

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(WILLIAM PATERSON COLLEGE),

Respondent,

-and-

Docket No. CO-H-88-280

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands to the Hearing Examiner an unfair practice charge filed by the Council of New Jersey State College Locals against the State of New Jersey (William Paterson College). The charge alleges that the College violated the New Jersey Employer-Employee Relations Act when a member of the Board of Trustees allegedly interfered with an associate professor's right to file grievances. The Commission dismisses that portion of the Complaint alleging that the Board member said the professor had no right to file a grievance. However, that portion of the Complaint alleging the Board member said "Little lady, how dare you file a grievance" is remanded to the Hearing Examiner for additional findings and a supplemental report.

P.E.R.C. NO. 90-10

STATE OF NEW JERSEY  
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Respondent,

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Docket No. CO-H-88-280

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

Charging Party.

Appearances:

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

For the Charging Party, Bennett Muraskin, Staff  
Representative

DECISION AND ORDER

On April 29, 1988, the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO filed an unfair practice charge against the State of New Jersey (William Paterson College). The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(1), when, at a March 21, 1988 meeting, James Kuhn, a member of the College's Board of Trustees, allegedly told Associate Professor Linda Dye she had no right to file a grievance and added: "How dare you file a grievance."

On August 3, 1988, a Complaint and Notice of Hearing issued. The State's Answer denied that Kuhn made the statements alleged.

On October 13 and 14, 1988, Hearing Examiner Lorraine H. Tesauro conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by December 29, 1988.

On June 30, 1989, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 89-43, 15 NJPER \_\_\_\_ (¶\_\_\_\_ 1989). She credited Kuhn's denial that he made any comment concerning the right to file grievances. She did not make any express findings about the allegation that Kuhn asked Dye how she dared to file a grievance.

On July 13, 1989, the Council filed exceptions. It asserts that the Hearing Examiner misunderstood the issue in this case, as evidenced by her not addressing whether Kuhn exclaimed "How dare you file a grievance." It further asserts the Hearing Examiner erred in not discussing the testimony of faculty member Timothy Gerne and College president Arnold Speert; making certain incorrect findings of fact; relying on Kuhn's labor relations expertise in crediting his testimony, and not considering analogous NLRB cases.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-6) are mostly accurate, but incomplete. We incorporate them with these corrections and additions.

The last sentence of finding no. 3 states that the president refers positive promotional recommendations to the Board of Trustees. The correct citation is the president's testimony (2T22), not the State's opening remarks at the hearing.

We add to finding no. 3 that the All College Promotion Committee recommended 14 faculty members for promotion. The president accepted 11 recommendations, but rejected three including one to promote Linda Dye to professor. The president instead recommended three other faculty members to the Board of Trustees (2T23-2T24).

We correct finding no. 4 to state that Speert did not recommend Dye's promotion to the Board of Trustees. We add these facts. Individual grievances were filed on behalf of the three teachers denied promotions and on February 5, 1988 a group grievance was filed by the Council. Dye's grievance (CP-1) alleged that she was not promoted because of sex discrimination and that promotional procedures had been violated. The Council's grievance (R-4) alleged that the president had not applied contractual criteria fairly and equitably, had ignored the contract's definition of "scholarly achievement," and had failed to give his reasons for denying the three promotions. The president told the trustees that a group grievance had been filed, but did not tell them of Dye's individual grievance (2T25). Kuhn chaired the trustees' Personnel committee (2T43-2T44). According to President Speert, Kuhn knew that Dye was

named in the group grievance (2T53). According to Kuhn, he presumed that Dye was named in the group grievance (2T104).<sup>1/</sup>

The denial of the promotions spawned a campus controversy (2T76). On February 23, 1988, the Faculty Senate resolved to adjourn participation in academic governance (R-2). The resolution asserted that the president and vice-president had unilaterally changed the relationship with the All College Promotion Committee by narrowing "scholarly achievement" to publications. A chronology of the 1988 promotion process, a summary of possible remedies, and a copy of College policies on governance were attached to the resolution. The Executive Committee guaranteed the Senate that if the president took no action, the Senate would be reconvened on April 5 to deliberate over whether to resume governance or call for a no-confidence vote (R-3). Robert Bing, Faculty Senate Chairperson, forwarded the adjournment resolution to Russell Hawkins, Chairperson of the Board of Trustees (R-2).

