H.E. NO. 2005-6

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

In the Matter of

WARREN COUNTY POLLUTION CONTROL AUTHORITY,

Respondent,

-and- Docket No. CO-2004-154

LOCAL 68, I.U.O.E.,

Charging Party.

Appearances:

For the Respondent,
Himelman, Wertheim & Geller, attorneys
(Susan C. Geiser, of counsel)

For the Charging Party,
Mary E. Moriarity, attorney

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On November 24, 2003, Local 68, International Union of Operating Engineers, AFL-CIO filed an Unfair Practice Charge with the Public Employment Relations Commission. Local 68 alleges that the Warren County Pollution Control Financing Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (3)[1/]

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
(continued...)

when it allegedly declined to hire Robert Williams III for a laborer position because it knew he would support Local 68 in a decertification election.

A Complaint and Notice of Hearing issued on January 22, 2004. The Authority filed an Answer on February 4, admitting that Williams applied and was considered for a position. The Authority admits that it knew Williams was friendly with another unit member and knew the Local 68 shop steward, and that it knew Local 68 wanted to postpone any election until after Williams was on the payroll. It denies that its hiring decision was illegally motivated and asserts that Williams was not hired because he failed the background check.

On February 23, 2004, I conducted a hearing. The parties examined witnesses and introduced exhibits.[2/] Both parties filed post-hearing briefs by March 31 and the Authority filed a reply brief by April 12, 2004.

Upon the entire record, I make the following:

1/ (...continued)
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/ The hearing transcript is referred to as T. Jointly submitted exhibits are referred to as J; Charging Party's exhibits are referred to as CP and Respondent's exhibits are referred to as R.

FINDINGS OF FACT

1. The Warren County Pollution Control Finance Authority operates a recycling operation in Warren County. John Carlton is the Executive Director of the Authority and has served in that capacity since 1997. The Authority normally employs five blue-collar employees - four employees in the title recycling laborer and a working foreperson. Local 68 was certified to represent this unit of employees on May 5, 1994 (T39, T53-T55, T60, T72; CP-2).

Robert Masterson is the Local 68 representative assigned to represent the blue-collar unit (T53). Unit member Karen "Cy" Boan is the working foreperson of the unit and has served as its shop steward since 1995 (T36-T37).

2. Carlton is responsible for the Authority's personnel decisions, subject to Authority Board approval (T72). Carlton supervises five intermediate supervisors, each of whom supervise the employees below them. When a job vacancy occurs, Carlton approves the decision to hire. However, he relies on the supervisors to post and advertise the position and to conduct initial screenings of the candidates (T61, T75-T76).

Although Carlton is aware of such postings, advertising, and the screenings, he does not always personally review applications as they come in, unless the vacancy is among the supervisory staff. With respect to any recycling laborer

vacancy, the hiring process would begin with Environmental Enforcement Supervisor William Carner. Carlton may interview the candidate directly with the supervisor, or he may agree to the supervisor's recommendation. Carlton always makes the final decision on a candidate, subject to confirmation by the Board (T52, T60-T62, T75-T76). The Board, however, has always followed Carlton's recommendations on hiring or firing of employees (T72). The Authority does not have any written procedures concerning its hiring process (T76-T77).

3. In December 2002, Carlton initiated a new hiring policy of conducting criminal background checks and physical screenings as a condition of employment. Specifically, a new hire would be subjected to a 90-day probationary period, during which time, the Authority would attempt to complete the criminal background check and medical screen of the individual. The criminal background check costs approximately $35.00, while the medical screening costs $600.00 (T87-T88).

However, in 2003, the Authority learned that it had hired two candidates, Robert Longyhore and Robin Cardosa, who had lied on their employment applications. Specifically, these individuals had indicated that they did not have criminal records; however, their criminal background checks revealed that they had each been convicted of a criminal offense (T41-T45, T62, T100, T111-T112).

Both Longyhore and Cardosa had begun employment before their criminal background checks had been completed (T43-T45). Longyhore worked at the Authority May 27 through sometime in August 2003; Cardosa worked there from September 3 through September 22, 2003. Both were terminated once the Authority learned of their convictions and thus, that they had lied on their applications (T42-T45, T111-T112).

