

H.E. NO. 2011-3

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

In the Matter of

TOWNSHIP OF UNION,

Respondent,

-and-

Docket No. CO-2009-361

INTERNATIONAL FEDERATION OF  
PROFESSIONAL AND TECHNICAL ENGINEERS,  
UNION COUNCIL NO. 8,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint based upon an unfair practice charge alleging that a public employer violated 5.4a(3) and (1) of the Act by suspending a shop steward/unit employee for two days, latter of which deprived the employee entitlement to a paid holiday under the terms of the parties' collective negotiations agreement. The Hearing Examiner found that the Charging Party had not demonstrated hostility toward protected conduct, as required under In re Bridgewater Tp., 95 N.J. 235 (1984).

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  
Apruzzese, McDermott, Mastro & Murphy, P.C.  
(Robert J. Merryman, of counsel)

For the Charging Party  
Mets Schiro & McGovern, LLP  
(Leonard C. Schiro, of counsel)

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

On April 6, 2009, International Federation of Professional and Technical Engineers, Union Council No. 8 (Council 8) filed an unfair practice charge against the Township of Union (Township). The charge alleges that on February 9, 2009, the Township unlawfully suspended unit employee and Council 8 shop steward Robert Katz for two days, and that his absence from work on the second day deprived him of a contractual paid holiday on Lincoln's Birthday. The charge specifically alleges

that the "manner" in which discipline was imposed was intended to ". . . harass, intimidate and retaliate" against Katz for his protected conduct, violating 5.4a(1) and (3)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

On August 27, 2009, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On September 4, 2009, the Township filed an Answer, admitting some allegations and denying others. The Township denies violating the Act.

On January 20, 2010, I conducted a hearing at which the parties examined witnesses and presented exhibits. One other exhibit was marked in evidence, without objection, on March 16, 2010. Post-hearing briefs were filed by March 25, 2010. A reply brief was filed on April 5, 2010.

Upon the record, I make the following:

FINDINGS OF FACT

1. Robert Katz was hired by the Township as a sanitation driver on May 25, 2000 and remains employed in the title (T20).<sup>2/</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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

<sup>2/</sup> "T" represents the transcript of the hearing, followed by the page number; "J" represents jointly submitted exhibits; (continued...)

He is a vice-president of Council 8 and a shop steward; he has held the latter post since 2002 (T21).

2. The Township and Council 8 signed a collective negotiations agreement covering all blue collar employees and white collar employees, except supervisors, professional employees, etc. It extends from January 1, 2000 through December 31, 2003 (J-1). Attached memoranda of agreement set forth terms and conditions of employment for these periods: January 1, 2004 through December 31, 2006; January 1, 2007 through December 31, 2008; and January 1, 2009 through June 30, 2011 (J-1).

The grievance procedure (Art. X) prescribes four steps, ending in binding arbitration. Step 1 provides that the grievant or Council 8 representative shall seek to informally resolve the matter within five days with his or her immediate supervisor. Step 2 provides that the grievance shall be written and "heard" by the department head or designated representative, who shall issue a written decision; Step 3 prescribes a written grievance to the municipal administrator.

The "holidays" provision (Art. XII) sets forth 13 paid holidays, including Lincoln's Birthday and Washington's Birthday. The 2004-2006 memorandum of agreement amends Art. XII and provides:

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2/ (...continued)  
"CP" represents Charging Party exhibits; and "R" represents Respondent exhibits.

To receive holiday pay, the employee must work the entire scheduled workday immediately preceding the holiday and the entire scheduled workday following the holiday unless excused by the Township Administrator or his designated representative. In the event that the employee claims that he or she is absent due to illness, the employee may qualify for holiday pay if and only if the employee provides a doctor's note on the first day of his or her return to work that states with specificity that the employee was under doctor's care on the date(s) of absence and was unable to work on the day(s) of absence.

