

P.E.R.C. NO. 80-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST ORANGE PUBLIC LIBRARY,

Respondent,

-and-

Docket No. CI-79-52-100

CONSTANCE TALIAFERRO,

Charging Party.

SYNOPSIS

The Commission, in agreement with the Hearing Examiner, finds that the Library violated the Act when it dismissed an employee who exercised her right to present a grievance to her employer. The employee was initially dismissed by the Director of the Library after she filed a grievance and sought to present that grievance to the Board of Trustees. However, she was reinstated by the Trustees and a different supervisor was assigned to evaluate her work. The Commission did not agree that the taint emanating from the Director's conduct in initially discharging the employee was dissipated by the formation of the new committee to independently review the employee's work. Rather, the Commission found that there was a causal connection between her initial attempt to present a grievance to the Trustees and her subsequent termination by them. Therefore, the Library was ordered to reinstate the employee, with back pay, to her former position.

STATE OF NEW JERSEY
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In the Matter of

EAST ORANGE PUBLIC LIBRARY,

Respondent,

Docket No. CI-79-52-100

-and-

CONSTANCE TALIAFERRO,

Charging Party.

Appearances:

For the Respondent, Jacob Green, Esquire
(Mr. Lawrence M. Koenig)

For the Charging Party, Oscar J. Miller, Esquire

DECISION AND ORDER

On April 19, 1979, an Unfair Practice Charge was filed with the Public Employment Relations Commission by Constance Taliaferro alleging that the East Orange Public Library (the "Library") 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"). In particular the charge alleges that the Library's decision to terminate Taliaferro's employment, effective April 14, 1979, was motivated in part by Taliaferro's filing and processing of a grievance and by her involvement in union activities on behalf of the Communications Workers of America in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7).^{1/}

^{1/} At the hearing the Charging Party amended the Unfair Practice Charge by deleting therefrom alleged violations of Subsections (a)(4), (5) and (7). The remaining Subsections in the charge prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the
(Continued)

It appearing that the allegations of the unfair practice charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 11, 1979. Hearings were held on August 1, 2, 3, 13, 14, 23 and 30, 1979 by Alan R. Howe, Hearing Examiner of the Commission, at which time both parties were represented by counsel and were given an opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. Post-hearing briefs were waived by the parties and, in lieu thereof, the parties argued orally on September 7, 1979.

On October 1, 1979, the Hearing Examiner issued his Recommended Report and Decision,^{2/} a copy of which is attached hereto and made a part hereof. The original of the report was filed with the Commission and copies were served upon the parties. Exceptions and a supporting brief were filed by the Library on November 2, 1979. A letter in response to the Library's exceptions was filed on November 13, 1979. This matter having been fully argued before the Hearing Examiner, we deny the request of the Library for oral argument before the Commission.

The Hearing Examiner found that the Library had not violated N.J.S.A. 34:13A-5.4(a)(3) by terminating Taliaferro's employment. Applying the standards adopted by the Commission in

^{1/} (Continued) exercise of the rights guaranteed to them by this Act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

^{2/} H.E. No. 80-11, 5 NJPER ____ (¶ ____ 1979).

In re Board of Education of the Borough of Haddonfield, P.E.R.C. No. 77-36, 3 NJPER 71 (1977) and In re City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977), revd on other grounds 162 N.J. Super. 1 (App. Div. 1978), pet for certif. granted 78 N.J. 404, appeal pending Supreme Court Docket No. 15,201 for determining whether an employer's conduct is violative of Subsection 5.4(a)(3), the Hearing Examiner noted that the Library and its administrative staff had been generally cooperative throughout the CWA's organizing activities which commenced in January 1979 and resulted in Commission certification of CWA as the majority representative for a unit of all Library employees on July 19, 1979. Moreover, the Hearing Examiner found that although Dorothy S. Jones, the Library Director, had in early February 1979, admonished Taliaferro not to participate in the Staff Association or union activity, Taliaferro ignored such warnings by soliciting membership on behalf of the CWA. However, the Hearing Examiner found that neither the Library Board of Trustees nor Jones had knowledge of such activity by Taliaferro. Based upon the foregoing, the Hearing Examiner recommended the dismissal of that portion of the Complaint alleging that the Library's conduct was violative of N.J.S.A. 34:13A-5.4(a)(3). There being no exception taken to this recommendation, it is adopted by the Commission without further discussion.

The Hearing Examiner, finding no evidence of a Subsection 5.4(a)(2) violation, also recommended dismissal of this alleged violation. Again since no exceptions were filed regarding this recommendation, it is adopted by the Commission.

Despite finding no (a)(3) violation, the Hearing Examiner did conclude that the Library's decision to terminate Taliaferro was causally related to Taliaferro's attempt to present a grievance

to the Library Board of Trustees on November 30, 1978. Citing In re New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1978) as well as other Commission and Court decisions, the Hearing Examiner found that the Library had violated Subsection 5.4(a)(1) of the Act by interfering with Taliaferro's right to present a grievance.

In arriving at this conclusion the Hearing Examiner employed a two-step approach. First he found that Jones had interfered with Taliaferro's right to present a grievance and had retaliated against her by summarily terminating her employment on December 18, 1978. In support of this preliminary finding the Hearing Examiner relied upon the following sequence of events. From Taliaferro's date of hire, December 19, 1977 until October 1978, she had a good relationship with Jones, her immediate supervisor. However, on October 24, 1978 Jones sent Taliaferro a memo which enunciated several complaints regarding the latter's work, and which suggested that if Taliaferro wished to pursue the matter, she should file a grievance with the Library Board of Trustees. However, thereafter on November 10 Jones instructed Taliaferro not to go to the Board. Nevertheless Taliaferro sent a letter to Jones on November 27, requesting that the matter be placed on the agenda for the November 30th Board meeting. At that meeting the Board, in accordance with Jones' recommendation, decided not to allow Taliaferro to present her grievance. Shortly thereafter on December 4, Jones gave Taliaferro a written reprimand criticizing her for attempting to present a grievance to the Board and threatened additional disciplinary measures if such conduct was repeated. Two weeks later, on December 18, 1978, Jones terminated Taliaferro. Based, in part, upon this

sequence of events, the Hearing Examiner found that Jones had interfered with and retaliated against Taliaferro for her exercise of protected rights. The second prong of the Hearing Examiner's analysis involved a finding that the decision of the Board of Trustees to terminate Taliaferro on April 14, 1979 was causally connected to and therefore tainted by Jones' earlier illegal conduct. The Hearing Examiner arrived at this conclusion, despite evidence that (1) the Board had reinstated Taliaferro after Jones had initially terminated her; (2) that the Board provided Taliaferro with an opportunity to present her grievance at its December 28 meeting; and (3) a Personnel Committee was established for the specific purpose of monitoring Taliaferro's work so that the Board could make an independent assessment of her job performance. Despite these actions taken by the Board, the Hearing Examiner nevertheless concluded that the Library's decision to terminate Taliaferro was violative of (a) (1) for the following reasons: (1) Jones, who harbored animosity toward Taliaferro for her attempt to present a grievance, had input into the Personnel Committee's deliberations; (2) Trustee Sellers, who was appointed to the Personnel Committee, had prejudged Taliaferro's work performance as evidenced by the former's motion at the December 28th Board meeting to terminate her; (3) in early February 1979 Jones had warned Taliaferro not to participate in any Staff Association or union activities; and (4) the Board denied Taliaferro her accumulated vacation leave for what it described as "disciplinary" reasons.

The Library excepts to the Hearing Examiner's factual and legal conclusion on a number of grounds, the most substantive of which will be reviewed in detail.

