

P.E.R.C. NO. 90-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (OFFICE
OF EMPLOYEE RELATIONS)

Respondent,

-and-

Docket No. CO-H-88-144

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT-AFT/AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Council of New Jersey State College Locals against the State of New Jersey (Office of Employee Relations). The charge alleged that the State violated the New Jersey Employer-Employee Relations Act when the president of Jersey City State College allegedly told a professor that he was not department chairperson because his colleagues were antagonized by his grievances and that his actions had "consequences." The Hearing Examiner found that the president did not make the statements alleged. The Commission accepts that finding.

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Charging Party.

Appearances:

For the Respondent, Peter N. Perretti, Jr., Attorney
General (Melvin E. Mounts, Deputy Attorney General)

For the Charging Party, Barbara Hoerner, Staff
Representative

DECISION AND ORDER

On December 4, 1987, the Council of New Jersey State
College Locals, NJSFT-AFT/AFL-CIO ("charging party") filed an unfair
practice charge against the State of New Jersey (Office of Employee
Relations) ("respondent"). The charge alleges that the respondent
violated the New Jersey Employer-Employee Relations Act, N.J.S.A.
34:13A-1 et seq., specifically subsection 5.4(a)(1),^{1/} when Dr.
William Maxwell, president of Jersey City State College, allegedly
told David Brook, professor of political science, that Brook was not
department chairperson because his colleagues were antagonized by

^{1/} This subsection 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."

Brook's filing grievances. Maxwell also allegedly told Brook that Brook's actions had "consequences."

On March 22, 1988, a Complaint and Notice of Hearing issued. On April 5, the respondent filed its Answer denying that the alleged statements were made.

On May 19, 1988, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs by February 9, 1989.^{2/}

On May 9, 1989, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 89-36, 15 NJPER 317 (¶20141 1989). He credited the president's denials and thus found that the charging party failed to prove its allegations.

On May 30, 1989, after an extension of time, the charging party excepted to the Hearing Examiner's crediting Maxwell's testimony and finding that Maxwell advised Brook's colleagues that they should not take Brook's grievance filing into account when selecting a chairperson.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-6) are accurate. We incorporate them with these additions.

We add to finding no. 7 that on numerous occasions Brook told Maxwell that the reason Brook was not chairperson was because Brook's colleagues were antagonized by his grievance (T36).

We add to finding no. 9 that Maxwell testified that he would not necessarily accept seniority as the determining criterion

^{2/} The parties agreed to delay the filing of briefs pending the decision of an arbitrator in a related matter.

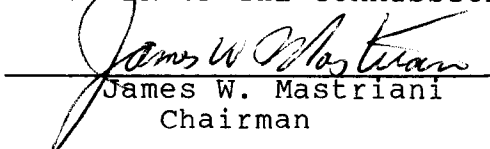
for the political science chairperson because the number of senior people in that department is limited (T57-T59).

This is a case about whether the president of a college told a senior professor that the reason the professor was not selected department chairperson was because his colleagues, who voted for chairperson, were antagonized by the professor's grievance filing. The professor conceded that he often expressed that thought to the president. But here, the professor claims that on June 9, 1987, the president made a similar comment to him. The president denied making the statement. The Hearing Examiner credited the president. Absent compelling evidence not present here, we will not substitute our reading of the transcript for the Hearing Examiner's credibility determination. City of Trenton, P.E.R.C. No. 80-90, 6 NJPER 49 (¶11025 1980). In light of that finding, the charging party did not prove that the respondent made any statements tending to interfere with Brook's statutory rights. New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 n.1 (¶10285 1979). Accordingly, the Complaint is dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Reid, Johnson and Wenzler voted in favor of this decision. None opposed. Commissioners Smith and Bertolino abstained. Commissioner Ruggiero was not present.

DATED: Trenton, New Jersey
July 31, 1989
ISSUED: August 1, 1989

H.E. NO. 89-36

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

In the Matter of

STATE OF NEW JERSEY, OFFICE
OF EMPLOYEE RELATIONS,

Respondent,

-and-

Docket No. CO-H-88-144

COUNCIL OF NEW JERSEY STATE COLLEGE
LOCALS, NJSFT, AFT/AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate §5.4(a)(1) of the New Jersey Employer-Employee Relations Act when the President of Jersey City State College met with David Brook, a professor of political science, on June 9, 1987. The Charging Party had alleged that at this meeting the College President stated to Brook, in the context of Brook's allegation that his filing of grievances antagonized his colleagues, that the actions of Brook had "consequences." The Charging Party failed to prove its allegations and the Hearing Examiner credited the categorical denials of the College President.

