

P.E.R.C. NO. 80-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-79-39-105

WILLIAM J. ROONEY and JOSEPHINE
ROONEY,

Charging Parties.

SYNOPSIS

In the absence of exceptions, the Commission adopts the Hearing Examiner's recommendation that the complaint against the State be dismissed. The Commission found, contrary to the allegations of the complaint, that the grievances filed by the Charging Parties had been duly processed in accordance with the grievance procedures contained in the collective negotiations agreements covering the Charging Parties. Accordingly, the State did not discriminate against the Charging Parties in connection with the processing of grievances filed by them.

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Appearances:

For the Respondent, John J. Degnan, Attorney General
(Melvin E. Mounts, Deputy Attorney General)

For the Charging Parties (William J. Rooney, Pro Se)

DECISION AND ORDER

On December 26, 1978, William J. Rooney and Josephine Rooney filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the State of New Jersey (the "State") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"). N.J.S.A. 34:13A-1 et seq. Specifically, it was alleged that the State violated N.J.S.A. 34:13A-5.4(a)(1) and (3) in connection with the processing of grievances which were filed by the Rooneys.^{1/}

Pursuant to a Complaint and Notice of Hearing which was issued on June 13, 1979, hearings were held on October 3, 18 and 19, 1979 in Newark, New Jersey before Commission Hearing Examiner Alan R. Howe at which time all parties were given an opportunity to

^{1/} Although William J. Rooney was terminated on January 5, 1979 and Josephine Rooney was terminated on April 10, 1979, the unfair practice charge was not amended in a timely fashion to include these events.

present evidence, to examine and cross-examine witnesses and to argue orally. The parties did argue orally and waived the filing of post-hearing briefs. The Hearing Examiner issued his Recommended Report and Decision on October 24, 1979, H.E. No. 80-15, 5 NJPER ____ (¶ ____ 1979), a copy of which is attached to this Decision and Order and made a part hereof. The report was served upon the parties and the case was transferred to the Commission. See N.J.A.C. 19:14-7.1. Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.3 which, in part, provides that any exception which is not specifically urged shall be deemed to have been waived.

The essence of the charge by the Rooneys is that the State failed to process various grievances which were filed by them, who were shop stewards in their respective negotiations units.^{2/} The Hearing Examiner found that each of the grievances filed by the Rooneys was duly processed in accordance with the grievance procedures contained in the respective collective negotiations agreements for their units. Accordingly, the Hearing Examiner recommended the dismissal of the complaint and found and concluded that there were no other elements of the charge which warranted further examination.

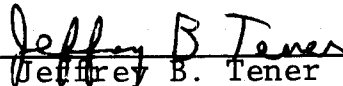
^{2/} William J. Rooney, an operating engineer, is in a negotiations unit represented by Local 195, International Federation of Professional and Technical Engineers, AFL-CIO and Josephine Rooney, a graduate registered nurse, is in a negotiations unit represented by the New Jersey Civil Service Association and the New Jersey State Employees Association.

The Commission, having reviewed the entire record and noting the absence of exceptions, hereby adopts the findings of fact and conclusions of law contained within the Hearing Examiner's Recommended Report and Decision. Therefore, the Unfair Practice Charge will be dismissed.

ORDER

For the foregoing reasons and upon the entire record herein, IT IS HEREBY ORDERED that the Unfair Practice Charge be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hipp, Newbaker and Parcels voted for this decision. None opposed. Commissioner Graves abstained.

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

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

In the Matter of

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Respondent,

- and -

Docket No. CI-79-39-105

WILLIAM J. ROONEY and
JOSEPHINE ROONEY,

Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the Rooneys against the State of New Jersey. The Rooneys, as employees of the Glen Gardner Center for Geriatrics, had made numerous charges of unfair practices, which allegedly violated Section 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act. The Hearing Examiner was of the opinion that the only possible violation of the Act, as alleged, was the failure to process grievances filed by the Rooneys through the contractual grievance procedure. The Hearing Examiner found that the State through its representatives properly processed each and every one of the grievances of the Rooneys through the several steps of the grievance procedure and that the decisions rendered were either accepted by the Rooneys or not appealed further by them. The final step of the grievance procedure was arbitration and the Union never took any of the Rooney's grievances to arbitration. Accordingly, the Hearing Examiner recommended the dismissal of the Complaint of unfair practices.

