

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. CO-80-303-114

MORRIS COUNCIL #6, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission, in an unfair practice proceeding, affirms the Recommended Report and Decision of its Hearing Examiner which found that the County of Morris discriminated against several of its employees due to their exercise of rights guaranteed to them by the New Jersey Employer-Employee Relations Act when it (1) reduced the work hours of certain employees; (2) rearranged their shift assignments to include more of the non-preferential shifts, and (3) meted out suspensions, where not warranted by the circumstances, because the employees had sought and received the assistance of the Association in successfully contesting actions taken by the County. The County's conduct was determined by the Hearing Examiner to be violative of N.J.S.A. 34:13A-5.4(a)(1). By way of remedy, the Commission orders the County to offer the affected employees, except for one employee who was found to have resigned voluntarily, the positions and/or work schedules which the employees enjoyed prior to the changes made by the County. In addition, all affected employees were ordered to be made whole for suspensions each received as a result of a March 1980 incident. The Commission found that the County's actions were not violative of N.J.S.A. 34:13A-5.4(a)(2), (4) and (7), and these aspects of the Complaint were ordered dismissed.

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Docket No. CO-80-303-114

MORRIS COUNCIL #6, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Edward Horan, Director,
Morris County Labor Relations

For the Charging Party, Morris & Hantman, Esquires
(Allen Hantman, of Counsel)

DECISION AND ORDER

An unfair practice charge was filed with the Public Employment Relations Commission ("PERC" or the "Commission") on March 31, 1980 by Morris Council #6, New Jersey Civil Service Association (the "Association"), alleging that the County of Morris (the "County") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the Association alleges that the County discriminated against several of its employees due to their exercise of rights guaranteed to them by the Act. The Association contends that the County (1) reduced the work hours of certain employees; (2) rearranged their remaining shift assignments to include more of the non-preferential shifts, and (3) meted out suspensions, where not warranted by the circumstances, because these employees had sought and received the assistance of the Association in successfully contesting certain actions taken

by the County. These actions are alleged to be violative of N.J.S.A. 34:13A-5.4(a)(1), (2), (4) and (7).^{1/}

It appearing that the allegations of the unfair practice charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued by the Director of Unfair Practice Proceedings on June 3, 1980. Pursuant thereto, hearings were held in the matter before Commission Hearing Examiner Edmund G. Gerber in Newark, New Jersey on July 23 and July 24, 1980, at which time the parties were given an opportunity to examine witnesses, present relevant evidence, argue orally and submit post-hearing briefs.

The Hearing Examiner's Recommended Report and Decision, H.E. No. 81-35, 7 NJPER ____ (¶ ____ 1981), a copy of which is attached hereto and made a part hereof, was issued on March 26, 1981. Exceptions were filed by the County on April 24, 1981; a reply to the County's exceptions was filed by the Association on April 30, 1981.

The Hearing Examiner found that the County had violated N.J.S.A. 34:13A-5.4(a)(1) when it changed the amount and the scheduling of work hours of certain employees who had sought the advice and assistance of their statutory majority representative

1/ These subsections prohibit public employers, their representatives or agents from:

- (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act;
- (2) Dominating or interfering with the formation, existence or administration of any employee organization;
- (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act;
- (7) Violating any of the rules and regulations established by the commission.

to contest various actions taken by the County concerning them. The Hearing Examiner further recommended that the Commission dismiss the alleged violations of N.J.S.A. 34:13A-5.4(a)(2), (4) and (7), inasmuch as no evidence appeared in the record to support a finding that these sections had been violated.

The County's exceptions are of a technical nature and go primarily to the accuracy of the Hearing Examiner's Recommended Order under the facts of this matter. Having reviewed the entire record in this matter, including the exceptions and the reply to exceptions filed by the parties, we determine that the findings of fact and conclusions of law made by the Hearing Examiner are supported by substantial evidence and they are hereby adopted. However, in considering the exceptions to the Recommended Order of the Hearing Examiner, we believe that some alteration is warranted.

