

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-246-128

ROCKAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission, in the absence of exceptions, affirms the Recommended Report and Decision of its Hearing Examiner which found that the Board did not engage in unfair practices when it increased the workload of a teacher represented by the Rockaway Township Education Association. The Commission finds that the increase in the teacher's workload was due to the type of courses taught by the teacher and the fact that he was popular with his students, resulting in a substantial number of students enrolling in his courses. The Hearing Examiner found no evidence linking the increase in the teacher's workload with his activities while a member of the Association's negotiating committee. The Association's charge alleging that the Board violated N.J.S.A. 34:13A-5.4 (a)(1) and (3) was ordered dismissed in its entirety.

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ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Green & Dzwilewski, Esqs.
(Allan P. Dzwilewski, of Counsel)

For the Charging Party, Greenberg & Mellk, Esqs.
(James F. Schwerin, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on February 25, 1981, by the Rockaway Township Education Association (hereinafter the "Association"), alleging that the Rockaway Township Board of Education (hereinafter the "Board") 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"). It was alleged that the Board's Principal at the Copeland Middle School had increased the workload of one Saul Frank in the 1980-1981 school year in retaliation for Frank's activities on behalf of the Association during negotiations in the Spring of 1980, 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 Unfair Practice Charge, as amended, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 19, 1981. A hearing was held on May 6, 1981 in Newark, New Jersey before Hearing Examiner Alan R. Howe, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by June 15, 1981.

The Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-50, 7 NJPER ____ (¶ ____ 1981), on June 29, 1981. He concluded that the Association had failed to prove by a preponderance of the evidence that the conduct of the Board was discriminatory and motivated, in whole or in part, by anti-union animus and therefore recommended that the Complaint be dismissed.

In particular, the facts of this case show that Mr. Frank's teaching load in the 1980-81 school year was increased over that which he had taught in previous school years.^{2/} Frank

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, and (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/} During the first quarter of the 1980-81 school year, Frank had a total of 137 students in five teaching periods and one study period. During the second quarter Frank had 148 students in the same number of periods. In addition, during the second quarter of the 1980-81 school the average number of students in Frank's six periods was 28, the highest of any teacher in the school. Finally, Frank was informed that his class sizes would be increased in the third and fourth quarters of the 1980-81 school year beyond that level which existed in the previous two quarters.

became a member of the Association's Negotiating Committee in March or April, 1980, and was involved in negotiations with Stephen Gottlieb, the Board's Principal at the Copeland Middle School where Frank is a teacher. These negotiations concerned the readjustment of classroom periods to which Frank and others objected. The Hearing Examiner found no evidence linking the increase in Frank's workload with his activities while a member of the Association's Negotiating Committee. The only evidence offered was an isolated statement allegedly made by Gottlieb in which Gottlieb said he was annoyed at Frank for his negotiating activities in the Spring of 1980.^{3/} The Hearing Examiner did not find this evidence to be sufficient to demonstrate anti-union animus by the Board.

While the Hearing Examiner found that Frank's teaching load had increased, it was found that such an increase was attributable to the type of courses taught by Frank and the fact that Frank was a popular teacher, which resulted in a substantial number of students enrolling in his courses.

Additionally,^{3/} the Hearing Examiner found that the Board did not independently violate subsection (a)(1) of the Act by its conduct.

Neither party has filed exceptions to the Report of the Hearing Examiner. We have reviewed the entire record in this matter and hereby adopt the findings of fact and conclusions of

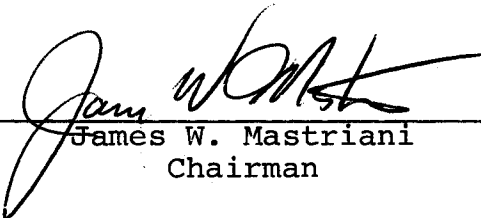
^{3/} Gottlieb denied saying anything regarding Frank's negotiating activities on behalf of the Association in the Spring of 1980.

