

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

In the Matter of

TOWNSHIP OF NORTH BERGEN,

Respondent,

-and-

Docket No. CO-2010-033

TEAMSTERS LOCAL 701,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss in part a Complaint alleging that the Township of North Bergen violated 5.4a(1), (2) and (3) of the Act when it allegedly threatened to privatize EMS operations and fire the EMTs, solicited employees to send letters seeking to revoke their authorization cards submitted in support of Local 701's card check certification, polled employees as to their union sentiments, and reduced the hours of work of union supporters. She did not credit witness testimony that the Chief threatened to privatize and fire all EMTs if the organizing effort was successful. The Hearing Examiner determined that the EMTs acted independently, not at management's direction, in withdrawing their support for Local 701. Also, she found that the EMTs were misled by the organizer to believe that there would be an election. Neither the statements of the organizer nor the cards themselves sufficiently informed EMTs of the card check procedure; the EMTs assumed there would be an election like the last time Local 701 tried unsuccessfully to organize them in 2004. Further, she rejected Local 701's assertions that the Township illegally polled employee sentiment. Finally, the record did not support that the Township reduced the hours of work of union supports since the timing of events mitigated against this conclusion and those who submitted letters seeking to revoke their support of Local 701 also had their hours of work reduced.

The Hearing Examiner, however, recommends that the Commission find that the Township independently violated 5.4a(1) by packing the eligibility list of non-supervisory employees with individuals they knew or should have known were supervisors,

namely the Chief, Deputy Chiefs and Captain. She did not find that this violation warranted a Gissel order since the conduct was not egregious enough to prevent a free and fair election. Also, Local 701 participated in the same conduct by insisting on the inclusion of its organizer, a supervisory employee, in the unit. The Hearing Examiner recommends that the Commission order the Director to remove the names of the five supervisory employees from the eligibility list submitted for the mail ballot election, including the organizer who is also a supervisor.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair 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.

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Appearances:

For the Respondent,  
Weiner Lesniak, attorneys  
(Mark A. Tabakin, of counsel)

For the Charging Party,  
Mets Schiro and McGovern, LLP  
(Brian Manetta, of counsel)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On July 24, 2009, Teamsters Local 701 (Charging Party or Local 701) filed an unfair practice charge against the Township of North Bergen (Respondent or Township) alleging that the Township violated 5.4a(1), (2) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq<sup>1/</sup>.

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<sup>1/</sup> These provisions 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (3) Discriminating in regard to hire or tenure of employment or any term or (continued...)

Local 701 alleges that the Township was openly hostile to its efforts to organize by card check certification all full-time and regular part-time emergency medical technicians (EMTs) employed by the Township.

Local 701 specifically contends that the Township packed the list of employees submitted during the investigatory phase of the representation proceeding by including employees ineligible for representation, thus inflating the number of cards necessary for card check certification and stalling the investigatory process in order to defeat the certification effort. It also contends that the Township (1) threatened to terminate all employees and hire an outside company to perform emergency medical services, (2) questioned employees about their support for Local 701, (3) created a list of union supporters, (4) prepared form letters for employees to revoke their authorization cards, and (5) rewarded employees who opposed the union with preferred shifts<sup>2/</sup> while reducing the work hours of union supporters. These actions, it asserts, violated the Act and made it impossible for Local 701 to achieve representation. The charge was accompanied by affidavits

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1/ (...continued)  
condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

2/ On the first day of hearing, Charging Party withdrew its allegation that Respondent gave more hours or preferred shifts to reward those opposed to Local 701 (1T139).

in support of Local 701's request to block the election ordered by the Director of Representation on July 14, 2009 in D.R. No. 2010-3, 35 NJPER 244 (§88 2009), aff'd P.E.R.C. No. 2010-37, 35 NJPER 435 (§143 2009). Local 701, therefore, requests as a remedy that the Township be ordered to recognize it as the majority representative of all non-supervisory emergency medical technicians employed by the Township and to negotiate with Local 701 over terms and conditions of employment.

On August 5, 2009, a Complaint and Notice of Hearing issued (C-1)<sup>3/</sup>.

On August 11, 2009, in response to the blocking request accompanying the charge and in order to obtain the employees' current representational intent and to preserve that intent, the Director ordered a mail ballot election conducted among non-supervisory EMTs employed by the Township. He also ordered the ballots impounded to allow for the disposition of the unfair practice hearing in the matter before me. D.R. No. 2010-5, 35 NJPER 312 (§107 2009). The Commission eventually upheld that procedure. Consequently, ballots were mailed to eligible voters on August 14, 2009. Ballots were collected and impounded on September 11, 2009.

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<sup>3/</sup> "C" refers to Commission exhibits received into evidence at the hearing. "CP" and "R" refer to Charging Party's and Respondent's exhibits respectively.

On August 18, 2009, Respondent filed its Answer (C-2). It generally denies that it was hostile to Local 701's organizing efforts but admits that it objected to certification by card check and requested a secret ballot election. It also denies that EMT Gendalie Santiago compiled a list of employees who supported the Charging Party or that the Township prepared letters for the employees to sign withdrawing their authorization cards. It further denies that it treated employees preferentially or retaliated against Local 701 supporters. Respondent raises various affirmative defenses.

At the pre-hearing conference on September 2, 2009, I granted the parties' mutual request to sequester witnesses. Each side was entitled to one resource person who could also be a witness. Local 701 Recording Secretary Ron Lake and EMS Chief Frank Travisano were Charging Party's and Respondent's resource persons, respectively, and were present throughout the hearing in this matter (1T8).

Hearings were held on October 20, November 5 and 12, and December 9, 2009 at which the parties examined witnesses and presented documentary evidence<sup>4/</sup>. After extension requests were granted, briefs and replies were filed by February 17, 2010. Based on the record, I make the following:

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<sup>4/</sup> Transcript references to hearing dates are "1T" through "4T" respectively.

**FINDINGS OF FACT**

**Background**

1. The Township of North Bergen and Teamsters Local 701 are public employer and public employee representative, respectively, within the meaning of the Act (1T12).

2. Although its Emergency Medical Technicians (EMTs) are not currently organized, the Township has a unionized workforce, including police, fire, public works and parks/recreation employees (3T63).

3. The Township's Emergency Medical Service (EMS) responds to all "911" emergencies within the Township and provides mutual aid to surrounding communities (2T6). All EMTs employed by the Township work part-time. The maximum number of hours they are permitted to work per week are 24 hours which is the equivalent of two 12-hour shifts. EMTs are not guaranteed a minimum number of hours of work per week (4T137). In any given 12-hour shift there are two ambulances with two EMTs per ambulance (4T141).

4. At the top of the EMS hierarchy is Director Richard Censullo who heads both the Township's EMS operations and the Department of Health (2T33). His office is located in the Department of Health building near the municipal building on Kennedy Boulevard. He is rarely in the EMS building on Granton Avenue (2T11, 2T33, 3T154).

Under Censullo in the EMS hierarchy is Chief Frank Travisano who holds a part-time position and has been chief since 2002. For the past 22 years, Travisano has also worked full-time at McCabe Ambulance in Bayonne (3T106). He oversees the Township's daily EMS operations. Travisano has an office in EMS headquarters (4T61). The Township stipulates that Travisano is a supervisory employee (3T206).

Under Travisano are Deputy Chiefs Elvia Lopez<sup>5/</sup> and Rosemberg Martinez as well as Captain David Prina, Lieutenant Robert Morano, and Supervisor Steven Job (2T88-2T90).

5. Steven Job has been employed by the Township since 2002. He has worked, however, as an unpaid volunteer EMT with the Township since 1989 (2T87). Although Censullo appointed him to the title of EMT supervisor in 2002 or 2003, Job has never taken a civil service examination for the position (2T86).

Job works approximately 24 hours per week or 48 hours in a two-week pay period (2T87). When he is on duty, he oversees operations at the scene of an emergency making sure that patients get transported to the hospital correctly and reporting any equipment failure to Deputy Chief Martinez. In the event of a

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<sup>5/</sup> Lopez is no longer employed by the Township, but was employed in 2008 and transferred from EMS headquarters to the Department of Health around March/April 2009 where she continued her EMS responsibilities. She was terminated sometime thereafter, unrelated to this case (3T168-3T169, 3T172).



large scale incident, such as a hazmat scene or large-scale motor vehicle accident, he is in charge of the operation until, or if, a higher-level supervisor arrives on the scene to take charge (3T85, 3T107). Job receives \$1.00 more per hour than other EMTs for his extra supervisory duties (3T108).

The 2008-2009 Local 701 Organizing Effort

6. According to Job, discussions about organizing a union began in December of 2008 among himself and four EMTs - Gendalie Santiago, Heatherlee Bailey, Thomas Collins and Hector Rodriguez (2T91). Initially, Job explains, Santiago, Bailey and Collins approached Job because they wanted better wages and overtime and knew that he was experienced with organizing a union having done so in 2004 (2T92, 2T129, 3T12).

7. I take administrative notice that, historically, on June 23, 2004, Local 701 filed a petition with the Commission seeking to represent all regularly employed EMTs and other EMS personnel employed by the Township of North Bergen. A mail ballot election was conducted and on September 23, 2004, the Director of Representation issued a Certification of Results indicating that a majority of the valid ballots was not cast for Local 701.

8. Steven Job was the primary organizer for Local 701's unsuccessful effort to organize the EMTs in 2004 (3T92). Job admits that as a result of the unsuccessful organizational effort

in 2004, no one was terminated or retaliated against by the Township (3T61)<sup>6/</sup>.

9. Gendalie Santiago refutes Job's testimony regarding her role in the 2008-2009 organizing effort.

Santiago has worked as an EMT for eight years riding on the ambulances to emergency calls (4T5). As of October 2008, her duties changed. Instead of riding the ambulance during her shifts, she was moved into headquarters to assist then Deputy Chief Lopez and Chief Travisano as a result of problems with Lopez who was responsible for scheduling. Santiago began doing payroll and run sheets which are ambulance call reports sent to the billing department to generate money for the EMS services (3T143-3T145, 3T153). Although she is not Travisano's secretary, she works closely with him (3T199, 4T6). She does not, however, work closely with Director Censullo who is only in EMS headquarters a couple times a month and has conversations with him perhaps every two or three months (3T200, 4T62).

The change in Santiago's duties as of October 2008 was not a promotion. Indeed, most EMTs don't like the work because it is a headache; most like riding the ambulances (3T200). Santiago

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<sup>6/</sup> Job testified unconvincingly that someone from the Township possibly told EMTs in 2004 that they would lose their jobs through privatization (3T62). I do not credit this testimony which was vague and unsubstantiated by direct knowledge. It has no probative value.

herself still goes out on ambulance runs approximately once a week (4T6, 4T61). She basically works Monday through Friday 4.5 hours per day when she is in the office, but on days that she is needed on the ambulances, she does not come into the office (4T61).

Santiago denies that she was one of the original organizers with Bailey, Collins, Rodriguez and Job or that she had discussions with this group about unionization in December 2008 as Job testified (4T12-4T13). She specifically denies approaching Job with Tom Collins to ask Job about organizing nor did she ask any EMT to sign authorization cards or give them cards (4T13-4T15, 4T98).

Santiago explains that sometime in the fall of 2008, Job approached her telling her that he was looking to start up the union again (4T9). Job told her she was one of the first EMTs that he approached to sign an authorization card (4T63). Santiago indicated that, at this time, there were problems with then Deputy Chief Elvia Lopez, especially in regard to scheduling and the call reports. According to Santiago, Job told her in response to complaints about Elvia Lopez that "[i]f we had a union we wouldn't be going through what we go through here" (4T99, 4T103-4T104)<sup>2/</sup>. So, Santiago signed the card, in part, to

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<sup>2/</sup> Job specifically denies that anyone approached him initially  
(continued...)

get rid of Lopez (4T16, 4T65-4T66, 4T99, 4T104). Job also told her that the EMTs could get benefits and full-time positions like the police (4T18, 4T101). I credit Santiago's testimony as to her role in the organizing effort and as to what Job told her in regard to Local 701.

10. Bailey, Collins, and Rodriguez did not testify to corroborate Job's claims as to Santiago. I do not, therefore, credit him in this regard, namely that Santiago approached Job with them to begin the organizing effort. There is no dispute, however, that Job took the initiative to begin an organizing effort because he had experience from the 2004 union campaign. He did so on his own initiative and at the request of several EMTs. Whether the 2008 effort began because Job was approached by Bailey, Collins and Rodriguez who expressed to him that they wanted better wages and benefits or because Job knew there was dissatisfaction with a particular supervisor - e.g. Deputy Chief Lopez, Job took the lead in organizing the EMTs and began the effort.

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1/ (...continued)  
because they were dissatisfied with Deputy Chief Elvia Lopez (2T129). However, his testimony does not contradict Santiago's testimony in this regard. She describes Job commenting on complaints he overheard concerning Lopez. That does not mean that any EMT approached him to organize because of the Lopez complaints.

However, I find that Santiago was not part of the original group and had her own motives for signing the authorization card, in part because of dissatisfaction with Deputy Chief Lopez. I also credit her testimony that Job told her the EMTs could get better benefits like the police. This statement is consistent with promises made during organizing campaigns in order to persuade employees to support unionization. Whether negotiations result in better wages and benefits or not, unions seek to accomplish this goal. It would not be unusual for an organizer to make such statements. Job admits that he told the EMTs that if the organizing effort was successful, Local 701 officials would meet with them and negotiate on their behalf for better wages, hours of work and overtime (2T98, 2T129). His testimony is consistent with Santiago's.

11. In December 2008, Job contacted Local 701 President Ernie Soehl and Local 701 Recording Secretary Ron Lake about organizing the EMTs. Lake committed to mail Job authorization cards for a card check certification. Lake also explained the card check certification procedure, telling Job that he would need to collect authorization cards from a majority of the employees in the unit being organized in order to be certified as the majority representative by card check with no election (1T31-1T32, 1T34, 2T93).

I take administrative notice that on July 19, 2005, subsequent to the Local 701's 2004 mail-ballot election, the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to authorize the Commission to certify a majority representative where (a) a majority of employees in an appropriate unit who have signed authorization cards designating that organization as their negotiations representative; and (b) no other employee representative seeks to represent those employees. N.J.A.C. 19:11-2.6(b). This new procedure is known as certification by card check.

12. After Job's call, Lake mailed him authorization cards as promised (CP-1; 1T34). The cards were titled "Authorization for Representation Under the National Labor Relations Act." Each card was addressed to the Township and stated that the undersigned employee authorized Local 701 "to represent me in negotiations for better wages, hours and working conditions." The cards contained spaces for the employee's name, address, e-mail, phone, job classification/department, and shift as well as a signature line (CP-1). The back side of the card recited employee rights under the National Labor Relations Act (NLRA) (1T78).

13. Job sent Lake a list of EMTs that he felt were eligible for representation by Local 701 in the petitioned for unit of non-supervisory EMTs. Job got the list of active EMTs from the

master telephone list posted by the Township on the bulletin board in the EMS headquarters. This list is used when employees call in sick and need to be replaced on their shifts (CP-2, CP-4; 1T39). The list consisted of 40 EMTs with their telephone numbers and dates of hire (CP-2).

Among the 40 employees listed were Deputy Chiefs Elvia Lopez and Rosenberg Martinez as well as Captain Dave Prina. These three were also listed separately at the bottom of the phone list among seven employees together with Director Censullo, Chief Travisano, Supervisor Steve Job and Lieutenant Robert Morano. Censullo, Travisano, Lopez, Martinez and Prina were not considered by Local 701 to be eligible for representation in the non-supervisory unit because they appeared to be supervisory employees. Local 701 felt they had the authority to hire, fire or discipline other EMTs (CP-2; 1T37-1T38, 1T88-1T89).

It is unclear from the record whether Lieutenant Robert Morano was considered by Local 701 to be eligible for representation in the Local 701 unit, but Job, at least, felt that he (Morano) was a non-supervisory employee and, thus, eligible for representation (1T37, 1T89). Job felt that Morano was only promoted to the lieutenant title because he wanted more money and Travisano could only get him more money by promoting him. Job considers Morano to have less supervisory status than he does because Morano has less seniority (2T143-2T144, 3T7-3T8).