3. On November 13, 2008, Katz drove a Township vehicle into another Township vehicle accidentally during his regular shift (T21; R-2). On Friday, December 5, 2008, Katz was issued a summary "employment action" notice, following a meeting he attended that day at which he was informed that he would serve a one day suspension for the accident and that ". . . two days of suspension will be held in abeyance for six months" (R-2; T76). Katz served the suspension on December 9, a Tuesday (R-2; T77).

4. On December 22, 2008, Katz filed a "level 1" [step 1] grievance with DPW Superintendent Sergio Panunzio contesting a denial of overtime opportunities for several unit employees (CP-2). On December 29, Panunzio issued a memorandum to Katz, denying the grievance (CP-2). On December 30, Katz filed a "level II" [step 2] grievance with Township Assistant Administrator Ron Manzella. On January 9, 2009, Katz wrote a

letter to Township Administrator Frank Bradley, seeking a hearing on the grievance at "level III" [step 3].

5. On December 23, Council 8 filed an unfair practice charge (dkt. no. CO-2009-219) alleging that on December 11, the Township violated 5.4a(1), (2) and (5) of the Act by refusing to negotiate "the impact" of recently installed GPS devices in public works vehicles (CP-3; T29). Katz's name does not appear on the charge. On an unspecified date, Katz filed a contractual grievance contesting the Township's action (T30).

6. On December 24, Katz filed a "level 1" [step 1] grievance contesting the propriety of an overtime assignment. Katz wrote that he ". . . should have been called for overtime before [another unit employee]" (CP-5; T37). He also wrote about recent conduct of a non-unit foreman who intended to "intimidate" his right to file contractual grievances (CP-5). On December 29, DPW Superintendent Sergio Panunzio issued a written denial of the grievance. On December 30, Katz wrote an appeal of the denial to the Township assistant administrator, requesting a hearing on the grievance. On January 9, 2009, he wrote an appeal to the Administrator (CP-5).

7. On January 6, 2009, Katz filed another grievance with Superintendent Panunzio contesting the pay rates of two named unit employees, following a civil service desk audit of their job duties (CP-4). On January 16, he wrote a letter to the Township

assistant administrator requesting a hearing at step 2. On January 21, he wrote a letter to the Township administrator, requesting a hearing at step 3 because ". . . no answer has been forthcoming" (CP-4; T32-36).

8. On Thursday, February 5, 2009, Katz drove his assigned Township truck into a tree branch overhanging a curbed public street accidentally, causing damage to the vehicle (T22; T77). Katz immediately reported the accident to his supervisor. Township police were called to the scene and Katz was issued a summons (T23; R-4). Later in the same day, he wrote and signed an accident report describing the incident (R-3). The repair cost about \$800 (T78).

In the afternoon of February 5, Katz felt ill and returned home, taking a one-half sick day (T23).

9. Katz did not report to work on Friday, February 6 because he had a "pre-scheduled" administrative leave day off (T23; T70). Also on February 6, the Township received a copy of the "New Jersey Police Crash Investigation Report" of Katz's accident the previous day prepared by the dispatched Township police officer (R-4; T82). On the same day, Superintendent Panunzio and Peggy Gehrig, executive assistant at the DPW determined that Katz was responsible for a "preventable accident," based upon the police report (T83). Late that afternoon, Gehrig drafted a memorandum to Katz from Panunzio

imposing a two-day suspension on Tuesday, February 10 and Wednesday, February 11. The memorandum advises that Katz served a one-day suspension in the previous December for his November 13 accident (see finding no. 3). It also recounted that the previous notice warned that ". . . two days of suspension were held in abeyance for six months provided that no further preventable accidents occurred." Gehrig dated the memorandum, "February 9, 2009" (CP-1; T84). Panunzio credibly testified that he wanted the memo dated the next business day that Katz was expected to return to work (T117).