First, the Library takes issue with the Hearing Examiner's conclusion that Taliaferro had properly followed the grievance procedure set forth in the Library staff manual.^{3/} More specifically, the Library argues that Taliaferro had not complied with the first step of the grievance procedure by not attempting to resolve her grievance for a "reasonable" period of time with Jones, her immediate supervisor, before invoking the next step of the procedure. Accordingly, the Library contends that Jones' actions which the Hearing Examiner found to be violative of the Act were merely attempts

3/ The Staff Manual provides as follows with respect to grievances: "Grievances. Problems, requests and and grievances within each department of the Library, without exception, proceed along the following lines:

"1. To the immediate supervisor; if unsettled in a reasonable time---

"2. To the Head of the Department concerned; after both these channels have been explored without resolution---

"3. To the Director or Assistant Director; if results here prove unsatisfactory---

"4. With the Director's knowledge, to the Library Board of Trustees at a regular meeting. The Board, which is the final authority, is always willing to consider problems, requests and grievances that have proceeded along these authority lines."

(CP-6, p. 8)

by her to enforce the grievance procedure.

Second, the Library excepts to the Hearing Examiner's finding that no legitimate business justification existed for Jones' summary dismissal of Taliaferro on December 18, 1978. According to the Library, in so finding the Hearing Examiner failed to take into account the examples of inadequate work performance cited by Jones prior to any allegedly illegal conduct on her part. In addition, the Library points to other deficiencies in Taliaferro's work performance which occurred after Jones' initial verbal rejection of Taliaferro's request to appear before the Board and which the Library argues provide further support for its assertion that legitimate business justifications existed for Jones' decision to terminate Taliaferro.

Third, the Library contends that even assuming that Jones' termination of Taliaferro was motivated by a desire to retaliate against her for the exercise of protected rights, nevertheless "the independent investigation conducted by the Personnel Committee and independent evaluation made by the Board of Trustees must be held to have attenuated any 'taint' that Mrs. Jones' actions might have created."^{4/} Specifically, the Library takes issue with the Hearing Examiner's findings that Jones had continuous input into the Personnel Committee's deliberations, that Trustee Sellers who sat on the Committee was biased against Taliaferro, and that Taliaferro was denied her accumulated pay in retaliation for her exercise at protected rights. The Library asserts that the decision to terminate

^{4/} Page 20 of Library's brief in support of exceptions.

Taliaferro's employment was based largely upon her medical condition which prevented her from fulfilling her job responsibilities. According to the Library this explanation for Taliaferro's discharge constitutes a valid independent basis for the Board of Trustees' action. Moreover, the Library argues that despite making a motion for Taliaferro's termination at the December 28th Board meeting, Sellers bore no animosity toward Taliaferro. Rather, the Library claims that Sellers' motivation for making such a motion was simply to open the matter for discussion.

Fourth, the Library takes issue with the Hearing Examiner's recommended remedy, claiming that reinstatement, even assuming the accuracy of the Hearing Examiner's findings, is inappropriate. Citing footnote 4, in In re North Warren Regional, P.E.R.C. No. 79-4, 4 NJPER 417 (¶4187 1978), the Library claims that any interference with Taliaferro's protected rights was nominal and remote while Taliaferro's inability to carry out her job-related responsibilities is well documented in the record.

Fifth, the Library, in somewhat convoluted fashion, argues that the "one of the motivating factors" test utilized by the Commission is inappropriate.

As the Hearing Examiner pointed out, the right of a public employee to present a grievance to a public employer is guaranteed by Article I, Para. 19 of the New Jersey Constitution and by Section 5.3 of the Act. Furthermore, the Supreme Court in Twp. of W. Windsor v. PERC, et al., 78 N.J. 98 (1978) clarified the parameters of this right by stating that some mechanism must be provided to ensure that public employees are able to present grievances to their

employers. Where there exists an exclusive majority representative, the procedural details of a grievance mechanism are subject to collective negotiations. Where no majority representative exists, the employer bears responsibility for notifying employees of the appropriate manner of presenting grievances. It is in this context that the factual background of the instant charge must be examined.

With regard to the first exception raised by the Library, we conclude, in agreement with the Hearing Examiner, that Taliaferro adhered to the grievance procedure set forth in the staff manual, and that Jones, by preventing Taliaferro from presenting her grievance to the Board of Trustees at its November 30th meeting, and thereafter reprimanding Taliaferro for attempting to present her grievance, interfered with the exercise of Taliaferro's protected rights. The grievance procedure then in existence provided that if the grievance remained unsettled after "a reasonable time" at the first level, then an employee could proceed to the next step, in Taliaferro's case, to the Board. However, even the Library concedes in its brief^{5/} that the grievance procedure was ambiguous in view of the fact that the phrase "a reasonable time" is subject to varying interpretations. Based upon our review of the record, it is our conclusion that Taliaferro attempted to comply with the grievance procedure. This is evidenced by the fact that she did not request permission to go before the Board until after she had at least two conferences with Jones and only after Jones, in an October 24, 1978 memorandum, specifically suggested that Taliaferro consider appearing before the Board. Subsequently, in accordance with step 4 of the grievance procedure, Taliaferro notified Jones

5/ See page 43 of the Library's brief in support of exceptions.

that she would like to be included on the agenda for the November 30th Board meeting. Jones turned down Taliaferro's request without explanation. We find no evidence in the record to indicate that Jones informed Taliaferro that further efforts to resolve the grievance at the initial step should be undertaken before proceeding to the Board.

In light of the ambiguity of the grievance procedure, a fact which the Library acknowledges, and in light of Taliaferro's apparent attempt to first resolve the grievance with Jones, we find that Taliaferro made every reasonable effort to comply with the Library's grievance procedure. Moreover, given the nature of an employer's obligation to provide employees with a mechanism for the presentation of grievances, the Commission concludes that Jones interfered with and coerced Taliaferro in her exercise of protected rights.

Insofar as the Library's second exception is concerned, the Commission again finds itself in agreement with the Hearing Examiner. Jones' illegal conduct was so substantial that it is virtually impossible to divorce that conduct from her decision to terminate Taliaferro. This seems particularly evident when it is recalled that just two weeks prior to Jones' summary termination of Taliaferro, Jones had sent Taliaferro an official written reprimand threatening Taliaferro with additional disciplinary action if her attempt to present her grievance to the Board of Trustees should be repeated. While we do not pass judgment upon the accuracy of Jones' assessment of Taliaferro's work performance, we are nonetheless satisfied that Jones' animus toward Taliaferro for the latter's exercise of protected rights unduly influenced Jones' decision to dismiss Taliaferro.

Furthermore, we are unable to agree with the Library's contention that any taint emanating from Jones' conduct was dissipated by the formation of a Personnel Committee to independently review Taliaferro's work or by granting Taliaferro the opportunity to present her grievance at the December 28th Board meeting. We are persuaded by the evidence which the Hearing Examiner cites in support of his conclusion that "there is a sufficient causal connection between Taliaferro's attempt to present a grievance to the Board of Trustees on November 30, 1978 and her subsequent termination by the Board on April 5, 1979"^{6/} to warrant finding that the Board violated section 5.4(a)(1) of the Act. Jones, who we have found to have retaliated against Taliaferro for exercising her right to present a grievance, had both direct and indirect input into the Committee's deliberations. Jones made her essentially negative evaluation of Taliaferro's work performance from June 5 through December 1978 available to the Personnel Committee. Additionally, the record establishes that Jones had knowledge of the numerous memos which Eisen, who had replaced Jones as Taliaferro's immediate supervisor, had sent to Taliaferro pertaining to her unsatisfactory work performance. Copies of those memos were also supplied to the Personnel Committee.