Although Job's official title was EMT supervisor, he does not consider himself to be a supervisory employee because he thinks he cannot hire, fire or discipline other EMTs, but feels that other EMTs view him as a supervisor (CP-2; 2T85-2T86, 3T10-3T11, 3T85-3T86). However, Job concedes that he can recommend that an EMT be hired or fired (2T85-2T86, 3T85-3T86). According to Local 701, Job's supervisory responsibilities consist of being the lead EMT when he arrives on the scene until someone of higher authority shows (1T89).

Chief Travisano recognizes that Job cannot hire or fire EMTs, but agrees with Job that he can recommend these actions. In addition, Travisano indicated that Job can recommend discipline. For instance, if Job observes an EMT doing something wrong, he can send them home (3T164-3T165). Travisano provided no specific examples to support that Job can recommend discipline, but Job did not rebut Travisano's testimony. Consequently, I find that Job has the authority to recommend that EMTs be hired, fired and disciplined and is, therefore, a supervisor within the meaning of the Act.

14. After receiving the authorization cards (CP-1) from Lake, Job began disseminating the cards among the EMTs during his work shifts<sup>8/</sup>. He did not approach all EMTs on the master

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<sup>8/</sup> Job testified that Santiago and Collins also distributed  
(continued...)



telephone list, namely those he perceived would not be supportive and who might sabotage the organizing effort. Among those Job did not approach were Director Censullo, Chief Travisano, Deputy Chiefs Lopez and Martinez, Lieutenant Morano, and EMTs Alex Robayo, Samanta Giannaros and Yves Saad (2T127-2T128, 2T135). Job knew Robayo was a friend of Elvia Lopez. Job did not give Saad a card because he worked with Travisano at McCabe Ambulance Service, although Job was comfortable giving cards to Belinda Orta and Christina Camacho who also worked at McCabe because he knew they were supportive of the unionization effort (23T137).

15. Of those EMTs Job approached, he explained that the cards had to be filled out correctly, then handed back to him and that he would return them to Local 701 (2T96, 2T101, 2T132-2T134). The employees wanted to know what would be the next step after the cards were returned (2T96). Job said he explained to them that by signing the card it was a vote and there would be no election (2T97, 2T145). Job denies threatening any employee, harassing or misleading them into signing the cards by promising them any particular benefits, such as full-time

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8/ (...continued)

authorization cards (3T13). Collins did not testify and Santiago denied disseminating cards (4T14-4T15). I cannot find this as a fact and do not credit Job's testimony in this regard. It is not credible, in particular, that if Job had given Santiago authorization cards to disseminate, he would need to approach Santiago separately to get her signature on a card. [See Fact No. 17 below].

positions and benefits (2T98, 2T146-2T149). Job said he told the employees that if the organizing effort was successful, Local 701 officials would meet with them and negotiate on their behalf for better wages, hours of work and overtime (2T98, 2T129).

16. Only two EMTs that Job approached to sign cards testified in this hearing - Anna Gruber who was called on behalf of Local 701 and Gendalie Santiago who was called by the Township. Neither witness corroborates that Job told employees that the card was a vote and that there would be no election.

Gruber holds several positions. She is a part-time EMT employed by the Township for the last three years as well as a special police officer employed by the Edgewater Police Department and a part-time student at Bergen Community College (2T6-2T7, 2T70). As an EMT, she works two 12-hour shifts per week on Tuesday and Saturday or occasionally on Friday (2T35).

Gruber explained that she obtained an authorization card from Steve Job who called her and asked if she was interested in signing a card (2T14-2T15). She had done some research on unionization and had no questions for Job who handed her the card and told her it would authorize the Local 701 to come in as bargaining agent and negotiate on behalf of the EMTs (2T15-2T16). Gruber described Job's demeanor as casual/relaxed and not coercive. According to Gruber, Job did not mislead her nor did

she observe Job tricking or misleading other employees to sign the authorization card (2T16-2T17).

On cross examination the following exchange occurred:

Q. How did you know that if the union garnered enough support through authorization cards that an election would not be necessary? How did you know that?

A. I don't recall.

Q. You didn't know that, did you? You still don't know that sitting here now, do you?

A. I know that.

Q. You do now?

A. Yes.

Q. Who told you now?

A. No one - no one told me. It's just information that - that I know.

Q. How did you get that information?

A. I don't know. (2T71-2T72)

In reviewing the authorization card (CP-1) on redirect, Gruber testified that the card does not say that there will be an election, and it was then that she knew there would not be an election (2T75).

Her testimony does not support a finding that Job told her that signing the card would amount to a vote and that there would be no election. Her testimony on cross was too vague to be credible on how she knew there would be no election. To credit Gruber's redirect testimony would require me to infer that because the authorization card did not state there would be an election, she assumed no election was needed. I cannot draw that inference. I find, rather, that Job handed her the card and told

her that the card authorized Local 701 to act as the bargaining agent for EMTs and not, as Job testified, that signing the card would be a vote and require no election.

Gruber also testified that she saw Job provide authorization cards to other employees and described Job's interaction with these employees as very casual and light hearted (2T16). This testimony only supports that Gruber observed Job's demeanor. It does not support that she heard what Job told those employees when he approached them to sign a card. Nor can I tell from her testimony how many employee interactions Gruber observed. Her testimony in this regard does not refute allegations that other EMTs were misled by Job when asked to sign authorization cards.

17. Santiago testified that Job sent her a text message stating that he had a card for her to fill out. Job then continued texting her asking where she was and telling her he needed her to sign the card; she felt rushed and harassed to sign it (4T19-4T20, 4T33). He then stopped by her office with the card (4T17).

Santiago stated that Job didn't explain the card or tell her that there would be no election nor did he suggest that she read it. He told her that it was just like the last time. She assumed that meant like the 2004 organizing effort, when cards were signed and then there was an election (4T17-4T18, 4T98). Job told her that signing the card simply meant that Local 701

officials would meet with the Township or EMTs and negotiate (4T19). In this regard, her testimony matches Gruber's (2T15-2T16).

According to Santiago, Job then handed her the card and she signed it and gave it right back (4T19, 4T64). Santiago signed the card because Job "made it sound good" - e.g. Job told her the EMTs could get benefits and full-time pensions like the police - and because "[i]t's Steve, our supervisor" (4T18, 4T31, 4T64-4T65, 4T101). Afterwards, Santiago felt, that Job was not truthful in his representations about Local 701 and that she was pressured and rushed into signing the card. She admits that she did no research on the issue of unionization before she signed the card (4T18-4T19, 4T64, 4T75). I credit Santiago's testimony.

18. Neither Gruber's nor Santiago's testimony supports that Job told them that signing the authorization card was a vote and or that the card would be used in lieu of an election. Since no other EMT testified to corroborate Job's testimony, I cannot find that Job told the EMTs that the authorization card was a vote and would result in no election, especially since he told Santiago that it would be like the last time, and she assumed that meant in 2004 when there was an election after cards were signed.

#### EMT Conversations with Travisano

19. During this period of time while cards were being collected, several EMTs approached Travisano both before and

after the February 20, 2009 posting of the Notice to Employees about the union organizing effort, although most of the EMTs came to him before the posting of the Notice to Employees.

Specifically, Heather Bailey, Christina Camacho, Belinda Orta, Emiliano Rios, and Tom Collins approached Travisano complaining about the manner in which the union organizing effort was being conducted, namely that the EMTs thought there would be a vote to determine whether they wanted Local 701 to represent them (3T108-3T109, 3T114). Each of these individuals subsequently sent letters to Local 701 seeking to revoke their authorization cards because, among other reasons, they were misled by the organizer (CP-16 through CP-24).

Specifically, Christina Camacho told Travisano that Job misled her when she signed the authorization card because she believed there would be a vote (3T109). Bailey told Travisano that she was upset that Job approached her and that she was going to have to pay dues (3T110). Rios told Travisano that he was against unionization and asked him if there was anyway he could not be part of the union if Local 701 came in. Rios explained that he was confused about what was going on, was unhappy with the organizing effort, and specifically with the way Job presented the union (3T113). Travisano told Rios that he believed that if the EMTs were organized he would have to be a part of the unit (3T157, 3T180).

Orta complained that she thought there would be a vote (3T112). Travisano told her that he thought there was going to be a vote, because initially he also thought there would be an election like in 2004 when EMTs signed showing of interest cards, and, after a period of time in which there were questions and answers, there was a vote. He suggested that she go talk to Gendalie Santiago because there were a lot of people complaining and he knew Santiago was going "crazy" about the union (3T112, 3T139, 4T118).

20. Travisano spoke to Censullo after speaking to Orta telling him that some of the EMTs were complaining to him about the authorization cards and about being part of the union (3T156). Travisano told Censullo that he (Travisano) instructed the EMTs to "leave him out of it" (3T156). Censullo told Travisano that he was doing the right thing and to just go about his normal day-to-day activities and to stay out of the organizing effort (3T156). Censullo instructed Travisano to tell the EMTs that he (Travisano) could not discuss the unionization effort with them (3T156).

21. As a result of Censullo's instructions, Travisano, thereafter, told the EMTs that he was not the one to complain to and that he did not want to get involved in union discussions (3T109-3T110). Travisano unequivocally stated that he never threatened EMTs who approached him, in particular Gruber, Polo,

or Santiago, with repercussions if they signed authorization cards (3T118). Travisano also denied that Censullo ever directed him to retaliate against anyone for their union sympathies nor did he ever hear Censullo and Santiago discuss Local 701 (3T152)<sup>9/</sup>. I credit Travisano's testimony. Santiago and even Gruber confirm that Travisano never threatened them regarding the union (2T44, 4T49-4T50). Santiago also described a conversation where she complained about Job to Travisano who told her he did not want to get involved (3T146-3T148). Nor is there evidence in the record that Travisano retaliated against any EMT for supporting Local 701. [see discussion below under sub-heading "Reduction in Hours of Work for Local 701 Supporters"]

22. Travisano related a conversation with Collins who also works with Travisano at McCabe Ambulance. Collins told Travisano that he wanted to make sure that Travisano let Censullo know that he (Collins) was not backing the union, although he didn't tell Travisano why he wanted to share that information with Censullo. Travisano told Collins to talk to Censullo himself but did not

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<sup>9/</sup> Travisano recalls only one conversation between Censullo and Gendalie Santiago in December 2008 or January 2009. Elvia Lopez was also present and the conversation took place in Censullo's office regarding the switch of some duties from Lopez to Santiago (3T153). Travisano did not elaborate on what duties but presumably they had to do with the scheduling duties that Lopez was eventually relieved of and which duties were subsequently transferred to Deputy Chief Rosenberg Martinez.



know whether Collins followed that advise (3T156, 3T191-3T192). It is unclear from the record when this conversation took place, where or under what circumstances. It has no probative value.

23. Travisano, also, recalled a conversation he had with Santiago in March 2009. She complained about Job, telling Travisano that the EMTs were sorry they got involved in the organizing effort and were trying to get out of it (3T117). Santiago told him she did not think it was fair for part-time employees to pay union dues and questioned whether the union would be able to get the EMTs full-time status (3T146-3T147).

Travisano told her that the EMTs had to leave him out of the discussions because he was unfamiliar with what was going on, did not want to get involved and was too busy with his other duties (3T117, 3T148). Travisano is a part-time employee and works only 12 to 24 hours per week to accomplish the many tasks assigned to him (3T148). Santiago confirmed that Travisano told her to leave him out of any discussion about the union (4T88).

After Travisano's discussion with Santiago, he again spoke to Censullo who told Travisano that it appeared the EMTs were confused, but warned him again not to get involved in the discussions or to get the Township involved (3T161). Censullo told Travisano that the Township was "union friendly" which Travisano assumed meant the Township had good relations with its unions (3T161, 3T179).

I do not find as a fact that Censullo's statement establishes that the Township was "union friendly," only that Trivisano concluded from what Censullo stated that the Township had good relations with the unions and that he was instructed not to get involved in the Local 701 organizing campaign - to stay out of it. Santiago corroborates Trivisano's testimony regarding the Censullo instructions. She testified that Trivisano told her he could not get involved in the union campaign (4T88).

24. Based on these conversations both before and after the posting of the Notice to Employees, Trivisano concluded that the employees were confused about what was going on with the unionization effort (3T158). Trivisano, however, never spoke to Job about the union effort (3T150).

25. Unlike Trivisano who had concluded that the EMTs were confused by the organizing effort and based on his conversations with the EMTs, Job concluded that the employees were in favor of the organizing effort (2T100). He mailed the signed authorization cards to Local 701 (2T101).

The Tom Collins/Captain Prina Conversation

26. Sometime in February 2009, Captain Dave Prina also spoke to Trivisano. Prina telephoned Trivisano to ask him if he knew what was going on with the organizing effort because he (Prina) was a full-time firefighter in Harrison and president of the Harrison firefighters union, yet nobody had advised him about

the Local 701 organizational effort. Travisano told Prina that he didn't know anything either (3T72, 3T149). Travisano did not tell Prina to talk to anyone about the organizing effort; specifically, he did not instruct him to talk to Tom Collins or Hector Rodriguez (3T150).

27. Nevertheless, according to Job, sometime in February 2009, EMT Tom Collins called to tell Job that Prina was in the EMS building asking Collins and EMT Hector Rodriguez where the authorization cards came from, who received cards, and how many employees signed them (2T102-2T103). Collins did not indicate to Job that Prina was threatening or coercive when questioning them, but allegedly related to Job that Prina told them he was in the EMS building under orders from Director Censullo (2T103, 3T71). Job concluded from this statement that Censullo directed Prina to find out where the authorization cards came from (2T103).

Job was not privy to the conversation between Prina and Collins, and he never spoke to Prina about it but Job immediately called Ron Lake (3T69-3T70). Job told Lake what Collins told him about the Prina conversation (3T70). Although Lake testified in this hearing, he did not testify that Job spoke to him about the Collins/Prina conversation. Prina, Collins and Censullo did not testify.

28. I find based on the conversation between Travisano and Prina wherein Prina expressed concern that no one informed him

that the EMTs were organizing, that if Prina spoke to Collins and Rodriguez, he did so to elicit information about something he evidently felt he should have been apprised of in light of his position as a union president. Job confirmed that Collins never indicated that Prina was threatening or coercive during the conversation. Therefore, I find that this conversation was initiated by Prina only to get information.

Moreover, I do not find, based on the telephone conversation between Job and Collins, that Prina told Collins and Rodriguez that he was asking for information on behalf of Censullo. This testimony is, at best, triple hearsay as to what Prina told Collins that Censullo may have said to Prina. There is no residuum evidence on the record to support this testimony. Moreover, it is unclear from Job's recitation of the conversation with Collins in what context Prina may have made the statement, if any, regarding Censullo.

Nevertheless, based on what Collins told him, Job concluded that Prina was acting under direction of Censullo to elicit information about the Local 701 organizing effort. I find, however, there is no legal foundation for Job's conclusion since the conversation was relayed to Job second-hand and neither Collins nor Rodriguez testified to support Job's testimony in this regard. These witnesses could have been called to support Job's testimony regarding the telephone call. I draw the

opposite inference from Charging Party's failure to call them to corroborate Job's testimony. State v. Clawans, 38 N.J. 162 (1962).

#### Packing the List Issue

29. After receiving the cards from Job, on February 5, 2009, Local 701 filed a representation petition seeking certification by card check without an election. In its petition, Local 701 sought to represent a unit of all non-supervisory EMTs employed by the Township and estimated the number of unit employees as 40 EMTs based on the master telephone list Job sent Lake at the beginning of the organizing effort. Local 701 submitted authorization cards with the petition (CP-1).

30. I take administrative notice of the following:

On February 17, 2009, in response to the filing of the representation petition, the Director of Representation sent the Township's attorney a letter notifying the Township that a Petition for Card Check Certification was filed seeking to represent the group of employees described in the Petition, namely all non-supervisory EMTs employed by the Township. The Director requested, among other things, that the Township submit by February 24, 2009, an alphabetized list of employees in the unit described in the petition - e.g. non-supervisory EMTs -

together with their job classifications for the payroll period immediately preceding the date of the Director's letter (February 17, 2009).

The Director further explained that an informal investigatory conference was scheduled for March 4, 2009 to determine the scope of the appropriate unit for collective negotiations and ascertain whether there was any objection to certification based upon a check of the authorization cards.

