notice and authorization the union shall be permitted to confer with employees on specific grievances during working hours "...provided the conduct of said business does not diminish the effectiveness of the County..." (see Finding of Fact No. 9, supra). Although Hurst's proofs are not overwhelmingly clear that he gave prior notice and was authorized to hold the meeting on February 25th, the Hearing Examiner assumes for purposes of this decision that he did give proper notice and received proper authorization. However, the meeting lost its protection when, during the course of the meeting, Land telephoned the dining room area and told Hurst that she needed the attendants back on the unit, a directive which Hurst refused to honor (see Finding of Fact No. 7d, supra). The continued conduct of the meeting by Hurst clearly diminished the effectiveness of the County within the meaning of Article XIX, §F, supra.

Thus, the discipline imposed on Hurst for his conduct in connection with the holding of the meeting on February 25th would

have taken place even in the absence of the exercise by Hurst of the protected activity of having properly called the meeting: See Bridgewater Twp. v. Bridgewater Public Works Ass'n., 95 N.J. 235 (1984). In other words, the County had a legitimate business justification in having disciplined Hurst for the February 25th incident based on his insubordinate conduct in refusing to terminate the meeting after Land telephoned Hurst and told him that she needed the attendants back on the unit. Hurst's refusal to comply with Land's directive diminished the effectiveness of the County's psychiatric unit, which was contrary to Article XIX, §F of the agreement as well as insubordination on the part of Hurst.

Based on all of the foregoing, the Hearing Examiner must recommend that the alleged violations by the County of §§(a)(1) and (3) of the Act be dismissed.

* * * *

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


CONCLUSIONS OF LAW

1. The Respondent did not violate N.J.S.A. 34:13A-5.4(a) (1) and (3) when it imposed a 45-day suspension upon Lewis G. Hurst for his insubordinate conduct on February 25, 1985.

2. The Respondent did not violate N.J.S.A. 34:14A-5.4(a)(4), (5) or (7) by its conduct herein.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: January 15, 1986
Trenton, New Jersey