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.

H.E. NO. 89-36

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LOCALS, NJSFT, AFT/AFL-CIO,

Charging Party.

Appearances:

For the Respondent, State of New Jersey
Hon. Peter N. Perretti, Jr., Attorney General
(Melvin E. Mounts, D.A.G.)

For the Charging Party, Barbara Hoerner, Staff
Representative

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 4, 1987 by the Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO ("Charging Party" or "AFT") alleging that the State of New Jersey, Office of Employee Relations ("Respondent" or "State") has 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. ("Act"), in that on June 9, 1987, David Brook, a Professor in the Political Science Department, met with William Maxwell, the President of the Jersey City State College for the purpose of

discussing a project that Brook wished the College to sponsor, adding that if he (Brook) were to become the Chairman of the Political Science Department the obtaining of the requested project would be facilitated; Maxwell's response to Brook was that he was not the Chairman because Brook's colleagues in the Department were antagonized by Brook's filing of grievances; when Brook asserted his right to file grievances, Maxwell stated that Brook's actions had "consequences"; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 22, 1988. Pursuant to the Complaint and Notice of Hearing, the original hearing dates of May 24 and May 25, 1988, were rescheduled to May 19, 1988, on which date a hearing was held in Newark, New Jersey, where the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties agreed to delay the filing of post-hearing briefs, pending the decision of an arbitrator in a related case. The parties ultimately advised the Hearing Examiner that they wished to have the matter adjudicated and, pursuant to a delayed briefing schedule, the final post-hearing brief was filed with the Hearing Examiner on February 3, 1989..

^{1/} This subsection 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."

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The State of New Jersey, Office of Employee Relations, is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. David Brook is a public employee within the meaning of the Act, as amended, and is subject to its provisions. Brook has been employed at Jersey City State College ("College") since 1967 and has been a Professor of Political Science in the Political Science Department since 1971 (Tr 10).
4. Brook has filed at least five grievances against the College, the first of which was filed in or around 1976 (Tr 10). In 1984, Joseph Weisberg, Dean of the School of Arts and Sciences, told Brook at a conference with another professor, Robert Arey, that one reason that Brook had certain scheduling problems was because of his

"past grievances" (Tr 12). Brook testified that in 1984, the President of the College, William J. Maxwell,^{2/} expressed anger at the fact of Brook's grievances and stated that the College had more important things to do than "...deal with the problems of David Brook..." (Tr 12, 13).^{3/}

5. In 1985, Brook again had a conference with Weisberg, in which Weisberg told Brook that he didn't mind grievances but the grievances of Brook were "frivolous" (Tr 13).

6. In March 1987, the three members of Brook's Department voted [2-1] that Dr. Carole Holden should become the Chairman of the Department (Tr 24, 31, 32).^{4/}

7. On June 9, 1987, Brook met with Maxwell for the purpose of delivering to him a letter from a colleague, Marshall H. Whithed, dated June 1, 1987 (CP-1) [Tr 14-16].^{5/} Maxwell read this letter, which was a proposal that would enable the College to administer a grant involving a substantial amount of money in connection with computerizing international conferences. Maxwell concluded that the letter was related to the effort of Brook to

2/ Maxwell has been the College President since 1974 (Tr 45).

3/ Maxwell credibly denied expressing anger to Brook in 1984 about Brook's grievances (Tr 48). This credibility resolution is based upon Maxwell's demeanor as a witness at the hearing.

4/ Holden's appointment was interim through June 30, 1987, and then it became full-time from July 1, 1987 through June 30, 1990 (Tr 33, 34).

5/ Brook has been a "close colleague" of Whithed for at least five years (Tr 28).

become the Chairman of his Department (Tr 29-31, 49, 50). Support for this conclusion is found on the second page of CP-1. [Tr 16-20]. Later in this meeting Maxwell asked Brook why he thought that he was not Chairman, and Brook stated that he felt it was because an original conflict had escalated.^{6/} Brook then testified that Maxwell responded, "The reason why you're not Chairman is because your colleagues have been antagonized by your grievances" (Tr 20). Maxwell credibly denied making this statement (Tr 52). When Brook stated that he had the right to engage in the "grievance process," Brook testified that Maxwell's response was that "These actions do have consequences." [Tr 20-22]. Maxwell categorically denied making this statement and the Hearing Examiner credits this denial (Tr 52). Maxwell did acknowledge that he stated to Brook on June 9th that he would tell the "Chairs in the future" that when selecting a Departmental Chair they should not take into account that Brook has filed grievances; Maxwell stated further that he had notified members of Brook's Department of this fact (Tr 53, 54).^{7/}

^{6/} Brook and Maxwell have had many discussions over the years about Brook's becoming the Chairman of his Department, a position which Brook has sought for a number of years (Tr 27, 45, 46).