10. Katz did not report to work on Monday, February 9 (T85). He phoned the Township in the early morning, leaving a recorded message that he was ill and intended to see his doctor (T52; T87). He visited his physician that morning, was diagnosed with bronchitis and advised not to return to work for the remainder of the week (T24). He was also provided a signed doctor's note memorializing that he was "under [a physician's] care" from "February 6 to February 17" and could "return to work" on February 17 [February 16, 2009 was the paid holiday, President's Day] (R-1; T60).

Soon after Katz returned home from his doctor appointment, Township employee Joe Riccio, dispatched by Panunzio, delivered the memorandum dated February 9, 2009 to him personally (T52;



T88; T118).<sup>3/</sup> Gehrig and Panunzio knew that Katz had "called out sick" that morning and believed that he would otherwise report to work on February 10, the first of two consecutive scheduled suspension days (T88; T117; T118). I find that Gehrig's and Panunzio's belief was reasonable because Katz admitted that before the memorandum was delivered he did not inform the Township that ". . . [he] would be out for the rest of the week" (T52). I credit the supervisors' testimonies.

Panunzio conceded in testimony that he had no reason to delay imposing the two-day suspension after determining that the February 5 accident was "preventable" and specifically wanted ". . . to close this chapter from this accident [i.e., the November 13 accident and December 5 discipline] and start when [Katz] came back to work the new disciplinary action for the new [February 5] accident" (T118). Gehrig and Panunzio also testified that Township employees had been dispatched in other instances to deliver discipline notices to other DPW employees (T88; T118). Katz conceded in his testimony that a now-former employee was "served [a disciplinary notice] at home" (T63).

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<sup>3/</sup> On direct examination, Katz testified that Riccio delivered the memorandum to him at home the day after his doctor visit (T24). His testimony on cross examination contradicted his earlier testimony and was both more specific about and encompassing of the events on February 9. I credit that testimony.

Panunzio's and Gehrig's testimonies were not rebutted; I credit them.

11. Katz testified that he called the Township a second time later that day (February 9) but could not recall with whom he spoke, other than, ". . . probably one of the girls" (T54). He testified that he advised of his intended absence due to illness for the remainder of the week, acknowledging in cross-examination, ". . . at that point [i.e., the time of his February 9 afternoon phone call to the Township] I had probably received the notice of suspension" (T52-T53). Katz also conceded that he did not inform the Township in his second phone call that he had been provided a doctor's note explaining his projected absence (T54; T55). He testified that (having been given a doctor's note for the week and having just received the notice of suspension), he didn't see the point of "arguing over the suspension" to whomever assertedly received his phone call that afternoon.

DPW executive assistant Gehrig testified that Katz did not call her on February 9 or any day that week to advise of his sick leave absence for the entire week (T88; T89). Panunzio testified that on February 9, the Township did not know that Katz intended to be absent the remainder of the week (T117). A series of handwritten and completed Township "employee daily attendance forms" from February 5-13, 2009 (excluding the February 12 Lincoln Birthday holiday) indirectly corroborates their

testimonies (R-5). Most of the forms were written by Township senior inspector George Dearness and the remainder by Gehrig. One of their signatures appear in the lined space next to "completed by . . ." at the bottom of five of the six single page forms (the copy of the form for February 9 does not reveal the signature line) (R-5; T86). The forms record all DPW employee absences, including scheduled absences for vacations, administrative leaves and suspensions, extended sick leaves and daily unscheduled sick leave absences, with the time that the employee phoned-in his or her notification recorded in a column on the form next to the employee's name. For example, the forms corroborate that on February 5, 2009, Katz took a one-half sick day and on February 6, he took an administrative leave day off. The February 9 form corroborates that Katz took a sick day off and that his phone message was recorded at "6:12 am." No other entry for Katz appears on the February 9 form. The February 10 and 11 forms corroborate that Katz was "susp.", (i.e., suspended). The February 13 form (signed by Dearness) reveals that Katz took a sick day off and reported it to the Township at "10:52 am."<sup>4/</sup> Although Dearness did not testify at the hearing

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<sup>4/</sup> Another possible (but unlikely) explanation for this entry may be surmised, in light of a referenced work place rule requiring employees to phone-in or report their unscheduled sick leave absence(s) within 15 minutes of the beginning of their shift(s). If Katz did not call the Township on Friday, February 13 because he had advised of his absence  
(continued...)

and no witness was asked about the entry for Katz on the February 13 form, I have no reason to doubt its accuracy, inasmuch as the recordations of his several immediately preceding absences were corroborated in testimony.