In addition, the Hearing Examiner properly considered Jones' statement to Taliaferro in early February 1979, directing Taliaferro to refrain from participating in any Staff Association or union activity as evidence of a subsection (a)(1) violation. With

^{6/} See H.E. No. 80-11 at page 16.

regard to the Library's contention that Sellers' presence on the Personnel Committee did not taint the Committee's recommendations, we find that the Hearing Examiner based his conclusions largely upon credibility determinations, which, as the hearer of the facts, he is in the best position to make. Clearly he did not credit Sellers' explanation as to her motivation for making the motion at the December 28th Board meeting to dismiss Taliaferro. As the Commission has pointed out on numerous past occasions, we will not ordinarily overturn a Hearing Examiner's credibility judgments and find no reason to deviate from this widely accepted policy herein. In similar fashion, we remain unpersuaded by the Library's explanation for the Board's refusal to pay Taliaferro for her accumulated vacation leave. Again, we find that the Hearing Examiner's conclusion in this regard was based upon judgments as to credibility which we are not prepared to overturn.

The Library, as previously mentioned, also excepts to the Hearing Examiner's recommended remedy, citing as support footnote 4 in North Warren. However, the Commission does not view the instant matter as appropriate for the application of the approach outlined therein. The interference with Taliaferro's protected rights in this matter was direct and immediate. We reject the Library's assertion that its decision to terminate Taliaferro was based upon valid, independent and unrelated grounds.

Finally, for the reasons cogently set forth in In re Haddonfield Borough Board of Education, supra, and in In re City of Hackensack, supra, the Commission will continue to apply the "one of the motivating factors" test where it is alleged that an employer, as in the instant matter, has retaliated against an employee for the

exercise of protected rights.

Accordingly, the Commission finds that the Library violated subsection (a)(1) of the Act but dismisses all other portions of the Complaint.^{7/}

ORDER

For the reasons set forth above, the Public Employment Relations Commission hereby determines that the Respondent, East Orange Public Library, has violated N.J.S.A. 34:13A-5.4(a)(1) by discharging Constance Taliaferro and

IT IS HEREBY ORDERED that the Respondent, East Orange Public Library shall:

1. Cease and desist from:

a. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act, particularly, by terminating of employees, such as Constance Taliaferro, for the exercise of such rights as filing grievances.

^{7/} It should be noted that the Hearing Examiner did not consider whether or not the Library's retaliation against Taliaferro for presenting a grievance also constituted a violation of subsection (a)(3) of the Act. In view of the lack of exceptions as to this point, and given the fact that the recommended remedy adequately compensates Taliaferro for the Library's illegal conduct, the Commission sees no reason to specifically address this question under the particular facts of this case.

Nevertheless we feel obligated to point out that in past decisions such as In re Lakewood Board of Education, P.E.R.C. No. 79-17, 4 NJPER 459 (¶4208 1978), affmd App. Div. Docket No. A-580-78 (9/24/79) and In re North Brunswick Township Board of Education, P.E.R.C. No. 79-14, 4 NJPER 451 (¶4205 1978), affmd App. Div. Docket No. A-698-78 (4/11/79), violations of subsection (a)(3) have been found where an employer retaliated against employees for the filing of grievances. We make mention of these decisions, lest our failure to make such a finding herein be construed as indicating any divergence from the approach articulated in Lakewood, supra, and North Brunswick, supra.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

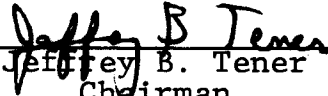
a. Forthwith offer reinstatement to Constance Taliaferro, without prejudice to any rights or privileges that she may have enjoyed prior to termination, to her former position as Exhibit Artist & Public Information Assistant, or to a substantially equivalent position, with back pay from April 14, 1979, including vacation or other leave that was withheld from her as a "disciplinary action", less interim earnings since that date.

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

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

IT IS FURTHER ORDERED THAT the Subsections (a)(2) and (3) allegations in the Complaint be dismissed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hipp and Parcells voted for this decision. Commissioners Hartnett and Newbaker voted against the decision.

DATED: Trenton, New Jersey
December 4, 1979
ISSUED: December 5, 1979

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 interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly, by terminating employees, such as Constance Taliaferro, for the exercise of such rights as filing grievances.

WE WILL forthwith offer reinstatement to Constance Taliaferro, without prejudice to any rights or privileges that she may have enjoyed prior to termination, to her former position as Exhibit Artist and Public Information Assistant, or to a substantially equivalent position, with back pay from April 14, 1979, including vacation or other leave that was withheld from her as a "disciplinary action", less interim earnings since that date.

EAST ORANGE PUBLIC LIBRARY

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

EAST ORANGE PUBLIC LIBRARY,

Respondent,

- and -

Docket No. CI-79-52-100

CONSTANCE TALIAFERRO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Library independently violated Subsection 5.4(a)(1) of the New Jersey Employer-Employee Relations Act when it terminated Constance Taliaferro as of April 14, 1979. The Hearing Examiner found that the Library's action was causally related to Taliaferro's attempt to present a grievance to the Library Board of Trustees on November 20, 1978, as a result of which she was terminated on December 18, 1978 by the Library Director. Notwithstanding that Taliaferro was thereafter reinstated by the Board of Trustees as of January 16, 1979 she was shortly thereafter unfavorably evaluated by the Library Director at the end of January and by mid-March a Personnel Committee of the Board of Trustees decided to recommend her termination. Taliaferro had worked only from January 16 to February 28, thereafter being absent due to illness until April 2, 1979.

In finding an independent violation of Subsection 5.4(a)(1) the Hearing Examiner cited the Commission's standard for such violation in New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (1978). The Hearing Examiner further found that the Library did not violate Subsection 5.4(a)(3) since no anti-union animus had been manifested by the Library toward Taliaferro nor had its conduct been "inherently destructive" of her rights under the Act. Finally, the Hearing Examiner recommended dismissal as to an alleged violation of Subsection 5.4(a)(2), which pertains to employer domination or interference with the formation, existence or administration of an employee organization.

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.

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

In the Matter of

EAST ORANGE PUBLIC LIBRARY, 1/

Respondent,

- and -

Docket No. CI-79-52-100

CONSTANCE TALIAFERRO,

Charging Party.

Appearances:

For the East Orange Public Library
Jacob Green, Esq.
(Lawrence M. Koenig, Esq.)

For Constance Taliaferro
Oscar J. Miller, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission, (hereinafter the "Commission") on April 19, 1979 by Constance Taliaferro, (hereinafter the "Charging Party" or "Taliaferro") alleging that the East Orange Public Library (hereinafter the "Respondent" or the "Library") 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. (hereinafter the "Act"), in that the Respondent did, effective April 14, 1979, terminate Taliaferro's employment, inter alia, because of a sequence of events beginning with her attempt on November 30, 1978 to present a grievance at a regular monthly meeting at the Board of Trustees of the Library, which she was prevented from doing by the Library Director, thereafter receiving a reprimand for said action from the Director on December 4, 1978 and, further, Taliaferro was terminated by the Library Director on December 18, 1978, which termination was rescinded by the Board of Trustees and Taliaferro returned to work

1/ As amended at the hearing. The Unfair Practice Charge, hereinafter referred to, named as Respondents Dorothy Jones, Marc Eisen and members of the Board of Trustees, all of whom were deleted as a result of the said amendment.

