P.E.R.C. NO. 90-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BERGEN,

Respondent,

-and- Docket No. CI-H-89-2

JACQUELINE M. WALTERS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Jacqueline M. Walters against the County of Bergen. The charge alleged that the County violated the New Jersey Employer-Employee Relations Act when it suspended Walters in May 1988; urged her to enter the Employee Assistance Program and see a psychologist; sought to have her sign a statement against the union; suspended her for failing to report to work or call in on March 31, 1989, and allowed co-workers to harass her. The charging party did not present any evidence that the employer was hostile to activity protected by the Act.

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In the Matter of

COUNTY OF BERGEN,

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-and- Docket No. CI-H-89-2

JACQUELINE M. WALTERS,

Charging Party.

Appearances:

For the Respondent, Berek P. Don, County Counsel
(Murshell Johnson, Assistant County Counsel)

For the Charging Party, Jacqueline M. Walters, pro se

DECISION AND ORDER

On July 1, 1988 and April 10 and May 11, 1989, Jacqueline M. Walters ("charging party") filed an unfair practice charge and amended charges against the County of Bergen ("employer"). The charge, as amended, alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (7),[1/] when it suspended the charging party in May 1988; the Director of Nursing urged her to enter the Employee Assistance Program ("EAP") and see a psychologist; a nursing supervisor sought to have Walters sign a

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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. (7) Violating any of the rules and regulations established by the commission."

statement against the union; the County suspended her for failing to report to work or call in on March 31, 1989, and co-workers allegedly harassed her.

On April 28, 1989, a Complaint and Notice of Hearing issued. On May 18, the County filed an Answer and amended Answer claiming that Walters was suspended for just cause in May 1988 and that the disciplinary action was not an unfair practice; that she agreed in a September 1988 meeting to accept the suspension and not pursue that matter; and that Walters was properly suspended in April 1989.

On June 12 and 13, 1989, Hearing Examiner Alan R. Howe conducted a hearing. The charging party testified and introduced exhibits. At the conclusion of the charging party's case, the employer moved to dismiss. The Hearing Examiner granted the motion orally. On June 21, he issued a written decision to "memorialize and supplement" the oral decision. H.E. No. 89-42, 15 NJPER ___ (¶_____ 1989). He found that the charging party had presented no evidence that she was disciplined in May 1988 or March 1989 in retaliation for any activity protected by the Act. He also found that the charging party was not denied union representation and was not illegally coerced into signing a statement against the union. He also found that the charging party's difficulties with her co-workers did not implicate any unfair practices.

On June 30 and July 5, 1989, the charging party filed a request for review. She reiterates her complaints concerning her

suspensions, the referral to EAP, and the alleged harassment by co-workers. On July 17, the County filed a reply urging adoption of the Hearing Examiner's recommendation. On July 26, the charging party replied to the County's submission. She again claims that the County's actions violated her rights under the Act. She attached a letter from her union's president urging her not to pursue an unfair practice charge and instead to allow the union to file a grievance on her behalf. She also attached a letter from her union's attorney acknowledging that she had decided to represent herself in this matter.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-7) are accurate. We incorporate them.[2/]

In re Bridgewater Tp., 95 N.J. 235 (1984), sets the standards for analyzing allegations of retaliation for engaging in protected conduct. In order to prevail, the charging party must, at a minimum, prove that she engaged in protected activity and that the employer knew of and was hostile to that activity. Here, the charging party did not present any evidence that the employer was hostile to any protected activity she engaged in. Instead, we have been presented with a series of employee complaints -- some concerning discipline by the employer, others concerning co-worker conduct -- that do not implicate any unfair practices and therefore

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2/ We correct page 14 of the report to indicate that the call in incident occurred on March 31, 1989.

cannot be addressed or remedied in the unfair practice forum. Accordingly, we dismiss the Complaint.[3/]

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

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

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

3/ No evidence was presented to support the subsection 5.4(a)(7) allegation.

H.E. NO. 89-42

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

In the Matter of

BERGEN COUNTY,

Respondent,

-and- Docket No. CI-H-89-2

JACQUELINE M. WALTERS,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission grant the Respondent's Motion to Dismiss at the conclusion of the Charging Party's case. The Complaint alleged that the Respondent violated §§5.4(a)(1), (3) and (7) of the New Jersey Employer-Employee Relations Act when it suspended Jacqueline M. Walters on May 3, 1988 and on April 13, 1989. The Hearing Examiner found that Walters had not adduced even a scintilla of evidence that she had engaged in protected activities under the Act, or if she did so, Walters failed to produce even a scintilla of evidence that the County manifested hostility or anti-union animus toward her exercise of protected activities. The Hearing Examiner concluded that Walters'"activities" constituted nothing more than personal complaints and gripes which did not constitute protected activity based upon decisions of the Federal Courts of Appeal and a prior decision of the Commission.