law made in H.E. No. 81-50. We find that the Board's actions did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) by its conduct herein. We adopt the Hearing Examiner's recommendation that the Complaint be dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED that the Complaint in this matter be dismissed in its entirety.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels, and Suskin voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

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

H. E. No. 81-50

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

In the Matter of

ROCKAWAY TOWNSHIP BOARD OF EDUCATION

Respondent,

-and-

Docket No. CO-81-246-128

ROCKAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board did not violate Subsections 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act when it increased the workload of a Middle School science teacher, Saul Frank, in the 1980-81 school year. The Hearing Examiner rejected the contention of the Association that the Board was motivated by anti-union animus toward Frank because of his activities in the Spring of 1980 in having served on the Association's Negotiating and Action Committees. The Association failed to prove by a preponderance of the evidence that there was any causal connection between the exercise by Frank of protected activities in the Spring of 1980 and the increase in his workload in the 1980-81 school year. The Hearing Examiner attributed Frank's increase in workload largely to his popularity with students who selected his courses in substantial numbers. Finally, the Hearing Examiner found no independent violation of Subsection 5.4(a)(1) by the conduct of the Board herein.

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 Rockaway Township Board of Education
Green & Dzwilewski, Esqs.
(Allan P. Dzwilewski, Esq.)

For the Rockaway Township Education Association
Greenberg & Mellk, Esqs.
(James F. Schwerin, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 25, 1981 by the Rockaway Township Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Rockaway Township Board of Education (hereinafter the "Respondent" or the "Board") 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's Principal at the Copeland Middle School increased the workload of one Saul Frank in the 1980-81 school year in retaliation for Frank's activities on behalf of the Association during negotiations in the Spring of 1980, all of which

was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) & (3) of the Act. ^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 19, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on May 6, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by June 15, 1981.

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

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

FINDINGS OF FACT

1. The Rockaway Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Rockaway Township Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Saul Frank has been a Science teacher at the Copeland Middle School for ten (10) years and Stephen Gottlieb has been the Principal of the

^{1/} These Subsections prohibit public employers, their representatives or agents from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

"(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."

said Middle School since August 1974.

4. Prior to the 1979-80 school year Frank had been a member of the Association but had not engaged in any other activities on behalf of the Association or served in any official position. Commencing with the 1979-80 school year Frank became a member of the Association's Negotiating Committee and in March or April 1980 he also became a member of the Association's ^{2/} Action Committee.

5. In the Spring of 1980 Gottlieb conducted several teacher staff meetings regarding the readjustment of classroom periods. Gottlieb proposed adding five minutes to each teaching period and eliminating the homeroom period. Frank and others strenuously objected to the proposal. Among those who objected was Richard Miller, who was President of the Association during the 1979-80 school year. The final result was that Gottlieb eliminated the homeroom period and added a study period but the length of the teaching periods remained the same.

6. In the Spring of 1980 Gottlieb told Frank that he could not teach Advanced Chemistry as requested because the class would be too small. As a result an additional Chemistry period was substituted so that Frank had a total of three Chemistry classes during the latter part of the 1979-80 school year.

7. During the first quarter of the 1980-81 school year Frank had a total of 137 students in five teaching periods plus the study period.

^{2/} The Action Committee was formed to develop policies for the purpose of putting pressure on the Board to settle the contract negotiations, which were then in progress. The activities of the Action Committee included having all of the teachers march into and out of school together during one (1) week in April or May 1980. The activities also included the issuance of flyers explaining the status of contract negotiations at that time. Frank testified credibly that his activities on behalf of the Action Committee were known to the Board and, in particular, to Gottlieb, who never said anything to Frank regarding his activities.

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During the second quarter Frank had 148 students in the same number of periods. During the prior year Frank had had 27 less students.

8. During the second quarter of the 1980-81 school year, supra, the average number of students in Frank's six periods was 28, which was the highest load of any teacher in the Middle School. The next highest teacher had an average of 23 students and one teacher had an average of 16 students.