The Hearing Examiner found that Ms. Geller, Ms. Espir and Ms. Para had all been employed as children's counsellors by the Shelter, that each had their hours cut in October 1979 by Shelter Director Hennessy and that Hennessy believed that they were part time employees whose hours could be cut without providing them with the 45-day notice that is required by Civil Service regulations for full-time employees. The three contended that they were full-time employees who were thus entitled to the 45-day notice. The employees initially contested the employer's actions on their own, but eventually sought advice and assistance from the Association. The Association assisted the employees in several capacities, including representing their interests at several meetings with

County representatives in an attempt to resolve the scheduling problems of employees at the Shelter and assisting them with Civil Service proceedings.

In February 1980, Civil Service determined that Ms. Geller was a permanent, full-time employee. The County momentarily returned Geller to full-time status and awarded her back pay, retroactive to the date when she had been unlawfully reduced from full to part-time status. Almost immediately thereafter, Geller was given a 45-day notice of reassignment to a part-time position and, accordingly, was reassigned 45 days later (April 1980). Subsequently, Geller was assigned to an inordinate number of unfavored shifts (TA20-TA-21).^{2/} She was obligated to discontinue all work on special programs due to the irregularity of her working hours, and became what she characterized as a "babysitter" (TA-22). She stopped receiving overtime assignments (TA-26). Eventually her hours were reduced from an original 40 hours per week as a full-time employee, to 20 hours per week the minimum number of hours guaranteed to part-time permanent personnel (TA-23), to 16 hours and ultimately to 8 hours -- all without any consistency to the number of hours she could expect to receive each week (TA-23). Moreover, all this was done despite an ever-increasing need for, and capacity to support, more hours of work and more special programs at the shelter, as evidenced by the hiring of new personnel during this period (TA-27). Geller stated that

2/ TA refers to the hearing transcript of July 23, 1980.

her "attempt to exercise her rights" precipitated her employer's discriminatory treatment toward her, as there was no alteration in any other facet of her professional relationship with her employer (TA-23). When she asked for more hours, she was told she was lucky to be receiving any, and had she not initiated her complaint she probably would have been restored to full-time service (TA-27). Geller finally stated that she remained as long as she could under these unfavorable conditions; however, "it finally became an unbearable situation to work under and [she] left the shelter in June" (TA-28).

Following the County's technical compliance with the Geller-Civil Service resolution, the County and the Association entered into an agreement restoring Ms. Espir to full-time status and giving her back pay retroactive to the date of her unlawful reduction from full to part-time status.^{3/}

Para testified that she was a full-time employee, but her hours fluctuated, sometimes above, sometimes below 40 hours per week. The employer contested Para's assertion. The Hearing Examiner found that there was no clear evidence in the record which indicated that a Civil Service proceeding had been brought on her behalf or that a settlement had been reached on her behalf by the Association and the County concerning her employment status (i.e., part time or full time). Accordingly, the Hearing Examiner

^{3/} While the record indicates that Espir is now returned to full-time status and has received back pay for time lost, it is uncertain from the record whether Espir has received a substantially equivalent work schedule.

concluded Para was a part-time employee.

After her hours had initially been cut (October 1979), Para received an average of three to four days of work per week. However, after the various appeals and grievances concerning her hours had been undertaken, her hours were cut again, so that she now received only two to three days work per week. Further, she then began to receive even more of the non-preferred shift assignments.^{4/}

The Association set up a meeting with the County representative in December 1979 to discuss and try to resolve employee scheduling problems. Attending that meeting were: Director Hennessey, the County Personnel Director, the President of the Association, Geller, Espir, Para and Paul Liedy, a part-time children's supervisor. Mr. Liedy made a presentation for the employees. Immediately thereafter, his hours were cut and he was given more undesirable shifts.