Finally, the Director instructed the Township to post in places where notices are normally posted affecting the employees in the unit a Notice to Employees that was enclosed with his letter, and to insert the date of posting on each copy of the Notices. The Notice was to be posted for 10 days and the Township was to return an enclosed Certification of Posting immediately after posting.

31. On February 23, 2009, the Township provided an alphabetical listing of all active employees holding the job classification of EMT. The list included, what the Township described, as 62 employees in the EMT title and 1 employee (Steven Job) in the title EMT Supervisor (CP-3; 1T42-1T43). Among the 62 listed as active EMTs were Chief Travisano, Deputy Chiefs Lopez and Martinez, Captain Prina, and Lieutenant Morano although, unlike Job, their titles were not designated as supervisory. Subsequently, during the course of the hearing,

Respondent stipulated that Travisano was a supervisory employee (3T206).

In the letter accompanying its list of 63 total EMTs (including Job) and to address the apparent disparity between Local 701's list of 40 EMTs and the Township's list, the Township explained that the number of EMTs working in any given pay period fluctuates because EMTs work on a part-time basis and are not subject to a set schedule (CP-3).

Also, attached to its letter (CP-3), was the certification of posting asserting that on February 20, 2009, the Township had posted the notice to public employees that a representation petition had been filed by Local 701 (CP-3). The Notice stated in pertinent part that Local 701 had filed a Petition with the Commission requesting certification as the exclusive negotiations representative of all non-supervisory EMTs employed by the Township. It further stated that Local 701 claims that it submitted authorization cards from a majority of the unit employees and that no other organization sought to represent these employees. The Notice explained that Local 701 sought certification based upon a check of its authorization cards. Finally, the Notice advised that the matter was under investigation and that no determination had yet been made.

32. Lake and Job reviewed the Township's February 23 letter and employee list (CP-3). Job informed Lake that several of the

listed employees were terminated, on leaves of absence or were individuals that he (Job) could not identify. Job concedes, however, that the Township's list of EMTs could be different from the master telephone list posted in EMS headquarters which was used by Local 701 and Job to determine the extent of the petitioned-for unit (CP-2), and that it was possible that an EMT who was presently employed would not appear on the master telephone list (1T43, 2T141).

As a result of their review, on March 2, 2009, Local 701 wrote to the Commission staff agent who was processing the matter for the Director and objected to the Township's "packing the list to avoid a card check certification" (CP-4). Specifically, Local 701 identified 22 individuals on the Township's list that it could not identify or were terminated and/or quit (CP-4; 1T44-1T45).

33. In response, on March 26, 2009, the Township sent a revised list of 51 individuals it still maintained were active employees, removing some, but not all, of the individuals objected to by Local 701 in its March 2 letter (CP-4, CP-5; 1T46). Job was still on the Township's list of 51 employees but his name was delineated by an asterisk that explained he was a supervisor and should not be included in the proposed unit (CP-5). Travisano, Prina, Lopez and Martinez were also still on the Township's list but were not identified, like Job, as



supervisors by the Township, even though Local 701 felt that these four employees should be excluded from the unit as supervisory employees (1T49). Up to this point, however, Local 701 had not officially raised an objection to these four individuals in its March 2 letter (CP-4) to the Commission staff agent.

Finally, the Township attached a chart to its March 26 letter. The chart consisted of three columns. In the first column, the Township listed the 51 employees it considered eligible for representation in the petitioned-for unit with the exception of Job whose name was asterisked as a supervisor ineligible for the unit. In the next column, entitled "union list," the Township checked off the names of the 40 employees Local 701 originally maintained were active EMTs eligible for inclusion in its unit, namely the 40 employees Local 701 gleaned from the master telephone list sent by Job to Lake. In the last column, entitled "Submitted Card of Revocation," the Township checked off the names of 26 employees who had "submitted letters to the Union and/or PERC seeking to revoke their authorization cards (CP-5)."

Of the 26 employees who the Township asserted submitted revocation letters, 2 employees (Sabrina Fabara and Juan Zuloaga) were not checked off in the column entitled "union list," presumably because their names were not on the original master

telephone list (CP-2, CP-5). Of those who were checked off in the "union list" column who did not submit letters to revoke their authorization cards were Luis Alzate, Yeseni Berrios, Gruber, Job, Nathi Kijpatansilp, Louis Knoetig, Michael Negron, Wilbert Negron, Marcos Osorio, Daniel Polo, Prina, Alexis Rodriguez, Eva Solar, Jessica Toro, Vanessa Valdez, and Nicholas Vanadium.

Based on the 26 revocation letters, and because a number of employees claimed that their cards were obtained by undue means and misrepresentations, the Township objected to certification by card check and requested that the Director of Representation order a secret ballot election (CP-5).

34. At the hearing in this matter, Gruber reviewed CP-5, the Township's list of 51 EMTs it maintained were eligible for the proposed Local 701 unit (CP-5). She considered Travisano, Martinez, Prina, Morano and Job to be supervisors (2T31-2T32). Gruber explained she was disciplined by Prina when she briefly left EMS headquarters during her shift to speak to her sister. While she was outside, a "911" call came in for an ambulance. Prina sent her home after she returned from the call (2T10). Based on her unrebutted testimony, I find that Prina had the authority to discipline EMTs.

Deputy Chiefs are above the Captain in the EMS hierarchy and also possess the authority to discipline and/or recommend EMTs.

For instance, Deputy Chief Martinez testified that although he cannot hire or fire, he can recommend discipline, and he considers Travisano, himself, Prina, Morano and Job to be supervisors (4T156, 4T174). Gruber confirmed that Martinez signs written warnings (2T7-2T8). Travisano considered Lopez a supervisor, although he gave no specific examples of her authority to hire, fire, or discipline or to effectively recommend these actions (3T127).

Gruber considers Job to be a supervisor, although she has never been disciplined by him nor has he hired or fired anyone to her knowledge (2T31-2T32). I have previously found that Job is a supervisor within the meaning of the Act<sup>10/</sup>. [see fact no. 13]

35. Gruber also testified that when she reviewed the list of 51 employees, she felt that EMTs Campo, Fleming, Muniz and Tierney were not employed as of the March 26, 2009 date of CP-5 but admits that she is not in charge of processing payroll or of hiring and firing EMTs (2T23-2T24, 2T27, 2T29). There was no foundation for her knowledge. Therefore, I do not find that her anecdotal testimony establishes the employment status of these four employees as of March 26, 2009.

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<sup>10/</sup> Gruber does not consider Lieutenant Morano to be a supervisor (2T31). Her testimony in regard to the supervisory status of Morano is not persuasive since she gave no specific examples to support her conclusions and her testimony was uncorroborated.

Job similarly testified that in reviewing CP-5 he believed that several employees - Campo, Flemming, Muniz, Rivera, Garcia and Fuda - were not employed as of March 26, 2009 (2T122-2T125). He laid no foundation for his knowledge or beliefs as to their employment status since he, like Gruber, does not process payroll or hire or fire EMTs. Both he and Gruber are part-time employees and do not work every shift. I cannot find as a fact without knowing the basis for Job's beliefs that his assumptions were accurate. Indeed, based on subsequent explanations provided by the Township, it appears that many of these employees were on approved leaves of absence (R-2).

36. On April 10, 2009, Local 701 responded by letter (CP-6) to the Township's revised list of 51 employees. It objected to 14 employees on the list. Of the 14, 7 EMTs were previously challenged in CP-4, but 7 employees were challenged for the first time, including Travisano, Prina, Martinez and Lopez who Local 701 argued were supervisory (CP-6; 1T50).

37. Based on the April 10 letter, the Township agreed by letter of April 29, 2009 (R-2) to remove three individuals that, it conceded, were no longer employed by the Township - Campo, Muniz and Tierney. The Township provided additional information on five employees that were on leaves of absence (Rivera, Fuda, Farbara, Flemming and Garcia). The Township also responded to Local 701's claims that certain employees (Travisano, Lopez,

Martinez, Prina) were supervisors, stating that none had the ability to hire, fire or discipline or effectively recommend these actions. Finally, the Township reiterated its opposition to certification by card check in light of the letters seeking to revoke the authorization cards based on claims of misrepresentation and harassment (R-2; 1T97-1T98).

38. Job admits that the various lists being exchanged between the Township and Local 701 were evolving over time (2T139). He also stated it was possible that the Township's list would be different than the master telephone list (CP-2) initially used by Local 701 to ascertain the current EMTs, because there were individuals who work for the Township's EMS that were not on the list and also individuals who come back periodically to work as EMTs who had not worked for a period of time (2T140-2T141).

39. Neither Martinez nor Travisano prepared any of the lists submitted by the Township in the processing of Local 701's representation petition (3T197, 4T173). No one who prepared these lists or helped to prepare them testified in this hearing.

40. Eventually, when the Director of Representation ordered on July 14, 2009 that a mail ballot election be conducted as a result of the questions raised by the revocation of the authorization cards, D.R. 2010-3, 35 NJPER 244 (¶88 2009), the Township submitted an excelsior list containing the names of the

48 employees it maintained were eligible to participate in the mail ballot election (CP-7; 1T53). According to Local 701, the excelsior list still contained the names of supervisory employees it maintained were ineligible for inclusion in the petitioned-for unit, namely Travisano, Lopez, Martinez, Prina and Morano (CP-7; 1T53-1T54). Several names that Local 701 had objected to in its April 10 letter (CP-6), however, were removed in CP-7, namely Carolina Campo, Rafael Antonio Muniz and Michael Tierney (1T99-1T100). The list also contained Job's name, even though the Township had previously maintained that he was a supervisor (CP-5, CP-7).

#### Privatization Discussions Generally

41. A major concern during the organizing effort among the EMTs was whether the Township could or would privatize. The privatization issue is one that the Township explores every year during budget preparation that begins around March. These discussions were annual and on-going and particularly of concern in 2009 because of the privatization of EMS services in neighboring communities - Hackensack and West New York. For instance, VanGuard Ambulance was retained by Hackensack in 2009 to operate its ambulance services (3T115-3T116).

42. Each year around March when Travisano is preparing the budget for the next budget year beginning July 1, Censullo asks him about the benefit of bringing in an outside company to run

the Township's ambulance service, particularly whether it would be less expensive (3T120, 3T130, 3T186). In 2009, the discussion was a little different, because Hackensack had recently privatized its EMS, and the EMTs lost their jobs. West New York was also privatizing (3T125-3T126, 3T192-3T193). Therefore, Travisano felt the EMTs were concerned that it could happen in North Bergen (3T130).

As in previous years, in March 2009, during budget preparations, Travisano was asked to explore the possibility of privatizing and what the cost would be (3T117, 3T189). Travisano spoke to two companies - McCabe Ambulance and AmCare (3T127-3T128, 3T188). Generally, these discussions are in his office and usually behind closed doors although he does not always keep the doors closed (3T189). During this time, he recalls such closed-door discussions with Deputy Chiefs Martinez and Lopez and also Director Censullo (3T187). Other than Lopez and Martinez, as far as Travisano knows, these conversations with Censullo about privatizing were not overheard by anyone (3T125).

43. Lopez especially wanted to know what would happen to the EMTs jobs, and was particularly interested in West New York. Travisano told her that they would probably keep the supervisors depending on what type of privatization was decided upon (3T123-3T124, 3T126, 3T130, 3T190). There are 2 types of privatization - (1) an outside company is selected and brings its

own ambulances and runs the EMS system and (2) a company provides the EMT employees and uses the Township's equipment (3T124). In Travisano's experience, when an EMS system is privatized, the employees of the municipality are usually offered jobs because there is a shortage of EMTs, also the EMTs are familiar with the coverage area (3T124, 3T190).

44. Except for Censullo, Lopez and Martinez, the only time Travisano discussed privatization was when an employee approached him and even then, no one asked if the Township was going to privatize because of Local 701 (3T127). He never indicated to these employees that privatization was contingent on whether the union effort was successful or not (3T202). For instance, Travisano works with Tom Collins both in the Township and at McCabe Ambulance (3T126). Travisano recalls Collins asking him about the privatization issue but not in the context of the union organizing effort (3T126). It is unclear whether this discussion took place at McCabe or in the Township.

45. In addition to privatization, there was also discussion of regionalization with other municipalities (3T121). According to Travisano, the Township is very pro regionalization because the ambulances in the North Hudson area have a tendency to overlap their services in responding to emergencies (3T121). The feeling was that regionalization would provide better response times and require fewer crews and equipment which would result in



savings (3T122). Trivisano preferred regionalization to privatization (3T122).

In 2009, Trivisano had some discussions with Prina, Collins and Santiago about regionalization because at that time West New York was in turmoil. As a result, the Township was answering most of their emergency calls. They debated the pros and cons of regionalization versus privatization. Trivisano expressed his preference for regionalization because it would be more cost effective (3T122, 3T129).

46. Santiago specifically recalled one discussion in 2005, but admits she was always raising these issues because she also works for a private ambulance service with contracts outside Hudson County (4T35). Lopez was often present during these discussions (4T36). No one approached Santiago after December 2008, however, to express a fear that if the union organizing effort was successful, the Township would privatize EMS nor did she hear rumors to that effect (4T36-4T37).

47. Deputy Chief Martinez recalls a conversation with Trivisano in 2006 about what would happen if the Township privatized EMS operations (4T126-4T127). Lopez was also in the office for that conversation (4T178). However, Martinez did not recall discussions after December 2008 among EMTs about privatization if the union were successful or that the EMTs would lose their jobs as a result (4T128, 4T131).

Travisano/Gruber/Polo Discussion about Privatization

48. It was during this February/March 2009 period, when a conversation took place in EMS headquarters between Travisano and EMTs Gruber and Polo. Gruber's and Travisano's versions of the conversation differ materially and are related below, together with my credibility determinations.

After the Township posted the "Notice to Employees" informing the EMTs of the representation petition filed by Local 701 (CP-3), Gruber was reading the posting with another EMT, Daniel Polo (2T11). It was a Saturday and Travisano was also on duty (2T12). Polo asked her what the posting meant, what would happen if he signed the card, and what would it do for the EMTs (2T12). Gruber explained that it would allow someone to negotiate for you and set terms of employment such as benefits (2T12).

At this point, according to Gruber, Chief Travisano observed the two talking (she doesn't know if he overheard their conversation or not), walked out of his office, interrupted their conversation, and, uninvited, allegedly stated to them:

. . . you're crazy to think that the town would go for it, that the town . . . wasn't going to stand for us being unionized, that the town already paid half a million plus dollars and salary and that they weren't going to pay more. And that we were silly to think that it would happen. And that nothing would stop the town from coming in, firing

all of us, and just brining in a transport company and paying them less (2T112-2T13).

According to Gruber, Travisano appeared agitated, not angry, and she believed that he was speaking for the Township (2T13).

Although Gruber acknowledged there were no rumors floating around about what would happen if the union came in, she repeated what Travisano had allegedly said to other EMTs (2T19). Gruber did not specify which EMTs she spoke to or what precisely she told them. Gruber felt that overall the EMTs, like John Longo, were indifferent to the organizing effort, but that most felt the Township was against Local 701's attempt to organize the EMTs and would not stand for it (2T17-2T19).

49. Travisano refuted Gruber's description of the conversation. He testified that sometime after the posting concerning the Local 701 organizational drive, he was approached in headquarters initially by Gruber. Then Polo came over (3T115-3T116, 3T181). Gruber allegedly asked him several questions, including whether the Township was thinking about privatization, what would happen if the Township privatized EMS and could they do it (3T116). Travisano told her that, of course, the Township "could" privatize at any time - there was no law against it, but explained when the issue was studied in the past, it was determined that the Township's EMS was more efficient than a private company in providing emergency services

(3T116, 3T181-3T182). Trivisano denied telling Gruber that if the union came in, the Township "would" privatize (3T181, 3T203).

50. Testimony as to whether Trivisano approached Gruber and Polo to discuss the union effort and privatization or whether Gruber invited Trivisano to join the discussion she was having with Polo is at equipoise. Their testimony on that limited point is equally credible. Neither called Polo to resolve that discrepancy. Both Trivisano and Gruber agree that a discussion took place in EMS headquarters sometime after the Notice to Employees was posted on February 20, 2009, and that Trivisano, Gruber and Polo were present. They also agree that the issue of privatization was discussed. However, as to whether the content or context of the discussion was as Gruber or Trivisano related is disputed.