^{7/} Finally, Brook testified that at this meeting on June 9th, he told Maxwell that he was leaving for Europe at the end of June and would not return until September and that he planned to file a grievance regarding the Departmental election of Holden at that time (Tr 22, 23, 32, 33).

8. Brook filed a grievance regarding the Departmental election of Holden on September 8, 1987, and it was heard by an arbitrator on May 12, 1988 (Tr 35).^{8/}

9. Maxwell has agreed with Brook over the years that seniority is an important factor or criteria for appointment to Chairman of Brook's Department but also testified that the Department has declined to use seniority as a criteria (Tr 37, 46, 47).^{9/}

DISCUSSION AND ANALYSIS

The State Did Not Independently Violate §5.4(a)(1) Of The Act Since The Charging Party Failed To Prove That On June 9, 1987, Maxwell Stated To Brook That His Actions In Filing Grievances Had "Consequences."

It cannot be gainsaid that David Brook has filed at least five grievances since 1976 and that he may have encountered certain problems because of "past grievances" (see Finding of Fact No. 4, supra).

The principal allegation in the instant Unfair Practice Charge is that on June 9, 1987, Brook met with President Maxwell for the purpose of delivering to him a letter from Whithed, which was a proposal that would enable the College to administer a grant involving a substantial amount of money. But, however, Maxwell

^{8/} Since the Hearing Examiner was never informed by the parties about this arbitrator's award, or its relevance to this proceeding, it is disregarded.

^{9/} Maxwell testified that if seniority was a major criteria, then Brook would be the only candidate for appointment (Tr 47).

concluded that this letter was related to Brook's effort to become Chairman of his Department, a subject about which Brook and Maxwell have had many discussions over the years. According to Brook, Maxwell stated at one point in this June 9th meeting that the reason that Brook was not chairman was because his colleagues had been antagonized by his grievances. The Hearing Examiner has credited Maxwell's denial that he made such a statement. Further, the Hearing Examiner has credited Maxwell's categorical denial that he stated, in response to Brook's claim that he had the right to engage in the grievance process, that "These actions do have consequences." However, Maxwell did acknowledge telling Brook at this meeting that in the future, in selecting a Departmental Chair, the Department should not take into account that Brook has filed grievances. [See Finding of Fact No. 7, supra, with respect to the foregoing].

Finally, of note, is the fact that Maxwell agreed with Brook over the years that seniority is an important factor or criteria for appointment to Departmental Chairmen but that Brook's Department has declined to use seniority as a criteria.

When all the foregoing is digested and analyzed it becomes crystal clear that the test for finding an independent violation of §5.4(a)(1) of the Act has not been met. Such an independent violation occurs only where the conduct of a public employer tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification: Jackson Tp.,

P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988), adopting H.E. No. 88-49, 14 NJPER 293, 303 (¶19109 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); N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Gorman, Basic Text on Labor Law, at 132-34 (1976). Also, the Charging Party need not prove an illegal motive in order to establish this independent violation of §5.4(a)(1) of the Act: Morris, The Developing Labor Law, at 75-78 (2d ed. 1983).

Even though the instant Charging Party need not prove an illegal motive in order to establish an independent violation of the Act as to Brook, there is simply nothing in the proofs of the Charging Party which suggests that President Maxwell engaged in any conduct which tended to interfere with Brook's statutory rights. The Hearing Examiner has credited Maxwell on the critical events which took place at the meeting between him and Brook on June 9, 1987, i.e., Maxwell did not make the "consequences" statement attributed to him by Brook. Further, even if Maxwell had stated that Brook was not Chairman because his colleagues had been antagonized by his grievances, this statement was a mere representation from the colleagues of Brook, which could not as a matter of law be imputed to Maxwell or the State. It is also noted, that Maxwell advised Brook's Department that its members should not take into account the fact of Brook's having filed grievances in

connection with selecting a Department Chairman. This is clearly a point in Maxwell's favor vis-a-vis the allegation of the Charging Party that Maxwell made statements or engaged in conduct which tended to interfere with the statutory rights of Brook under the Act.

Thus, for all of the foregoing reasons, the Hearing Examiner must recommend dismissal of the Complaint.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent State did not violate N.J.S.A. 34:13A-5.4(a)(1) when William J. Maxwell, the President of Jersey City State College, met with David Brook on June 9, 1987.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: May 9, 1989
Trenton, New Jersey