On March 1, 1980, Ms. Para was involved in an incident at the Shelter with employees Paul Liedy and Karen Zygmunt (a full-time children's supervisor) which led Director Hennessey to fire Liedy and to suspend Para and Zygmunt for eight days each. After an in-house hearing was conducted by the County Personnel Director and Mr. Hennessey, Liedy's dismissal was reduced to a suspension, and the Para and Zygmunt suspensions were reduced from eight to five days. The Hearing Examiner concluded, and we affirm his conclusion, that the reduction of these penalties was done so as to avoid having to go through a Civil Service hearing. The

^{4/} The record indicates that since Geller left, Para has received more hours and now works approximately four days per week.

Hearing Examiner further concluded that Hennessy's conduct was quite suspect in this situation, inasmuch as he acted after what was only a very cursory investigation, based upon information which appeared unreliable and under circumstances where there appears to have been no evidence of any wrongdoing. Finally, in comparison to various other events which have occurred at the Shelter, the discipline meted out for the March 1 incident was clearly inconsistent and excessive. During the period of their suspensions, Para, Liedy and Zygmunt were each deprived of work on days ^{5/} when they had been scheduled to work.

The explanations proffered by the County for the hours cut and changes and the County's reaction to the March 1 matter were determined by the Hearing Examiner to be pretextual. We agree. The Hearing Examiner concluded that the totality of Hennessy's conduct did interfere with, restrain and coerce employees in the exercise of protected rights in violation of N.J.S.A. 34:13A-5.4(a)(1). We agree. While the initial schedule changes may have been precipitated by budgetary considerations, the second round of changes and the March 1 incident were clearly coercive in nature and had a chilling effect on the exercise of employee rights.

The Hearing Examiner recommended that the County offer Geller and Para full-time positions, offer Liedy and Espino work schedules equivalent to those which they had prior to the changes, make Para and Zygmunt whole for the suspensions which they received

^{5/} Based upon the record herein, it appears that Zygmunt missed seven scheduled work days; Para missed four scheduled days and Liedy missed an undetermined number of days.

due to the March 1 incident, cease and desist from interfering with employee rights, and that we dismiss the (a)(2), (4), and (7) allegations. The County filed several exceptions.

(a) The County states that Geller and Liedy have resigned their jobs. That Geller and Liedy have left County employment does not render this issue moot, nor does it render the Hearing Examiner's Recommended Order concerning these employees unnecessary. Where the Commission has determined that any party has engaged in unfair practices within the meaning of the Act, pursuant to N.J.S.A. 34:13A-5.4, it shall issue "an order requiring such party to cease and desist from such unfair practices and to take such reasonable affirmative action as will effectuate the policies of this Act." Ordering the restoration of the status quo which prevailed prior to the County's unlawful conduct -- or ordering such action as may make possible the restoration of the status quo -- is such a "reasonable affirmative action as will effectuate the policies of this Act."^{6/}

NLRB precedent provides broad authority for the finding of a constructive discharge where the facts reveal that an employee resigned due to an employer's unfair practice or following an employer's imposition of "onerous working conditions" after the employee's exercise of a protected activity. In re Marcus Hardware, Inc. [243 NLRB No. 158 (1979)] 102 LRRM 1353; In re Lewittes Furniture Enterprises, Inc. [244 NLRB No. 127 (1979)],

^{6/} See, Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n Ed. Secys., 78 N.J. 1 (1978).

102 LRRM 1266; In re Western Pacific Roofing Corp., [244 NLRB No. 74 (1979)], 102 LRRM 1220; In re Holiday Inn of Perrysburg, Ohio [243 NLRB No. 55 (1979)], 101 LRRM 1526; In re Production Stamping, Inc., [239 NLRB No. 176 (1979)], 100 LRRM 1141. For an employer to be held legally responsible, it must be alleged and shown that the termination involved was the culmination of a plan on the employer's part to force such action, or the foreseeable consequence of earlier harassment. Moreover, where constructive discharge has been found, the proper remedy is full reinstatement accompanied by back pay in order to make the affected employee whole. In re Serv-U Stores, Inc., [225 NLRB No. 7 (1976)], 93 LRRM 1033; In re Walker Electric Co., Inc., [219 NLRB No. 52 (1975)] 90 LRRM 1171; In re Big Y Supermarkets, [173 NLRB No. 67 (1968)] 69 LRRM 1437. In this case, the record reveals that following Geller's successful Civil Service challenge of the County's reduction in her hours from full time to part time, she was discriminated against by way of a properly-implemented reduction to part-time status despite the lack of any legitimate need therefor. Additionally, she was harassed by way of assignment to unfavorable shifts, termination of overtime assignments and further reduction in her hours. Eventually she resigned, apparently due to the cumulative effect of these negative actions taken against her. Accordingly, we conclude that the record adequately supports a finding of constructive discharge with respect to Ms. Geller.