9. On November 7, 1980 Frank had a meeting with Gottlieb, at which time he asked why he was being "screwed." Gottlieb replied with a denial and, after Frank stated that he had one of the largest loads in the school, Gottlieb allegedly said that he was annoyed at Frank for his negotiations activities in the Spring (1980).^{3/}

10. The next day, November 8, 1980, Frank learned that his class sizes would be larger in the third and fourth quarters of the 1980-81 school year than in the first two quarters.

11. In February 1981 Frank gave Gottlieb his course requests for the first two quarters of the 1981-82 school year, requesting for each quarter a course in Advanced Chemistry (CP-4). Under date of March 3, 1981 Gottlieb replied to Frank, stating that his request was "not possible" inasmuch as each science teacher must teach two sections of Introduction to Science and that no advanced level course could be offered for the first half of the 1981-82 school year (CP-1). When Frank sent Gottlieb another memo under date of March 6, 1981, stating that he wanted to teach four periods of Chemistry in the second quarter of the 1981-82 school year (CP-2), Gottlieb replied on March 9, 1981 that he could only teach two periods of Chemistry and that Frank must teach two periods of Scientific Measurement (CP-3).

^{3/} Gottlieb acknowledged that a meeting took place between himself and Frank on November 7, 1980 and testified that Frank said he was going to file a grievance regarding class size. Gottlieb flatly denied saying anything regarding Frank's negotiating activities on behalf of the Association in the Spring of 1980. The Hearing Examiner credits Gottlieb's denial in this regard based upon his overall demeanor as a witness.

12. Frank testified that he had had no problems with class size and course requests prior to his activities on behalf of the Association in negotiations in the Spring of 1980.

13. Frank testified that in either March or April 1981 two teachers, Marjorie Neave and Shirley Bulvanoski, told him that Gottlieb had told each of them to stay away from Frank because Frank is a "grumbler and complainer." Gottlieb acknowledged that he had spoken to Neave in the Fall of 1980, telling her that she was getting "bad advice" from Frank. However, Gottlieb denied that he had ever said anything regarding Frank to Bulvanoski. Thus, Gottlieb admittedly spoke to Neave but, in the face of Gottlieb's denial at the hearing that he ever spoke to Bulvanoski regarding Frank, the Hearing Examiner cannot credit the hearsay testimony of Frank as to what Bulvanoski allegedly told him.

14. Richard Miller, the President of the Association during the 1979-80 school year, hereinbefore referred to, had also previously held the position of President, as well as Vice-President and Grievance Chairman between the years 1972 and 1979. He has been on the Negotiating Committee of the Association for seven years. He was also on the Action Committee in the Spring of 1980. Miller testified credibly that Gottlieb never took any retaliatory action against him because of his Association activities.

15. Eugene A. Leimberg testified that he was the President of the Association from April through October 1980, at which time he resigned. He was on the Action Committee from March through June 1980, working with Frank on the said Action Committee as well as on the Negotiating Committee. He had previously been a Building Representative and the Association's Legislative Chairman. During the period that he was President of the Association in 1980 no one ever indicated to him that Gottlieb was "anti-union."

THE ISSUE

Did the Respondent violate Subsections(a)(1) and (3) of the Act by increasing the workload of Saul Frank in the 1980-81 school year in retaliation for Frank's activities on behalf of the Association in the Spring of 1980?

DISCUSSION AND ANALYSIS

Respondent Did Not Violate Subsections(a)(1) and (3) Of The Act By Its Conduct Herein

The Hearing Examiner finds and concludes that the Respondent was not motivated, in whole or in part, by anti-union animus when it increased the workload of Saul Frank in the 1980-81 school year.