January 16, 1979, after which she engaged in union activities on behalf of the "CWA" (Communication Workers of America), which ultimately resulted in the aforesaid termination of April 14, 1979, and all of the foregoing was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7) of the Act. ^{2/}

It appearing that the allegations of the above charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 11, 1979. Pursuant to the Complaint and Notice of Hearing, the record was opened on July 19, 1979, ^{3/} and evidentiary hearings were held on August 1, 2, 3, 13, 14, 23, and 30, 1979 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses and to present relevant evidence. Post-hearing briefs were waived by the parties and, in lieu thereof, the parties argued orally on September 7, 1979.

An Unfair Practice Charge, as amended, 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 oral argument 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 East Orange Public Library is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Constance Taliaferro is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

3. Taliaferro was hired by the Library on December 19, 1977 as an Exhibit Artist & Public Information Assistant, ^{4/} her status being temporary under

2/ At the hearing the Charging Party amended the Unfair Practice Charge by deleting therefrom alleged violations of Subsections (a)(4), (5) and (7). The remaining Subsections in the charge prohibit 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.

"(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."

3/ No evidence was adduced on this date, the hearing being devoted to preliminary stipulations, amendments to the charge and the resolution of a subpoena dispute.

4/ Taliaferro was known as Constance Thomas at the time of her hire.

Civil Service for a period not to exceed 80 working days in a 12-month interval on a part-time basis (CP-2). Taliaferro's status changed from part-time to full-time effective June 4, 1978 (CP-5). At the time of her final termination, April 14, 1979, Taliaferro was still a temporary or provisional employee under Civil Service (CP-14).

4. From the time of Taliaferro's hire until January 16, 1979 her principal supervisor was the Library Director, Dorothy S. Jones. Thereafter Taliaferro was supervised by the Assistant Director, Marc Eisen.

5. Taliaferro's employment relationship with Jones was good-to-excellent until October 1978. On October 18 and October 19, 1978 Jones had conferences with Taliaferro in Jones' office where Jones made oral complaints to Taliaferro regarding Taliaferro's work performance. Eisen was present during part of the time of these two conferences. At the request of Taliaferro, Jones set forth the substance of her complaints in a memo to Taliaferro dated October 24, 1978 (CP-3). These complaints of Jones, which Taliaferro characterized as "petty", were four in number and may be summarized as follows:

(a) A patron wished to have a notice of a meeting posted on the "kiosk" in the Library, which Taliaferro refused on the grounds that the kiosk was too crowded. The patron noted that several items on the kiosk were outdated. Jones concluded that there was room on the kiosk for the patron's notice. The same patron also complained about the "unpleasant body odor" of another staff member, with which Taliaferro agreed. Jones stated that no staff member should ever "denigrate" a fellow staff member to the public.

(b) In connection with the publicity for the "Friends of the Library Book Sale," Jones stated that Taliaferro's response, in not having prepared anything since a "Friends" officer had printed the posters, was "shaky at best."

(c) With respect to the flier for the Urban Regional Conference, Jones stated that Taliaferro should have asked for further clarification from Jones before calling a Mr. Abram of the Newark Library.

(d) In connection with the Art Show as part of the Settlement Day Celebration, Jones criticized Taliaferro for not having properly construed her function as "liason to the City Committee." The gist of the criticism was that Taliaferro had neglected some of the responsibilities of her position with the Library. 5/

5/ Jones also expressed dissatisfaction with Taliaferro "in a P.R. sense" and Jones indicated that she was preparing a "guide listing your regular duties". (See a second memo of October 24, 1978 from Jones to Taliaferro clarifying Taliaferro's responsibilities on her job-CP-26).

6. At the conclusion of Jones' October 24, 1978 memo to Taliaferro, outlining the four complaints (CP-3, supra), Jones stated: "Should you wish to consider our discussion and/or this memo in the nature of a grievance problem, you may request permission to go to the Board." (Emphasis supplied).

7. On October 26, 1978 Taliaferro spoke to Minnie L. Johnson, the Vice President of the Board of Trustees of the Library, and Taliaferro showed Johnson the October 24 memo from Jones (CP-3) and asked if she should answer it. Without discussing the contents of the said memo, Johnson suggested to Taliaferro that she consult the Staff Manual (CP-6).

8. The Staff Manual provides as follows with respect to grievances:

"Grievances. Problems, requests and grievances within each department of the Library, without exception, proceed along the following lines:

"1. To the immediate supervisor; if unsettled in a reasonable time---

"2. To the Head of the Department concerned; after both these channels have been explored without resolution---

"3. To the Director or Assistant Director; if results here prove unsatisfactory---

"4. With the Director's knowledge, to the Library Board of Trustees at a regular meeting. The Board, which is the final authority, is always willing to consider problems, requests and grievances that have proceeded along these authority lines." (CP-6, p. 8)

(Emphasis supplied in part). ^{6/}

9. After encountering Jones on November 10, 1978, at which time Jones indicated to Taliaferro that she should not go to the Board of Trustees of the Library regarding the contents of CP-3, supra, Taliaferro sent a memo to Jones under date of November 27, 1978, which stated:

^{6/} As a result of Taliaferro's difficulties in taking the subject matter of CP-3 to the Library Board of Trustees, infra, the procedure on "grievances" was revised and clarified as of January 17, 1979 to provide for specific time limits in the steps of the procedure and, to provide further, that all but the initial step must be "in writing". An additional fifth step states that in going before the Board of Trustees a copy of the "writing" must be sent to the Library Director. (See CP-23, p. 2).

"Just a reminder, that I would like to be included on the agenda for the November 30th Board of Trustees Meeting, per our previous conversation of November 10th, 1978," (CP-4)

Jones responded orally to this memo, stating that Taliaferro could not go the Board of Trustees meeting on November 30th.

10. On November 30, 1978 Taliaferro appeared at the regular meeting of the Library Board of Trustees along with numerous Library employees, who, as witnesses at the instant hearing, corroborated her as to what transpired at the said meeting. It is undisputed that Taliaferro attempted to present a grievance to the Board with respect to the contents of CP-3, supra, and that before Taliaferro could proceed, Jones "cut her off," stating to Herman Kapp, the President of the Board of Trustees, that the subject involved an unresolved problem between the two of them and that she, Jones, did not want Kapp to hear Taliaferro. Kapp concurred with Jones and advised Taliaferro that she must follow the grievance procedure as outlined in the Staff Manual (CP-6, supra). Taliaferro was not heard.

11. As Taliaferro was leaving the November 30 meeting of the Board of Trustees, Eisen gave her a brown envelope, which contained a memo from Jones to Taliaferro dated November 30, 1978, which advised Taliaferro, inter alia, that she, not having submitted anything in "writing," was not given permission to go before the Board at the November 30 meeting. The same memo contained other "complaints" regarding Taliaferro's work performance. (See CP-7).

12. Under date of December 4, 1978 Jones sent Taliaferro a memo which was to "serve as an official reprimand for your insubordinate behavior in attempting to by-pass regular procedures and go to the Board of Trustees on November 30, before giving your written grievance to either Mr. Eisen or myself." (CP-48) The memo also stated that any "repetition of such action will be handled under Civil Service disciplinary procedures." Taliaferro responded to this memo under date of December 26, 1978 (CP-49).

13. On December 6, 1978 Taliaferro received nine or ten written memos from Jones and Eisen, which Taliaferro testified was a definite increase in the number of memos normally received. These memos were not offered in evidence.

14. Under date of December 9, 1978 Taliaferro responded in writing to Jones' memo of October 24, 1978 (CP-3, supra), which was received in evidence as CP-8. Copies of this memo were sent by Taliaferro to the members of the Library Board of Trustees.