With respect to Liedy, no constructive discharge can be found based on this record. This conclusion is buttressed by the fact that his resignation was not tendered until after the hearing in this matter, and no application to reopen the record was made.

(b) The County states that Espir has already been restored to full-time status. We note, however, that the Hearing Examiner took cognizance of the fact that Espir is already full-time. The Recommended Order requires that Espir be offered a substantially equivalent schedule -- in terms of shift preferences -- to that which she enjoyed before her hours were cut in 1979. The record is unclear with regard to precisely what schedule (i.e., the mix of work shifts) Espir is now working and whether it is substantially equivalent to that which she worked before the 1979 schedule changes. The appropriate remedy for this aspect of the charge requires not only a return to full-time status (which has been effectuated), but also a return to a substantially equivalent work schedule as was enjoyed prior to the County's unlawful conduct. Hence, we shall affirm this part of the Hearing Examiner's recommended Order.

(c) Finally, the County states that Para is a part-time employee. Further, the County contends that if Para is made full-time, it would necessarily displace another full-time employee with greater rights to the job than Para has.

We note that consistent with the County's contention, the Hearing Examiner determined that Para is a part-time employee. That finding was not excepted to by any party and it is hereby affirmed. Inasmuch as Para was a part-time employee initially, we shall modify the Hearing Examiner's Recommended Order to require that Para be offered a substantially equivalent work schedule -- in terms of both time and shift preference -- as that which she enjoyed prior to the 1979 changes.

ORDER

IT IS HEREBY ORDERED THAT:

A. The Respondent County of Morris shall cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act, particularly by adversely changing work schedules of employees who seek advice and assistance from Morris Council #6, NJCSA and otherwise have Council #6 represent them in the presentation of grievances.

B. The Respondent take the following affirmative action:

1. Offer Patricia Geller a position as a full-time, permanent childrens' counsellor at the Morris County Youth Shelter with back pay as a full time employee from the date of her second demotion to part-time status, mitigated by the part-time salary or other compensation received following the date of her demotion.

2. Offer Elizabeth Para a work schedule that is substantially equivalent -- in terms of the amount of work hours per week and the mix of work shifts -- to that which she enjoyed prior to the work schedule changes made by Respondent in the fall and winter of 1979.

3. Offer Jill Espir a work schedule which is substantially equivalent -- in terms of the mix of work shifts -- to that which she enjoyed prior to the work schedule changes made by Respondent in the fall and winter of 1979.

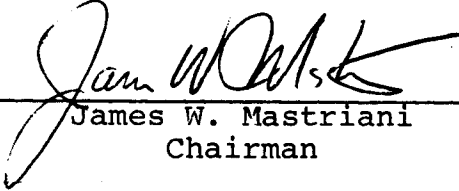
4. Make Elizabeth Para, Paul Liedy and Karen Zygmunt whole for the suspensions which each received as a result of the March 1, 1980 incident.

5. Post at all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon the receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by other material.

6. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

C. The allegations in the Complaint that Respondent violated N.J.S.A. 34:13A-5.4(a)(2), (4) and (7) be dismissed in their entirety.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Newbaker, Hipp, Parcels, Hartnett, Graves and Suskin voted for this decision. None opposed.