I am mindful that Trivisano as the Township's resource person was present during Gruber's testimony. Local 701 asserts that this allowed Trivisano to tailor his testimony. For the foregoing reasons, however, I credit Trivisano's testimony that he did not tell Gruber that the Township would not tolerate the union and would fire all the EMTs. I reject the notion that Trivisano changed his testimony after hearing Gruber's description of the conversation. Being a resource person does not deprive a witness of the right to refute testimony he has heard, if his testimony is otherwise credible.

I do not discount the possibility that when Travisano told Gruber that the Township had studied the issue of privatization in the past, he mentioned the cost of EMT salaries - e.g. \$500,000. This would comport with Travisano's testimony that he did a cost-benefit analysis each budget cycle at the request of Censullo. Therefore, this could come up in a discussion of the cost of privatization versus operating emergency services in-house. Travisano explored this possibility each budget cycle and was familiar with the Township's concerns about cost containment. Even if Travisano, however, expressed his opinion that the Township would not pay EMTs more money because of the concern over cost containment, such an opinion does not substantiate that he told Gruber the Township would not tolerate the union and would fire all EMTs or that the union would lead to less profitability. I find that Gruber drew this conclusion on her own.

When Travisano told Gruber and Polo, in response to Gruber's questions, that the Township "could" privatize even in the presence of a union and eliminate their positions, Gruber concluded that the Township "would" fire the EMTs and privatize if the union was successful. This conclusion led her to misinterpret the conversation<sup>11/</sup>.

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<sup>11/</sup> Job testified that sometime in May 2009 Tom Collins told him  
(continued...)

Gruber admits that Travisano never discouraged her participation in the union organizing efforts, one way or the other (2T72-2T73). This testimony is inconsistent with her version of the conversation wherein Gruber states that Travisano told her and Polo that if Local 701 was successful in organizing the EMTs, they would all be fired. Her version implies that Travisano issued a threat. Certainly such a threat could be interpreted as "discouraging her participation in the union organizing effort," something Gruber denies that Travisano or even Censullo did.

In fact, other than the conversation with Travisano when she was with Polo, Gruber never had another conversation with Travisano about the organizing effort (2T73-2T74). She admits that Censullo never spoke to her directly or threatened her because she was participating in the organizing effort or promise her a benefit if she refused to support the union. She has no

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11/ (...continued)  
that he overheard Travisano talking or "threatening" to privatize EMS operations (3T75). Job did not know the circumstances under which the statements attributed to Travisano and allegedly overheard by Collins were made or to whom they were made (3T76). Without knowing the context of what Job states Collins overheard, I cannot give this testimony any weight. It has no probative value. Particularly, I do not find that this double hearsay supports Gruber's version of her conversation with Travisano. Also, Collins was not called to testify and clarify what he allegedly overheard Travisano say about privatization and to whom.

first hand knowledge one way or the other about Censullo's feelings regarding the union. Gruber herself never got in trouble because she signed an affidavit in support of the unfair practice charge (R-6) nor did her work schedule change nor were her hours reduced as a result of her affidavit (2T44-2T45).

Although I do not rely solely on demeanor, Travisano's demeanor during his testimony was calm and forthright. Gruber's description of him as being "agitated" during the conversation with her and Polo did not comport with my observations.

Additionally, in Gruber's affidavit in support of the charge (C-1; R-6), she describes the Travisano conversation as follows:

I was informed that if the Union was authorized to represent North Bergen EMTs, the Township may decide to fire all of its employees and hire an outside company to perform emergency medical services [C-1; R-6].

Gruber's affidavit prepared months before the hearing in this matter and closer in time to the events complained of, uses the term "may" not "would" to describe the possible actions the Township could take. Her affidavit supports Travisano's testimony that he told her and Polo that the Township could privatize at any time. She does not name Travisano as the source of this information and has no explanation in her testimony for failing to do so (2T49).

Gruber's affidavit also does not support that Travisano interrupted her conversation with Polo or that he stated that the

EMTs would be crazy to think that the Township would stand for them unionizing, and that he said nothing would stop the Township from firing the EMTs and bringing in a transport company and paying them less. Her affidavit lacks any of the details of her testimony. Omitting such details suggests to me that she revisited the import of Travisano's statements and embellished the content of his conversation. Those memories are not as reliable as contemporaneous writings, in this case her affidavit.

Finally, Local 701 did not call Polo to rebut Travisano's testimony and corroborate Gruber's. Generally, a party's failure to produce a witness where that witness' testimony would serve to elucidate the facts at issue - in this case the Travisano/Gruber conversation - "raises a natural inference that the party so failing fears exposure of those facts would be unfavorable to him." State v. Clawans, 38 N.J. 162, 170 (1962). The standards for determining when an adverse inference can be drawn against a party for failing to produce a witness are whether the witness is within the power of the party to produce and the testimony of that witness must be superior to that already produced with respect to the fact to be proved Id. at 170.

I am aware in a proceeding such as this, where there are allegations of employer intimidation and threats, such an inference must be cautiously drawn. Polo's testimony, however, is key to determining the tone, tenor and content of the conversation described by Gruber, especially since her testimony



was refuted by Travisano. Charging Party still bears the burden of proving its charge by a preponderance of the evidence. This conversation is key to proving Charging Party's assertion that management was hostile to and interfered with Local 701's efforts to organize the EMTs. Charging Party could have subpoenaed Polo. It didn't. Therefore, I draw an inference from Local 701's failure to call Polo to corroborate Gruber that Polo would not have refuted Travisano's testimony.

#### The Letters of Revocation

51. After Santiago signed her authorization card, she changed her mind about wanting to be represented by Local 701, because Job was not responding to her questions, specifically about how the union would get the EMTs full benefits, a pension and all the other things she says he promised (4T37). When she questioned him, Job explained that he would get back to her after he spoke to Local 701, but he never did get back to her with answers to her questions (4T37, 4T102).

52. Having received no response from Job, Santiago decided to do her own research about unions by "googling" the subject on the internet (4T37-4T38, 4T79). That is where she found the form letter to revoke an authorization card (CP-11), although she does not remember the exact web site (4T42). When she found CP-11 which was the template she used for her revocation letter, she changed a couple of things, specifically, by adding the name

Teamsters Local 701, printed it out, signed it and saved it in her documents (4T44, 4T80, 4T82)<sup>12/</sup>.

53. Santiago then sent CP-11, a letter dated February 27, 2009, to Local 701 President Ernie Soehl. The letter stated:

Effective immediately, I hereby revoke and rescind any authorization card that I may have signed seeking to have the Teamsters Local 701 represent me for purposes of collective bargaining with my employer.

You are now on notice that I do NOT want Teamsters Local 701 representation, and you may NOT count any card that I signed as evidence that I desire such representation. Please have the courtesy to immediately return to me, by mail, any card that I may have signed seeking or requesting Teamsters Local 701 representation.

Now that you are on notice of my revocation and rescission of any and all Teamsters Local 701 authorization cards, you must inform any "neutral" or other person or entity authorized to count authorization cards or conduct an election, including the NLRB, that my card is null and void, and that such card may NOT be considered as support for the Teamsters Local 701 in any "card check" process, any similar request for recognition, or an certification election.

Finally, this letter revoking my authorization for Teamsters Local 701 representation should be deemed to be irrevocable for one year from today's date.

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<sup>12/</sup> Santiago did not save the template letter on her personal computer at work or any computer in the EMS building (4T44). It is unclear from her testimony what she meant by saving it in her documents. I infer that she saved it to some personal computer site that she could access at home and at work.

Again, I ask you to give me the courtesy  
of a prompt written reply to this letter  
[CP-11].

Santiago told no one in management how she found the letter (4T44). She sent it to Local 701 in an envelope by regular mail (4T87).

54. Santiago denies that the Township offered her anything for withdrawing her authorization card, nor did she withdraw her card because she was afraid of losing her job (4T22, 4T30). Further, no one in management, particularly Censullo, provided any assistance to her in finding the revocation letter or offer to help her in this regard (4T38, 4T41).

55. In Santiago's opinion, Job himself started the rumor that she had sent a letter revoking her authorization card and the rumor caused other EMTs to seek her assistance with revoking their own cards (4T54). As a result, Santiago gave information about getting the letter off the internet to other EMTs if they asked her for it, but told them she had her own reasons for revoking her card, and suggested they do their own research on the internet (4T45, 4T54)<sup>13/</sup>.

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<sup>13/</sup> Local 701 argues that Santiago's testimony is inconsistent as to whether or not she told anyone about the website (Charging Party Brief at p. 9). I disagree. On direct, Santiago testified that when asked by other EMTs she gave them the web site and that she specifically told Bailey about it (4T39, 4T42). On cross, she clarified she told her friend Heather Bailey about the letter when she first found it and told others when they asked her about it (4T80-4T81). I observed that Santiago often answered questions literally

(continued...)

For instance, Heather Bailey asked Santiago for the information about revoking an authorization card (4T39, 4T80). Santiago gave her the web site she had used and told Bailey to do her own research (4T39). Santiago denies actually giving Bailey a copy of the form letter (4T39). Other EMTs - e.g. Belinda Orta, Christina Camacho, Ivette Triana, Ramon Garcia, Steven Farber, Jesse Garcia and Emigliano Rios - also came to Santiago for information about the form revocation letter, and, once again, she gave them the web site where she got her form letter and told them to do their own research (4T39, 4T45-4T46).

As a result, letters identical to Santiago's letter (CP-11) were sent by Bailey (CP-8), Triana (CP-9), Jesse Garcia (CP-10), Rios (CP-12), Ramon Garcia (CP-13), Orta (CP-14), and Farber (CP-15) to Teamsters Local 701 President Ernie Soehl. All the letters were dated February 27, 2009 and not copied to anyone with the exception of Farber's letter that was dated March 18, 2009 and copied to the Director of Representation and the Commission staff agent, and Jesse Garcia's letter that was dated March 5, 2009.

56. Some of these revocation letters were delivered individually, but seven or eight letters were received by Local 701 in one envelope with Santiago's name and return address

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13/ (...continued)  
and concluded that this was because English was her second language. I do not discredit her testimony in this regard nor do I find it unreliable or inconsistent.

(CP-29; 1T64, 1T66). Santiago denies that she sent the letters in the express mail envelope (CP-29) or that it is her handwriting on the envelope. She has no knowledge or explanation for why her name and address appear on CP-29 (4T48, 4T87). Moreover, Santiago sent her own letter separately and by regular mail (4T87).

I credit Santiago that she did not prepare the envelope or send it, but find that some of the letters were sent together in one envelope to Lake. I infer that Santiago's name and return address were inserted because, at this point in time, Santiago provided the information about where to find the template for the revocation letter used by the other EMTs.

57. Santiago denies discussing with other EMTs whether they were for or against the union, even when they came to ask her about the letter to revoke the authorization cards (4T53)<sup>14/</sup>. She told them to make up their own minds (4T54).

The EMTs kept copies of the revocation letters they sent, and when none of them were getting responses from Local 701,

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<sup>14/</sup> Santiago also denies telling Travisano that she had signed a card (4T31). This testimony seems at odds with Travisano's testimony wherein he indicated that Santiago came to him complaining about Job and that she wanted to get out of the union organizing situation (3T117). I observed, however, that English does not appear to be Santiago's first language and that she often answered questions literally. Whether she specifically told Travisano that she did or did not sign a card, I credit Travisano that Santiago complained to him about the union and Job and that she was against the union effort. He told her he did not want to get involved (3T117, 3T148).

Santiago asked for the copies from those who kept them so that she could have proof that they were sent (4T82). She asked them to give her copies because she also had not gotten a response from Local 701 and thought she would have to go to Censullo "to see what we could do about [the union organizing effort]" (4T55).

Santiago kept a list of EMTs who gave her copies of their letters (4T54). Santiago kept the list on notebook or scrap paper. She denies the list included those who were in favor of the union nor was she directed by Censullo to keep the list (4T54-4T56). As EMTs gave her a copy of their revocation letter, Santiago would cross their name off a list of all the EMTs (4T56). Although Santiago denies telling either Job or Gruber that she was keeping a list, Santiago was friendly with Heather Bailey outside of work and told her that she was keeping such a list (4T57-4T58).

58. Local 701 did not return the authorization cards as requested by CP-8 through CP-15. Although Lake reviewed the letters, he did not speak to the individuals because he felt the letters were of little value. According to Lake, authorization cards cannot be revoked once signed (1T105).

59. When Santiago got no response from Local 701 to her first letter (CP-11) seeking to revoke her authorization card, she sent a second letter (CP-19) dated March 13, 2009 to Local 701 President Soehl with a copy to the Director of Representation and the Commission staff agent. In this letter, for the first

time, Santiago indicated that she was misled into signing the authorization card (4T76). Santiago wrote:

This is a second request to Teamsters Local 701. Effective immediately, I hereby revoke and rescind any authorization card that I may have signed seeking to have the Teamsters Local 701 represent me for purposes of collective bargaining with the Township of North Bergen. You are now on notice that I do NOT want Teamsters Local 701 representation and you may NOT count any card that I signed as evidence that I desire such representation. Please have the courtesy to immediately return to me, by mail, any card that I may have signed seeking or requesting Teamsters Local 701 representation.

I was wrongly informed and promised a fulltime [sic] position as well as benefits and a pension by the organizer. Second, I was told that we will meet and discuss the pros and cons before any further action would be taken. I was pressured into it and told that we will be able to cast a vote. None of these actions were taken by the organizer and therefore I wish to revoke my authorization card. Now that you are on notice of my revocation and rescission of any and all Teamsters Local 701 authorization cards, you must inform any "neutral" or other person or entity authorized to count authorization cards or conduct an election, including the NLRB, that my card is null and void, and that such card may NOT be considered as support for the Teamsters Local 701 in any "card check" process, any similar request for recognition, or any certification election.

Finally, this letter revoking any authorization for Teamsters Local 701 representation should be deemed to be irrevocable for one year from today's date March 13, 2009. Again, I ask you to give me the courtesy of a prompt written reply to this letter [CP-19].

Santiago got CP-19 off of the same web site as CP-11 (4T107). She added the first four sentences in the second paragraph to the template letter (4T109-4T111). She saved the letter on her computer and then mailed it out (4T113).

60. Subsequently, letters identical to CP-19 and dated March 13, 2009 were sent to Soehl with a copy to the Director and Commission staff agent from Bailey, Triana, Jesse Garcia, Rios, Ramon Garcia, Denis Zhuravkov, Yudi Camacho and Cristina Camacho (CP-16 through 24). When these EMTs asked Santiago where to get the letter and what she added to the letter, she told them and e-mailed them a copy of the letter from her computer (4T110, 4T113-4T114). The record does not reflect whether the copy was e-mailed from her work or personal computer.

61. Four more letters dated March 13, 2009 were also sent to Soehl, by Ethan Rudnitsky, John Longo, Juan Zuloaga, and Rosemberg Martinez and copied to the Director of Representation and the Commission staff agent (CP-25 through CP-28). These letters were also identical to each other and stated:

I am writing to inform you that I have learned some of my co-workers have been obtaining signatures to have your union Teamsters Local 701 represent us. I was never informed by the organizer of such thing; it was kept anonymous from some of us.

I do not wish to be "represented" by your union Teamsters Local 701, I do not wish to be a member of your union, and do not support your union in any manner. Please consider my opposition to representation by your union to be permanent and continuing in nature.



I will also send a copy of this letter to my employer "Township of North Bergen" in addition to the State of New Jersey Public Employment Relations Commission.

Please be aware that refusing to honor my revocation and rescission will violate my rights under the National Labor Relations Act. Moreover, representing to my employer (or any third party or "arbitrator") that I support representation by your union will similarly violate my legal rights [CP-25 through CP-28].

According to Lake none of these employees signed authorization cards (1T63-1T64).

62. Longo, Rudnitski, and Zuloago did not testify, consequently I cannot find why they sent letters to revoke cards when they had not signed authorization cards. Martinez, however, testified and explained that he sent the March 13 letter to Local 701 and the Director because he was not sure what position Local 701 was going to take as to his inclusion in the unit. He wanted to make sure that he was not included or represented by Local 701 (CP-28; 4T163-4T164, 4T168). Martinez was never approached by Job or anyone to sign an authorization card, because, as in 2004, he was not a union supporter (2T128, 4T19, 4T129-4T130, 4T167).

Martinez asked and received the template for the letter from Santiago who gave him an internet web site for the letter. At her request, Martinez gave her a copy of his letter. Martinez knew she was keeping copies of the letters, but was never told why and he didn't ask her (4T133, 4T165).