We add these facts to finding no. 5. President Speert told Bing that the March 21 meeting had been called to discuss only one topic -- possibly including a faculty member on the Board of Trustees (1T15; 2T28). Bing told his colleagues that the meeting was limited to this question, but Kuhn was not told that (2T4; 2T45; 2T78).

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<sup>1/</sup> Speert testified that the trustees' role in the promotion process is limited to acting on the president's positive recommendations (2T22). But Kuhn noted that the All College Promotion Committee had appealed the promotion denials to the Personnel Committee of the Board of Trustees and had met with the committee (2T107-2T108).

The Hearing Examiner accurately recounts the testimony of Dye and Bing about the meeting. We add this summary of the testimony of Timothy Gerne and President Speert.

Gerne was a member of the Executive Committee of the Faculty Senate. He testified that after dinner, he started the business discussion off by endorsing employee representation on the Board of Trustees and citing the example of Chrysler (2T5-2T6). Russell Hawkins, the trustees' chairperson, opposed the idea. Kuhn, while rustling papers, suddenly turned towards Dye, looked her in the eye and, according to Gerne, said, "Little lady, how dare you bring the small issue of your promotion. I don't want my house picketed by students like it was in 1974" (2T6). On cross-examination, Gerne testified that Kuhn said, "Little lady, how dare you bring this small grievance" (2T17). Kuhn was angry and spoke loudly (2T7). The discussion later returned to faculty representation on the Board of Trustees (2T8-2T9). Gerne did not remember in detail the sequence of events at the meeting (2T14). He remembered Kuhn expressing dismay at the faculty withdrawing from governance, but he could not remember when Kuhn said that (2T11-2T13).

President Speert recalled Chairperson Hawkins opening the discussion after dinner (2T31). Hawkins stated that it was up to the faculty to propose having a trustee representative. Kuhn then stated that since the faculty had abandoned governance, he no longer favored such representation. Dye responded that the suspension of governance was a mild step compared to a no-confidence vote (2T32).

According to Speert, Kuhn spoke passionately and loudly (2T34), stating that: "he didn't believe that the filing of the grievance and the withdrawal from governance helped in terms of continuing discussions between the administration and the faculty" (2T35). Kuhn said that filing a grievance was "a major matter" and that it was illogical to file a grievance and withdraw from governance over a promotional dispute (2T55-2T56). Speert then wrote a note to Bing stating that Kuhn takes governance very seriously, and urging Bing to get the discussion back on track (2T36). According to Speert, Kuhn did not address Dye's "right to file" a grievance (2T38). Speert did not mention any statements about the timing of the grievance or recall exactly what Kuhn said to Dye about her grievance (2T51). He did not recall Kuhn referring to Dye as "little lady" (2T38). At the next trustees' meeting, Kuhn apologized to Dye and Vivian Barg, a student representative on the Board of Trustees, for "any statement he might have made like little lady or little woman or that girl" (2T43). Kuhn said he didn't recall making those statements, but if he had he felt truly sorry and apologized (2T43).

We elaborate on the discussion of Kuhn's testimony. Kuhn has been a trustee since 1975. A professor of Industrial Relations at Columbia University's Graduate School of Business, he has written books and articles on collective bargaining and grievance processing (2T68-2T69; R-5). Kuhn admitted he was very angry (2T88) at the meeting. He testified that he asked Dye why a grievance had been

filed at a time when a grievance would make it harder to resolve the promotion controversy and governance question. When Dye responded that the grievance had to be filed within the time limits, Kuhn said that an extension of time could have been received (2T84-2T85). Kuhn denied referring to Dye by any form of address other than her name, explaining that he had referred to Vivian Barg, whose name he could not recall, as "that girl on the board" (2T85-2T86). He made that comment in discussing the problems with having student and faculty representatives on the Board of Trustees. Kuhn confirmed Speert's account of his apology (2T95).