4. As a result, in September 2003, the Authority instituted a new hiring policy. Under the new policy, the Authority's supervisors would select the candidate for the vacancy and have a background check, including a criminal record check and medical screening, conducted on the candidate before any offer of employment could be made. This background check includes reviewing the candidate's job application, checking the candidate's driver's license for any criminal record or violations, conducting a criminal background check, and contacting prior employers for references (T62-T64, T77).

The Authority does not have any formal or written guidelines detailing the hiring process. There are no guidelines on checking employment references. Sometimes a supervisor may get detailed information regarding a candidate for employment, while other times he or she may not. While Carlton thinks it is good practice for supervisors to check references, not all do (T77-T78; T85-T86).

5. According to Carlton, the purpose of checking employment references is to get reliable information about the candidate and his or her work history (T78-T79). Carlton does not ask his supervisors to write a memo regarding their findings on a candidate's employment references; sometimes, however, they make notes (T80-T81). Carlton's personal practice regarding checking a candidate's employment history is to try to verify as much information as possible, regarding the contents of a candidate's application. He tries to learn as much character information as possible and tries to document the information in case of any challenge to his hiring decision (T109-T110).

James Lampert was employed by the Authority as a recycling laborer until May 3, 2003. With respect to Lambert's hiring, Carlton did speak to Lampert's former employer, Warren County. The County gave Lampert a very favorable recommendation and a copy of his review; however, Carlton did not write a memorandum regarding his findings on Lambert's employment history, as he normally does (T41, T80,T110).

When the Authority hired Longyhore, Carlton conducted the employment reference check on him, at Carner's request. Carlton contacted two references for Longyhore. He learned information on Longyhore's work quality, attendance and ability to get along with others (J-2; T81-T83,T110-T111).

Carlton does not know if Cardosa's references were checked (T111). However, there were no documents in Cardosa's file regarding her employment references (T100).

7. In 2000, Robert Williams applied for a recycling laborer position. He had a 25-minute job interview with Carlton then, but he was not hired for the position. Rather, the Authority hired a more experienced candidate (T11, T27).

8. Thereafter, from March 2001 until May 2003, Williams was employed by Arrow Wrecker Service in South Florida with Charles Lawson serving as his supervisor. He left employment at Arrow when he was suddenly told upon reporting for work one morning, "We no longer need you, it's not working out." (T24-T25; CP-1).

Before Arrow, Williams had been employed by both Hackettstown Mall Mobil Service and by Buchanan Construction Products from October 1998 to June 2000. Norm Tynan was his direct supervisor on the night shift at Buchanan. Dave Donahoe was the supervisor above Tynan, until Bob Buzga replaced Donahue about two months before Williams left in June 2000 (T28-T29; CP-1). Neither Donahoe nor Buzga had daily direct supervisory contact with Williams since they worked the day shift (T28-T29).

While at Buchanan, Williams applied for a promotion to maintenance mechanic. The company, however, decided to require that any candidate for the position be bilingual which Williams

was not. Buzga and Williams then met regarding the promotion. They specifically discussed the bilingual requirement and the fact that the position did not pay enough to justify Williams incurring the expense of attending school to learn Spanish. Accordingly, Williams felt he had no further opportunity for advancement at Buchanan, and thus informed Buzga that he would be looking for another job (T29-T33).

If Buzga was dissatisfied with Williams' job performance or attitude, he did not mention it to Williams. Rather, he did express dissatisfaction and unhappiness that Williams was unhappy with his job and that he was planning on leaving. (T29-T31, T32-T33). Williams was unhappy with the direction his job was going and with his hours. He wanted to be reassigned to maintenance but was not permitted that assignment. Thus, he found a new position in Florida and gave Buzga two weeks notice (T25-T26, T32; CP-1).

9. In September 2003, Williams learned from a friend who worked at the Authority that it had a job vacancy. The friend knew of Williams' prior interest in the position and asked Williams if he was still interested. Williams was interested and the friend mailed him a job application. Williams completed the application for the position of recycling laborer on September 27, 2003 and returned it to the Authority (T12-T13, T64; CP-1). On the application, he listed unit member Bubba Williams (not

related) as a personal reference (CP-1). Bubba Williams had filed a grievance in 2003 that proceeded to arbitration (T57-T58).