63. Martinez heard discussions of the pros and cons of unionization among other EMTs, but kept out of those conversations unless he was asked his opinion (4T125-4T126, 4T161). Generally, his response when asked was that he didn't want a union for himself but suggested they make up their own minds (4T122-4T123, 4T161). He recalls one such conversation with EMT Farber (4T125-4T126, 4T161). He also remembers Santiago telling him that she was opposed to the union but does not recall his response to her (4T122, 4T162).

The only other conversation he specifically recalls about his union sentiments was with Censullo sometime in March or April 2009. Censullo asked him whether he knew anything about revocation letters and whether Martinez had signed one. Martinez told him he had sent a letter (4T165-4T166). Martinez testified that Censullo did not direct him to take part in an anti-union campaign or retaliate against those who had signed cards (4T129-4T130, 4T167). I credit Martinez's testimony.

64. Santiago also received no response from Local 701 or, presumably, the Director to her second letter (CP-19; 4T48). Because none of the EMTs got a response to either the February 27 or March 13 letters, Santiago did not know what else to do so she gave a copy of the letters (CP-8 through CP-24) and the list she was keeping of those who had sent letters to Censullo who told her he could not get involved; he refused to help Santiago or the other EMTs who were upset with Local 701 and wanted to withdraw

their cards (4T48-4T49, 4T73, 4T83, 4T87, 4T89). She did not go to Travisano with the letters because he told her previously that he couldn't get involved (R-1 at page 10; 4T49, 4T73, 4T88).

Job Reaction to Santiago's Revocation Letter

65. Job received a call from Local 701 in March 2009 informing him that Local 701 had received letters seeking to revoke authorization cards. As a result, Job sent Santiago text messages asking her why she revoked her authorization card (2T134)<sup>15/</sup>.

66. On March 3, 2009, Santiago received a text message from Job stating: "thank u 4 withdrawing from the union I hope u get wat they offer u and make sure it's in writing" (R-9). She retrieved a copy of the text from her cell phone. Santiago took this text as a threat, because Local 701 told Job that she had sent a letter revoking her authorization card (4T22).

67. On March 6, 2009, Santiago received another text message from Job: "yeah rite u wer the first 2 sign and I ws the only1 with the infor and the balls 2 do it then u screw me don't

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<sup>15/</sup> These texts were not provided to Local 701 during discovery despite its requests for documents to be used at the hearing (4T23). Santiago explained that when she purchased a new phone just before the hearing, she inserted a new sim card which caused her to review thousands of old text messages. Among the messages were R-9 and R-10 from Job which she turned over to the Township's attorneys (2T77-2T78). I admitted the text messages over the objection of Charging Party that it was prejudiced by the last minute production of these documents. Local 701 had the opportunity to cross examine and rebut her testimony.

4get my neck is the 1 on cutting block thanks" (R-10). This text was a response to her reply to the previous text although she does not remember what her reply to R-9 was and could not retrieve a copy of her reply from her cell phone (4T28, 4T77-4T78).

Santiago concluded when she got the second text that Job thought she screwed him by revoking her card. Although she does not know for sure what he meant by his neck being on the cutting block, Santiago thought Job felt that the EMTs were backing out after he tried to form the union like they did in 2004 when the EMTs voted not to be represented (4T29-4T30).

These text messages upset Santiago because she had known Job for years and thought he would be nicer (4T53, 4T76). She felt threatened by the second text because it just didn't sound like Job (4T53, 4T104-4T105).

68. Job does not deny sending the texts.<sup>16/</sup> He admits he felt his "neck was on the line" if the organizational effort failed. It did not make him look good to Local 701 and the union supporters (3T16). Job cared about their opinions because the

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16/ Job testified that he also sent texts to Bailey and Rios asking why they withdrew their authorization cards. He testified that Bailey responded that she was in fear of losing her job (3T14-3T15). This testimony is hearsay unsupported by any residuum of evidence on the record. Even if I credited that Bailey told him she was afraid of losing her job, that does not establish that management caused her to have this fear. The privatization issue was an on-going concern among employees.

success of the organizational effort, he felt, was a challenge to his character (3T17, 3T88).

69. In addition to the texts, Job testified that he approached Santiago sometime after the revocation letters were sent in March 2009 and wanted to know why she withdrew her authorization card (2T105, 2T139). Job relates that Santiago told him that she was afraid of losing her job if the Township outsourced the EMT work and that if that were done, only the supervisors would be kept on but everyone else would be let go (2T105, 2T107). Upon hearing this, Job was not certain whether she feared privatization and/or was genuinely opposed to the union (3T102-3T103).

Job testified that Santiago also told him that there were pre-typed downloadable letters on the internet and explained that she was collecting the letters and putting together a list for Censullo of anybody that wanted to withdraw their authorization cards (2T106, 2T138, 3T96). According to Job, Santiago told him that she was collecting the letters for management (3T27). Santiago also told him that she had gone to Censullo and told him that she wanted to withdraw from the union (3T97).

70. Santiago admits receiving Job's texts but, denies Job's claim that she had any conversation with him about withdrawing her card and, specifically, that she told Job she withdrew her card because she was in fear of losing her job, and that the supervisors would be kept on and all other staff would be removed

if the union was certified (2T105, 4T51, 4T53, 4T103). Santiago states that there was never a time when she felt that if she didn't sign the revocation letter that she'd be fired or disciplined, and she denies telling Job that she would be (4T50).

Santiago explained that she is not afraid of losing her Township position because she has two other jobs. Santiago also denies telling Job that he could get the letter from the internet, that she was collecting the letters and that she then showed him the letter on her computer (2T105-2T107, 4T52).

I credit Santiago that she did not tell Job that she was in fear of losing her job. She testified credibly that this was not her reason for seeking to revoke her card, namely that Job was not responding to her questions about the union and that Job misled her about there being no election.

Moreover, having received texts that she describes as upsetting and "unlike Steve," it is unlikely that they had the conversation as described by Job. I do not believe that Santiago would have shown Job where to get a letter on the internet and admit she was collecting the letters and making a list. What would be the point when Job was the lead organizer and was clearly angry over the attempts to withdraw cards he had actively collected. It is more likely that Santiago would have avoided having any face-to-face discussion with him regarding the union organizational drive that she now opposed and was actively working against.

Nevertheless, even if I credit that Santiago told Job that she was collecting the revocation letters and putting together a list of those seeking to withdraw their cards for Censullo, that does not mean that Censullo directed her to do so. Santiago credibly testified that her actions were the result, initially, of receiving no response to her questions about Local 701 from Job and that she collected the letters and gave them to Censullo only after Local 701 did not respond to requests to withdraw authorization cards. Santiago went to Censullo when she did not know what else to do. Censullo refused to help her.

Gruber/Santiago Conversation about Revocation Letters/Lists

71. At some point after she signed an authorization card, Gruber testified that Santiago called her into her office in the EMS building. Gruber described Santiago's work area as having two desks set up back to back with a computer on each desk (2T38). All EMTs have access to the computers for personal reasons such as doing homework, shopping, surfing the internet (2T38-2T39). Santiago allowed access to whichever computer she was not using (2T20, 2T39, 2T48).

Santiago asked Gruber whether she was for or against the union, although she never asked Gruber during this conversation to sign a letter to revoke her authorization card. According to Gruber, Santiago was sitting in front of her computer and Gruber was either sitting or standing directly to Santiago's left side with a view of the computer screen (2T20, 2T48)). Prior to this

time, although Gruber had spoken to other EMTs about the union, she had not spoken to Santiago because she and Santiago were not on friendly or even conversational terms (2T27).

According to Gruber, she asked Santiago why she wanted to know Gruber's opinion about the union and Santiago told Gruber that she was compiling a list at the request of Censullo and the Township attorney of EMTs who were for and against the union and she wanted to know what Gruber's position was (2T20-2T21, 2T38). Standing next to Santiago, Gruber saw a list of about 17 employees on Santiago's computer screen, glanced at it, saw a few names (the first being Carmen Negron), and assumed that this was the list Santiago was compiling, although Gruber does not know why the list she saw was actually being maintained (2T82-2T83).

Gruber refused to tell Santiago what her position was in regard to the union and indicated to Santiago that she had no right to ask her or any employee whether they supported the union (2T22). Gruber had done some computer research and knew it was unlawful for the Township or any supervisor to ask who was for or against the union (2T46). Because of her research, Gruber explained she did not name Santiago specifically as the individual who asked her about her union preference in the affidavit Gruber submitted in support of the unfair practice charge because she thought that Santiago could get into trouble for posing the question (2T46).



72. Santiago denies having this conversation with Gruber (4T93). Even if Gruber had come up to her and told Santiago that she wanted to sign a revocation letter, Santiago would not have put her name on the list nor would she have accepted a signed revocation letter from Gruber because she does not talk to Gruber and does not like Gruber personally (4T94, 4T96). Santiago agreed with Gruber that their mutual dislike predates the union organizing effort and, in fact, has nothing to do with that effort (4T105). For instance, even though she doesn't like Gruber, Santiago does like Job (4T97).

Santiago specifically refutes Gruber's testimony that she (Santiago) called Gruber into her office and asked her whether she (Gruber) was for or against the union or that she told Gruber she was compiling a list for Censullo and his attorney of who was for or against the union (2T20-2T21, 4T56-4T57). Santiago states she never compiled the list for Censullo or the Township attorneys or at their request and has no idea how Gruber knew there was a list (4T57, 4T59).

73. I find that the conversation with Santiago did not take place as described by Gruber. Although, Santiago was an active participant in opposing the organizing effort by getting the template for the revocation letter, providing assistance to other EMTs in retrieving the letter off the internet, collecting copies of the letters and making a list of those who gave her a copy of their letters, Santiago credibly testified that she gave a copy

of the letter to Bailey because they were friends outside of work and to other EMTs who approached her to ask about the revocation letter. It is unlikely, therefore, that Santiago would have gratuitously taken Gruber into her confidence and called Gruber into her office to have a conversation about the revocation effort when Gruber and she did not ordinarily speak and in fact actively disliked each other. Moreover, unlike the other EMTs, Gruber did not approach Santiago for a copy of the letter. Considering their frosty relationship, having a voluntary encounter as described by Gruber is improbable. I, therefore, credit Santiago that she did not have a conversation with Gruber about the letter or revoking her authorization card or keeping a list of union supporters. This is not information shared casually with someone that was actively disliked.

In addition, Gruber's explanation for why she did not specifically name Santiago in her affidavit as the person who quizzed her (Gruber) about her support for the union, because she thought Santiago would get into trouble, supports, if anything, that Santiago was acting on her own in compiling a list of employees and questioning EMTs. Certainly, if, as Gruber testified, Santiago told her she was acting on behalf of Censulo, Gruber's conclusion that Santiago could get into trouble is illogical.

Finally, if Gruber saw a random list of employees on Santiago's computer while the two were working in headquarters

and deduced that Santiago was maintaining a list for some nefarious or prohibited reason, Gruber's conclusions were not supported by the evidence on the record. Santiago was in charge of payroll and run reports. Having the names of EMTs on her work computer would be expected as part of her regular duties.

Nevertheless, Local 701 suggests that the Township's March 26 letter to PERC, attaching a list of employees who sent revocation letters (CP-5), corroborates Gruber's testimony that Santiago told her she was keeping a list of union supporters for Censullo. I disagree. Santiago testified that when she and the other EMTs got no response to either the February 27 or March 13 letters to Local 701 requesting to revoke their authorization cards, she took copies of all the letters to Censullo to see if he could do something about the EMT efforts to disassociate themselves from Local 701 (4T49, 4T73, 4T83, 4T87). Presumably, Censullo gave the letters to the Township's attorney who created the list attached to CP-5.

Additionally, Local 701 suggests that I credit Gruber because she was testifying against her economic interest, namely against her employer and simply had no reason to testify otherwise, while Santiago was testifying on behalf of the Township and had every reason to conform her testimony accordingly. However, Gruber was a union supporter. She had done research even before she signed an authorization card. She knew her rights. For instance, she knew that a supervisor cannot

poll employees as to their union preference. Presumably, Gruber also knew that just as her organizing activities were protected, so was her testimony in these proceedings. Gruber, in that regard, was not testifying against her economic interests. Similarly, although Santiago's testimony supports that she was working to revoke her authorization on her own and helping others, that does not mean that I should reject testimony that I find otherwise credible because it supports the Township's defense in this matter.

Reduction in Hours of Work for Local 701 Supporters<sup>17/</sup>

74. In support of its allegation that the Township retaliated against supporters of Local 701 by reducing their hours of work, Local 701 analyzed payroll records and introduced an exhibit (CP-30; R-4) consisting of a spreadsheet listing all EMTs and charting the hours that they worked over nine two-week pay periods beginning December 31, 2008 and ending May 5, 2009. Most of the letters seeking to revoke authorization cards were sent during the payroll period from February 25, 2009 through March 10, 2009 (CP-30; 1T71-1T72).

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<sup>17/</sup> In its answers to the Township's interrogatories, Local 701 claims that the only individual that was rewarded for sending a letter seeking to withdraw her authorization card was Gendalie Santiago (R-5; 1T135-1T136, 1T144). During the first day of hearing, Charging Party withdrew its allegation that Gendalie Santiago was rewarded for sending letters seeking to revoke their authorization cards by having her hours of work increased (R-5; 1T142). Therefore, there is no remaining allegation that any employee was rewarded for opposing the union organizing effort.

Payroll records from the period of December 2008 when the organization drive began through May 2009 reflect that, following the February 25-March 10 payroll period, five out of sixteen employees on Local 701's master telephone list who did not send letters seeking to revoke their authorization cards had their hours of work reduced. Specifically, Wilbert Negron had his hours reduced on average per pay period from 29.25 to 21.5; Michael Negron had his hours reduced from 36 to 19.75; Daniel Polo was reduced from 64.15 to 44 hours; Eva Solar was reduced from 35.90 to 24 hours; and Jessica Toro was reduced from 48.95 to 23.25 hours. On average the five lost 16.6 hours per pay period (CP-30; R-4; 1T73-1T76)<sup>18/</sup>.

The payroll records, however, do not indicate the reason that the hours were reduced. For instance, the records do not reveal whether the employees requested that their hours be changed, or whether they were originally scheduled for more hours and then swapped shifts (1T112). Neither Lake, Job, or anyone else on behalf of Charging Party spoke to these five employees whose hours were reduced to ascertain specifically whether they had requested or knew the reason for the change in hours

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<sup>18/</sup> Gruber testified that after she signed her affidavit in support of the unfair practice charge in this matter (C-1), there was "some fudging" with her schedule, but her schedule was corrected after she spoke to Martinez about it (2T45). I do not find that her testimony supports she was retaliated against for her union activity. The testimony was too vague and gave no basis for the alleged "fudging."

(1T111-1T112). Also, none of the employees whose hours were allegedly reduced because of their union support testified.

75. Additionally, seven employees who sent letters requesting that Local 701 revoke their authorization cards also had their hours reduced on average per pay period during this time frame before (December 2008 through March 10, 2009) and after (March 11, 2009 through May 5, 2009) they sent their letters. Bailey was reduced from 54.45 to 51.19; C. Camacho was reduced from 51.60 to 47.94; D. Camacho was reduced from 62.36 to 51.44; J. Garcia was reduced from 65.65 to 51 hours; Orta was reduced from 50.15 to 47.94; Rios was reduced from 54.10 to 51.19; and Zhuravkov was reduced from 42.70 to 34.81 hours. The average hours reduced per employee per pay period for this group was 6.4 hours (CP-30; R-4). None of these employees testified.

76. Gruber testified in support of the allegation that the Township retaliated against EMTs for their support of Local 701 by reducing their hours of work and giving those hours to those who opposed the union effort. Her testimony, however, did not support this allegation and has no probative value.

For instance, Gruber testified that Jesse Garcia told her that he was involuntarily removed from a Thursday night shift that he had worked for three years and that the shift was given to employees with less seniority, namely Orta, Christina Comacho, Bailey and Rios who had submitted letters of revocation (2T50-2T52, 2T64-2T65, 2T76). Garcia, however, like Orta,

Camacho, Bailey and Rios, had sent a letter seeking to revoke his authorization card (CP-10; 2T80). The Township would have no reason to retaliate against him for initially supporting the union by signing an authorization card since the Township had no knowledge of who signed authorization cards and, in any event, he withdrew that support like they did.