Hawkins confirmed that Kuhn's remarks were directed toward the timing of the grievance (2T123).<sup>2/</sup> As a member of the Personnel Committee, Hawkins knew of the controversy over the three promotion denials and that Dye was one of those denied promotion (2T117). Hawkins testified that Kuhn did not comment on the right to file grievances (2T124). He could not recall whether Kuhn addressed Dye in any way besides by her name (2T124).

In her analysis, the Hearing Examiner stated (H.E. at 9) that the March 21 meeting was scheduled well before the controversy over promotions erupted. Speert testified that the meeting was

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<sup>2/</sup> The Hearing Examiner states that Hawkins was not present during Kuhn's testimony, but the Council asserts that the sequestration order was limited to excluding Kuhn during Speert's testimony and that the Hearing Examiner rejected its request to exclude Hawkins during Kuhn's testimony. The record is silent on this question. Sequestration rulings should be on the record.



scheduled before the suspension of governance on February 23 (2T27), but the promotion controversy began in early February.

Subsection 5.4(a)(1) prohibits a public employer and its representatives and agents from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." These rights include the right to file a grievance over employment conditions. N.J.S.A. 34:13A-5.3. An employer violates subsection 5.4(a)(1) if its representative or agent makes a statement which tends to interfere with an employee's exercise of the right to grieve and which lacks a legitimate and substantial business justification. Mercer Cty., P.E.R.C. No. 86-83, 11 NJPER 589 (¶16207 1985); Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83); New Jersey Sports & Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979).

The charge alleges that Kuhn told Dye she had no right to file a grievance. The Hearing Examiner credited the testimony of Kuhn and Hawkins that he made no such statement. We accept that credibility determination and dismiss that portion of the Complaint alleging that Kuhn made such a statement.

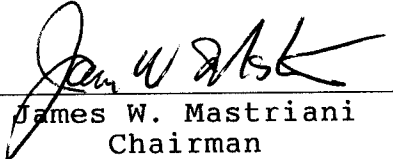
The charge also alleges that Kuhn said to Dye: "How dare you file a grievance." Dye, Bing and Gerne testified that Kuhn made this comment and prefaced it by addressing Dye as "little lady." The Hearing Examiner partially credited Bing's corroborative testimony on this point, but continued to credit Kuhn's denial that he made any comments about the right to file a grievance (H.E. at 6 n. 5). These credibility determinations do not answer whether Kuhn

made a comment critical of Dye's decision to file a grievance such as "How dare you file a grievance."<sup>3/</sup> The Hearing Examiner made no specific and express findings about whether Kuhn called Dye "little lady" and whether he asked her how she dared to file a grievance. We are unable to decide this case without such findings. Accordingly, we remand the case to the Hearing Examiner to issue promptly a supplemental report with further findings and analysis.

ORDER

That portion of the Complaint alleging that Dr. Kuhn told Linda Dye that she had no right to file a grievance is dismissed. The case is remanded to the Hearing Examiner for proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
August 17, 1989  
ISSUED: August 18, 1989

<sup>3/</sup> The analysis states (H.E. at 9) that "Chairperson Hawkins corroborated Kuhn's testimony and account of the events and confirming Kuhn's consistency to deny the statement." We need clarification on this underlined part of the sentence. In any event, neither Hawkins nor Speert corroborated Kuhn's testimony that he believed he had not made the alleged second statement (2T114). On a related point, we accept the Hearing Examiner's observation (H.E. at 6 n.5) that Kuhn's expertise on grievance processing made it unlikely he would say Dye had no right to file a grievance. But we will not extend this observation to the factual question of whether he made the second statement. Kuhn was very angry and convinced that the grievance should not have been filed.

H.E. NO. 89-43

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

In the Matter of

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Respondent,

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Docket No. CO-H-88-280

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

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the State of New Jersey, William Paterson College ("State") did not violate subsection (a)(1) of the Act and dismiss the complaint filed by the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO ("AFT"). The AFT alleges that a member of the Board of Trustees made certain unlawful remarks to an employee in retaliation for her filing a grievance. The State maintains that the comments were not directed to the employee nor did they bear any tendency to interfere with the employee's rights as guaranteed under the Act. The Hearing Examiner finds that the AFT failed to meet its burden of proof that the comments tended to interfere with the employee's rights and the Complaint should be dismissed.