If Katz informed the Township on Monday afternoon, February 9 that he would be absent the remainder of the week, as he so testified, what necessitated his phoning-in a sick day on Friday, February 13? In light of Katz's inability to recall the name of the Township representative with whom he spoke on the afternoon of February 9 (he otherwise recalled many details, including the name of the employee who delivered the suspension notice that day); the unlikelihood (in that phone call) that he would neither mention nor allude to the discrepancy presented by his just-received notice of an immediate two-day suspension and his medically excused absence that week or ask to speak with a supervisor about it; and the inconsistency presented by his testimony compared with the recorded and unrebutted called-in sick-day absence on February 13, I do not credit Katz's testimony

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4/ (...continued)  
for the week on the afternoon of February 9 and the recipient had not conveyed the message or conveyed it to no avail, the Township (i.e., a representative) may have called Katz at home to verify the reason for his absence. Katz did not testify that he received such a phone call. If this scenario actually transpired, I remain persuaded that Gehrig and Panunzio did not know about Katz's sick leave absence for the week of February 9-13, 2009 until February 17 or later (see finding no. 12).

that he reported his medical absence for the week during the afternoon on February 9. Nor did Katz -- about two weeks later -- offer his purported February 9 afternoon phone call as a defense or response to Gehrig's stated reason for denying him holiday pay on Lincoln's Birthday (see finding no. 13). Even if I credit his testimony, I credit Gehrig's and Panunzio's testimonies that they were unaware of his sick leave absence for the week on the afternoon of February 9 and on any other day that week.

12. On February 17, 2009, a Tuesday, Katz presented his doctor's note to an unspecified Township representative when he returned to work (T54; R-9). Both Gehrig and Panunzio testified that if Katz had not been served the suspension notice at home and had been considered on sick leave for the work week of February 9-13, his two-day suspension would have commenced on February 17, rendering him contractually ineligible for holiday pay on President's Day (February 16) (T99; T119). Their testimonies were unrebutted; I credit them.

On the same day, Katz received notice that he would serve a three-day suspension for the February 5 accident on February 18, 19, and 20 (Wednesday through Friday) (T64; T92; T98; R09). I infer that Katz served the three-day suspension on the designated dates.

13. On or about February 23, Katz returned to work and received his paycheck, which revealed that ". . . three days' [pay was] taken out of it, instead of two" (T37; T38; R-9). On or around that date, he asked Gehrig why he hadn't been paid for the Lincoln's Birthday holiday (T38; T89). Gehrig answered that he wasn't paid for the holiday because he served a suspension [considered an unexcused absence] on February 10 and 11 (T38). Katz replied that he was on a medically excused sick leave absence from about February 6 through 16 (T38). Katz received holiday pay for President's Day, Monday, February 16 (T38).

14. On an unspecified date before March 10, 2009, Katz filed a grievance contesting the Township's refusal to pay him for the Lincoln's Birthday holiday (T38; CP-6). On March 10, 2009, Panunzio issued a memorandum to Katz, denying the grievance (CP-6). Panunzio wrote in a pertinent part:

Suspension days are not scheduled based on the employee's preference or convenience. They are typically scheduled as soon as a decision is made to impose the suspension. Once it was determined that you were again involved in a preventable motor vehicle accident there was no reason to delay the imposition of the two days' suspension being held in abeyance. [CP-6]

Panunzio also wrote that Katz was not contractually entitled to the paid holiday because he was suspended from work on the day preceding Lincoln's Birthday (CP-6).

