

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HILLSDALE,

Respondent,

-and-

Docket No. CO-81-62-68  
CO-81-89-69

LOCAL 804, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Charging Party.

SYNOPSIS

In unfair practice charges submitted by Local 804, the Commission concluded that the Borough did not violate the Act when it terminated the employment of two of its employees. It was alleged that the employment terminations had been discriminatory and motivated by anti-union animus; however, the Commission found that both employees were suffering physical ailments which prevented their ability to properly perform their jobs.

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BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Charging Party.

Appearances:

For the Respondent,  
Richard J. Donohue, Esq.

For the Charging Party, Cohen, Weiss & Simon, Esqs.  
(Peter Herman, of Counsel)

DECISION AND ORDER

Unfair Practice Charges were filed with the Public Employment Relations Commission on September 12 and September 22, 1980 by Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "Charging Party" or "Local 804") alleging that the Borough of Hillsdale (the "Respondent" or the "Borough") 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. (the "Act"), in that the Respondent terminated Robert V. Panarotti on September 5, 1980 and Frank Murphy on September 12, 1980 in retaliation for their activities on behalf of the Charging Party in a representation

election case, Docket No. RO-80-99, all of which was alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act.<sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 15, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on March 3 and March 4, 1981 before Hearing Examiner Alan R. Howe 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 April 6, 1981.

The Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-36, 7 NJPER \_\_\_\_ (¶ \_\_\_\_\_ 1981), on April 8, 1981, a copy of which is attached hereto and made a part hereof. He concluded that the Charging Party had failed to prove by a preponderance of the evidence that the conduct of Respondent was discriminatory and motivated, in whole or in part, by anti-union animus and therefore recommended that the Complaint be dismissed.

The facts of this case involve the termination of employment of two of the Borough's employees, allegedly for their involvement in organizational meetings for Local 804. Murphy was

<sup>1/</sup> These subsections prohibit public employers, their agents or representatives 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 the Act.

a newly hired employee serving a six month probationary period in the Sanitation Department, who had attended one Local 804 organizational meeting in June, 1980. He was out sick for six days during the first four months of his employment and at some point developed a back problem which resulted in Joseph D'Amico, the Department of Public Works Superintendent, concluding that Murphy would not be able to function as a productive employee. At that time, there were two probationary employees vying for one full time position with the Sanitation Department and the decision to terminate Murphy was made for the reasons stated above. The Hearing Examiner held, and the Commission agrees, that the dismissal of Murphy was not in retaliation of his having attended union organizational meetings and that he was terminated for good and sufficient reasons.

The other termination, allegedly for discriminatory reasons, involved a Sweeper Operator, Panarotti. Panarotti had attended all three of the union meetings in May and June 1980. He was also known as a close friend of the chief on-site organizer for Local 804.

Panarotti developed an ear problem in April 1980, for which he had been under the care of a doctor. After Panarotti attempted to change his job unsuccessfully he resorted to the use of head phones to lessen the noise from his job as Sweeper Operator. During the summer of 1980, he was absent from work three days because of his hearing difficulties. On September 5,

1980, Panarotti was summoned to D'Amico's office where he was informed that he would have to be terminated because of his hearing problem.

The Hearing Examiner found that D'Amico was not motivated by anti-union considerations in the action taken by him against Panarotti. D'Amico testified that with the advent of the leaf season he needed a Sweeper Operator who could do the work without the complications of a health problem and that this was the sole reason for Panarotti's termination.

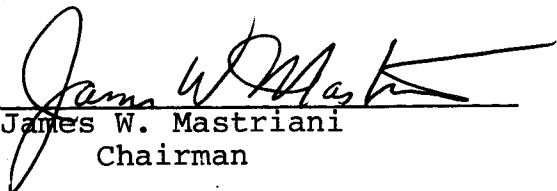
Thus, notwithstanding that Panarotti had attended the three union meetings and was a close friend of the chief union activist, the Hearing Examiner concluded that the Charging Party had failed to prove by a preponderance of the evidence that Panarotti's termination was in retaliation for his exercise of rights guaranteed by the Act.

Neither party has filed exceptions to the Report of the Hearing Examiner. We have reviewed the entire record in this matter and hereby adopt the findings of fact and conclusions of law made in H.E. No. 81-36. We find that the Borough's actions did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) by its conduct herein with respect to Murphy and Panarotti. We adopt his recommendation that the Complaint be dismissed in its entirety.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Newbaker, Parcels and Suskin voted in favor of this decision. Commissioners Graves and Hipp voted against the decision.

