

H.E. NO. 2001-4

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

In the Matter of

MONROE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2000-55

MONROE TOWNSHIP FEDERATION OF  
TEACHERS, LOCAL 3391,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Monroe Township Board of Education did not violate 5.4a(1) of the Act when its high school principal, and its guidance director appeared at a Federation social event to obtain the names of failing seniors.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. 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, Louis Rosner, Esq.

For the Charging Party, Sagot, Jennings & Sigmond,  
attorneys  
(Mary L. Crangle, of counsel)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On September 15, 1999, the Monroe Township Federation of Teachers Local 3391 ("Federation") filed an unfair practice charge (C-1) with the New Jersey Public Employment Relations Commission ("Commission") alleging that the Monroe Township Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act ("Act"), specifically N.J.S.A. 34:13A-5.4a(1).<sup>1/</sup>  
The Federation alleged that on June 11, 1999, the high school

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<sup>1/</sup> This provision prohibits 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."

principal and the director of guidance coerced, intimidated and interfered with employee rights by appearing at and disrupting a Federation social function and engaged in conduct that embarrassed the union president and intimidated other employees, all of which had a chilling effect on employee participation in Federation activities.

On January 5, 2000, a Complaint and Notice of Hearing issued. On January 24, 2000, the Board filed an answer, denying it violated the Act, but admitting that the principal and the director appeared at the Federation social function and that they sought out Federation officials to explain the reason for their (the administrators') presence.

A hearing was held on March 2, 2000.<sup>2/</sup> Both parties filed post-hearing briefs and the Board also filed a reply brief the last of which was received on May 15, 2000.

Based upon the entire record, I make the following:

#### FINDINGS OF FACT

1. The Board had a practice of requiring high school teachers to submit a completed form (commonly known as the "senior failure form") to the guidance office on or about the last examination day of the school year, listing whether they had any seniors or graduating juniors who failed a course (R-1). The

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<sup>2/</sup> The transcript will be referred to as "T".

purpose of the form was to determine eligibility for graduation and to notify failing students that they should not participate in graduation exercises (T36-T37, T91-T97). The form is usually distributed two weeks before it is due and prescribes the date and time for submission (T13; R-1). The form is the easiest and most reliable way to obtain that information (T143-T144).

2. In 1999, the last examination day was Friday, June 11. The senior failure form (R-1), was due by 2 p.m. that day (T13, T33, T77). Graduation rehearsal was scheduled for Monday, June 14, with graduation scheduled for Tuesday, June 15. The guidance counselors were expected to notify failing seniors on Friday evening not to appear at Monday's exercises (T97).

3. At 1:15 p.m. on Friday, June 11 high school principal Steven Stumpo held an end-of-year faculty meeting to thank teachers for their work. He did not mention the senior failure form (T148-T149). Local Federation President, Rocco Canonica announced at the end of the meeting that the Federation-sponsored social was scheduled for approximately 3 p.m. that day at the Library Four restaurant (T16, T78-T79). Neither Stumpo nor Guidance Director William Howie were actually invited to the social event (T17). Apparently, this was the first time the union social was held on the last exam day (T130). The meeting ended close to 2 p.m. and the teacher work day ended at 2:15 p.m. (T15). On that date a collective agreement was in effect and not about to expire; no negotiations sessions were scheduled between the Board and the Federation (T29-T30).

4. By 2:20 to 2:30 p.m. on June 11, Guidance Director Howie realized he had not received senior failure forms from thirteen teachers. Howie prepared a list of those teachers which included Federation President Canonica, probably the only union officer on the list (T86). At approximately 2:30 p.m., after the teacher workday had ended, Howie made the first of two announcements over the school's public address system naming each of the thirteen teachers and asking them to call him, but he did not receive any replies (T99-T102). Howie next telephoned all thirteen teachers at home but was unable to reach any of them (T102).<sup>3/</sup>

At approximately 4 p.m. on June 11, one of the thirteen teachers who had not submitted the senior failure form, Diane Hatrick, walked past Howie at the high school and they acknowledged one another. Howie knew she had not submitted a senior failure form but he did not ask her about the form because he believed she was emotionally upset after just meeting with the principal on some other matter (T46-T47, T126-T128).