15. In his capacity as Council 8 shop steward, Katz has never been informed about a suspended DPW unit employee denied holiday pay because the holiday was contiguous to a suspension date, thereby implicating the quoted Article XII provision (see finding no. 2) (T57). Gehrig conceded in testimony the possibility that no other DPW unit employee, suspended for less than three days, was denied holiday pay (T109).

16. Brian Yawnick, a DPW assistant supervisor, was responsible for a "preventable accident" in mid-November 2009 (T44; T100). Katz testified that Yawnick did not serve a disciplinary suspension until the first week of December (i.e., he was not denied holiday pay for a disciplinary suspension that could have been imposed on work days contiguous to the Thanksgiving holiday) (T44-T49). Gehrig testified that Yawnick served a two-day "held-in-abeyance" suspension in mid-November 2009 (T100). Panunzio testified that Yawnick's suspension was imposed after the Township received the police report on the accident which involved several vehicles and multiple injuries. He denied that the suspension was "delayed" (T120). No Township document establishes the date(s) Yawnick served a two-day suspension. Nor does the record show that Yawnick is a unit employee. I do not find that his suspension was postponed to insure that he received holiday pay.

Antoine Wynn is a unit employee who was suspended for "excessive lateness," with two suspension days held in abeyance for six months (T40; T99). Katz testified that on January 7, 2010 (a date presumed to be in the probationary period), Wynn phoned the Township to report a sick day absence fifteen minutes after his normal shift had commenced (a presumed violation of a work rule) and the "held-in-abeyance" suspension was not imposed (T67). Gehrig testified that Wynn has not reported late to work after he served the two-day suspension (T99). I credit her unrebutted testimony.

17. Each unit employee daily and briefly places his or her hand on a scanner at the workplace in order to verify the time and date of arrival. If an employee does not submit to the scan on any workday, ". . . the computer reads it as an absence," according to Panunzio's unrebutted testimony (T125). If an employee is not at work on an excused sick leave day contiguous to a holiday, he or she can be paid for the holiday, provided that that information is "manually" entered on the Township's data system (T125).

No such entry was made on Katz's behalf because Gehrig and Panunzio were not informed about his excused absence until February 17, 2009 or later (finding nos. 12 and 13; T125). Panunzio conceded in his testimony that he never intended for Katz to effectively serve a three-day suspension during the week



of Lincoln's Birthday holiday. He testified: "I meant for him to get his two days in abeyance" (T125). I credit his testimony.

#### ANALYSIS

Public employees and their organizations have a statutory right to avail themselves of negotiated grievance procedures. N.J.S.A. 34:13A-5.3. Retaliation for engaging in protected activity violates 5.4a(1) and (3) of the Act. In re Bridgewater Tp., 95 N.J. 235, 244 (1984), sets forth the elements a charging party must prove to establish a violation of 5.4a(3).

Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of protected rights. Id. at 246.

If the employer did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes however, the record demonstrates that both unlawful motive under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can

prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place in the absence of protected conduct. Id. at 242. The affirmative defense however, need not be considered unless the charging party has proved on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action.

No direct evidence shows that the Township refused to pay Katz holiday pay for Lincoln's Birthday in 2009 in retaliation for his activities as shop steward. I must next assess the circumstantial evidence to determine if the Act was violated.

Council 8 has proved the first two Bridgewater elements; Katz engaged in protected activity and the Township knew it. Specifically, Katz filed written grievances on behalf of unit employees and appeals at successive steps of the contractual grievance procedure to various employer representatives, including DPW Superintendent Panunzio, the Township assistant administrator and administrator.

The decision on whether the charging party has proved hostility is based upon consideration of all the evidence, including that offered by the public employer and the credibility determinations and inferences drawn by the hearing examiner. Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987). I find that the evidence does not prove that the Township

was hostile to Katz's protected conduct by denying him holiday pay for Lincoln's Birthday in 2009.