DATED: July 21, 1981  
Trenton, New Jersey  
ISSUED: July 22, 1981

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

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BOROUGH OF HILLSDALE

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Docket Nos. CO-81-62-68  
CO-81-89-69

LOCAL 804, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsections 5.4 (a)(1) and (3) of the New Jersey Employer-Employee Relations Act when it terminated two employees, Robert V. Panarotti and Frank Murphy, respectively, on September 5, and September 12, 1980. The Hearing Examiner concluded that the Charging Party failed to prove by a preponderance of the evidence that the terminations were in retaliation for the exercise of rights guaranteed by the Act, particularly, in connection with a representation election conducted on July 11, 1980. The activities in which the two employees engaged were minimal and the Respondent offered adequate legitimate business justification for its actions in terminating each employee.

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  
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TEAMSTERS, CHAUFFEURS, WAREHOUSMEN AND  
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Charging Party.

Appearances:

For the Borough of Hillsdale  
Richard J. Donohue, Esq.

For Local 804, International Brotherhood of Teamsters, Chauffeurs,  
Warehousemen and Helpers of America  
Cohen, Weiss & Simon, Esqs.  
(Peter Herman, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

Unfair Practice Charges were filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 12 and September 22, 1980 by Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter the "Charging Party" or "Local 804") alleging that the Borough of Hillsdale (hereinafter the "Respondent" or the "Borough") had engaged 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 terminated Robert V. Panarotti on September 5, 1980 and Frank Murphy on September 12, 1980 in retaliation for their activities on behalf of the Charging Party in a representation election case, Docket No.



RO-80-199, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act. <sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charges, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 15, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on March 3 and March 4, 1981 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 April 6, 1981.

Unfair Practice Charges 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 Borough of Hillsdale is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Local 804, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

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<sup>1/</sup> These Subsections prohibit public employers, their agents or representatives 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 employee in the exercise of the rights guaranteed to them by the Act.

3. Vincent A. Ferraiuolo is an employee of the Borough's Department of Public Works (hereinafter "DPW") and is in charge of the Sewerage Department. In or about May 1980 he became the chief on site organizer for Local 804 in an effort to organize the DPW employees into Local 804.

4. Ferraiuolo arranged for three meetings to be held among employees of the DPW, the first meeting being held in May 1980 and the second meeting being held in June 1980 both at Ferraiuolo's home. A third meeting was held at the end of June 1980 at the Elks Club in Park Ridge.

5. Robert V. Panarotti, who was hired as a Sweeper Operator for the DPW on September 15, 1978, attended all three of the union meetings, supra. Frank Murphy, who was hired as a Garbageman in the DPW Sanitation Department on April 12, 1980, <sup>2/</sup> attended only the second union meeting, supra.

6. Authorization cards were signed on behalf of Local 804 by DPW employees after the first union meeting in May 1980, as a result of which a Stipulation for Consent Election was executed on June 12, 1980. Pursuant thereto an election was held on July 11, 1980. The tally of ballots indicated 11 "No" votes, nine votes for Local 804 and one challenged ballot. <sup>3/</sup>

7. The following foremen of the DPW were eligible to vote in the two elections conducted by the Commission: Peter P. Ubachs--Sanitation Department; Richard Suebert--Parks Department; and Martinus Hynekamp--Road Department. Suebert and Ubachs attended the second union meeting, supra, and Hynekamp attended the third union meeting, supra.

8. Except for a 60-day suspension from April 22 to June 22, 1980, **Joseph D'Amico** has been the Superintendent of the DPW for the past eight or nine years. He was not eligible to vote at either election herein involved.

<sup>2/</sup> Murphy was initially hired as a CETA employee in the Road Department on October 24, 1978. He became a full time employee in the Sanitation Department on April 12, 1980 but was to be on probation for six months until October 12, 1980.

<sup>3/</sup> Timely objections were filed by Local 804 on July 16, 1980 as a result of which a second election was directed and held on November 7, 1980 where Local 804 failed to obtain a majority of the ballots cast.