DATED: October 2, 1981
Trenton, New Jersey
ISSUED: October 5, 1981

APPENDIX "A"

NOTICE TO ALL 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 our employees in the exercise of rights guaranteed to them by the Act, particularly by adversely changing work schedules of employees who seek advice and assistance from Morris Council #6, NJCSA and otherwise have Council #6 represent them in the presentation of grievances.

WE WILL offer Patricia Geller a position as a full-time permanent childrens' counsellor at the Morris County Youth Shelter with back pay as a full-time employee from the date of her second demotion to part-time status, mitigated by the part-time salary or other compensation received following the date of her latter demotion.

WE WILL offer Elizabeth Para a work schedule that is substantially equivalent -- in terms of the amount of work hours per week and the mix of work shifts -- to that which she enjoyed prior to the work schedule changes made by us in the fall and winter of 1979.

WE WILL offer Jill Espir a work schedule which is substantially equivalent -- in terms of the mix of work shifts -- to that which she enjoyed prior to the work schedule changes made by us in the fall and winter of 1979.

WE WILL make Elizabeth Para, Paul Liedy and Karen Zygmunt whole for the suspensions which each received as a result of the March 1, 1980 incident.

COUNTY OF MORRIS

(Public Employer)

Dated _____

By _____

(Title)

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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. NO. 81-35

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

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Docket No. CO-80-303-114

MORRIS COUNCIL #6, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner found that the County of Morris violated § 5.4(a)(1) when it altered the hours of employees who sought the advice of their employee representative and as a result of that advice filed appeals of the County's actions with the New Jersey Department of Civil Service.

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.

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Appearances:

For the Respondent, Edward Horan, Director
Morris County Labor Relations

For the Charging Party, Morris & Hantman, Esqs.
(Allen Hantman, of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On March 31, 1980 Morris Council #6, New Jersey Civil Service Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the County of Morris had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). It was specifically alleged that four employees of the Morris County Youth Shelter were discriminated against by the curtailment of work hours, rearrangement of shifts and suspension without pay because they exercised rights protected under the Act. It was claimed that these acts violated sections 5.4(a)(1), (2), (4) and (7) of the Act.^{1/}

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by
(continued)

It appearing that the allegations of the Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 3, 1980. Pursuant to the Complaint and Notice of Hearing, hearings were held on July 23 and 24, 1980 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence, argue orally and were provided an opportunity to submit post-hearing briefs.

Jill Espeir, Elizabeth Para and Patricia Geller were employed as full-time children counselors at the Morris County Youth Center. In October of 1979 each of them was individually informed by James Hennessey, Director of the Youth Shelter, that the Shelter was having budgetary problems and each of them would have to have their hours cut. Hennessey believed that they were part-time employees and that their hours could be, and, in fact, were cut immediately. All three women took the position that they were full-time employees and their hours could not be cut without 45 day's prior notice.

The women individually contacted Civil Service and appealed the County's action. They then contacted Betty Lisovsky

1/ (continued)

this Act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act; and (7) Violating any of the rules and regulations established by the commission."

President of Council #6. A meeting was set up by Mrs. Lisovsky and the three women. After this initial meeting, Lisovsky contacted the Director of Labor Relations for Morris County, Mr. Edward Horan, and had several meetings with him. A meeting was set up among all the individuals involved. Para, Espeir, Geller, Lisovsky, Hennessey and Horan attended, along with Paul Leidy, a part-time child supervisor. At that meeting, Leidy, on behalf of the Association, presented a model schedule to the County which laid out a proposal as to how work assignments and scheduling should be conducted at the Shelter. As a result of this meeting, a letter was sent by the County Administrator, Fred Rossi, directing that "the assignment of part-time workers must be done in accordance with the preference of the employees within the following groups. This preference applies to weekly hours of work and shift preference: (1) Permanent part-time employees by seniority within the group; (2) Provisional part-time employees by seniority within the group; (3) College students on vacation by seniority within the group."