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

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Appearances:

For the State of New Jersey
John J. Degan, Attorney General
(Melvin E. Mounts, Esq., D.A.G.)

For William J. Rooney and Josephine Rooney
(William J. Rooney, Pro Se)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 26, 1978 by William J. Rooney and Josephine Rooney (hereinafter the "Charging Parties" or the "Rooneys") alleging that the State of New Jersey (hereinafter the "Respondent", the "State" or the "Center") 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, inter alia: the Center and the State have refused to process grievances filed by the Rooneys; the Center and the State have used conference reports as warning slips; on or about November 3, 1978 a Settlement Agreement was signed with the State and is being "used" as a means leading to the ultimate termination of the Rooneys; on or about November 4, 1978 union meeting facilities

were denied and on the same date the Rooneys were threatened with eviction from housing facilities "when they are again terminated;" on or about November 6 and 9, 1978 two directives were posted by Lloyd Osmun for the purpose of "harassing the union and its representative" and these directives are being used as threats against the Rooneys; and on or about November 10, 1978 William J. Rooney was threatened with termination by Sid Turner; all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act. ^{1/}

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 13, 1979. Pursuant to the Complaint and Notice of Hearing, hearings were held on October 3, October 18 and 19, 1979 in Newark, New Jersey, ^{2/} at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and waived the filing of post-hearing briefs.

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 oral argument of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for

1/ These Subsections 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.

"(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."

The Rooneys failed to timely amend the aforesaid Unfair Practice Charge to include their termination which, as was developed at the hearing, occurred for William J. Rooney on January 5, 1979 and for Josephine Rooney on April 10, 1979.

2/ The matter was originally scheduled for hearing in the first week of August 1979 but, due to the unavailability of witnesses for the Charging Parties, the hearing was rescheduled to mid-September 1979. Due to the hospitalization of Josephine Rooney in mid-September 1979 the hearing did not commence until October 3rd.

determination.

Upon the entire record, the Hearing Examiner makes the following material ^{3/}:

FINDINGS OF FACT

1. The State of New Jersey is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. William J. Rooney and Josephine Rooney are public employees within the meaning of the Act, as amended, and are subject to its provisions.

3. William J. Rooney was hired as an Operating Engineer No. 1 on January 1, 1977 at the Glen Gardner Center for Geriatrics and was terminated on January 5, 1979. At all times material hereto William J. Rooney was in a negotiations unit represented by Local No. 195, International Federation of Professional and Technical Engineers, AFL-CIO, the relevant collective negotiations agreement being effective during the term July 1, 1977 to June 30, 1979 (J-2).

4. Josephine Rooney was hired as a Graduate Registered Nurse in January 1977 at the Glen Gardner Center for Geriatrics and was terminated on April 10, 1979. At all times material hereto Josephine Rooney was in a negotiations unit represented by the New Jersey State Employees Association, the relevant collective negotiations agreement being effective during the term July 1, 1977 to June 30, 1979 (J-1).

5. Since at least May 13, 1977 William J. Rooney was recognized by the Center as a shop steward. ^{4/} According to Mr. Rooney, five grievances were filed by him in January, March and April 1978 which Mr. Corso refused to process. ^{5/} Further, Mr. Rooney testified that at the time of his first termination, July 27, 1978 for unauthorized absences, there were 37 "personal" grievances still pending.

^{3/} The qualifying word "material" is emphasized since a considerable amount of testimony and documentary evidence was concerned with matters not germane to the allegations in the Unfair Practice Charge nor the provisions of Section 5.4(a) of the Act, supra.