9. D'Amico testified credibly that, with the exception of Murphy, he did not individually interrogate DPW employees regarding their union sentiments. D'Amico spoke to Murphy individually prior to the July 11, 1980 election regarding Murphy's union sentiments. Murphy responded that he wanted no part of the union and was going along with D'Amico. The Hearing Examiner does not credit Murphy's denial that he never spoke to D'Amico. <sup>4/</sup>

10. On July 13, 1980, two days after the first election, Ferraiuolo's hours were changed from 7:30 a.m. - 3:30 p.m. to 8:00 a.m. - 4:30 p.m. Also, on July 14, 1980 Ferraiuolo was reassigned from his job in the Sewerage Department to operating the Vacuuming Truck, which he had not operated for five years because it was hazardous to his health. Ferraiuolo was on the Vacuuming Truck only one day and as a result had to enter the hospital. He was not thereafter assigned to the Vacuuming Truck.

11. Immediately before being hospitalized Ferraiuolo was in D'Amico's office for three hours. D'Amico testified credibly that the reason that Ferraiuolo was summoned to his office was because of a fight which had occurred, and which involved Ferraiuolo. D'Amico brought up the subject of the union at this meeting, observing that the men had turned against the union as indicated by the vote on July 11, 1980. <sup>5/</sup>

12. D'Amico acknowledged that he knew that Panarotti was sympathetic to the union and was on very close social terms with Ferraiuolo. D'Amico, however, credibly denied that any actions taken by him against Panarotti, infra, were motivated by union considerations.

13. Panarotti developed an ear problem in April 1980 and was under the treatment of a Doctor Cantor. At that time Hynekamp was Acting Superintendent during the period of D'Amico's suspension. Panarotti spoke to Hynekamp about <sup>4/</sup> Murphy did testify that on July 10, 1980 Hynekamp asked Murphy how he felt about the union and Murphy responded that he was likely to be voting for D'Amico. The Hearing Examiner here observes that Hynekamp, as well as Suebert and Ubachs, was included within the collective negotiations unit thus their activities and conduct are not binding upon the Respondent Borough.

See pg. 5 for footnote 5.

changing jobs, which Hynekamp told him could not be done. Thereafter, Panarotti used head phones to lessen the noise. Over the course of the Summer of 1980 Panarotti took off four or five sick days, three of which were for his hearing difficulties.

14. On September 5, 1980 Panarotti was summoned to D'Amico's office and with Hynekamp present D'Amico told Panarotti that he would have to be terminated because of his hearing problem. D'Amico testified credibly that, with the advent of the leaf season, he needed a Sweeper Operator who could do the work without the complication of a health problem and that this was the sole reason for Panarotti's termination.

15. The witnesses for the Respondent testified credibly that Murphy was out sick on July 14, 15, and 16, 1980 and again on August 4, 5 and 6, 1980. Further, according to D'Amico, Murphy developed a back problem in the Summer of 1980 and, in consultation with Ubach, the foreman of the Sanitation Department, D'Amico concluded that Murphy was unlikely to be able to continue to function as a productive employee.

16. D'Amico testified credibly that as of September 1980 he had only one full-time permanent position open in the Sanitation Department and two probationary employees, Murphy and one Joseph Neigo. D'Amico decided to make Neigo permanent and to terminate Murphy as of September 12, 1980. The Hearing Examiner finds as a fact that union considerations did not enter into D'Amico's decision to terminate Murphy.

17. D'Amico learned that Ferraiuolo was the chief organizer for Local 804 among DPW employees in April 1980. Ferraiuolo was the observer at each of the two elections in July and November 1980. Notwithstanding Ferraiuolo's open activity on behalf of Local 804 he has remained an employee of the Borough's DPW.

5/ Ferraiuolo testified credibly that D'Amico brought up the subject of the union with him several times and on each occasion D'Amico stated that he knew that the union would "not get in" because the men were not strong enough and had turned against the union.

THE ISSUE

Did The Respondent violate Subsections (a)(1) and (3) of the Act when it terminated Robert V. Panarotti on September 5, 1980 and Frank Murphy on September 12, 1980?

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsections  
(a)(1) and (3) Of The Act By Its Terminations  
Of Panarotti and Murphy

The Charging Party contends that the Respondent violated the Act when it terminated Panarotti and Murphy in September 1980 because the Respondent was motivated in whole or in part by anti-union animus and thus retaliated against Panarotti and Murphy because of the exercise by them of rights guaranteed by the Act. The Hearing Examiner finds and concludes that the Charging Party has failed to prove by a preponderance of the evidence that such was the case.

The Section (a)(3) standard was enunciated by the Commission in Haddonfield Borough Board of Education, P.E.R.C. No. 77-36, 3 NJPER 71 (1977) and City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977), rev'd on other grounds, 162 N.J. Super. 1 (App. Div. 1978), aff'd as modified, 82 N.J. 1 (1980). See also Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (1978), aff'd, App. Div. Docket No. A-4824-77 (1980) and Cape May City Bd. of Education, P.E.R.C. No. 80-87, 6 NJPER 45 (1980).