The County did not, however, return Para, Geller or Espeir to full-time. But, on February 21, 1980, Civil Service determined that Geller was a permanent full-time employee and her hours could not have been cut without serving her with a prior 45 day notice. She was awarded back pay retroactive to October when her hours were initially cut. The County immediately thereupon served her with a 45 day notice which stated that she

would be reassigned to a permanent part-time position with fewer hours, and 45 days later her hours were cut. After October 1979 Geller was continually given weekend and graveyard shifts, i.e., from 11:30 p.m. to 7:30 a.m. These were not shifts of preference but were the least favored shifts at the Shelter, in spite of the County Administrator's letter discussed above and in spite of Geller's requests for day-time shifts. These shift assignments were made by Hennessey.

Prior to October of 1979, Geller was regularly asked to come in to work overtime if someone was sick and could not work a shift, but after October of 1979 she was never asked to work overtime again. During the Spring of 1980, much of the full-time staff was required to work one day of overtime every other week, but Geller continued to get only two days of work a week. Between October of 1979 and June of 1980, four new permanent employees were added to the staff, but Geller was not offered the position of full-time counselor again. Geller testified that she specifically asked Hennessey if she could be scheduled for more shifts. She claims that Hennessey stated that Geller was lucky to be getting 20 hours a week and "if she had gone along with things never begging and not involving everybody else she probably would have had her 40 hours a week back again." Geller resigned from the Shelter in June of 1980.

Espeir testified that in February of 1980, apparently after Civil Service rendered its decision in the matter of Geller

above, the County and Council #6 negotiated a settlement on Espeir's behalf, paying her back wages for the hours she lost when her hours were cut from full-time to part-time. Espeir was restored to and remained on full-time status as an employee. She testified, however, that Hennessey stated to her sometime before she was to start full-time status that "if her activities continued (i.e., protesting her reduction in hours), her job would be put on the line through political influence."

Elizabeth Para apparently never was a full-time employee. There is no testimony as to what decision was made as to her status by Civil Service nor was a settlement ever worked out on her behalf. Further, she testified that since she was first hired her hours fluctuated sometimes more than 40 hours a week and sometimes less. After her hours were cut in October, she remained on a schedule of two days a week for one week and three days a week the following week. Her schedule has never been increased.

There was ample evidence that additional work was available for both Geller and Para. Jennifer Enright-Ford testified that she was hired as a child supervisor in early 1980 and currently holds that position. She testified that she regularly worked five or six shifts every week and currently works days.

Mayae Banks has been the Assistant Director at the Youth Shelter since May of 1974. Mrs. Banks is active in preparing the budget and establishing staff requirements for the Youth

Shelter. Banks testified that there were no reductions in the number of staff positions from 1979 to 1980. In the Summer of 1979 there were four women working as full-time counselors, including Geller, Para^{2/} and Espeir. All had basically 40 hour work weeks. Mrs. Banks testified that in the work week of November 14, 1979, Geller worked one evening shift and two weekend shifts, although that on the whole the week was running short; that is, there were not enough people taking shifts either because of illness or vacation. Banks testified that during the week of March 2 to 9, 1980, Enright-Ford worked six shifts for 48 hours, while Geller worked two evening shifts and Para worked only two day shifts for that week. Banks was asked if there was any significant change in the philosophy or operation of the Shelter to justify the unavailability of shifts for Geller, et al, during February, March, April or May of 1980. Banks testified that the staff at the Shelter is larger now than it was in September 1979 and further that, as she testified, there were two summer employees serving as children's supervisors, one working three shifts, the other four. During the spring when Para and Espeir were classified as part-time, the Shelter did hire some full-time people and on occasion did have people classified as part-time working as many as 48 hours a week.

Leidy, who was a provisional part-time supervisor at the Youth Shelter, was the employee who presented the proposed

^{2/} Para received a full-time load at this time, but her official Civil Service status was apparently that of a part-time employee.

work schedule at the December 19, 1980 meeting involving the employees, Horan and Hennessey. He testified that immediately after the meeting his hours were cut. Prior to the meeting, he worked one shift during the day on Saturday and two shifts on Sunday, one in the day and one in the evening. After the meeting his daytime Sunday shift was cut and was never reinstated.