15. Under date of December 18, 1978 Jones sent a memo to Taliaferro, which recited complaints regarding Taliaferro's work performance over the past two months, and concluded with Jones stating that she was terminating Taliaferro's employment effective January 12, 1979 with her last day of work to be December 18, 1978 (CP-9). ^{7/}

16. Taliaferro appeared at the next regular meeting of the Library Board of Trustees on December 28, 1978 and was permitted to read to the Board members present the contents of her December 9, 1978 memo to Jones (CP-8, supra, the response to Jones' memo of October 24, 1978). Taliaferro stated at the outset that the subject matter was a "grievance."

17. After Taliaferro concluded her presentation, supra, the Board took up the question of Jones' termination of Taliaferro on December 18, 1978 and Jones was advised to change it to a recommendation. ^{8/} A motion to terminate Taliaferro by Trustee Bebe Sellers did not receive a "second." Thereafter, Sellers made a motion to appoint a Personnel Committee to investigate the problem between Jones and Taliaferro, which was adopted. The Board Vice President, Minnie L. Johnson, who chaired the meeting, appointed a three-member Personnel Committee consisting of herself, Sellers and Barbara Leach.

18. On January 7, 1979 the members of the Personnel Committee of the Board met with Taliaferro and Jones, as a result of which a recommendation was made to the Library Board of Trustees at a special meeting on January 11, 1979 that efforts be made toward a reconciliation in the work problems between Jones and Taliaferro, and further, that this work relationship be monitored and evaluated by the Personnel Committee for three months, after which a final recommendation would be made to the Board of Trustees. Taliaferro was directed to return to her "desk" on January 16, 1979. (See R-1).

19. When Taliaferro returned to work on January 16, 1979, she received a memo from Jones on the same date advising her that Eisen would supervise her activities thereafter and, additionally, clarifying Taliaferro's responsibilities

^{7/} At its next regular meeting on December 28, 1978, the Board of Trustees refused to accept Jones' summary termination of Taliaferro on her own initiative whereupon Jones was advised to revise her December 18 memo (CP-9, supra) by recommending to the Board of Trustees that Taliaferro be terminated (see CP-10 dated December 28, 1978). The action of the Board of Trustees in response to Jones' recommendation is set forth in Findings of Fact Nos. 17 and 18, infra.

^{8/} See footnote 7, supra.

as Exhibit Artist and Public Information Assistant (CP-12). Taliaferro responded to this memo from Jones on January 30, 1979 listing 87 areas of duties and responsibilities (CP-27). ^{2/}

20. At the end of January 1979 Jones prepared a Personnel Service Rating Report (evaluation) on Taliaferro from June 5 through December 1978, the sum total of which is essentially negative on "job performance;" positive and negative with respect to such "personal" items as initiative, adaptability, self-confidence and appearance; and, finally, essentially negative on "supervision" (CP-15). The said Report provides for comments by the employee and the employee's signature but is "blank," notwithstanding that Taliaferro on February 9, 1979 sent a memo to Jones inquiring as to why she had not received a performance rating in accordance with the guidelines set forth in the Staff Manual (CP-47). ^{10/} Jones gave a copy of the Report on Taliaferro (CP-15) to the Personnel Committee of the Board of Trustees.

21. Eisen acknowledged on cross-examination that alot of memos were sent by him to Taliaferro after he became her supervisor on January 16, 1979, stating that he did so whenever he saw deficiencies in her job performance (see CP-57, CP-58 and CP-60). ^{11/} In at least one instance Taliaferro sent a memo to Jones on February 9, 1979 (CP-59) in response to Eisen's memo of February 2, 1979 (CP-58). Eisen testified further that he found Taliaferro's work performance to be "unsatisfactory" with respect to the publicity function of her job. Eisen testified that the principal problem with Taliaferro was with regard to lateness and errors in the Library calendars for February and March 1979. ^{12/}

^{9/} Exhibit R-2, which purports to be the same document as CP-27, supra, lists only 80 areas of duties and responsibilities and indicates that a copy was sent by Taliaferro to the Personnel Committee of the Board of Trustees.

^{10/} The Staff Manual provides that: "Performance Evaluations are prepared after the first 3 months of employment...and annually thereafter..." (CP-6, p. 7). Taliaferro testified credibly that she did not see the Personnel Service Rating Report (CP-15) until the first day of hearing, July 19, 1979. Jones testified that she did performance evaluations on seven other employees at the same time that she did Taliaferro's and that these seven employees were given an opportunity to add their own comments and sign the Report.

^{11/} Eisen also testified that copies of his memos to Taliaferro were given to the Personnel Committee of the Board of Trustees at their request.

^{12/} It is noted that on April 30, 1979 Eisen completed the Civil Service termination form (CP-14), in which he gave as the reason for termination "incompetency or inefficiency," after discussing the matter with Jones.

22. Sometime shortly prior to January 18, 1979 the CWA sent out a notice of a meeting for January 18 to "East Orange White Collar Employees," a copy of which Jones received by mail at her home (R-6). This was followed by a letter from the CWA, dated January 23, 1979, making reference to the "meeting last week" and stating that a petition was going to be filed with "PERC," a copy of which Jones also received by mail at her home (R-7).

23. Taliaferro placed the commencement of CWA's organizing activities as starting in January 1979, and this was corroborated by Charging Party witness Kathleen Brown, a Library employee, and George W. Ballard, an employee of the City of East Orange and a Local Union President of CWA.

24. At a meeting of Library Department Heads on January 26, 1979 the minutes indicate, in part, that CWA representatives met, inter alia, with Roberts, ^{13/} Eisen and Jones ^{14/} and the said minutes state thereafter that: "The staff will have to decide what they want to do. If it is the pleasure of the staff to affiliate, the Board and Administration will cooperate. PERC will come in to monitor election..."(R-8, p. 5).

25. Taliaferro became involved in the organizing activities of CWA immediately after she returned to work at the Library on January 16, 1979. Also, after her return to work, Taliaferro attended meetings of the Library Staff Association. Taliaferro attended at least four meetings in late January and early February 1979 which involved the CWA and/or the Staff Association and Jones was aware of her attendance at these meetings.

26. Immediately after the fourth such meeting in early February 1979, Jones summoned Taliaferro to her office and, according to Taliaferro, Jones told her that she could "not participate in any Staff Association or union activity." (8/1 Tr. 107). ^{15/} Taliaferro acknowledged that notwithstanding Jones' statement with respect to "union activity" she thereafter solicited membership in the CWA

^{13/} Geraldine Roberts became President of the Board of Trustees January 11, 1979 and was thereafter an ex-officio member of the Personnel Committee.

^{14/} Ballard testified credibly that he and a CWA representative, Larry Cohen, conducted at least two or three meetings among Library employees on the premises of the Library without objection from "management." At the first such meeting, he, Ballard, said that he had a conversation with Jones.

^{15/} Although Jones denied making such a statement, the Hearing Examiner credits Taliaferro in this regard, finding her a credible witness based upon her demeanor at the hearing.

by handing out authorization cards. There was no evidence adduced that Jones or anyone else from Administration had knowledge of this activity. 16/

27. Johnson and Leach, members of the Personnel Committee of the Board of Trustees, were delegated the task of observing Taliaferro during the 90-day monitoring period. Notwithstanding that Taliaferro, after her return, worked only from January 16 to February 28, 17/ the Personnel Committee had concluded by March 14, 1979 that Taliaferro's overall job performance was deficient, which is reflected in an unsigned Committee memo dated March 14 (CP-16) and in a memo from Johnson to Roberts, Leach, and Sellers dated March 20, 1979 (CP-28), the latter memo stating that the observations of Taliaferro would form the basis of a recommendation to be presented to the Board of Trustees on April 5, 1979. 18/

28. At a meeting of the Library Board of Trustees on April 5, 1979, with six of the seven Trustees present, the Board voted to terminate Taliaferro. 19/ The action of the Board is set forth in a letter to Taliaferro from Johnson dated April 6, 1979 (CP-13). 20/

29. In view of the knowledge of Jones, the Library Director, with respect to at least Taliaferro's attendance at CWA and Staff Association Meetings, the Hearing Examiner cannot credit the denials of Eisen, Johnson, Roberts, and Sellers that they had no knowledge of such activity by Taliaferro. 21/

16/ Also, Taliaferro attended a meeting of the Library Staff Association on February 9, 1979, at which she was among seven employees appointed to a Committee "to study collective bargaining techniques" (CP-38A, 38B). Jones later learned that Taliaferro was on this Committee from Betty Speed, the President of the Staff Association.