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

H.E. NO. 89-43

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LOCALS, NJSFT-AFT/AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Hon. Peter Perretti, Attorney General  
(Melvin E. Mounts, D.A.G.)

For the Charging Party  
Bennett Muraskin, NJSFT/AFT Staff Representative

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On April 29, 1988, Council of New Jersey State College  
Locals, NJSFT-AFT/AFL-CIO ("AFT") filed an unfair practice charge  
with the New Jersey Public Employment Relations Commission  
("Commission") against the State of New Jersey and William Paterson  
College ("State") alleging violations of the New Jersey  
Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-5.4 et seq.  
subsection (a)(1).<sup>1/</sup> The AFT alleges that on March 21, 1988,

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<sup>1/</sup> This subsection prohibits public employers, their  
representatives or agents from: "(1) Interfering with,  
restraining or coercing employees in the exercise of the  
rights guaranteed to them by this act."

James Kuhn, a member of the Board of Trustees at William Paterson College, made certain unlawful remarks to employee Linda Dye. The AFT asserts that these comments were in retaliation for Dye's grievance over the denial of her promotion.

A Complaint and Notice of Hearing issued on August 3, 1988. Hearings were held as scheduled on October 13 and 14, 1988 in Newark, New Jersey at which time the parties examined witnesses, presented relevant evidence and argued orally. Closing arguments were waived and the parties filed post-hearing briefs.

Upon the entire record, I make the following:

#### FINDINGS OF FACT

1. The State and the AFT are parties to a collective negotiations agreement covering all nine State Colleges J-1. The unit includes full time teaching and/or research faculty; department chairpersons; administrative staff (nonmanagerial); librarians; student personnel staff; demonstration teachers; Teacher-A. Harry Moore School; professional academic support personnel (holding faculty rank); and full time members of the State College Unit who teach summer session (J-1, page 1).

2. Linda Dye is a 21 year employee of the College. Her present title is Associate Professor of Movement Science and Leisure Studies. She is a full time teaching and research faculty member.

(1T11) <sup>2/</sup>. She applied for a promotion to full professor in November 1987.

3. Under the College's promotion process the applicant files a promotion application with the department. The department elects a promotion committee which observes and evaluates the candidate. Candidates compile materials for committee review. The committee assesses the materials and evaluations. It then ranks candidates, giving a recommendation or no recommendation, together with the supporting materials to the All College Promotion Committee (1T45). The All College Committee then makes a recommendation to President Speert and Vice President Hamovitch (1T45). Speert refers positive recommendations to the Board of Trustees (1T6).

4. Speert denied Dye's promotion on February 1, 1988, and did not recommend her to the All College Promotions Committee (1T12). Dye filed an individual grievance on February 8, 1988 (1T12).<sup>3/</sup> The grievance alleged Speert's failure to promote Dye was sexual discrimination (1T13; CP-1). James Kuhn, a Board of Trustees representative, was unaware that Dye filed an individual grievance (2T90). The Board of Trustees is not involved in the grievance process (J-1, Art. 7) and it's only role in the promotions process is to act upon positive recommendations by the President (1T6).

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<sup>2/</sup> The transcripts are cited as follows: "1T" refers to the transcript of October 13 and the corresponding page; "2T" refers to the transcript of October 14 and the corresponding page.

<sup>3/</sup> The grievance is still pending.

5. A special dinner meeting was held on March 21, 1988 for members of the Faculty Senate Executive Committee, the Board of Trustees, Speert and Hammovitch (1T17). There was no distributed agenda (1T42). The President of the Executive Committee extended the invitation to the other members of the Committee and stated that the appointment of a faculty member to the Board of Trustees would be discussed (1T15)<sup>4/</sup>.