Also, Gruber admits that she is not privy to the calendars submitted by other employees as to their availability to work certain shifts or whether they asked to have their hours reduced or increased (2T60-2T61). She concedes that monthly shift schedules change frequently and changes are noted on the posted monthly schedule, copies of which she did keep the final monthly schedules with the changes (2T78). Additionally, Gruber knew that all EMTs' shifts were reduced because the State determined it was unlawful for EMTs to work 80 hours in a two-week pay period without benefits (2T52). Therefore, EMTs were told that they could only work a maximum of 48 hours per two-week pay period (2T52). This could also have been a reason for the change in hours.

I do not find based on Gruber's testimony as to Garcia that the Township retaliated against union supporters by reducing their hours of work<sup>19/</sup>.

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19/ On cross examination, Gruber admitted that in her affidavit (R-6) wherein she stated that individuals who refused to sign cards or who asked to revoke cards received more hours, it was only true as to Prina (2T61-2T64). Since Prina, as  
(continued...)

77. Job himself did not have his hours of work reduced or receive less favorable shifts because he supported Local 701 (3T31-3T32). However, sometime in May 2009, he was approached by Wilbert Negrón and Mike Negrón who told him that their shifts were changed and hours were cut (3T34-3T35). They did not tell Job that their hours were cut because they refused to revoke their authorization cards, but, according to Job, they told him they believed their shifts were changed because of the union. They did not, however, specify that they were approached or threatened in any way (3T37, 3T41).

Job acknowledges that both Negróns work for the Hudson County Sheriff's Office and their shifts change as a result of complications arising from their work which might affect their ability to work a particular shift with the Township (3T50-3T51). Job did not do an independent investigation to verify the Negróns' claim (3T38). These two were the only ones who came to him about reduced hours (3T43-3T44).

78. Job has never done scheduling so he has no idea whether there might be some other reason for the decrease in hours of the five individuals identified by Local 701's analysis (Michael Negrón, Daniel Polo, Wilbert Negrón, Eva Solar, Jessica Toro)

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19/ (...continued)

captain, holds a different position than other EMTs it is not a comparable situation. Moreover, Gruber knew that Prina was president of his firefighter's union, but had no knowledge as to whether he was for or against the organizing effort because they never spoke about it (2T52).



(R-5; 3T45). Other than the Negrons who allegedly told Job that they "believed" their union activities contributed to a reduction in their hours, Job has no independent knowledge to support the reason for the reduction in hours for any of the individuals (3T46). Job admits that he does not know whether any of them swapped shifts, were sick or had other job related issues (3T46). None of these individuals testified.

Job admits that many EMTs who signed letters to revoke their authorization cards also had their hours of work reduced between January and June 2009. Indeed, he explains that Deputy Chief Lopez reduced everyone's hours because the Township ordered that no EMT was to get more than 48 hours per pay period (3T58). Despite this, Job assumed that the reductions were a result of the union effort and never spoke to those in charge of scheduling, including Deputy Chief Martinez who took over scheduling mid-March, who Job has known for eight years and works closely with, and who Job is not afraid to approach.

Job denies that he was ever interrogated about the union or where the authorization cards came from and states that, with the exception of the two Negrons who allegedly told him they believed their schedule change was the result of their union activities, he is unaware of any one else who "was threatened or harassed or coerced because of their union activity" (3T72-3T73).

Job's testimony does not support that the Negrons' hours were reduced because of their union activity. Neither Negron

testified at this hearing to corroborate Job's testimony regarding what they allegedly told him was their belief that their hours were cut because of their union activities or to explain the basis for that belief. Therefore, I do not find that the reason their shifts were changed was because of their union support nor do I draw any inferences from the change in shifts.

I also do not find support from Job's or Gruber's testimony that the other three - Polo, Toro, and Solar - had their hours reduced because they signed authorization cards or did not submit letters to revoke the card. They did not testify nor did former Deputy Chief Lopez testify. She was responsible for scheduling the five during the February/March pay periods when the revocation letters were sent to Local 701 and eventually given to the Township. Moreover, schedules for a month are made out during the previous month. Schedules for February and March 2009 would have been prepared by Lopez mid-January and mid-February 2009 before the first letters of revocation were sent to Local 701 on February 27, 2009. Martinez took over the scheduling from Lopez beginning in April 2009. Although he began the scheduling for April in mid-March, he gave plausible explanations for the changes in hours from the time that he was responsible for scheduling, explanations that are not tied to union activity.

79. Deputy Chief Rosemberg Martinez has worked as an EMT for the Township for 10 years and was promoted to his current position in 2007. He is in charge of scheduling among other

duties (4T117-4T118). Martinez started doing EMT scheduling between the 15<sup>th</sup> and 20<sup>th</sup> of March 2009 for the April schedule (4T157). He took over the responsibility from Elvia Lopez who had already prepared the March 2009 schedule<sup>20/</sup>, so he had no idea of Lopez' views of Local 701's effort or what her conversations might have been with the Negrons, Solar, Toro, or Polo about the union or any reduction in the employees' hours for March (3T135, 4T136, 4T157-4T160). Monthly calendars are scheduled from the first to the end of the month, so the first schedule he prepared was for April 2009 (4T158).

80. Travisano gave Martinez on-the-job training (4T136-4T137). When Martinez began his training, he had no idea how many shifts each EMT normally worked or what those shifts were (4T137). He and Travisano reviewed the schedules and realized that Lopez had made numerous mistakes because the maximum hours per employee (24 hours per week) was not being implemented (3T136). As a result, adjustments were made in new schedules to maintain the maximum permissible hours which caused a decrease in some schedules (3T136). According Travisano, this issue was separate from the organizing effort and was a problem that existed before he was aware of Local 701's efforts (3T136).

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20/ Sometime in March 2009 Lopez was transferred to the Department of Health Building until a decision was made on her termination. She was still responsible for preparing run-sheets (3T127, 3T135-3T136, 3T203),

81. Travisano told Martinez all EMTs are part-time and are not guaranteed a minimum number of hour per week. However, the maximum number of hours permitted in any week is 24 hours or two shifts. Each shift is 12 hours. In any given shift there are two ambulances with two EMTs per ambulance (4T137-4T138, 4T141). Each EMT decides the shift they prefer to work. What might be a preferred shift for one EMT is not for another (4T138). There is no less favorable shift (4T138).

82. Each month a blank copy of the monthly calendar is printed and by the 15<sup>th</sup> of each month, EMTs put down their shift availability and preferences on the calendar (4T138-4T139). Those who have a preference for a set schedule each week, like Monday and Friday each week, usually because of their primary job schedules, get a priority when Martinez is making out the monthly calendar because it is easier to schedule that person for the same days each month (4T140-4T141). For instance, some EMTs have been working the same days for the past two or three years (4T140). Job works a rotating shift at Jersey City Medical Center that gives him the same two or three days off every other week, thus he has a permanent shift schedule (4T133).

83. If a number of EMTs pick the same shifts to work, those who have a set schedule have preference (4T141). Next, preference is given based on seniority (4T141). Usually every month, there are 8 to 12 spots to fill because no one picks them (4T153). In that instance, Martinez sends out a page through the

computer's recall system for anyone's availability to work those shifts (4T153).

84. If an EMT does not fill in his/her availability on the monthly calendar, he/she will get whatever is available in that particular month and can accept or decline the assignment (4T142).

85. It takes Martinez between six and eight hours to prepare a monthly schedule (4T142). However, schedules change every day based on calling out sick or mandatory overtime in their primary jobs (4T142). Correction officers and police or sheriff's officers, such as Wilbert Negrón, Michael Negrón and Hector Rodríguez, fall into this latter category (4T142-4T143).

86. If someone calls out, they must first look for a replacement (4T144). If they can't find anyone, then Martinez would have to find a replacement for that shift (4T143-4T144). As with filling shifts no one picks, he finds replacements for call outs through the computer's recall system (4T143). Shift assignments through this system are on a first-come-first-served basis (4T143).

87. If the EMT who call's out cannot find a replacement, it's considered an absence (4T145). If a replacement is found, however, no absence will be recorded (4T145). EMTs can also swap shifts (4T145).

88. Martinez does not know whether Wilbert Negrón, Michael Negrón, Daniel Polo, Eva Solar, or Jessica Toro signed

authorization cards or whether they did or did not submit letters to revoke their authorization cards (4T146). He denies taking any action against them because of their union sentiments such as changing their shifts (4T146-4T147, 4T149).

89. Martinez also denies that Censullo or Travisano directed him to change the shift of Michael Negrón (4T148). Martinez explains that Michael Negrón often changed his schedule because he is a sheriff's officer which is his primary job (4T149). Moreover, Michael Negrón never complained to Martinez about his hours being reduced (4T154).

90. Martinez recalls that Polo's shift changed in April 2009 because he had several classes to attend that month (4T150). Polo once complained to Martinez that his hours were reduced, but Martinez explained to him that he could not give any EMT more than 24 hours per week (4T154). Polo never suggested to him that his hours were reduced because of union activity (4T154).

91. Martinez denies that Censullo or Travisano directed him to change the shift of Wilbert Negrón, but does not recall the reason his hours were reduced in April or May 2009 compared to March 2009 (4T151). Wilbert Negrón never complained about his hours being reduced (4T155).

92. Martinez recalls that Solar's hours were reduced between March and May 2009 because she did not submit her availability on the monthly calendars (4T151). Solar preferred not to give her availability because she only likes to work with

certain EMTs and doesn't want Martinez to assign her partner. She gets more flexibility in choosing her partners by taking whatever is leftover on the shift assignments for the month (4T152). She also never complained to him about her hours being reduced (4T155).

93. Martinez recalls that in March and April Toro forgot to give him her availability so he did not put her name on the monthly schedules (4T153). Toro never complained about her hours being reduced (4T154).

### **ANALYSIS**

Local 701 alleges that the Township violated 5.4a(1), (2) and (3) of the Act when it took actions through its supervisory employees and through one of the EMTs to thwart the organizing effort. Specifically, Local 701 asserts that Chief Travisano threatened two EMTs (Gruber and Polo) during a conversation that the Township would privatize its operations and fire the EMTs if the union organizational effort was successful; that Captain Prina interrogated two EMTs (Collins and Rodriguez) on behalf of Director Censullo about the origin and signing of the authorization cards; that Censullo ordered EMT Santiago to poll other EMTs about their union support and to organize an anti-union campaign among EMTs to revoke their authorization cards; that the Township reduced the hours of work of five EMTs (the Negrons, Toro, Polo and Solar) who signed authorization cards and refused to revoke them; and that the Township "packed the list"

of eligible employees submitted during the processing of Local 701's card check petition to delay certification in order to promote its anti-union campaign.

Based on the record, I find that the Township did not threaten to privatize its operations during the union organizing campaign, poll employees or enlist the assistance of EMT Santiago to solicit letters to revoke the authorization cards. I recommend dismissing the Complaint as to these allegations. I find, however, that the Township packed the list of what should have been eligible non-supervisory employees with employees it knew or should have known were supervisors, and that this action violated 5.4a(1) of the Act. I do not find that this violation warrants a bargaining order remedy under Gissel. Packing the list was not egregious nor did it prevent a free and fair election and, in any event, Local 701 acted the same way by insisting that a supervisory employee (its organizer Steven Job) was eligible.

#### The Privatization Issue

Local 701 asserts that during one conversation between Chief Travisano and EMTs Gruber and Polo, Travisano threatened privatization and loss of jobs in the event that Local 701 was successful in organizing the employees. These statements, it contends, violates 5.4a(1), specifically employees' rights to form, join and assist any employee organization freely and without fear of penalty or reprisal under 5.3 of the Act.



An employer independently violates 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Motive is not necessary to prove a violation under this provision. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73 5 NJPER 550 (¶10285 1979).

The matter before me implicates employer speech during an organizing campaign and the right of the employer to comment on union efforts with employees. In Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission considered the implications of employer speech, regarding two letters written by a principal and the superintendent critical of an Association vice-president's comments at a meeting to discuss the resignation of a teacher he was representing. The Commission determined that writing the letters was not a per se violation of the Act. The Commission wrote in pertinent part:

A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal Id. at 503.

Here, the issue of employer free speech arises in the context of a representational campaign and, more specifically, in the context of a petition for certification by card check, a relatively new procedure under our Act. It is appropriate to look to federal precedent as a guide, in particular employer free speech rights in the private sector. Lullo v. IAFF, 55 N.J. 409 (1970); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secy's, 78 N.J. 1 (1978). An important case in this regard is NLRB v. Gissel Packing Company, 395 U.S. 575, 71 LRRM 2481 (1969).

There the Supreme Court considered four consolidated cases addressing, among other things, the right of employers to discuss union organizing efforts with employees. The Court noted in pertinent part that:

[A]n employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board. Thus, §8(c) (29 U.S.C. §158(c)) merely implements the First Amendment by requiring that the expression of "any views, argument, or opinion" shall not be "evidence of an unfair labor practice, "so long as such expression contains "no threat of reprisal or force or promise of benefit" in violation of §8(a)(1). Id. at 617.

Section 8(a)(1) mirrors subsection 5.4a(1) of our Act. The Court further explained that:

\* \* \* \*

. . . . an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the

communications do not contain a "threat of reprisal or force or promise of benefit." He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. [citation omitted] If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. . . . [A]n employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control," and not "threats of economic reprisal to be taken solely on his own volition." [citation omitted] Id. at 618-619.

Citing Wassau Steel Corp. v. NLRB, 377 F.2d 369, 372, 65 LRRM 2001 (C.A. 7<sup>th</sup> Cir. 1967), the Court further opined that the employer should avoid "brinkmanship" or conscious overstatements he has reason to believe will mislead his employees.

The Court then applied the standards above to the specific facts of one of the consolidated cases (Sinclair Company). The Court considered statements of the Company's President during a union's organizational drive. The Company had experienced a long strike in 1952. After a three-month shutdown, the Company reopened without a union contract, and the employees remained

unrepresented until 1965 when IBT Local 404 began an organizing campaign. Upon learning of the union's drive, the President spoke to all the employees to dissuade them from joining the union, emphasizing the results of the 1952 strike which he claimed almost put the company out of business. He then reminded the employees that they were forgetting the lessons of the past; that the company was still on thin ice financially; that the union's only weapon was to strike; that a strike could lead to plant closing; and that because of the employees' ages they might not easily find new employment. Finally, he suggested that for those who did not believe that the plant could go out of business they should look at other plants in the area. These statements were followed up by letters and a pamphlet reiterating the same comments and specifically referring to the union as a "strike happy outfit."

The Court determined that the intended and understood import of the President's communications was not to predict that unionization would inevitably cause the plant to close but to threaten to throw employees out of work regardless of the economic realities, because the employer had no support for its conclusions that the union would have to strike to be heard or that other plants in the area had closed because of unionization. The communications were not protected speech and violated the NLRA.

Based on Gissel and subsequent cases, the question before me is whether Travisano's statements to Gruber and Polo represented a threat and, thus, violated the Act. While Charging Party accurately summarizes the facts and legal holdings of Gissel and other federal cases, I agree with Respondent that those cases are not controlling based on the facts before me.

For instance, in Brenner Glass, 209 NLRB 686, 86 LRRM (¶1189 1974), a violation was found where, during an organizing campaign, a supervisor stated that the owner would close the plant before he would "pay that kind of salary," a direct threat. In Parke Coal Co., 219 NLRB 546, 89 LRRM (¶1708 1975), a violation was found based on the implied threat that if the union was successful, the employer did not know how long he could operate. These cases are not controlling because the facts here do not support either a direct or implied threat that if employees exercised their right to organize, operations would cease and jobs would be lost.

I specifically found that Local 701 did not prove by a preponderance of the evidence that Travisano approached Gruber and Polo and began a conversation about privatization. Travisano's and Gruber's testimony in this regard was in equipoise, and since Polo was not called to testify, Charging Party has not established by a preponderance of the evidence that Travisano's comments were unsolicited. I also did not find, as Gruber testified, that Travisano told her and Polo that the

Township would not stand for the EMTs organizing and would fire them all. Without a doubt, as Local 701 argued, such a statement would be a direct threat under the legal precedent cited and would interfere with employee organizational rights.