17/ Taliaferro was out of work due to illness from February 28 to April 2, 1979 and produced a supporting statement from her doctor (CP-46).

18/ Roberts and Johnson testified credibly that several efforts to meet with Taliaferro in February 1979 regarding her job performance did not take place because of Taliaferro's failure to appear at appointed times. The Hearing Examiner finds that Taliaferro's failure to appear contributed to the negative conclusions of the Personnel Committee regarding Taliaferro's job performance as reflected in the memos of March 14 and March 20, 1979 (CP-16, CP-28, supra).

19/ According to Johnson, the reason for termination was that Taliaferro was not performing. Roberts testified that the Board concluded that Taliaferro was incompetent and inefficient because she was out due to illness in March.

20/ This letter of April 6 states, inter alia, that Taliaferro is terminated as of April 14, 1979 and that Taliaferro is to lose 60 hours accumulated vacation leave "as a disciplinary action." (Emphasis supplied)

21/ The Hearing Examiner has previously noted that no evidence was adduced regarding knowledge by Jones or anyone else in Administration regarding Taliaferro's solicitation activity on behalf of CWA (see Finding of Fact No. 26, supra).

30. CWA filed a representation petition with the Commission on April 24, 1979 and was certified on July 19, 1979 for a unit of "all library employees" (Docket No. RO-79-210).

THE ISSUE

1. Did the Respondent Library violate the Subsection (a)(3) of the Act when it terminated Taliaferro as of April 14, 1979?

2. Did the Respondent Library independently violate Subsection (a)(1) of the Act when it terminated Taliaferro as of April 14, 1979?

DISCUSSION AND ANALYSIS

Introductory Statement

At the outset of the oral argument in this matter on September 7, 1979 the Hearing Examiner directed the attention of counsel for the parties to the following decisions of the Commission, namely, (1) with respect to the standard for a Subsection (a)(3) violation: Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71 (1977) and City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977), rev'd. on other grounds, 162 N.J. Super. 1 (App. Div. 1978), pet. certif. granted 78 N.J. 404 (1978); and (2) with respect to the standard for an independent Subsection (a)(1) violation: New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (1978).

Thereafter the parties proceeded to argue orally without specifically addressing themselves to the standards set forth in the above cases. Therefore, the Hearing Examiner will do so infra.

The Respondent Library Did Not Violate Subsection (a)(3) Of The Act When It Terminated Taliaferro As Of April 14, 1979

In Haddonfield, supra, the Commission had before it a case of first impression involving the standard to be applied in order to find a Subsection (a) (3) violation. The Hearing Examiner in that case had presented the Commission with options involving four possible tests. The Commission adopted a combination of two of the four tests set forth by the Hearing Examiner, namely, (1) the "one of the motivating factors" test - the "Respondent's actions were motivated in part by statutorily protected union activities engaged by the alleged discriminatee, even if other motivating factors exist;" and (2) the "inherently destructive of employees rights" test - the "employer's conduct is so inherently de-

structive of employee rights that the existence of an anti-union motivation as one of the factors in the decision may be presumed and need not be proved."

Thereafter the Commission said in Haddonfield:

"...A violation of N.J.S.A. 34:13A-5.4(a)(3) should be found if it is determined that a public employer's discriminatory acts were motivated in whole or in part by a desire to encourage or discourage an employee in the exercise of rights guaranteed by the Act or had the effect (inherently destructive) of so encouraging or discouraging employees in the exercise of those rights.

"Application of this two-fold standard will normally involve a preliminary showing by the Charging Party of two essential elements. There must be proof that the employee was exercising the rights guaranteed to him by the Act, or that the employer believed said employee was exercising such rights, and proof that the public employer had knowledge, either actual or implied, of such activity.

"It is believed by the Commission that adoption of the above standard will best effectuate the Declaration of Policy section of the Act, incorporated in N.J.S.A. 34:13A-2 and the protected rights guaranteed by N.J.S.A. 34:13A-5.3. Discriminatory acts by employers, even if only partly motivated by an employee's union activities, or acts that would discourage exercise of such rights, would clearly tend to frustrate the express intent of the Act." (3 NJPER at 72)

Following its decision in Haddonfield, the Commission decided City of Hackensack, supra, where it articulated further on the combined two tests adopted in Haddonfield. In City of Hackensack the Commission said:

"Under the Haddonfield decision, a Section 5.4(a)(3) violation may be found if the Charging Party can prove either that anti-union animus was one of the motivating factors for the discriminatory conduct or that effect of the employer's action was 'inherently destructive' of rights guaranteed to employees by the Act..." (Emphasis supplied)(3 NJPER at 144)

The Hearing Examiner finds and concludes, based on the foregoing Findings of Fact, that the Charging Party has failed to meet its burden of proving by a preponderance of the evidence that the Respondent Library manifested anti-

union animus toward Taliaferro under the "one of the motivating factors" test and, further, that the Charging Party has likewise failed in its burden of proving that the Respondent Library's conduct with respect to Taliaferro was "inherently destructive" of Taliaferro's rights under the Act without regard to the presence of anti-union animus: Haddonfield and City of Hackensack, supra.

In so finding and concluding, the Hearing Examiner has relied upon the following:

1. Prior to the advent of CWA activity at the Library in January 1979 there had been no collective negotiations representative for Library employees, notwithstanding that the Staff Association had been in existence for some unspecified period of time.

2. Jones became immediately aware of CWA's organizing activities at the Library, commencing in mid-January, having received at her home two CWA leaflets, and having met and conversed with Ballard at the first CWA meeting among Library employees in January 1979, which Ballard testified was without objection from "management." 22/

3. The minutes of a meeting of Library Department Heads held on January 26, 1979 confirms that CWA representatives had met not only with Jones but with Roberts, the President of the Board of Trustees, and with Eisen, the Assistant Director of the Library. Further, the minutes indicate clearly to the Hearing Examiner that the Library Board and Administration took a cooperative stance vis-a-vis the desires of the staff to "affiliate", clearly referring to CWA, and indicating further that "PERC" would come in to monitor an election. 23/

4. Taliaferro voluntarily became involved in the organizing activity of the CWA in January 1979, following her return to work, and attended four meetings of CWA and/or the Staff Association in January or early February 1979, of which Jones had knowledge, before Jones admonished her not to "participate in any Staff Association or union activity." Notwithstanding this statement of Jones, Taliaferro thereafter solicited membership in the CWA by handing out authorization cards, as to which neither Jones nor anyone else in administration had knowledge. Taliaferro also attended a Staff Association Meeting on February 9, at which she was appointed to a Committee "to study collective bargaining techniques," and Jones later learned of Taliaferro's appointment to this Committee. 24/

22/ See Finding of Fact No. 22 and footnote 14, supra.

23/ See Finding of Fact No. 24, supra.

24/ See Findings of Fact Nos. 25 and 26, supra.