^{4/} Mr. Rooney testified that he was "appointed" as a shop steward in April 1977 but that Robert A. Corso, the Personnel Director, refused to recognize him as shop steward until June 1977. The Hearing Examiner credits Mr. Corso's testimony that Mr. Rooney was recognized as shop steward as of May 13, 1977. Mr. Corso testified, as did Mr. Rooney, that contract grievances filed by Mr. Rooney before May 13, 1977 were returned and not processed.

^{5/} See footnote 4, supra.

While in termination status, Mr. Rooney on September 4, 1978 contacted Mr. Corso regarding the "moving" of these "personal" grievances, but Mr. Corso declined on the ground that Mr. Rooney was no longer a State employee. When Mr. Rooney returned to work at the Center on November 3, 1978, pursuant to a Settlement Agreement (CP-1), which was executed on November 2, 1978, ^{6/} Mr. Rooney filed additional grievances in November 1978 (see CP-5, CP-11 and CP-12) and also on December 4, 1978, which he claimed were not processed. ^{7/} Mr. Rooney testified further that six of the 37 "personal" grievances, which were pending as of November 2, 1978, were in fact processed in December 1978.

6. Josephine Rooney, who was also a shop steward, testified that as of the date of the Settlement Agreement she had 20 to 25 grievances which had not been processed. ^{8/} After Josephine Rooney returned to work on November 3, 1978 she filed five additional grievances, which she claimed were never processed.

7. Mr. Corso testified credibly regarding the disposition of grievances filed by the Rooneys. ^{9/} He stated that prior to July 1978, 12 grievances of Josephine Rooney and 12 grievances of William J. Rooney had been processed through Steps 1 and 2 and were either resolved or no appeal was taken thereafter. Further, prior to July 1978, 19 grievances of Josephine Rooney had been processed and heard at Step 3, the Department Head level, and she, as the grievant and/or shop steward, had accepted the decisions rendered. Similarly, 15 grievances of William J. Rooney had been processed and heard at Step 3 and the decisions rendered had been accepted. Note: under the contractual grievance procedure Step 4 is arbitration. Mr. Corso also testified that on September 11, 1978, 17 grievances of

^{6/} The Rooneys, who had been terminated in July 1978, supra, were reinstated with 10 weeks back pay as of the date of the said Settlement Agreement.

^{7/} Mr. Rooney also testified regarding appeals of "minor disciplinary actions," which he took on behalf of himself and which he claimed were not processed. The Hearing Examiner disregards these alleged failures to process on the ground that there is nothing in the Unfair Practice Charge relating to the failure to process appeals from "minor disciplinary actions."

^{8/} George F. White, Jr., a Business Representative for N.J.S.E.A., testified that on September 11, 1978 he attended a hearing where 22 grievances filed by Josephine Rooney were processed. This was confirmed by Josephine Rooney and Mr. Corso.

^{9/} It is noted that unlike the Rooneys, who, for the most part, had no copies of their grievances, Mr. Corso had reviewed and classified the Rooney's grievances and the said grievances were in the hearing room for reference at the time of Mr. Corso's testimony.

Josephine Rooney, which had been filed in March and April 1978, were heard at Step 3 and none were appealed thereafter to arbitration by the Union. After the Settlement Agreement of November 2, 1978, arrangements were made with David L. Coutant, the Business Representative of N.J.S.E.A., to process 18 grievances of Josephine Rooney, which had been pending since May 1978, on January 12, 1979. Mr. Coutant requested a postponement prior to January 12 and no further pursuit was made by the Union of the grievances, which were thereafter considered "dead." Finally, Mr. Corso testified that six other grievances filed after November 3, 1978, two by Josephine Rooney and four by William J. Rooney, were duly processed and the dispositions at Step 1 were not appealed further. ^{10/}