A Hearing Examiner's Recommended Decision to Dismiss is not a final administrative determination of the Public Employment Relations Commission. The Charging Party has ten days to request review by the Commission or else the case is closed.

H.E. NO. 89-42

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

In the Matter of

BERGEN COUNTY,

Respondent,

-and- Docket No. CI-H-89-2

JACQUELINE M. WALTERS,

Charging Party.

Appearances:

For the Respondent, Berek P. Don, County Counsel
(Murshell Johnson, Assistant County Counsel)

For the Charging Party, Jacqueline M. Walters, Pro Se

HEARING EXAMINER'S RECOMMENDED DECISION AND ORDER
ON RESPONDENT'S MOTION TO DISMISS

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on July 1, 1988, and amended on April 10 and May 11, 1989, by Jacqueline M. Walters ("Charging Party" or "Walters") alleging that Bergen County ("Respondent" or "County") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), in that Walters, who was employed at the Bergen County Intermediate Care Facility ("Facility") as a Hospital Attendant, was summoned to a suspension hearing on May 3, 1988, at 11:15 p.m. where four supervisors were present, but no shop steward was present; Mary Gannon, the Director of Nursing, claimed that she had written statements from several

employees, one of whom, Edwina Lancaster, had accused Walters of threatening her and following her home; the suspension hearing concluded at 11:45 p.m. and Walters was suspended for three days, returning to work on May 12, 1988, on the 7:00 a.m. to 3:30 p.m. shift rather than the 11:00 p.m. to 7:30 a.m. shift to which she had assigned prior to May 3rd; Walters was also urged by Gannon to enter the Employee Assistance Program and to see a psychologist; Walters was scheduled for a hearing on May 16, 1988, to discuss the charges of "disorderly conduct" but failed to appear; in February 1989, a nursing supervisor sought to have Walters sign a form against the union for holding up a pay increase but Walters refused to sign; on April 10, 1989, Walters was given a Notice of Minor Disciplinary Action for having failed to report to work or call in on March 31, 1989, and she was suspended for one day without pay; and Walters has since May 1988 had frequent irritating encounters with co-workers, particularly Lancaster, also a Hospital Attendant; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (7) of the Act.[1/]

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. (7) Violating any of the rules and regulations established by the commission."

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 28, 1989. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 12 and June 13, 1989, in Newark, New Jersey, at which time the Charging Party was given an opportunity to examine witnesses and present relevant evidence. At the conclusion of the Charging Party's case on June 12th, the Respondent made a Motion to Dismiss on the record and the Hearing Examiner, after hearing the oral argument of the parties, granted the County's Motion on the record on June 13, 1989. This decision is issued to memorialize and supplement the oral decision on the record..

Upon the record made by the Charging Party only, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Bergen County is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Jacqueline M. Walters is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

3. Walters was first hired by the County on February 2, 1987, as a Hospital Attendant at the County's Bergen Pines facility and on January 11, 1988, she was transferred to the Bergen County Intermediate Care Facility in Rockleigh. There she worked on the 11:00 p.m. to 7:30 a.m. shift until May 12, 1988, when she was assigned to the 7:00 a.m. to 3:30 p.m. shift.

4. At about 5:00 a.m. on May 3, 1988, Walters was in the Smoking Room with several other Hospital Attendants, one of whom was Edwina Lancaster. Lancaster began making references to Walters' weight, referring to her at one point as an "elephant" and they exchanged words.

5. When Walters reported for work at about 11:00 p.m. in the late evening of May 3, 1988, she was immediately told by Edgar Coxeter, the then Administrator, to follow him to a room where three nursing supervisors were present, namely, Mary Gannon, Leonore Flach and Winona Swain. No shop steward was present nor did Walters make a request that a shop steward be present. Gannon stated that Walters had verbally threatened and then followed Lancaster to her home between 6:00 a.m. and 7:00 a.m. on May 3, 1988 (the prior shift). Walters denied this allegation. Lancaster was not present but Gannon stated that she had written statements from Lancaster and several other employees to support the charge. Gannon handed Walters a written "Warning" with a notice of suspension at 11:45 p.m. (CP-1).