5. CWA was subsequently certified by the Commission on July 19, 1979 for a unit of "all Library employees," after having filed a petition on April 24. ^{25/} There is nothing in the record to indicate that Jones or Library Administration, including members of the Board of Trustees, were hostile to or resisted in any way the organization or representation efforts and activities of CWA.

6. Counsel for the Charging Party, upon inquiry of the Hearing Examiner at the oral argument, conceded that Taliaferro was no more active for the "union" than any other employee of the Library, noting, however, that Taliaferro was the employee who had "bucked" Jones' authority. ^{26/}

The Hearing Examiner is thus persuaded that the Respondent Library did not manifest anti-union animus toward Taliaferro, either during the course of her employment, or by terminating her as of April 14, 1979. Further, as noted previously, the Hearing Examiner is of the firm view that any conduct of the Respondent Library vis-a-vis Taliaferro was not "inherently destructive" of her rights under the Act.

Therefore, the Respondent Library not having violated Subsection (a)(3) of the Act, the Hearing Examiner will recommend dismissal as to this Subsection.

The Respondent Library Independently
Violated Subsection (a)(1) Of The Act
When It Terminated Taliaferro As Of
April 14, 1979

The right of a public employee to present a grievance to a public employer is guaranteed by Article I, para. 19 of the New Jersey Constitution and by Section 5.3 of the Act. See Twp. of W. Windsor v. P.E.R.C., et al., 78 N.J. 98, 107-109 (1978).

Further, the presenting of a grievance by a public employee, or even the threat to do so, has been held to be a protected activity under Subsection (a)(1) of the Act. See No. Brunswick Twp. Board of Education, P.E.R.C. 79-14, 4 NJPER 451, 453 (1978), aff'd. App. Div., Docket No. A-698-78 (1979); Lakewood

^{25/} See Finding of Fact No. 30, supra.

^{26/} The consequences regarding the relationship between Jones and Taliaferro will be dealt hereinafter.

Board of Education, P.E.R.C. No. 79-17, 4 NJPER 459, 461 (1978), aff'd. App. Div., Docket Nos. A-580-78, A-4008-76 (9/24/79); and Salem County Board for Vocational Education, P.E.R.C. No. 79-99, 5 NJPER 239, 240 (1979), ^{27/} appeal pending, App. Div., Docket No. A-3417-78.

The Commission set forth the standard for an independent Subsection (a)(1) violation in New Jersey College of Medicine and Dentistry, supra, as follows:

"It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or to coerce a reasonable ^{28/} employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial 'business' justification..." (4 NJPER at 422) ^{29/} (Emphasis supplied).

The Hearing Examiner finds and concludes that the Respondent Library has independently violated Subsection (a)(1) of the Act under the standard of New Jersey College of Medicine and Dentistry, supra. In support of this, the Hearing Examiner relies upon the following:

1. From Taliaferro's date of hire, December 19, 1977, until October 1978 she had a "good-to-excellent" relationship with her immediate supervisor, Jones, the Library Director. Her problems commenced at conferences on October 18 and 19, 1978, which resulted in Jones' memo to Taliaferro of October 24, 1978 (CP-3), which enumerated Jones' four complaints. ^{30/} In Jones' memo of October 24 it was she, Jones, who invited Taliaferro to go to the Board of Trustees in the event that Taliaferro considered the discussion and Jones' memo "in the

^{27/} This was the first Commission decision where an independent Subsection (a)(1) violation in a termination case was found.

^{28/} The Hearing Examiner again (see H.E. No. 79-29, f.n. 41) respectfully suggests that the Commission delete the word "reasonable" from its Subsection (a)(1) standard inasmuch as there is no NLRB or federal court precedent for such a qualification: see Textile Workers Union of America v. Darlington Mfg. Co., 380 U.S. 263, 58 LRRM 2657, 2659 (1965). The Commission is constrained to follow NLRB precedent where "appropriate": Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970) and Galloway Township Board of Education v. Galloway Township Association of Educational Secretaries, 78 N.J. 1, 9 (1978).

^{29/} The Commission has continued to apply this standard in Rutgers, The State University, P.E.R.C. No. 79-89, 5 NJPER 226, 228 (1979), Borough of Pine Hill Board of Education, P.E.R.C. No. 79-98, 5 NJPER 237, 239 (1979) and Cape May City Board of Education, P.E.R.C. No. 80-37 (p. 5), 5 NJPER ___ (1979).

^{30/} See Findings of Fact Nos. 3-5, supra.

nature of a grievance problem." ^{31/} After Taliaferro was told by Johnson on October 26 to consult the Staff Manual, Taliaferro on November 10 was told by Jones that she should not go to the Board regarding CP-3. However, Taliaferro sent a memo to Jones on November 27 stating that she would like to be on the agenda for the November 30th Board meeting (CP-4), to which Jones replied orally that she could not. ^{32/}

2. Inasmuch as Jones was Taliaferro's principal supervisor until January 16, 1979, ^{33/} Taliaferro had clearly complied with the procedure on "Grievances," as provided in the Staff Manual, by November 27 since Jones, as Director, had "knowledge" that Taliaferro intended to go to the Library Board of Trustees at a regular meeting, namely, November 30th. ^{34/}

3. At the regular meeting of the Library Board of Trustees on November 30 Jones peremptorily prevented Taliaferro from presenting a grievance to the Board with respect to the contents of CP-3, supra, and the President of the Board at that meeting sustained the position of Jones, as a direct result of which Taliaferro was not heard, notwithstanding her compliance with the procedure on "Grievances," supra. ^{35/}

4. As Taliaferro left the November 30 meeting of the Board of Trustees, she was given a memo from Jones, which recited that she did not have permission to go to the Board and contained other "complaints" regarding Taliaferro's work performance. Subsequently, on December 4, Jones gave Taliaferro a written "official reprimand" for attempting to go to the Board on November 30, and additionally threatening her with "disciplinary procedures" under Civil Service if such action was repeated. ^{36/} Further, on December 6 Taliaferro received nine or

^{31/} See Finding of Fact No. 6, supra.

^{32/} See Findings of Fact Nos. 7, 9, supra.

^{33/} See Finding of Fact No. 4, supra.

^{34/} See Finding of Fact No. 8 supra. The Hearing Examiner herein concludes that Taliaferro fully complied with Steps 3 and 4 of the procedure under "Grievances" in the Staff Manual (Steps 1 and 2 being clearly inapplicable in this instance). It is again noted that there was no requirement that grievances be in writing until January 17, 1979 (see footnote 6, supra).

^{35/} See Finding of Fact No. 10, supra.

^{36/} See Findings of Fact Nos. 11 and 12, supra.

ten written memos from Jones and Eisen, a definite increase in the number of memos normally received; and on December 18, 1978 Jones summarily terminated Taliaferro, effective January 12, 1979, with her last day of work to be December 18, because of Taliaferro's work performance over the previous two months. ^{37/}

From the foregoing recital of the facts the Hearing Examiner concludes that the Respondent Library, through the actions of Jones, clearly violated Sub-section (a)(1) of the Act by interfering with, restraining and coercing Taliaferro in the exercise of her rights guaranteed by the Act, namely, the attempt to pre-sent a grievance to the Board of Trustees on November 30, there being no legitimate and substantial "business justification" on the part of the Respondent for such action by Jones. ^{38/} It remains only to consider whether or not Taliaferro subse-quent problems with Jones and the Board of Trustees carried over through and are causally connected to Taliaferro's final termination as of April 14, 1979.