10. On September 30, 2003, during the "window" period for filing petitions, unit member Joan Pluto, along with other employees, filed a decertification petition with the Commission seeking to decertify Local 68 as the majority representative.[3/] At the time the petition was filed, the laborer job was vacant (T55-T56; CP-3).

11. After submitting the application, Authority supervisor Carner called Williams in Florida to inform him that he was being considered for the position. Carner explained that a drug screening and a criminal background check would first have to be completed before Williams could be hired by the Authority (T13-T15, T-35). Williams then asked if he was the only candidate being considered. He did not want to become involved in another possibly unsuccessful contest for the position like his 2000 application, particularly because there would now be the expense and inconvenience involved in pursuing the job while living in Florida. Carner, however, assured him he was the only candidate for the job and that the drug screening and criminal

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3/ I take administrative notice of the facts concerning the election petition as set forth in the decision, Warren Cty. Pollution Control, D.R. No. 2004-10, 30 NJPER 147 (¶59 2004).

background check would take place next (T13-T14). Carner never mentioned Williams' previous employment history (T16).

12. Williams traveled to New Jersey and met with Carner on October 14, 2003, regarding the position. Carner interviewed him and explained hours, benefits and job duties of the position. He also indicated that it was a union position. Carner gave Williams paperwork to sign for a physical examination and instructed him to provide a urine sample. Carner then took Williams to Carlton's office for an introduction (T14-T16, T22, T24, T64).

Carner explained that Williams was the candidate for the recycling laborer position. Williams told Carlton, "Yes, I remember you, we interviewed for this once before." This was the extent of their conversation (T22-T24, T52).

Carner took Williams to the recycling center, where Williams greeted foreperson/shop steward Cy Boan (T16, T46-T47). Boan knew Williams from 17 years ago, when Williams had worked at a Sunoco Station where Boan had her cars serviced; Williams was the mechanic who worked on Boan's cars (T47-T48, T50-T51). Boan told Carner that she knew Williams and that he was a good worker (T47, T50-T51). Carner informed Boan that Williams would be starting employment with the Authority as soon as his background check was completed (T48).

Williams and Carner then went to the County courthouse, where Williams was fingerprinted for his criminal background check. They next went to the County administration building where Williams was scheduled for his physical on October 17, 2003 in Morristown (T16-T17).

Carner never referred to Williams' previous employment history or asked for the names of his former supervisors during their October 14 meeting (T16; T27-T28). Williams was not told that his employment references would be checked (T16, T48).

Carner did tell Williams that the Authority would first have to complete the medical screening and criminal background check, before Williams could start the position. Carner explained that this was now Authority procedure because of problems that had occurred when the Authority had hired two employees before first checking their criminal background. At Carner's request, Carlton had the background check done on Williams and scheduled him for the medical screening (T17, T88).

13. On October 17, 2003, Williams reported for his physical examination as scheduled. Thereafter, he called Carner a few times to check on the status of his medical screen and criminal background check (T23-T24). Williams' criminal background check revealed that he did not have a criminal record and his physical screening declared him fit for work (T100-T101).

14. On October 28, 2003, Local 68 Representative Masterson attended a conference at the Commission offices regarding the decertification petition that had been filed by Pluto and other employees. At the conference, the details of the decertification election were discussed, specifically, the payroll period for eligibility to vote in the election. Masterson learned from shop steward Boan that the Authority was actively considering a candidate for the vacant fifth unit position. Local 68 maintained that, since the unit normally has five employees, the election eligibility date should be set after the fifth employee begins employment, so that the new employee would be eligible to vote (T54-T55; CP-2).

The Authority disagreed with Masterson, asserting that it did not want to delay the processing of the petition and thus "violate Pluto's rights" (T56). The Authority also requested a mail ballot election; Local 68, however, refused. Masterson was upset at the Authority's request as he perceived that a mail ballot election would take longer than an in-person election. He was also dismayed that, on the one hand, the Authority wanted what he perceived to be the lengthier mail ballot procedure, while at the same time, it would not agree to wait for the fifth employee to begin employment and thus be eligible to vote (T56-T57).