Para and Leidy were also involved in an incident on March 1, 1980. They, along with Karen Zygmunt, worked the 3:00 p.m. to 11:00 p.m. shift. That evening the children at the Shelter asked if they could build a fire in the fireplace. The Supervisors agreed and Leidy built a fire about 9:00 that evening. After half an hour or 45 minutes, the children asked if they could put the lights out to watch the fire and the Supervisors agreed. According to the testimony of these three supervisors, the television was on in the room, there were lights on in other rooms and one of the supervisors was in the living room and the two others were in an adjoining office which looks out over the living room, playing scrabble. The children were in their pajamas at that time. The fire was put out sometime around 11:00. On Wednesday, March 5, when Zygmunt returned to work she was told that Hennessey had tried to contact her. When she approached Hennessey, he explained that based upon what he had heard from children, there had been a situation which he found objectionable, Zygmunt was suspended as of that time. On that same day, Wednesday, March 5, Leidy returned a call from Hennessey. At that time, Hennessey related to Leidy what his understanding of

the incident that occurred the preceding Saturday and Hennessey told Leidy that his employment at the Youth Center was terminated. Hennessey called Para twice. The first time he had asked her some questions specifically about what had happened and he said he was going to further investigate the incident and get back to her. That afternoon Hennessey told Para she was suspended pending a hearing. Subsequently, a hearing was conducted by Hennessey and Herman Hoopes, the Morris County Personnel Director. The suspensions of Para and Zygmunt were rescinded. They were all given five day suspensions retroactively. Leidy's dismissal was rescinded as well. However, Zygmunt and Para had lost eight days of work and they were never reimbursed for the three days in question.

Hennessey testified on behalf of the County concerning the assignment of work hours and the suspensions of the three employees mentioned. I found that Hennessey's testimony lacked credibility. He was evasive, i.e. he refused to acknowledge that Geller was a full-time employee in spite of the clear findings of the Civil Service Commission. He testified that hours of the employees in question were reduced because of a budget crisis, yet the evidence is clear that that budget crisis only lasted from October 1979 to January 1980 and effective January 1980 there was enough money to hire additional employees. Nevertheless, the work hours of Geller, Para, Espeir and Leidy remained severely curtailed. He testified that there was a difference in the two

classifications of employees, that is, supervisors and counselors. The supervisors were paid at a somewhat lower rate than the counselors and the counselors had to have a higher level of experience and training to be counselors, although the salary schedules of both employees overlapped. Hennessey testified that he wanted to have counselors work during the day since they had more training and were able to handle more problems of the children and therefore he wanted the supervisors to work at night when the residents were asleep. The three women, Espeir, Para and Geller were all counselors, but were nevertheless assigned night shifts. It is uncontroverted that Hennessey, in scheduling employees, ignored the letter of understanding which was entered into in November (giving employees with greater seniority shifts of preference). Similarly, his testimony was that because of the budget cut, supervisory employees should be given more work over counselors in order to pay them a lower rate. Yet, as noted above, the budget problems ceased to exist effective January 1980. There is no reason to doubt that the original cut in hours made by Hennessey was done strictly for budgetary reasons. But, Hennessey's proffered reason for his failure to reinstate the complainants' old hours were strictly pretextual. No reason was ever offered for reducing Leidy's hours.

Hennessey's conduct in terms of meting out discipline concerning the March 1 incident also is suspect. Hennessey testified that he became aware of this incident when a supervisor

from the evening shift on March 2, 1980 told him that some of the residents asked if they could light a fire and turn the lights down. Hennessey testified that he then asked some of the children at the Shelter what had happened and it was upon the basis of asking the children what had happened and his phone conversation with Para, Leidy and Zygmunt that he came to the decision that the actions of the three employees deserved a dismissal. He testified that his information was that the three employees were out of the living room area for extended periods of time and since the children were dressed in pajamas in the dark (the Shelter being coed, 5 boys and 2 girls), there was an overly permissive and suggestive atmosphere. All three employees denied any wrongdoing whatsoever, and there was no independent evidence adduced to demonstrate that there was any wrongdoing. Given Hennessey's lack of credibility, one cannot credit his testimony here. For again, the testimony was non-specific and evasive. There was testimony from Hennessey that other employees had been dismissed in the past. However, the infractions for such dismissals were far more serious than the incident here. These earlier incidents warranting dismissal were when a supervisor assisted a resident in running away from the residence and hid the resident in her own home, sleeping on the job during the 11:00 p.m. to 7:00 a.m. shift and engaging in sexual intimacy with a resident.