Dye attended the March 21 meeting as a member of the Faculty Senate. During the evening, she urged the discussion of the placement of a faculty member on the Board of Trustees and the extension of governance issues. According to Dye, Kuhn became angry and responded, "listen here, young lady, your idea of moderate and my idea of moderate are very different. Grievances have been filed. How dare you file grievances." and "You are wrong to file a grievance. You have no right to file a grievance." (1T18).

Dr. Bing, a faculty member and Chairperson of the Faculty Senate corroborated Dye's testimony on direct examination:

...We sat down to dinner and social conversation. At the conclusion of the meal, Russell Hawkins said it would be time and we agreed to begin to discuss the matter at hand and we began to discuss the issue of faculty representation to the Board. (1T52; 1T53)

Bing then testified that Kuhn stated his opposition to faculty representation on the Board. Linda Dye tried to bring the subject back to governance. When asked if Kuhn responded, Bing stated:

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<sup>4/</sup> This was not a regularly scheduled meeting of the Faculty Senate (1T43).

Yes. He turned to her [Dye] ... to his left ... and he said something to the effect "Do you know grievances have been filed in this matter?" He said, "I can't understand why grievances have been filed in this matter." Then he said to her specifically, "Little lady, how dare you file a grievance in this matter." (1T55)

Kuhn acknowledged a discussion took place (2T86;2T89), but qualified his statement. After Board members dicussed their positions about faculty representation on the Board, Kuhn expressed his concerns that, "it was not appropriate for us to be talking about extending the governance with the faculty at a time when the faculty had withdrawn from governance. ..."(2T83).

He continued testifying that, "I said I was sorry to see this kind of development because it certainly was promoting or it helped to or was the outcome of an adversarial relationship which reminded me very much of what happened some years before... " (2T83)

Kuhn then commented on events that occurred in 1974-75 when the faculty withdrew from governance. He stated further:

... I believe it was Professor Bing who said it was his understanding that we were to talk about only a single subject and that was the extension of governance and I replied that I did not understand that and I did not see how the topic of extension of governance could be separated from the situation in which we found ourselves where the faculty had withdrawn from governance.

This raised a serious issue for me ... .

I then -- Professor Dye was sitting to my left and I asked her directly why a grievance was filed at this time when a grievance -- when a resolution, when it would make a resolution more difficult and she replied that the Union had to file the grievance, that it had to be filed -- I forgot exactly how she put it, that



the grievance had to be filed because there was a limit on the time for filing." (2T84).

Kuhn testified he felt very strongly about the governance issue and did not make any comment concerning the right to file a grievance (2T88).<sup>5/</sup> He testified he was not angry about the filing of the grievance only that the timing was inappropriate (2T89). Kuhn agrees that employees have a right to file grievances (2T124).

Russell Hawkins, Chairperson of the Board of Trustees, corroborated Kuhn's testimony by confirming Kuhn's remarks were directed toward the timing of the governance issue (2T123). Hawkins presided at the March 21, 1988 meeting but was not present when Kuhn testified. He agreed that Kuhn was very concerned about the governance issue and made that very clear. (2T120;2T123).

Kuhn made a public apology to Dye at the next meeting in April (2T95).

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<sup>5/</sup> Dye testified Kuhn said she had "no right to file a grievance" (1T18). Bing corroborated Dye's testimony with regard to the "little lady" comment (1T55), but he did not testify he heard Kuhn's remarks about the right to file grievances. I give partial credit to Bing's testimony, but I continue to credit Kuhn. Kuhn denied he made any remarks regarding the right to file a grievance (2T88) and I credit his denial. I found his testimony forthright, consistent and credible.

Kuhn indicated he was very concerned about the governance issue and tended to be predisposed by it at the meeting. Given Kuhn's background and experience, it is not likely that he would make the "no right to file" comment.

ANALYSIS

The principal allegation is that Kuhn interfered with Dye's rights under the Act when he commented on her grievance at a general meeting of the Board of Trustees, administrators and faculty representatives. The primary issue for discussion was whether or not a faculty member should be appointed to the Board of Trustees.

The State maintains that Kuhn did not direct the statement toward Dye; his comments did not bear any tendency to interfere with Dye's right to file grievances; and the AFT incorrectly perceived the statement.