8. The Hearing Examiner declines to credit the testimony of Mr. White and Walter J. Hutchins, witnesses for the Charging Parties, that Robert M. Long, the Deputy Chief Executive Officer of the Center, made statements to them about "getting rid" of the Rooneys. Instead, the Hearing Examiner credits Mr. Long's denial that any such statements were made by him. Likewise, the Hearing Examiner does not credit the testimony of Mr. Rooney that Sidney C. Turner, the Chief Operating Engineer, said on or about November 10, 1978 that Mr. Rooney was "not going to be there long." Instead, the Hearing Examiner credits the denial by Mr. Turner that such a statement was made. ^{11/}

THE ISSUE

Did the Respondent State through its representatives at the Center violate Subsections (a)(1) and (3) of the Act by the conduct herein alleged by the Rooneys?

^{10/} Note is also made that seven of Mr. Rooney's grievances, dated July 21, 1978, were withdrawn as a result of the Settlement Agreement of November 2, 1978 (CP-1).

^{11/} These determinations by the Hearing Examiner are based upon both the credibility of the witnesses who testified and the likelihood that such statements against the Rooneys would have been made by Mr. Long and Mr. Turner. It should be noted that statements indicating the Center's hostility to the Rooney's would more properly be germane to deciding the propriety of the Rooney's termination in 1979, which are not before the Hearing Examiner.

DISCUSSION AND ANALYSIS

Inasmuch as the ultimate termination of the Rooneys by the State in 1979 is not before the Hearing Examiner, ^{12/} the Hearing Examiner is of the firm view that the only alleged conduct by the representatives of the Center on behalf of the State which could possibly constitute a violation of the Act is the alleged failure and refusal of representatives of the Center to process grievances filed by the Rooneys. The remaining allegations in the Complaint and the Unfair Practice Charge, recited above, are of so little consequence, in the opinion of the Hearing Examiner, that they will not be treated further herein.

The Hearing Examiner finds and concludes that each and every one of the grievances filed by the Rooneys, as shop steward, either on behalf of themselves or others, were duly processed under the grievance procedures contained in the respective collective negotiations agreement for their units (J-1 and J-2). At the hearing, the Rooneys made much of the alleged failure of representatives of the Center to process their grievances. Unfortunately for the Rooneys, they did not have copies of the grievances, from which to testify specifically, except in a few instances in the case of Mr. Rooney, and therefore they had to testify, based on their respective recollections, as to what had transpired in the past. Mr. Corso, on the other hand, had before him at the hearing all of the various grievances of the Rooneys, which he had reviewed and classified, and was able to give precise testimony as to dates and numbers of grievances filed and to relate how the grievances were processed.

The Hearing Examiner has credited Mr. Corso's testimony regarding the disposition of grievances filed by the Rooneys, ^{13/} and his testimony discloses that all of the Rooney's grievances were processed through Steps 1, 2 and 3 of the contractual grievance procedure, including grievances filed as far back as March 1978. It is interesting to note that not only were the Rooney's grievances duly processed through the first three Steps of the grievance procedure, but that the grievances were never considered sufficiently meritorious by the Union to take even one of them to arbitration. Plainly, the testimony of the Rooneys that their grievances were not processed must be rejected.

Having concluded that the Rooney's grievances were duly processed

12/ See footnotes 1 and 11, supra.

13/ See Finding of Fact No. 7, supra.

through Steps 1, 2 and 3 of the contractual grievance procedure, the Hearing Examiner has no alternative but to recommend dismissal of the Complaint, there being nothing else of merit in the charge of unfair practices which would warrant further findings and conclusions by the Hearing Examiner.

* * * *

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

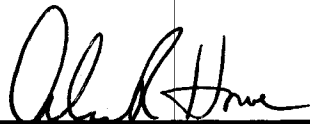
CONCLUSIONS OF LAW

The Respondent State did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) by its conduct herein with respect to the Charging Parties.

RECOMMENDED ORDER

The Respondent State not having violated the Act, supra, it is HEREBY ORDERED that the Complaint be dismissed in its entirety.

Dated: October 24, 1979
Trenton, New Jersey



Alan R. Howe
Hearing Examiner