Both sides could not reach an election agreement at the conference. Thus, they each presented their respective arguments to the Commission for a determination as to the method of the election and the cutoff date for voter eligibility (T58; CP-2).

15. At this time, Carlton was reviewing Williams' candidacy. He had told Carner to provide him all the information he could about Williams. Carner explained that he had spoken to Boan and Authority employee Bubba Williams as character references; however, he had not contacted any of Williams' previous employers. Carlton asked why he had not done this, as this was typically done. Carner responded that he did not believe the employers would provide any useful information (T65-T66).

Carlton felt this was a deficiency in the hiring process and that employment references needed to be checked. Carlton decided to check the references himself because of the past circumstances with candidates falsifying their job applications. On November 5, 2003, he proceeded to contact the three employers listed on Williams' application - Arrow, Mobil and Buchanan (T66, T90). As Carlton explained, he spoke to "whatever people I could find that would have information about Mr. Williams as an employee." (T66-T67; J-2).

At Arrow, Carlton spoke to the woman who answered the phone. He indicated that he was calling regarding an employment

candidate. He explained that he was trying to confirm the candidate's employment, that he wanted to know information about the individual as an employee, and that he wanted to know why the individual left Arrow (T66-T68, T96). Carlton did not obtain the woman's name or title; he admits he should have done so (T68, T90-92, T96).

The woman confirmed to Carlton that Williams had worked at Arrow from March 2001 to May 2003. Carlton asked about his work and why he left. She replied that Williams had ended up getting into an argument with his supervisor and that that was the reason he left employment (T68, T101-T102). Carlton did not ask the supervisor's name. Further, Carlton did not ask when Williams' argument with the supervisor's occurred; nor did he ask the nature of the argument (T96, T102-T103). Carlton perceived the woman to be honest and truthful, based on the tenor of the conversation (T98, T112; CP-3). After this conversation, Carlton concluded that Williams incorrectly stated on his application that he was terminated from Arrow for "no reason;" rather, he concluded it was because of the argument with his supervisor (T103).

16. Carlton also contacted Mobil, but the individual who answered the phone had no knowledge of Williams (T69). Carlton next contacted Buchanan where he initially spoke to the receptionist. He explained that he was calling to obtain

information on a potential candidate and any information on the candidate's prior employment at Buchanan. Carlton left his name and number with the receptionist (T69-T70).

Bob Buzga called Carlton back. He confirmed Williams' employment with Buchanan from October 1998 to June 2000. Carlton then asked Buzga about the quality of Williams' work. Buzga explained that Williams had left to pursue NASCAR work. He further volunteered that Williams' employment with Buchanan had not gone well and that he likely would have been terminated if he had not voluntarily left. Buzga indicated that Williams had an attitude, was inefficient, and had some "run-ins" with his supervisor (T70, T92).

Carlton did not ask Buzga how long he had been Williams' supervisor (T91-T92). Further, Carlton did not ask Buzga to explain what his reference to "attitude" or "inefficiency" meant, and further, did not ask Buzga to name the supervisor with whom Williams had had conflicts (T92-T94). Nor did he ask Buzga whether Williams had ever been disciplined, short of termination (T95).

Carlton believed Buzga was giving a reliable reference (T112). He interpreted Buzga's information in a negative way (T70-T71, T92-T95; C-2).

17. Carlton concluded, based on his conversation with two of William's prior employers, that Williams had had disagreements

with his superiors, which resulted in him leaving. Carlton had developed a very negative feeling and did not think Williams was the type of employee the Authority was seeking. According to Carlton, Buzga's reference specifically caused him to be concerned about Williams' suitability for employment at the Authority, as Carlton felt that Williams would not be a team player or a good quality worker and thus, would probably not be a good candidate (T70-T71).

Carlton then decided not to hire Williams, based on the information he learned from two of Williams' employment references (T66, T71; J-2). Carlton wrote a memorandum to the file concerning his conversations with the people he spoke to at the three employers listed on Williams' application (T67; J2).

18. On Friday, November 7, 2003, Carner called Williams and left a message on his answering machine, asking Williams to call him (T17-T18). On the following Monday, November 10, 2003, Williams contacted Carner. Carner informed Williams that he was no longer being considered for the position. Carner explained that Carlton had made the decision, and that Williams should speak to Carlton. Williams called Carlton and left a message; Carlton returned the call later that afternoon (T18-T19, T65).