The Subsection(a)(3) standard was first enunciated by the Commission in Haddonfield Borough Board of Education, P.E.R.C. No. 77-36, 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), aff'd as modified, 82 N.J. 1 (1980). See also, Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (1978), aff'd App. Div. Docket No. A-4824-77 (1980); Township of Clark, P.E.R.C. No. 80-117, 6 NJPER 186 (1980), aff'd App. Div. Docket No. A-3230-79 (1/23/81); and Cape May City Bd. of Education, P.E.R.C. No. 80-87, 6 NJPER 45 (1980). Further, for a Subsection(a)(3) violation to be found the actions of the public employer must be "discriminatory" (See Haddonfield) and must have been committed with a "discriminatory motive" (See Cape May City Bd. of Education).

The Commission in Haddonfield, supra, stated that a Charging Party must initially establish two essential elements in a Subsection(a)(3) case: there must be proof that the employee was exercising rights guaranteed to him by the Act and further, there must be proof that the public employer had knowledge, either actual or implied, of such activity. The Hearing Examiner is satisfied

that Frank's activities as a member of the Association's Negotiating Committee and its Action Committee in the Spring of 1980 were protected by the Act and that the Board was at least impliedly aware of these activities.

However, the mere fact that Frank was engaging in protected activities in the Spring of 1980 and that the Board had knowledge thereof does not a priori result in a finding that a violation of the Act has occurred. The Charging Party must prove by a preponderance of the evidence that the Board acted with discriminatory motive in increasing Frank's workload in the 1980-81 school year.

The only evidence adduced indicating anti-union animus on the part of the Respondent was Gottlieb's alleged statement to Frank at the November 7, 1980 meeting regarding Frank's negotiations activities in the Spring of 1980. The Hearing Examiner, however, has found as a fact that at this meeting Gottlieb made no reference to annoyance with Frank in this regard (see Finding of Fact No. 9, supra).

In having credited Gottlieb's denial that he said anything to Frank regarding Frank's negotiations activities on November 7, 1980, the Hearing Examiner has given weight to the testimony of Miller and Leimberg, past Presidents of the Association, who were active on behalf of the Association in years past. Miller, who like Frank was on the Association's Action Committee in the Spring of 1980, testified credibly that Gottlieb never took any retaliatory action against him. Leimberg, who likewise was on the Action and Negotiating Committees in the Spring of 1980, testified that no one ever indicated to him that Gottlieb was "anti-union."
(See Findings of Fact Nos. 14 & 15, supra).^{4/}

^{4/} Additionally, the Hearing Examiner has also considered the admission of Gottlieb that he stated to Neave in the Fall of 1980 that she was getting "bad advice" from Frank and, further, the credited denial of Gottlieb that he ever said anything regarding Frank to Bulvanoski (see Finding of Fact No. 13, supra).

The increase in Frank's workload in the 1980-81 school year is plainly attributable to the various courses assigned to Frank by Gottlieb and the fact that Frank is admittedly a very popular teacher, which has resulted in students selecting his course offerings in substantial numbers. Thus, the Hearing Examiner can draw no negative inferences from the size of Frank's workload, given his popularity as a teacher among the students of the Middle School.

Additionally, the Hearing Examiner has assigned no weight whatever to Frank's complaint regarding Gottlieb's response to Frank's request to teach Advanced Chemistry in the Spring of 1980 (see Finding of Fact No. 6, supra). Also, the Hearing Examiner concludes that Frank's objection to Gottlieb's proposal to increase the length of the teaching periods and to eliminate the homeroom period in the spring of 1980 was not causally connected to any problem which Frank had thereafter in the matter of workload in the 1980-81 school year (see Finding of Fact No. 5, supra)^{5/}.

Finally, the Hearing Examiner concludes that the Respondent did not independently violate Subsection(a)(1) as contended by the Charging Party (see Charging Party's Brief, pp. 9-11).

Based on all of the foregoing, the Hearing Examiner must recommend ~~dismissal~~ of the Unfair Practice Charge and Complaint.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4 (a)(1) and (3)

^{5/} It is noted that Miller also opposed Gottlieb on his proposed lengthening of the teaching periods and eliminating the homeroom (Tr. 94-97).

by its conduct herein with respect to Saul Frank and any increase in Frank's workload during the 1980-81 school year.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: June 29, 1981
Trenton, New Jersey