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<sup>3/</sup> Howie testified he telephoned Canonica's home and spoke to a woman who said Rocco was not home (T103-T104). Canonica testified that he was home from around 3:10 p.m. until about 5 p.m. and did not receive a call from Howie (T79-T80). The testimonies on this issue are not entirely inconsistent and I have no reason not to credit each witness. Howie did not say he spoke to Rocco, and Rocco did not say that Howie did not speak to a woman at his house. Since I credit witness Helen Maccherone that several teachers told her that they received calls at home that afternoon (T44-T45), I conclude that Howie did at least attempt to reach all thirteen teachers at their homes on June 11, 1999.

5. At about 4:15 that afternoon, Howie informed principal Stumpo that thirteen teachers had not submitted their senior failure form (T150). After Howie explained how he had tried to reach those teachers, Stumpo recalled that the Federation party was ongoing at Library Four and he suggested that might be the most expedient way/place to obtain the information (T151). Howie telephoned the restaurant but it was consistently busy. With an operator's help, he learned the telephone was "off the hook" (T105-T106). Howie and Stumpo decided to go to the restaurant to learn from any of the attending thirteen teachers the names of any failing seniors. Between the end of the school day and the time that Howie (and Stumpo) left for the restaurant, Howie did not ask other guidance counselors if they knew whether any of the thirteen teachers had failing seniors (T134).

6. Howie and Stumpo arrived at Library Four at approximately 5 p.m. Before entering the restaurant, Stumpo told Howie that he wanted to solicit the Federation leadership's assistance because he did not want to be intrusive or make anyone uncomfortable (T151-T152). About 175 unit members were attending the party when they arrived (T25). Howie and Stumpo entered the restaurant and stood near the bar at the front of the room and were looking at/scanning the crowd. High school teacher Lynne Smith saw them. She approached and asked if she could help them (T69). Stumpo asked to speak with Federation President Canonica. Smith told him that Rocco was not there and she again asked if she could assist them (T70, T152).

Stumpo explained that they were looking for teachers who had not turned in their senior failure forms. Smith invited them to look around but Stumpo explained that he preferred to "go through the union leadership" and he asked to speak to the vice president, Sue Cohen (T70, T152-T153).

7. Cohen saw Stumpo and Howie standing near the front of the restaurant scanning the crowd. Cohen noticed that the crowd became more quiet as it observed Stumpo and Howie (T57-T60). Cohen said the people were just curious (T60-T61).

Smith brought Stumpo and Howie to Cohen (T58, T64). They told her they were looking for Federation leaders and they asked for the Federation's help in locating the teachers who had not turned in the senior failure forms (T58-T59, T153).

Cohen was not a high school teacher and was unfamiliar with the senior failure form. Therefore, she looked for the Federation's lawyer who coincidentally had just left the restaurant, and instead located high school teacher Helen Maccherone, who was also the Federation's treasurer and grievance chairperson. Cohen asked Maccherone to help Stumpo and Howie (T12, T17-T18, T59).

Stumpo and Howie were standing at the top of two steps where the bar area met the dining room (T18-T19). Believing that Stumpo and Howie were the center of attention, Maccherone wanted to get them away from the steps; she offered them a drink, but they politely declined (T21, T32). Maccherone asked what they

wanted and Stumpo said he was looking for Rocco. Maccherone explained the reason Rocco had not arrived, and Stumpo explained he was looking for the teachers who had not turned in their senior failure forms (T19-T20). Neither Maccherone, nor any other teacher or Federation official asked Stumpo and Howie to leave the restaurant (T31, T109, T171). Rather, Maccherone told Stumpo it was a public place and he could help himself and look. But Stumpo explained that he thought it was more appropriate to go through the union leadership and Maccherone offered to help because she realized it would be the quickest way to get their business completed (T20-T21, T155).

Maccherone took the list of names from Stumpo and walked through the restaurant looking for the specific teachers. She told inquiring staff that she was looking for high school teachers (T22). She found one teacher on the list, Karen Dilmore, who went to see Stumpo (T22-T24).

Maccherone told Dilmore that Stumpo and Howie simply wanted to know if she had failing seniors (T42-T43). Dilmore may have been a little concerned, but Stumpo told her why they needed to see her and she told them that she had no failing seniors (T50, T157). Dilmore did not tell Maccherone that she felt harassed by talking to Stumpo, nor did she ask Maccherone to file a grievance on her behalf (T44).