The Hearing Examiner finds and concludes that there is a sufficient causal connection between Taliaferro's attempt to present a grievance to the Board of Trustees on November 30, 1978 and her subsequent termination by the Board on April 5, 1979, effective April 14, 1979. This is based on the following:

1. Notwithstanding that Taliaferro was permitted to read her response to Jones' memo of October 24, 1978 at the regular Board meeting on December 28, 1978 and, further, notwithstanding that the Board refused to accept Jones' summary termination of Taliaferro on her own initiative and, instead, created a Personnel Committee, Taliaferro was placed in the position of being "monitored and evaluated" for a three-month period from the date of her return to her "desk" on January 16, 1979, after which a "final recommendation" was to be made to the Board of Trustees. ^{39/}

2. Upon Taliaferro's return to work on January 16, Jones clarified Taliaferro's responsibilities in a written memo on the same date and, at the end of January, Jones prepared an essentially negative evaluation of Taliaferro from June 5 through December 1978, notwithstanding that Taliaferro's job performance

^{37/} See Findings of Fact Nos. 13 and 15, supra.

^{38/} The Commission stated in Salem County Board for Vocational Education, supra, that "...the firing of an employee who has been complaining about working conditions is a clear independent violation of Section (a)(1) as per the Hearing Examiner's analysis." (5 NJPER at 240).

^{39/} See Findings of Fact Nos. 16-18, supra.

through October 1978 had been "good-to-excellent." This evaluation was given to the Personnel Committee by Jones although Jones never permitted Taliaferro to comment and sign the evaluation as Jones did for seven other employees who were evaluated at about the same time. 40/

3. Eisen sent "alot of memos" to Taliaferro after he became her supervisor on January 16 and copies of these were given to the Personnel Committee. He considered Taliaferro's work performance to be "unsatisfactory" with respect to the publicity function of her job, stating that the principal problem was lateness and errors in the Library calendar for February and March 1979. 41/ Clearly, Jones had to have knowledge of these memos from Eisen to Taliaferro.

4. Although the Hearing Examiner has previously concluded that Jones' statement to Taliaferro in early February 1979 that Taliaferro could "not participate in any Staff Association or union activity" was not deemed sufficient evidence to support a Subsection (a)(3) violation, this statement can clearly be considered as evidence of an independent Subsection (a)(1) violation. 42/

5. Notwithstanding that Taliaferro was only observed from January 16 to February 28, after which she was out of work due to illness until April 2, 1979, the Personnel Committee, which the Hearing Examiner concludes had continuous input from Jones and Eisen, decided in mid-March that Taliaferro's overall job performance was deficient. On March 20 the Personnel Committee was prepared to make a recommendation regarding Taliaferro to the Board of Trustees at its meeting on April 5, 1979. At the April 5 meeting the Board of Trustees not only terminated Taliaferro as of April 14, 1979, but denied her 60 hours of accumulated vacation as a "disciplinary action." 43/

Based on the foregoing, the Hearing Examiner finds and concludes that Taliaferro's final termination as of April 14, 1979 was triggered by and causally connected to her initial effort to present a grievance to the Board of Trustees on November 30, 1978. 44/

40/ See Findings of Fact Nos. 19 and 20, supra.

41/ See Finding of Fact No. 21, supra.

42/ See Borough of Pine Hill Board of Education, supra, 5 NJPER at 239.

43/ See Findings of Facts Nos. 27 and 28, supra.

44/ This conclusion is reached notwithstanding the Hearing Examiner's finding in footnote 18, supra, that Taliaferro's failure to meet with Roberts and Johnson contributed to the negative conclusion reached by the Personnel Committee regarding Taliaferro's job performance.

All three members of the Personnel Committee were members of the Board of Trustees on November 30, 1978 and were, thus, actually or constructively aware of Taliaferro's efforts to present a grievance at that meeting. Trustee Sellers made a motion to terminate Taliaferro at the Board meeting on December 28, 1978, which did not receive a "second" and, thereafter, Sellers was appointed a member of the Personnel Committee that "monitored and evaluated" Taliaferro's job performance. The Hearing Examiner concludes that the presence of Sellers on the Personnel Committee provided a tainting element to the eventual recommendation of the Personnel Committee that Taliaferro be terminated.

Clearly, from October 1978 and thereafter, Taliaferro became an irritant to Jones personally as Library Director, ^{45/} for which Jones ultimately retaliated against Taliaferro, first by written reprimand on December 4, followed by summary discharge on December 18, 1978, and subsequently by Jones' negative evaluation of Taliaferro at the end of January 1979, which Jones gave to the Personnel Committee. Jones clearly had knowledge of the memos from Eisen to Taliaferro after January 16, which Eisen provided to the Personnel Committee.

Finally, any doubt about the element of retaliation being present in the action of the Board of Trustees at its meeting on April 5 evaporates in the face of the communication to Taliaferro the following day, April 6, advising her of her termination and that she was being denied 60 hours vacation leave as a "disciplinary action." What possible reason would have been for the Board of Trustees to "discipline" Taliaferro, separate and apart from terminating her, unless the Board's ultimate decision to terminate was tainted by, and related back to, the protected activity of Taliaferro in attempting to present a grievance to the Board of Trustees on November 30, 1978. The Hearing Examiner can find no justifiable reason for any "disciplinary action" against Taliaferro and this fortifies his conclusions that the Respondent Library independently violated Subsection (a)(1) of the Act when it terminated Taliaferro as of April 14, 1979. Therefore, an appropriate recommendation as to remedy in this regard will

^{45/} The Hearing Examiner concludes that, based upon the record and upon the demeanor of Taliaferro as a witness, Taliaferro was an "assertive type" of employee, such as was the discriminatee in Salem County Board for Vocational Education, supra (see 5 NJPER at 240).

be made hereinafter.

The Charging Party has failed to adduce any evidence which would support a violation of Subsection (a)(2) of the Act and the Hearing Examiner will recommend dismissal as to this alleged violation.

* * * * *

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

CONCLUSIONS OF LAW

1. The Respondent Library independently violated N.J.S.A. 34:13A-5.4 (a)(1) when it terminated Taliaferro as of April 14, 1979.
2. The Respondent Library did not violate N.J.S.A. 34:13A-5.4(a)(2) and (3) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Library cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by the terminating of employees, such as Constance Taliaferro, for the exercise of such rights.

B. That the Respondent Library take the following affirmative action:

1. Forthwith offer reinstatement to Constance Taliaferro, without prejudice to any rights or privileges that she may have enjoyed prior to termination, to her former position as Exhibit Artist & Public Information Assistant, or to a substantially equivalent position, with back pay from April 14, 1979, including vacation or other leave that was withheld from her as a "disciplinary action," less interim earnings since that date.

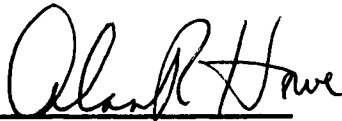
2. Post at all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, after being signed by the Respondent's authorized representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure

that such notices are not altered, defaced or covered by other material.

3. Notify the Director of Unfair Practice within twenty (20) days of receipt what steps the Respondent Library has taken to comply herewith.

C. That the Subsections (a)(2) and (3) allegations in the Complaint be dismissed.

DATED: October 1, 1979
Trenton, New Jersey


Alan R. Howe
Hearing Examiner

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 the rights guaranteed to them by the Act and will refrain from terminating employees for the exercise of such rights.

WE WILL forthwith offer reinstatement to Constance Taliaferro, without prejudice to any rights or privileges that she may have enjoyed prior to termination, to her former position as Exhibit Artist & Public Information Assistant, or to a substantially equivalent position, with back pay from April 14, 1979, including vacation or other leave that was withheld from her as a "disciplinary action," less interim earnings since that date.

EAST ORANGE PUBLIC LIBRARY

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780