Rather, I credited Travisano that the conversation took place in front of the Notice of Posting on the EMS bulletin board and that Travisano responded to questions posed to him about whether the Township could privatize, what would happen if it did. He answered accurately that the Township could privatize its operations whether there was a union or not and jobs might be lost, but that, in the past, the Township had not done so because it was not advantageous from a cost-benefit perspective. He did not further state, or even suggest, that unionization would inevitably lead to privatizing nor could his statements be construed as "brinkmanship" or conscious overstatement that would cause Gruber to conclude that whether or not economic factors dictate, the Township would privatize because the EMTs organized. Travisano's statements cannot be construed as a prognostication of Township action. Under Gissel and related cases, his comments were protected by the First Amendment as permissible speech.

There is no doubt, however, that Gruber concluded from Travisano's statements that the Township would privatize if the union organized the EMTs. There is no objective basis for her conclusions; they were not justified by Travisano's response, yet she, not he, shared her interpretation of his comments with

other EMTs. Her actions in communicating what she interpreted cannot be imputed to the Township as a threat to employee organizational rights.

The circumstances here are very close to those set out in Atlantic Cty. Utilities Auth., P.E.R.C. No. 94-97, 20 NJPER 195 (¶25091 1994). There, the Commission, affirming a Hearing Examiner's recommendation, found no violation based on statements made by the employer's representatives during an organizing campaign. An organizational drive had begun in the fall of 1992. A year before there had been an unsuccessful attempt to organize the blue-collar workers. At an October 1992 meeting of employees and supervisors, the Authority President discussed the budget. As in this matter, the Authority annually reviewed its operations and considered the cost and benefits of subcontracting various portions of its operations.

During the meeting, employees raised concerns about a particular manager and their working conditions. One particular employee complained about the manager stating that if the manager was not such a problem, the employees wouldn't need a union. The Authority President responded that they didn't need any "outside help." The Authority President also announced at this meeting that there would be no privatization of operations in 1993 and added that the Authority was "95% to 99% sure that it would not be privatizing any of its operations." Atlantic Cty. Util., H.E. No. 94-15, 20 NJPER 119, 121 (¶25064 1994).

Another meeting was conducted in November 1992 by Director of Solid Waste Management Lefke with Authority drivers to discuss the budget and, among other issues, privatization. Lefke stated as to privatization that the Authority was exploring budgetary options including privatization. The Hearing Examiner found that Lefke made no predictions and made no reference to privatization as to any particular group of employees or any particular employees Id. at 119.

Then, at a meeting of employees and supervisors on February 2, 1993, three days before the election, the Authority President voiced an opinion that the employees did not need a union and in response to a question about who would take away benefits if the union was successful, the Authority President stated that the Authority would. The Hearing Examiner found this statement was non-coercive and a statement of the Authority's bargaining position if the union should win. He explained that not all statements about non-profitability are unlawful. "An employer does not threaten his employees merely by discussing with them the possible pitfalls which may result from collective bargaining" Id. at 124.

Charging Party argues that Atlantic County is distinguishable because Travisano, it asserts, informed Gruber and Polo that the Township would privatize if the union was successful. This argument is not viable, because I did not credit that Travisano made the statements attributed to him by



Gruber. The fact that Travisano may have in previous years or on other occasions discussed the issue of privatization with EMTs and did so again in 2008/2009 does not in and of itself convert his conversations to threats under the cases discussed above.

See generally, New Jersey Dept. of Human Services, P.E.R.C. No. 88-8, 13 NJPER 642 (¶18242 1987) (Speech unlawfully coercive where supervisor stated he was fed up with "union crap" in front of one employee and told a grievant to back off or there would be trouble); Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986) (college administrator letter to faculty generally urging them to vote against union did not constitute unlawful interference without threat or promise of benefits); Cf. Atlantic City Conv/Visitors Ctr Auth., D.R. No. 2002-9, 28 NJPER 170 (¶33061 2002) (election blocked where union established nexus between promised bonuses and raises if unit employees agreed to decertify); Sea Breeze Health Care Center, 331 NLRB 149, 168 LRRM 1418 (2000) (employer's "union truth quiz" during election campaign with 17 anti-union questions and prize of \$1427.60 for completing quiz to employees' favorite charity violated NLRA).

Based on the totality of the circumstances, there is no violation attached to Travisano's statements. Accordingly, I recommend that the 5.4a(1) allegations regarding Travisano be dismissed.

Interrogation of Employees

Charging Party asserts that the Township interrogated two employees through its agent, Captain Prina in violation of 5.4a(1). Citing Bergen County., H.E. No. 83-44, 9 NJPER 416 (¶14190 1983, aff'd in part by P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983), Charging Party asserts that employer's may not interrogate employees regarding protected activity.

In Bergen County, the Hearing Examiner determined, among other things, that the interrogation of an employee concerning his solicitation of authorization cards, the misrepresentation as to the legality of collecting the cards outside of the window period, causing the employee to destroy collected cards for fear of arrest or job loss, and creating the impression that the employer supported the rival union unlawfully interfered with employee organizational rights.

That case is distinguishable from the matter before me. Here, the facts establish that Prina, who is president of a firefighter union in another town, expressed to Chief Travisano that no one had told him what was going on with the organizing drive and he wanted to know from Travisano what was happening. Travisano told Prina he didn't know. The alleged "interrogation" was established by testimony of Local 701's organizer, Steven Job, who stated that he received a telephone call from EMT Collins that Prina was in EMS headquarters questioning Collins and another EMT, Hector Rodriguez, about the cards and where they came from and also that Prina told them he was at headquarters on

Censullo's instructions. Job concluded that this meant Censullo instructed Prina to question where the cards came from.

I found that Prina's questioning was not an attempt to coerce or threaten Collins and Rodriguez about their union sympathies, but was a natural outgrowth of Prina's position as union president elsewhere and his feeling that someone should have apprised him of another union's effort to organize<sup>21/</sup>. I infer, because of his union position elsewhere, that Prina would not be hostile to such an effort. Collins never indicated to Job that he felt threatened or coerced by Prina's questions. Merely, inquiring as to where the authorization cards came from does not rise to the level of coercive behavior prohibited by Bergen County.

As to Charging Party's contention that Prina was asking about the authorization cards on behalf of Director Censullo, I found that Job's testimony in this regard had no probative value because there was no context to this statement.

Based on the foregoing, I do not find that Captain Prina's conversation with Collins and Rodriguez violated 5.4a(1).

Actions of Gendalie Santiago

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21/ Respondent suggests that I draw an adverse inference from Charging Party's failure to call Collins or Rodriguez to corroborate Job's hearsay testimony. However, the testimony of Travisano about his conversation with Prina provided a residuum of proof on the record to support that Prina likely questioned Collins and Rodriguez. Prina was not called by the Township to explain the conversation, so Collins and Rodriguez' rebuttal testimony was not necessary.

Charging Party asserts that the Township interfered with employee organizational rights in violation of 5.4a(1) when EMT Gendalie Santiago, acting at the direction of Director Censullo, polled EMTs about revoking their authorization cards, provided them with letters to revoke cards and provided Censullo with a list of EMTs who revoked their cards.

Santiago's actions on behalf of management, Local 701 contends, also violates 5.4a(2) which prohibits employer domination or interference with the formation, existence or administration of any employee organization. Borough of Shrewsbury, D.U.P. No. 79-12, 5 NJPER 13 (¶10007 1978), aff'd P.E.R.C. No. 79-42, 5 NJPER 45 (¶10030 1979, aff'd 174 N.J. Super 25 (App. Div. 1980), certif. den. 85 N.J. 129 (1980). In Atlantic Community Coll., P.E.R.C. No. 87-33, 12 NJPER 764, 765 (¶17291 1986), the Commission discussed the standards for a 5.4a(2) violation and held that domination occurs when the organization is directed by the employer rather than the employees. Interference, although less severe than domination, goes beyond merely interfering with an employee's 5.3 rights, it is aimed at the employee organization as an entity. North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980).

In Bergen County, both 5.4a(1) and(2) violations were found where the incumbent union and the County through its supervisor materially misrepresented the PERC law causing an organizer to

destroy cards he was collecting for a rival union and suspend the collection of any more cards. The President of the incumbent union also threatened to have the organizer suspended and arrested for his actions. These remarks, the Commission determined, had a devastating effect on the organizer and his right to solicit cards and on the organizational rights of the rival union. He destroyed the cards out of fear that he would go to jail for collecting the cards and other employees would get in trouble for signing the cards. The County not only interfered with the formation of the rival union but gave the impression to the organizer that it supported the incumbent and its president.

Based on my findings of fact, however, the actions of the Township and Santiago do not rise to the level of either 5.4a(1) or (2) violations as found in Bergen County or other Commission cases. I credited Santiago that she acted independently in seeking to revoke her authorization card and assisting other EMTs who asked her by giving them copies of the revocation letter she found on the internet. For reasons stated in my findings of fact, I did not find her testimony to be evasive and unreliable. Rather, I did not credit Gruber's testimony regarding a conversation she had with Santiago.

Local 701 asserts that Santiago was acting at the direction of Censullo when she assisted the EMTs by providing the web site for the revocation letters and maintaining the list of those who submitted letters. However, other than the fact that Santiago

eventually approached Censullo and gave him the list of those who had sent letters together with copies of the letters, there is no evidence that management directed Santiago or the others to send the letters. There were neither threats (direct or implied) or promises of benefits.

What is apparent was that the organizer, Job, was anxious to have a successful campaign in light of the failed effort that he led three years before. Job admitted that he viewed the 2008/2009 campaign as a test of his character. Job had pressured Santiago into signing the card and led her to believe that there would be an election. The authorization card recited rights under the NLRA, not our Act, and authorized Local 701 to represent employees "in negotiations for better wages, hours and working conditions (CP-1)." The card does not mention that it can be used as a ballot for purposes of card check recognition under our Act or that there would be no election.

Ordinarily the wording on the card that Job solicited EMTs to sign is sufficient for purposes of certification by card check. Although there is no definition of authorization cards or requirements under the current rules for specific language on the cards themselves, the Director of Representation has determined that language on authorization cards showing that the card signers authorize the employee organization to represent such employees for the purpose of collective negotiations is sufficient to comply with the rule authorizing a card check

certification to determine a majority representative without an election. Mt. Ephraim Bd. of Ed., D.R. No. 2007-3, 32 NJPER 293 (¶121 2006).

Here, however, in light of the unsuccessful organizing campaign a few years previously and Job's suggestion to Santiago that the same process would be in place this time, namely an election, fairness dictates that either the card itself or the organizer make clear to employees that the process had changed from the last time. Neither Santiago nor the other EMTs can be charged with knowing that shortly after the 2004 election the Legislature amended our Act to authorize certification by card check without an election. Indeed, 5.3 protects not only employee rights to form, join and assist labor organizations but also to refrain from doing so. In protecting both the right to form an organization and to chose not to do so, co-equal rights under our Act, employees must be fully informed of the consequences of their actions.

Thus, Santiago concluded that Job misrepresented the significance of signing the card by referring to the 2004 organizing procedures. This together with Local 701 and Job's failure to respond to questions she had about the union prompted her decision to seek revocation of her card. Whether Santiago then persuaded others to question the process and revoke their cards, providing them assistance to do so, or others acted because they also felt that Job misrepresented the process in

soliciting their signatures on the cards and wrongly promised benefits, it was not management who prompted these actions and, therefore, management did not interfere with employee rights or dominate the formation of Local 701.

Charging Party argues that the EMTs were anxious to show Censullo their revocation letters and that demonstrates that management actively procured the letters. It also argued there was no reason for Santiago to turn her list and letters over to Censullo if she was not working under his guidance. These arguments are not supported by the evidence. Santiago explained that she only went to Censullo as a last resort when she got no response from Local 701 after two letters seeking to revoke her card. In fact, she never went to Chief Travisano, because he had told her earlier that he could not get involved in the effort to revoke the cards. The urgency to revoke cards that Charging Party attributes to management came from the failure of Charging Party to respond to the letters.

Similarly, I reject Charging Party's argument that management directed Santiago because in the Township's March 26, 2009 letter (CP-5) to the Commission staff agent, the Township attached a graph containing, among other information, a list of EMTs who had submitted letters of revocation to Local 701. Charging Party asserts that the Township's knowledge of who submitted letters is proof that Santiago acted as an agent of management. Santiago, however, admitted turning the letters and



list over to Censullo when she received no response. Her second letter was dated March 13, 2009. Santiago had enough time between March 13 and March 26, 2009 to wait for a response from Local 701 and then, having received none, turned the information over to Censullo from which the Township's attorney prepared CP-5.

Charging Party asserts that as proof that Santiago's efforts were driven by management, four EMTs who had not signed authorization cards sent letters dated March 13, 2009 to Local 701 (CP-25 through CP-28) with a copy to the Township that they did not wish to be represented by Local 701. Management's actions instilled such fear, Charging Party contends, that even these employees felt compelled to register their non-support for the union effort. I also reject this argument.

Only one of the four employees, Deputy Chief Martinez testified. He explained that he did not support the effort in 2004 and still did not want a union in 2008/2009. He sent the letter because he had never been approached by Job to sign a card (Job confirmed that he only approached those he felt would be supportive) and wanted to make sure that he would not be included in the unit. Martinez, at least, did not send a letter to Local 701 and the Township out of fear. He simply wanted to make his views known, as he had in 2004. I do not, therefore, draw the inference that the other three EMTs acted out of fear of

retribution in sending their letters or conclude that management drove the effort to revoke authorization cards.

Finally, citing North Bergen Housing Authority, I.R. No. 95-11, 21 NJPER 22 (¶26011 1994), Charging Party contends that Santiago's list represented illegal polling by management of employee preference as to unionization. The facts, here, do not support such a conclusion. Santiago kept the list of those who had submitted revocation letters to Local 701, not for management, but in case their combined efforts at revoking their cards were unsuccessful and she had to seek further assistance. Santiago credibly testified that EMTs sought her assistance in getting the letter from the internet not vice versa. Although Santiago acted as the central figure in the gathering of the copies and keeping lists, it was to further her own efforts not Censullo's or the Township's.

Based on the foregoing, I do not find that the Township violated 5.4a(1) or (2) when Santiago provided assistance to other EMTs and collected copies of revocations letters, kept a list of those who sent revocation letters and provided the list and letter to management after receiving no response from Local 701.

#### Reduction in Hours of Work of Union Supporters

Local 701 argues that the Township violated 5.4a(3) and derivatively a(1) when it reduced the hours of work of five EMTs - Michael Negron, Wilbert Negron, Daniel Polo, Eva Solar and

Jessica Toro - who did not send revocation letters in retaliation for their support of Local 701.

In Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), the New Jersey Supreme Court set the standard for determining a violation un 5.4a(3) of the Act. The Court determined that Charging Party must prove by a preponderance of evidence on the entire record that protected activity was a substantial or motivating factor in the employer's adverse action. This may be done by direct or circumstantial evidence showing that the employee engaged in protected activity, the employer knew of the activity and the employer was hostile toward the exercise of the activity.

If an illegal motive has been proved and if the employer has not presented any evidence of a motive not illegal under the Act, or if the employer's explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. If the record establishes that both motives unlawful under the Act and other motives contributed to a personnel action, then the employer will not have violated the Act if it can prove by a preponderance of the evidence on the entire record that the same action would have taken place even in the absence of the protected activity. This affirmative defense does not have to be considered unless the Charging Party has proved that anti-union animus was a motivating or substantial reason for the personnel action.

Local 701 is correct that the EMTs were involved in protected activity during the organizing campaign. They are protected in their right to support Local 701 by signing an authorization card or refusing to sign a card. Certainly, the EMTs are exercising protected organizational rights when they submit a revocation letter or do not submit a letter. Any adverse personnel action taken by the Township with knowledge of these actions is prohibited by 5.4a(3).

Where Local 701's argument fails, is that the Township had no knowledge of who signed authorization cards, and although the Township learned through Santiago who had submitted letters to revoke their cards, the Township had no knowledge of who, among those who had not submitted letters, had also signed authorization cards. For instance, as the Township correctly argues, it would have no way of knowing (1) whether or not the five EMTs were union supporters who did not want to revoke their cards; (2) whether they had never signed cards to begin with and so had nothing to revoke; or (3) whether they sent revocation letters but never gave a copy to Santiago and were never put on the list given to the Township. All three scenarios mitigate against the Township having knowledge as to the protected activities of the five EMTs Local 701 asserts were retaliated against for being union supporters. I reject Local 701's argument that CP-5 supports that the Township had knowledge of who signed authorization cards. CP-5 only supports that the

Township knew who submitted revocation letters, knowledge that it acquired from Santiago who gave copies of the letters to Director Censullo.