Maccherone could not find any other teacher on Stumpo's list, but she found the husband of one of those teachers and he



spoke to Stumpo (T25). Maccherone then returned the list to Stumpo, telling him no one else on the list was present. Stumpo and Howie promptly left the restaurant. Their visit lasted approximately 20 minutes (T24-T25, T157).

8. Rocco Canonica arrived at Library Four approximately five minutes after Stumpo and Howie left the restaurant (T26, T79). Maccherone informed him of Stumpo and Howie's visit, the purpose of their visit, that he (Rocco) was one of the thirteen teachers that had not submitted his senior failure form and she suggested he immediately call the school. Canonica thought he had submitted the form, but later learned he had not (T80, T87-T88).

Canonica called the school and spoke with Howie, informing him that he had no failing seniors. Howie thanked him for the information and did not ask him to submit the form (T81-T82, T113-T114).

9. After leaving the restaurant, Howie returned to school to attempt to obtain the information about seniors and prepare for an awards ceremony that evening (T112, T131). Sometime after Howie returned, other guidance counselors were able to determine if there were failing seniors by manually reviewing scanner sheets with final grades and they gave the information to Howie ((T135-T137, T139). Some guidance counselors had attended the Federation social but returned to school to complete their work and attend the awards ceremony (T50-T51, T99, T124).

ANALYSIS

A public employer violates 5.4a(1) of the Act if its actions tend to interfere with employee rights under the Act and the employer lacks a legitimate and substantial business justification for its action. N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (Note 1) (¶10285 1979); New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422 (¶4189 1978). See also Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988); UMDNJ-Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). A charging party need not prove an illegal motive in an a(1) case, Orange Bd. Ed., P.E.R.C. No. 94-124, 20 NJPER 287, 289 (¶25146 1994); Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987), nor must it prove that employees were actually coerced or intimidated, but only that the employer's action tended to coerce. Commercial Twp. Bd. Ed., P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982) aff'd 10 NJPER 78 (¶15043 App. Div. 1983).

In its post-hearing brief, the Federation argued that Stumpo and Howie's mere presence at the restaurant had the tendency to interfere with its rights because they were not invited; that Stumpo choose to go there to publicly chastise Canonica and others, and because it had a chilling effect on the exercise of Federation rights. It further argued that Stumpo and Howie had no legitimate or substantial business justification for

going to the restaurant--claiming that Stumpo did not remind the teachers about the form at the June 11 faculty meeting; that Howie did not ask Diane Hatrick about her senior failure form when he saw her later that afternoon; that they could have obtained the information through other sources; and that the information could not have been critically important since some guidance counsellors attended the afternoon social event.

In Fairview Free Public Library, P.E.R.C. No. 99-47, 25 NJPER 20 (130007 1998), the Commission established the standard used to determine whether an employer has violated 5.4a(1) of the Act:

[W]e must first determine whether the disputed action tends to interfere with the statutory rights of employees.... If the answer to that question is yes, we must then determine whether the employer has a legitimate operational justification. If the employer does have such a justification, we will then weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act.  
[citation omitted]  
25 NJPER at 21

In deciding whether an employer's action "tended" to interfere with statutory rights, the Commission will "...consider the totality of evidence proffered during the course of a hearing and the competing interests of the public employer and the employee organization and/or affected individuals. [emphasis added]. N.J. College of Medicine and Dentistry, 4 NJPER at 422-423.

Having considered all the evidence, I am not convinced that Stumpo and Howie's presence at Library Four had the tendency to

interfere with employee rights. Knowing they were appearing at a Federation event to which they were not invited, Stumpo and Howie were circumspect in their efforts to obtain the information they needed. Although the Federation social was a private event, it was held at a restaurant otherwise open to the public. Rather than rush to the restaurant, Howie first tried to contact the union leadership by telephone, only to learn later that the telephone was off the hook.

When they first arrived at the restaurant, Stumpo and Howie sought to discuss the matter with the highest ranking Federation official they could find there and they requested Federation assistance in their endeavor, instead of barging through the roomful of attendees, unnecessarily disrupting their social event.