It is true that Zygmunt had no prior involvement in the Association and there was no reason for Hennessey to take any

retaliatory action against her. But, as discussed above, Hennessey had already taken very questionable action against Para and Leidy. Further, Hennessey told Leidy he was fired without any real investigation on Hennessey's part. This revealed Hennessey's state of mind. Given the background of the parties, it was clear that Hennessey wanted to get rid of Leidy.

Para, Zygmunt and Leidy were reinstated only because Hennessey subsequently realized that these employees were entitled to Civil Service protections, and if he attempted to discharge these three employees they would be entitled to a Civil Service hearing. To avoid a full Civil Service hearing, he changed their penalties to five day suspensions, the maximum penalty that does not require Civil Service review. Even if some form of discipline might have been appropriate, Hennessey's initial reaction, as well as the final five day suspension, were excessive.

No violation of 34:13A-5.4(a)(3) was alleged, nor was there any direct testimony of animus, but if an (a)(3) charge were filed, given Hennessey's conduct and his lack of legitimate business justification for the treatment of Para, Geller, et al., such motivation could have been inferred. See, In re Haddonfield Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71 (1977). Here, however, the totality of Hennessey's conduct did interfere with, restrain or coerce employees in the exercise of protected rights in violation of N.J.S.A. 34:13A-5.4(a)(1). It is noted that proof of motive of anti-union animus is not an essential element

in proving a violation of this subsection. See, Housing Authority of the City of Newark and Fred Butler, P.E.R.C. No. 81-48, 6 NJPER ____ (¶ ____ 1980).


Accordingly, I hereby recommend that the Commission find the alteration of the hours of Geller, Para, Espeir and Leidy, and the imposition of penalties against Leidy, Para and Zygmunt for the March 1 incident, constituted violations of 5.4(a)(1) of the Act and recommend that the Commission order:

1. The County of Morris offer Elizabeth Para and Patricia Geller positions as full-time permanent counselors at the Morris County Youth Shelter.
2. Offer Paul Leidy and Jill Espeir substantially equivalent work schedules to what they enjoyed before their hours were cut in 1979.
3. Make Elizabeth Para and Karen Zygmunt whole for the five days suspension they received as a result of the March 1 incident.
4. That the County cease and desist from attempting to interfere with the exercise of protected rights by taking action against employees who seek the advice of Council #6 and otherwise have Council #6 represent them in the presentation of grievances.
5. Post at all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof,

and, after being signed by the County's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the County to ensure that such notices are not altered defaced or covered by other material.

6. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent County has taken to comply herewith.

7. It is further recommended that the Commission order that the allegations concerning violations of subsections 5.4(a)(2), (4) and (7) be dismissed since no facts were adduced at the hearing which would indicate violations of these subsections.



Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
March 26, 1981

Recommended Posting

NOTICE TO ALL 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 cease and desist from attempting to interfere with, restrain or coerce employees in the exercise of protected rights by taking action against employees who seek the advice of Council #6 and otherwise have Council #6 represent them in the presentation of grievances.

WE WILL offer Elizabeth Para and Patricia Geller positions as full-time permanent counselors at the Morris County Youth Shelter.

WE WILL offer Paul Leidy and Jill Espeir substantially equivalent work schedules to what they received prior to October 1979.

WE WILL make Elizabeth Para and Karen Zygmunt whole for the five days suspension they received as a result of the March 1, 1980 incident.

COUNTY OF MORRIS

(Public Employer)

Dated _____

By _____

(Title)

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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.