The Hearing Examiner elects to consider first the matter of the Murphy termination. Murphy's engaging in any conduct protected by the Act is necessarily limited to having attended one organizational meeting in June 1980, in which two foremen, Ubachs and Suebert, were present. It is noted here again that Ubach and Suebert were within the unit of eligible voters at each of the two elections and, therefore, were not agents of the Respondent. When Murphy was questioned by

Superintendent D'Amico regarding Murphy's union sentiments immediately prior to the first election on July 11, 1980, Murphy responded that he wanted no part of the union and was going along with D'Amico. Murphy testified that he voted against the union at the first election. The foregoing was the extent of Murphy's activity on behalf of Local 804. Murphy became a full-time employee in the Sanitation Department on April 12, 1980 and commenced serving a six-month probationary period through October 12, 1980. Murphy was out sick three days during July and three days during August 1980. According to D'Amico, Murphy during the Summer developed a back problem, which resulted in D'Amico concluding that Murphy was unlikely to be able to function as a productive employee. (See Finding of Fact No. 15, supra). As of September 1980 D'Amico testified credibly that he had only one full-time permanent position open in the Sanitation Department and had to make a choice between Murphy and another probationary employee, Joseph Niego. D'Amico decided to make Niego permanent and to terminate Murphy as of September 12, 1980. Union considerations did not enter into D'Amico's decision to terminate Murphy. (See Finding of Fact No. 16, supra).

It is clear to the Hearing Examiner that Murphy was not terminated in retaliation for the exercise by him of rights guaranteed by the Act. There was no showing of any anti-union animus toward Murphy. He was a probationary employee, who was terminated for good and sufficient reason.

The Hearing Examiner now turns to the question of Panarotti's termination on September 5, 1980. Panarotti had been a permanent employee since 1978 when he was hired as a Sweeper Operator for the DPW. Panarotti attended all three of the union meetings in May and June 1980. He was known by D'Amico as a close friend of Vincent A. Ferraiuolo, who was the chief on site organizer for

Local 804. <sup>6/</sup>

Panarotti had no conversations with D'Amico prior to the first election on July 11, 1980. Panarotti did not testify as to how he voted in the first election. Panarotti developed an ear problem in April 1980, for which he has been under the care of a doctor. After Panarotti attempted to change his job unsuccessfully he resorted to the use of head phones to lessen the noise from his job as Sweeper Operator. During the Summer of 1980 he was absent from work three days because of his hearing difficulties. On September 5, 1980 Panarotti was summoned to D'Amico's office where he was informed that he would have to be terminated because of his hearing problem.

The Hearing Examiner has found that D'Amico was not motivated by anti-union considerations in the action taken by him against Panarotti (see Finding of Fact No. 12, supra). D'Amico testified credibly that with the advent of the leaf season he needed a Sweeper Operator who could do the work without the complications of a health problem and that this was the sole reason for Panarotti's termination (see Finding of Fact. No. 14, supra).

Thus, notwithstanding that Panarotti attended the three union meetings and was a close friend of Ferraiuolo, the Hearing Examiner finds and concludes that the Charging Party has failed to prove by a preponderance of the evidence that Panarotti's termination was in retaliation for the exercise by him of rights guaranteed by the Act. The Respondent has presented a legitimate business justification for its action in terminating Panarotti : See Cape May City Bd. of Education, (6 NJPER at 46).

Accordingly, for the reasons hereinbefore set forth the Hearing Examiner must recommend dismissal of the Complaint alleging that the Respondent violated Subsections (a)(1) and (3) of the Act.

<sup>6/</sup> The Hearing Examiner attaches great significance to the fact that, notwithstanding that Ferraiuolo was the chief union activist, he has not been discriminated against and is still an employee of the Respondent.

\* \* \* \*

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

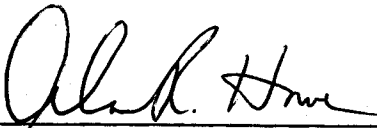
CONCLUSIONS OF LAW

The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) when it terminated Robert V. Panarotti on September 5, 1980 and Frank Murphy on September 12, 1980.

RECOMMENDED ORDER

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

DATED: April 8, 1981  
Trenton, New Jersey

  
\_\_\_\_\_  
Alan R. Howe  
Hearing Examiner