The Federation's argument that Stumpo and Howie wanted to publicly chastise Canonica and others was simply not supported by the evidence. The record does not show that Stumpo or Howie chastised anyone, or made any inappropriate or negative remark about Canonica or anyone else. They asked for Canonica primarily because he was the Federation president and they did not want to circumvent Federation authority. Of course, since Canonica had failed to submit the senior failure form they also wanted to know if he had any failing seniors, but there is no evidence--or even the suggestion--that they were treating him different than any other teacher who had failed to submit the form.

Canonica explained that he inadvertently failed to submit the senior failure form and that he called Howie and gave him the requested information. He did not testify that Howie or Stumpo criticized him, made any inappropriate remarks to or about him, chastised him, or in any way coerced or intimidated him. In fact, none of the Charging Party's witnesses testified that Stumpo and Howie acted in anything but a polite and professional manner. No one suggested they made inappropriate, threatening, coercive or intimidating remarks to anyone. None of the Federation officials they spoke with at the restaurant told them their presence was disrupting the party or making people uncomfortable, and they were never asked to leave. In fact, they were invited to look around themselves but declined just to avoid disrupting the party.

Karen Dilmore, the only teacher on the list with whom Howie and Stumpo spoke at the event, did not testify at this hearing and did not file a grievance over the matter. I can not infer the incident tended to interfere with her protected rights.

The Federation's argument that the Board had no legitimate or substantial business justification for Stumpo and Howie's actions is inaccurate. The Board had a pressing problem that needed immediate attention. Although it was partially responsible for the predicament it faced, the Board, nonetheless, needed to obtain information about failing seniors on Friday, June 11 to provide those students proper notice not to attend graduation exercises on Monday, June 14.

The Federation also argues that Stumpo failed to remind the teachers at the faculty meeting to submit their forms; that he didn't ask Hatrick for the information while she was still at school; and that he could have obtained the information through other sources at school. These purported omissions are irrelevant. The Board provided teachers with the senior failure form as it has done for many years and it was their responsibility to submit them on time. It was only because thirteen teachers failed--inadvertently or not--to submit their forms that the problem arose. Stumpo could have reminded the teachers at the faculty meeting; Howie could have made the school public address announcement before the teachers left for the day; and he could have asked Hatrick if she had any failing seniors. Nevertheless, the Board needed the information and Stumpo honestly believed that the quickest way to obtain it was to see the thirteen teachers at the restaurant. Stumpo and Howie did not go to the restaurant to punish, chastise, berate, coerce or intimidate the teachers. They only wanted the names of failing seniors.

While it was possible to obtain the names of failing seniors by reviewing scanner sheets, the record shows that was a more laborious, time consuming and perhaps inexact method than use of the senior failure form. It appears that the scanning process could not have been undertaken without the aid of the regular guidance counselors, some of whom were at Library Four earlier in the afternoon. To avoid further delay, Stumpo acted reasonably in

trying to obtain the necessary information from the teachers at the restaurant with the Federation's assistance. Only after the guidance counselors returned from the restaurant did Howie undertake the more difficult task of obtaining the information by reviewing scanner sheets.

In Fairview and Orange, the Commission found that employer conduct tended to interfere with employee rights. In Fairview, the employer eliminated or modified certain benefits in reaction to a representation petition. In Orange, a principal called a faculty meeting at which he criticized union leaders for engaging in a protest rally, and he also failed to discuss any legitimate concerns he had over their conduct. The facts here simply do not approach the severity of those in either case. Stumpo clearly announced to Lynn Smith the purpose of his visit to the restaurant, which concerned a legitimate business need. Neither he nor Howie criticized or in any way coerced or intimidated anyone at the restaurant. On this record, I conclude their actions did not tend to interfere with employee rights.

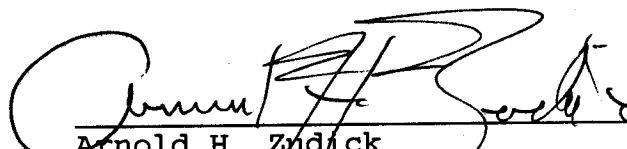
Accordingly, based upon the above findings and analysis, I make the following:

#### CONCLUSIONS OF LAW

The Borough did not violate 5.4a(1) of the Act when Stumpo and Howie appeared at the Federation social to ascertain the names of failing seniors.

RECOMMENDATION

I recommend the complaint be dismissed.



Arnold H. Zidick  
Senior Hearing Examiner

Dated: August 3, 2000  
Trenton, New Jersey