19. Carlton informed Williams that, upon review of his application, he was no longer being considered for the position. Williams asked if they were going to re-post the position and

whether he should reapply. Carlton responded that the Authority was not going to re-post the position; rather, it was going to work off of the other applications it had already received. Carlton never indicated to Williams that the decision not to hire him involved Williams' employment history and, in fact, Carlton never referred to Williams' employment history or to any particular employer listed on Williams' job application (CP-1; T18-T20, T24, T65).

20. On November 12, 2003, the Director of Representation issued a letter decision directing that the election be conducted by in-person voting on December 16, and that the cutoff date for voter eligibility would be November 6 (T57-T58).

Local 68 then filed this charge, and asked that the election be stayed until after the charge was litigated. On December 2, the Director denied that request, and on January 29, the Commission denied an application for a stay and denied review. Warren Cty. Pollution Control Financing Auth., P.E.R.C. No. 2004-43, 30 NJPER 28 (¶7 2004).

The election conducted on December 16 resulted in two votes cast in favor of Local 68 and two votes against representation, with one challenged ballot, cast by Williams. Subsequently, the Director determined that since Williams was not an Authority employee, he was ineligible to vote. The results of

the election were certified on February 17, 2004. Warren, D.R. No. 2004-10.

21. After the Authority told Williams that he would not be hired, Williams called Buzga at Buchanan and questioned him about the reference he had given to Carlton. He asked Buzga the date Carlton had called him and whether he told Carlton that he would have fired Williams, if he had not left voluntarily. Buzga confirmed to Williams that Carlton had solicited a reference, but denied telling Carlton that he considered firing Williams if he had not resigned (T115-T122).[4/]

12. After Williams was rejected as a candidate in November 2003, the Authority did not consider any candidates for the recycling laborer position until January 2004, when it advertised in the newspaper for candidates for the recycling laborer position. By the time of the hearing in this matter, the Authority interviewed 10 candidates for the position (T48-T49, T89).

ANALYSIS

In Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), the New Jersey Supreme Court set forth the

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4/ Williams' testimony about his conversation with Buzga merely confirms that Carlton checked Williams' employment reference with Buzga; it has no effect on Carlton's testimony about what he learned from his conversation with Buzga, which I credit. Williams' testimony does not undermine that, but merely confirms what Buzga told him.

standard for determining whether an employer's action violates 5.4a(3) of the Act. Under Bridgewater, no violation will be found unless the Charging Party has proven, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If an illegal motive has been proven and if the employer has not presented any evidence of a motive not illegal under our Act, or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the Charging Party has proved, on the record as a whole, that union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for the hearing examiner and Commission to resolve.

The decision on whether a Charging Party has proved hostility in such cases is based upon consideration of all the evidence, including that offered by the employer, as well as the credibility determinations and inferences drawn by the hearing examiner. Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987).

Local 68 argues that it has established a prima facie case under Bridgewater. First, it asserts that it has proven the first two Bridgewater elements in that Williams engaged in protected activity and the Authority knew of it. It claims that William's relationship with Local 68 shop steward Cy Boan and unit employees Bubba Williams amounts to protected activity and the Authority knew of this activity. Further, it asserts the Authority was hostile towards Williams' protected rights. Specifically, Local 68 claims that the Authority would have assumed that Boan and Williams would be pro-union, since Boan was the shop steward and Bubba Williams had recently arbitrated a grievance. Local 68 claims that, given Williams' relationship with these two pro-union employees, the Authority perceived that, if Williams was hired and eligible to vote, he would support Local 68 in the representation election. Therefore, to avoid this risk, the employer promptly ended Williams candidacy. According to Local 68, this demonstrates hostility towards Williams.

Local 68 further claims that the Authority demonstrated hostility towards protected rights by virtue of the positions it took in the decertification proceeding. Specifically, the Authority claimed at the Commission conference regarding the decertification petition, that it did not want to violate the petitioner's rights by delaying the election to wait for a candidate to fill the vacancy. On the other hand, the Authority urged a mail ballot election procedure rather than the speedier on-site election. According to Local 68, these conflicting positions by the employer demonstrate support for the decertification effort and thus hostility towards Local 68.