Timing is a factor in assessing employer motivation. Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). From December 22, 2008 through January 16, 2009 -- the latter date was three weeks before the shop steward was effectively denied holiday pay for Lincoln's Birthday -- Katz filed several unrelated grievances and follow-up appeals with various Township representatives. No evidence suggests that any Township representative was hostile to any of Katz's writings. Any perceived relationship between the written grievances and appeals and suspension is eclipsed and superceded by Katz's February 5, 2009 Township truck accident, which alone caused and procedurally justified a two-day disciplinary suspension.

The police report implicating Katz's negligence in the accident was delivered to the Township and reviewed by DPW representatives Panunzio and Gehrig in the afternoon on Friday, February 6, when Katz was taking a scheduled administrative leave day off. The two supervisors concluded that the accident was "preventable", triggering the two-day suspension, ". . . held in abeyance" set forth in the December 5, 2008 disciplinary notice to Katz, issued in response to his previous "preventable" accident on November 13. Panunzio and Gehrig drafted a notice to Katz, setting February 10 and 11 as the suspension dates. No

facts suggest that February 11 was selected for the purpose of rendering Katz contractually ineligible for holiday pay. Nor do the proffered examples of employees Brian Yawnick and Antoine Wynn illustrate "disparate treatment" of Katz. See, e.g., Rutgers, the State University, P.E.R.C. No. 2001-38, 27 NJPER 91 (¶32034 2001).

The record does not show when the police report on Yawnick's multiple vehicle and multiple injury accident was issued and then reviewed by Township representatives. Wynn was suspended two days for reporting late to work, an infraction distinguishable from reporting a sick day absence late. In context, I doubt that the latter infraction triggers a "held in abeyance" suspension prescribed for a repetition of the former infraction. The chronology following Katz's previous accident demonstrates (and the disputed instance reiterates) that in the scheduling of "held in abeyance" suspensions, the designated suspension dates closely follow the issuance of the suspension notice.

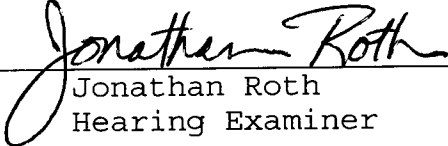
The record reveals no instances of any other unit employee who was denied a contractual paid holiday because he or she was suspended for two days, one of which was contiguous to that holiday. Nor does it reveal instances of any unit employee in the same circumstance who received a paid holiday or any whose designated two-day suspension was changed in order to facilitate a paid holiday.

Panunzio and Gehrig dated the suspension notice to Katz, "February 9", in anticipation of delivering it to him personally upon his return to work on that particular Monday. Upon learning that Katz had phoned-in a sick day early that Monday, the supervisors decided to direct delivery of the notice (as written) to him at his home that afternoon. The logic and efficiency of their decision is apparent; it spared them from revising the notice or writing a new one with different and speculative dates (i.e., when would Katz return to work?) and obviated the possibility that Katz would return to work on February 10, only to learn that he was suspended that day, thereby depriving him of notice. Similarly persuasive is Panunzio's unrebutted goal of "closing [that] chapter" and proceeding promptly with discipline for Katz's February 5 accident. (Katz was suspended for that accident on February 18, 19 and 20). Finally, nothing in the record belies Panunzio's testified admission that he did not intend that Katz effectively serve a three-day suspension instead of a two-day suspension for his "preventable accident" during a probationary period.

Under all the circumstances, I find that Council 8 did not prove that the "manner" in which the Township imposed a two day

suspension of shop steward Katz was in retaliation for his protected activity.<sup>5/</sup>

I recommend that the Commission dismiss the Complaint.

  
Jonathan Roth  
Hearing Examiner

DATED: October 12, 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 October 25, 2010.

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<sup>5/</sup> This decision addresses only the alleged unlawful motive for the Township's conduct. It does not address the propriety of that conduct under Article XII of the parties' collective negotiations agreement.