The Township was not hostile to the five EMTs because, as the Township points out, hours were reduced during the time period examined by Local 701 not just for the five EMTs who submitted letters of revocation, but also for seven EMTs who did not submit revocation letters. Also, none of the EMTs whose hours were reduced testified. Local 701 reviewed payroll records from December 31, 2008 through May 5, 2009. Neither Job nor anyone else from Local 701 spoke to the EMTs to ascertain the possible reason for the change in hours.

Job himself did not have his hours of work reduced nor did he receive less favorable shifts because he supported Local 701. However, sometime in May 2009, he was approached by the two Negrons who told him that their shifts were changed and hours were cut. They did not tell Job that their hours were cut because they refused to revoke their authorization cards, but, according to Job, they told him they "believed" their shifts were changed because of the union. They did not, however, tell Job that they were approached or threatened in any way because of union activity. Job did not do an independent investigation to verify the Negrons' claim. These two were the only ones who came to him about reduced hours.

The evidence supports that scheduled hours for the EMTs had changed previously due to problems with Deputy Chief Lopez' scheduling and the Township's instruction to adhere to part-time hours, namely 24 hours per week or 48 hours in a two-week pay period. These scheduling problems and directives pre-dated the organizing campaign. Deputy Chief Martinez took over Lopez' scheduling responsibilities mid-March 2009 for the April 2009 schedule. Although Martinez was himself not a union supporter, at the time he began scheduling, he had no knowledge of who signed authorization cards or who submitted revocation letters.

When Martinez assumed the scheduling responsibilities he had no idea how many shifts each EMT normally worked or what those shifts were, but there were some reduction in hours because Lopez had not adhered to the Township's instructions regarding maximum hours of work per week and per pay period. For instance, Polo's shift changed in April 2009 because he had several classes to attend that month. Polo once complained to Martinez that his hours were reduced, but Martinez explained to him that he could not give any EMT more than 24 hours per week. Polo however, never suggested to Martinez that his hours were reduced because of union activity. Solar's hours were reduced between March and May 2009 because she did not submit her availability on the monthly calendars, she only likes to work with certain EMTs and doesn't want Martinez to assign her partner. She gets more flexibility in choosing her partners by taking whatever is

leftover on the shift assignments for the month. She also never complained to him about her hours being reduced. Toro forgot to give Martinez her availability so he did not put her name on the monthly schedules. Toro never complained about her hours being reduced.

Martinez does not recall specifically why the Negrons' hours were reduced but explained that Michael Negrón often changed his schedule because he is a sheriff's officer which is his primary job. Neither Michael Negrón nor Wilbert Negrón ever complained to Martinez about their hours being reduced.

Based upon the record before me, I cannot find that Polo, Toro or Solar had their hours reduced for illegal reasons. Similarly, I do not find that the Township was aware of the Negrón's protected activity or that the Township was hostile to that activity. I also cannot find that Martinez, who was responsible for scheduling in April and May, had any knowledge of their protected activities.

Local 701 contends, however, that most of the revocation letters were sent and received by Local 701 in the pay period February 25 through March 10, 2009 after which the five employees received reduced hours. It asserts that since Martinez was not doing the scheduling for the pay period of March 11 through March 24, 2009 his testimony and explanations for these reductions in hours is not probative.

Martinez, however, could not explain the reasons why any EMTs' hours were reduced in March 2009, since that schedule was prepared in mid-February before he took over scheduling. The timing does not support that the Township acted from knowledge of or hostility to protected activities. The Township could not have reduced any employee's hours between March 10 and 31, 2009 in retaliation for the revocation letters because, the March schedule was prepared in mid-February, before any letters had been sent (the first is dated February 27) and before the Township knew of the letters (sometime after March 13 when Santiago brought them to Censullo and before March 26 when the Township sent CP-5).

Local 701 also argues that hostility is established in Chief Travisano's conversation with Gruber about privatization. However, I did not credit Gruber's testimony regarding that conversation and found that Travisano's statements were protected speech. His statements were not evidence of hostility.

Based on the foregoing, I recommend that the 5.4a(3) and derivative (1) allegations regarding the reduction in hours be dismissed.

#### Packing the List Issue

Charging Party asserts that the Township interfered with organizational rights by improperly including on the eligibility lists submitted to the Commission EMTs who were supervisors or no longer employed by the Township. It contends that the Township



packed the list in order to inflate the numbers of employees to defeat the card check and/or stall the representational process long enough to dissuade EMTs from supporting the union effort through its anti-union campaign. This, Local 701 contends, violates 5.4a(1) of the Act.

N.J.A.C. 19:11-10.1(a) requires that in all representation elections, the employer file an election eligibility list with the Director and all parties. Failure to comply with this requirement may be grounds for setting aside an election where objections are filed. N.J.A.C. 19:11-10.1(b).

In Monmouth County, P.E.R.C. No. 82-80, 8 NJPER 134 (¶13058 1982), the Commission considered an election objection based on the employer's inadvertent omission of five names out of 207 in a county-wide voter unit on an eligibility list. The Commission adopted for the first time the standard set out in Excelsior Underwear, Inc., 156 NLRB 1236, 61 LRRM 1217 (1966) requiring that the employer submit an election eligibility list to all parties in order to foster the goal of an informed electorate and a fair election. Failure to submit a list is grounds for setting aside an election.

Thus, in Monmouth, the Commission determined that it was unreasonable to expect perfection in the compilation of an eligibility list. An election will not be set aside if an employer substantially complies and omissions are not the result of bad faith or gross negligence. The Commission found that the

County substantially complied with the rule requiring it to submit the list Id. at 135.

In 2005 the Legislature amended our Act to allow for certification by card check without an election where a majority of employees in an appropriate unit sign valid authorization cards. Determination of whether a majority of employees signed cards depends on the number of employees determined to be eligible in the petitioned-for unit. The eligibility list submitted by an employer at the request of the Director in a card check case is used to determine whether a majority of eligible employees have signed cards and, therefore, certification without an election is appropriate. Although there is no specific rule, the list for purposes of card check performs the same function as an excelsior/eligibility list does in an election to ensure a fair election, and the authorization cards are the equivalent of a ballot. It is appropriate, therefore, in considering whether the Township violated the Act, to apply the standards set out in Monmouth and Excelsior, namely, whether in generating the eligibility list for card check certification the employer has substantially complied with the Director's instruction to provide a list of employees in the unit described by the petition and whether any omissions or, in this case additions, are the result of bad faith or gross negligence.

Both Charging Party and Respondent cite Bo-Ed Inc. d/b/a/ Golden Fan Inn, 281 NLRB 226, 123 LRRM 1116 (1986) as instructive

in setting out the standards for finding a violation based on the employer's addition of ineligible individuals to an excelsior list. There, the Board found that where employer's payroll system was informal and in state of disarray and 30% of employees had not filled out W-4s, the list prepared by a clerical employee who relied on the employer's payroll system might be inaccurate. It determined that the addition of ineligible individuals to an excelsior list cannot without more sustain a violation. Additionally, the Board determined that the employer's inclusion of two individuals whose supervisory status was clearly debatable did not rise to the level of a violation.

Charging Party argues that Golden Fan is distinguishable because the Township does not claim that its payroll system is in a chaotic state, only that EMS may have been lax in reporting its employee turnover to its payroll department. The Township asserts that the list it initially supplied at the Director's request on February 23, 2009 was based on the Township's, not the EMS, payroll records, and, therefore, some EMTs were not reported by EMS as having separated from service.

As to EMTs who the Township included and who were no longer on its payroll, EMTs work part-time and, in many cases, hold second and third jobs. The nature of their employment and the difficulty in determining who was currently active - e.g. some would leave periodically and then come back to work for the Township - caused the Township's employment records to vary from

those of the EMS. Even Local 701's organizer, Job, conceded that the original master telephone list that Local 701 relied on to estimate the size of the petitioned-for unit could differ from the actual number because of the transient nature of EMT employment. The evidence supports, therefore, that the lists being exchanged were evolving and, although the Township eventually removed EMTs based on Local 701's objections, some EMTs remained on the list because they were still active but on leaves of absence and, thus, appropriately included. Based on these facts, I find no unlawful purpose in the inclusion of the additional EMTs who were removed on the basis that they were no longer active employees.

5.3, however, prohibits supervisors, defined as individuals who have the power to hire, discharge or discipline employees or to effectively recommend these actions, from being represented in a collective negotiations unit with non-supervisory employees. Local 701 petitioned to represent non-supervisory employees employed by the Township.

The Township included Chief Travisano, Deputy Chiefs Lopez and Martinez, and Captain Prina in all the lists it submitted as employees eligible for the non-supervisory unit. The only employee the Township insisted held a supervisory title was Job, Local 701's organizer, even though the EMS hierarchy consists of Director Censullo, Chief Travisano, Deputy Chiefs Martinez and

Lopez (Lopez has since left the Township's employ), Captain Prina, Supervisor Job and Lieutenant Morano.

In defense of including Trivisano, Martinez, Lopez and Prina in its lists of non-supervisory employees, the Township argues that these employees all hold the civil service title of EMT, not EMT supervisor, and so were not supervisory employees. The determination of supervisory status does not hinge on mere titles or job descriptions. It is the nature of the authority the employee actually exercises and evidence that the authority is exercised with some degree of regularity that is required to establish supervisory authority. Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). At the hearing in this matter, the Township stipulated that Trivisano was a supervisor. His inclusion on the Township's list was not inadvertent. The Township knew or should have known, if it had investigated, that Trivisano was a supervisor not appropriately included in the eligibility list. In this instance the Township acted in bad faith.

The Township contends as to Martinez and Prina that their supervisory status is reasonably debatable and, therefore, under the Excelsior and Golden Fan standards does not rise to the level of a violation. I disagree. Deputy Chief Martinez testified that he can recommend discipline, and Gruber confirmed that he signs written warnings. Gruber also testified that she was disciplined by Prina who sent her home after an infraction.

Prina was not called to rebut her testimony that he can discipline EMTs. As to the other Deputy Chief, Elvia Lopez, Travisano testified that he considered her to be a supervisor. She is no longer employed by the Township.

The evidence supports that both Martinez and Prina exercise supervisory authority and were not appropriately included on the Township's lists. Since Lopez is also a deputy chief and Chief Travisano considered her to be a supervisor, I infer that her authority to discipline matched Martinez. The inclusion of Martinez, Lopez and Prina on the Township's lists was not inadvertent. The Township knew or should have known that the inclusion of these employees was improper, because they possessed supervisory authority based on their actual duties and responsibilities. Taken together with the Township's insistence that Job, who is lower on the EMS hierarchy, be excluded, there is evidence of bad faith.

Nevertheless, the Township contends that Job is a supervisor and should have been excluded from the eligibility list. Job can recommend that EMTs be hired or fired. Travisano explained that Job can recommend discipline, such as sending an EMT home. Although Travisano provided no specific examples, Job did not rebut his testimony as to discipline. EMTs Gruber and Santiago considered Job to be a supervisor. I concluded from the evidence that Job too is a supervisor under the Act. Therefore, he should

have been excluded from the list of eligible employees<sup>22/</sup>. Local 701 knew or should have known that Job was a supervisor.

Finally, the Township argues as to Lieutenant Morano, that Local 701's inconsistent stance as to whether he is or is not a supervisor supports that the Township's inclusion of possibly supervisory employees was at least reasonably debatable. I disagree. The testimony was inconclusive as to Morano's supervisory status and, therefore, his status, unlike the others, was clearly debatable. Golden Fan. The Morano argument is a red herring and not dispositive as to whether the Township's inclusion of Travisano, Lopez, Martinez and Prina was for an unlawful purpose and a violation of the Act.

Based on the foregoing, I recommend that the Township violated 5.4a(1) of the Act when it included supervisory employees on its list of eligible employees. However, as to remedy, I do not recommend that the actions of the Township amount to such egregious misconduct that a Gissel bargaining order is appropriate. The evidence does not support Local 701's claims that the Township in fact ran an aggressive and unlawful anti-union campaign.

Additionally, whether or not the four supervisors were improperly included on the employer's list, the Township's actions in this regard did not buy it time to run an anti-union

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<sup>22/</sup> I do not consider the propriety of Job, as a supervisor, soliciting authorization cards from non-supervisory employees as this issue has not been raised by the Township.

campaign as suggested by Local 701 and, thus, require that I set aside the mail ballot election and order negotiations. There was no cause and effect between the Township's actions in this regard and the Director's refusal to certify by card check. See generally, Glassboro Housing Authority, P.E.R.C. No. 90-16, 15 NJPER 524 (¶20216 1989) (Commission dismissed decertification petition as remedy where it found immediate cause and effect between employer's unfair practices and filing of the petition).

Here, unlike Glassboro, the letters to revoke authorization cards were sent by EMTs on February 27, 2009. These letters called into question the validity of the authorization cards, specifically the actions of the organizer in soliciting the cards. Employee discontent with Local 701 was evident, if not before, at least simultaneously with the exchange of the first eligibility list on February 23, 2009. It was the validity of the cards that caused the Director of Representation to decline certification by card check and to direct an election, not whether Local 701 had a majority of authorization cards. I reject Local 701's argument that these individuals were added to dilute the list and prevent Local 701 from gaining a majority under card check certification.

Finally, Local 701 also insisted on the inclusion in the list of eligible employees a supervisory employee, Job. If the Township was wrong to include Travisano, Martinez and Prina, then



Local 701 was equally wrong. Neither party can benefit from such behavior.

Therefore, I recommend that the Commission order the names of Frank Trivisano, Rosenberg Martinez, Dave Prina and Steve Job be removed from the list of eligible voters in the mail ballot election previously ordered by the Director of Representation. Elvia Lopez is no longer employed and is also a supervisor. Her name, if it is on the list, should also be removed. I also recommend that the impounded ballots be processed to determine the intent of the voters as to whether they wish to be represented for purposes of collective negotiations by Local 701 or no representative.

#### **CONCLUSIONS OF LAW**

The Township of North Bergen did not violate 5.4a(1), (2) and (3) of the Act by threatening to terminate all employees and hire an outside company to perform emergency medical services, questioning employees about their support for Local 701, creating a list of union supporters, preparing form letters for employees to revoke their authorization cards, and reducing the work hours of union supporters.

The Township independently violated 5.4a(1) of the Act when it included supervisory employees in the eligibility list it submitted to the Director of Representation in the processing of Local 701's petition for card check certification.

#### **RECOMMENDED ORDER**

I recommend that the Commission dismiss the 5.4a(1), (2) and (3) allegations regarding threatening to terminate all employees and hire an outside company to perform emergency medical services, questioning employees about their support for Local 701, creating a list of union supporters, preparing form letters for employees to revoke their authorization cards, and reducing the work hours of union supporters.

I recommend the Commission ORDER:

A. That the Township of North Bergen cease and desist from:


1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by including supervisory employees Chief Frank Travisano, Deputy Chief Rosemberg Martinez, Deputy Chief Elvia Lopez, and Captain Dave Prina on the list of eligible employees submitted to the Director of Representation for purposes of processing Local 701's petition for card check certification.

B. That the Township take the following action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

2. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

C. That the Director of Representation remove the names of Frank Travisano, Elvia Lopez, Rosemberg Martinez, Dave Prina and Steve Job from the eligibility list submitted by the Township for the mail ballot election ordered by the Director of Representation in D.R. 2010-5, 35 NJPER 312 (¶107 2009).

  
Wendy L. Young  
Hearing Examiner

DATED: May 26, 2010  
Trenton, New Jersey

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 June 8, 2010.



# NOTICE TO EMPLOYEES



**PURSUANT TO  
AN ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE  
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,  
AS AMENDED,**

**We hereby notify our employees that:**

**WE WILL NOT** interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by including supervisory employees Chief Frank Travisano, Deputy Chief Rosenberg Martinez, Deputy Chief Elvia Lopez, and Captain Dave Prina on the list of eligible employees submitted to the Director of Representation for purposes of processing Local 701's petition for card check certification.

Docket No. CO-2010-033

Township of North Bergen  
(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"