I disagree with Local 68's assertions. First, I do not find the Charging Party has met its burden under Bridgewater, as it has not established the first Bridgewater element - that Robert Williams engaged in protected activity. I simply do not find that Williams' relationships with Boan and Bubba Williams constitutes protected activity. First, Williams' acquaintance with Boan took place 17 years earlier and simply involved the happenstance of Boan taking her car to a service station where Williams then worked. Under these circumstances, I do not find that this attenuated, casual contact somehow constitutes protected activity.

Further, as to Williams relationship with Bubba Williams, the record shows that the two simply knew each other, as

candidate Williams listed Bubba Williams as a personal reference on his application. There is no evidence that they discussed the union or engaged in protected activity.

Moreover, there is no evidence to support Local 68's claims that the Authority knew Williams, if hired, would have voted in favor of Local 68. Simply being acquainted with persons who are engaged in union activities is not enough to demonstrate protected activity. Further, there is no evidence to support Local's 68's speculation that Williams would have voted in favor of union representation. Indeed, in Local 68's exhibit CP-2, the Charging Party stated that there was no way to predict how the new employee, presumably Williams, would vote.

In addition, I do not find hostility with regard to the Authority's positions in the decertification proceeding. The Authority's position that it did not want to delay the decertification election by waiting some indeterminate period of time for a fifth unit member to begin employment while, on the other hand, requesting a mail ballot election, does not lead to the conclusion that the Authority had a hostile intent.

Finally, I find that even if the Charging Party had established its prima facie case under Bridgewater, the Authority showed it had a legitimate business justification for not hiring Williams. The Authority decided not to hire Williams, based on the information Carlton learned from two of Williams' prior

employers. Specifically, Carlton learned from Arrow and Buchanan that Williams had disagreements with his supervisors which ended with him leaving their employ. Carlton believed this to be an indication of the type of employee Williams might be, and Carlton developed a very negative feeling about Williams' candidacy because of it. He was particularly concerned after he spoke to Bob Buzga at Buchanan, concluding that Williams probably would not be a "good candidate, a team player, or a good quality worker."

Local 68, however, claims the Authority's business justification for not hiring Williams is a sham. It asserts that the real reason he was not hired was because it did not want him to vote in the election, as it perceived him to be pro-union.

Local 68 points out that Carlton had no intention of checking Williams' references before hiring him, until Local 68's November 4, 2003 submission to the Commission, CP-2, asserting that the new hire should be eligible to vote. It further notes that the Authority had no regular practice regarding checking references and that Carlton had no interest in getting reliable information about Williams.

I disagree. There are no facts showing anything other than Carlton's reason for not hiring Williams was due to the negative information he received from two of Williams prior employers. Moreover, I do not agree that Carlton had no interest

in obtaining reliable information. In fact, given that the two preceding laborers had to be removed from the position because of false information on their employment applications, Carlton had every reason to aggressively check Williams' employment record. The record shows Carlton identified himself to both employers and described the purpose of his call. Further, he had no reason to doubt the information provided by the Arrow employee or Buzga at Buchanan.

Moreover, I do not believe the timing of Carlton's employment reference check on Williams - after the Union's November 4 submission, CP-2 - somehow makes it illegitimate. According to Carlton, he decided to conduct the employment reference check on Williams, after learning Carner had failed to do. Carlton viewed this as a deficiency in the hiring process, particularly, in light of the events with the last two hires. Although the Authority has no written practice nor procedure on checking employment references, Carlton's practice was to do so and he expected the supervisors below him to follow his practice.

Based on the above, I find that the Authority did not unlawfully terminate Williams' candidacy for employment and therefore, I find that the Authority did not violate 5.4a(3), and derivatively, a(1) of the Act.

CONCLUSION OF LAW

The Authority did not violate 5.4 a(3) or derivatively, a(1) of the Act.

RECOMMENDATION

I recommend the Commission ORDER that the Complaint be dismissed.

Susan Wood Osborn
Hearing Examiner

Dated: October 25, 2004

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by November 9, 2004.