In order for the State to be in violation of the Act, there must be proof of an independent violation of 5.4(a)(1). A public employer violates subsection (a)(1) when its conduct tends to interfere with an employee's statutory right and lacks a legitimate and substantial justification. Jackson Township, P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988), adopting H.E. No. 88-49, 14 NJPER 293, 303 (¶19109 1988); UMDNJ, Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); N.J. Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). It is not necessary for the charging party to prove an illegal motive in order to establish the independent violation of 5.4(a)(1) of the Act.

Section 5.4(a)(1) cases also require a balancing of two important but conflicting rights: the employer's right of free speech and the employee's right to be free from coercion, restraint

or interference in the exercise of protected rights. All the circumstances in a particular case must be reviewed to strike that balance. See generally Trenton State College, P.E.R.C. No. 88-19, 13 NJPER 720 (¶18269 1987); County of Mercer, P.E.R.C. 86-33, 11 NJPER 589 (¶16207 1985).@

Here, the question is not necessarily whether or not the employer retaliated against Dye by not promoting her for filing a grievance but whether or not Kuhn's statements tended to interfere with Dye's exercise of her rights under the Act.

The AFT has the burden of proving that Kuhn's conduct tended to interfere with those rights. See Trenton State College, 13 NJPER at 720, 721. Its proofs lack substance in proving that Kuhn engaged in any conduct which tended to interfere with Dye's statutory rights.<sup>6/</sup>

Dr. Kuhn is a member of the Board of Trustees. I find that the Board does not participate in the grievance process nor in the selection of candidates for promotion. Their role in the promotions process is limited to acting upon the President's positive recommendations.

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<sup>6/</sup> Kuhn denied making any comments concerning the right to file grievances and Chairperson Hawkins corroborated his testimony. The AFT failed to provide a substantial rebuttal to either Hawkins or Kuhn's testimony. Although Bing's testimony corroborated Dye's, in part, it does not provide the necessary proofs that Kuhn's remarks interfered with Dye's protected rights. One must consider the context in which Kuhn asked Dye about the grievance and how Kuhn addressed the two issues. It is not characteristic for someone who is an authority on the subject of grievances to make comments that lend themselves to interfere with an individual's rights.

Dye applied for the promotion in the fall of 1987. The College President did not recommend her promotion to the Board of Trustees. Dye was notified of the unfavorable recommendation on February 1, 1988. On February 5, 1988, the AFT filed a grievance over the State's failure to promote Dye. On February 8, Dye grieved as an individual. The March 21, 1988 meeting was scheduled well before the controversy erupted over the promotions (2T27, 28, 45) and the events of the March 21 meeting obviously occurred well after the filing of the grievance and the controversy over governance.

Kuhn's testimony qualified his statement by placing it in the context in which it was meant and how it related to the issue of governance (2T88-89). I credited Kuhn's testimony on the events taking place at the meeting on March 21, 1988 (2T84-89). Chairperson Hawkins corroborated Kuhn's testimony and account of the events and confirming Kuhn's consistency to deny the statement. Full credit is given to Kuhn's denial.

The record does not justify finding an independent 5.4 (a)(1) violation. The AFT did not satisfy the criteria for finding a violation and failed to provide demonstrative proof that the State's conduct was coercive or tended to interfere with Dye's protected rights in any way.

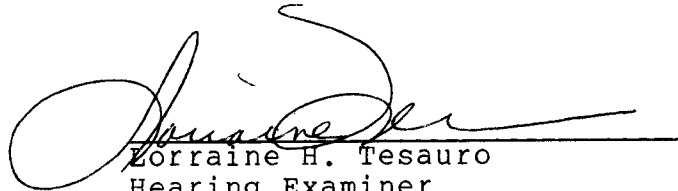
Upon the foregoing and upon the entire record, the Hearing Examiner makes the following:

CONCLUSION

The Respondent State of New Jersey did not violate N.J.S.A. 34:13A - 5.4 (a)(1).

RECOMMENDED ORDER

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



Lorraine H. Tesauro  
Hearing Examiner

DATED: June 30, 1989  
Trenton, New Jersey