6. On May 6, 1988, a Preliminary Notice of Disciplinary Action was issued to Walters and she was given a three-day suspension without pay (CP-2).[2/]

2/ There was considerable testimony and colloquy between Walters and counsel for the County as to whether or not Walters was suspended for three days or seven days. It was clearly

Footnote Continued on Next Page

7. On May 11, 1988, Leonard A. Vena, the Public Health Coordinator, sent a memo to Walters in which he not only advised Walters of the fact of her three-day suspension without pay but also directed her to report to work on May 12, 1988, on the day shift, supra. Vena further advised Walters that she was to have a hearing on her suspension on May 16th. [See CP-3, supra].

8. Insisting that she could not adequately prepare for the May 16th hearing, Walters unsuccessfully attempted to have the hearing adjourned to another date. Although Walters "punched out" at 2:06 p.m. on May 16, 1988, she did not attend the hearing scheduled for 3:00 p.m.

9. On May 17, 1988, Vena sent a letter to Walters, in which he recited the fact of her hearing having been scheduled for May 16th and her having failed to appear, as a result of which her suspension "...will stand and your assignment to the day shift will remain in effect..." (CP-5).

10. Also, on May 17, 1988, Shirley Feinblum, the 1st Vice President and Grievance Chairperson of New Jersey Employees Labor Union Local No. 1, the collective negotiations representative for

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2/ Footnote Continued From Previous Page

established that Walters was "docked" only for three days during the seven-day period from May 3 to May 12, 1988, when she returned to work on the 7:00 a.m. to 3:30 p.m. shift (CP-3). A Final Notice of Disciplinary Action regarding Walters' three-day suspension was issued on September 16, 1988 (CP-11).

Walters and other "white collar" employees of the County,[3/] sent a letter to Walters. Feinblum stated that the Union had been ready and willing to provide Walters with representation at her hearing the previous day at 3:00 p.m. where Feinblum and others appeared on behalf of Walters. After waiting until 3:45 p.m., the Union representatives departed. Feinblum reminded Walters that she had twice assured Feinblum by telephone prior to the meeting that she (Walters) would appear. [See CP-19].[4/]

11. Walters acknowledged on cross-examination that she never filed a grievance with respect to the May 3, 1988 suspension and that the County did not prevent her from doing so. Although the record is not clear as to whether or not Walters was familiar with the collective negotiations agreement (C-5, supra), Walters did refer to a shop steward not having been present on May 3rd, supra.

12. Although a settlement agreement between the parties was executed on August 31, 1988, and was received in evidence, it is not deemed relevant to the instant proceeding (CP-10).

13. Sometime in February 1989, E. Maro, a nursing supervisor, asked Yvette Shaw, another Hospital Attendant, to sign a letter bringing charges against the Union for holding back a pay increase. Shaw signed but when Maro requested that Walters sign the

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3/ See Exhibit C-5, the collective negotiations agreement in effect between the County and Local No. 1 from January 1, 1987 through December 31, 1988.

4/ Walters responded to Feinblum's letter on June 1, 1988 (CP-20).

letter, she refused because she was not first given the opportunity to read it. Walters has never read the letter at any time since that date.

14. Walters was suspended for one day, April 13, 1989, for having failed to report to work or to have called in to her supervisor on March 31, 1989 (CP-16). Once again there was no Union shop steward involved although Walters did testify that she had been unable to reach a Grievance Chairman by the name of Murphy. Walters did not file a grievance regarding this one-day suspension nor did she make any other appeal.5/

DISCUSSION AND ANALYSIS

The Applicable Standard On A Motion To Dismiss

The Commission in New Jersey Turnpike Authority, P.E.R.C. No. 79-81, 5 NJPER 197 (1979) restated the standard that it utilizes on a motion to dismiss at the conclusion of the Charging Party's case, namely, the same standards used by the New Jersey Supreme Court: Dolson v. Anastasia, 55 N.J. 2 (1969). The Commission noted the courts are not concerned with the worth, nature or extent, beyond a scintilla, of the evidence, but only with its existence, viewed most favorably to the party opposing the motion. While the

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5/ Walters had appealed to the Department of Personnel for a hearing concerning her three-day suspension in May 1988. This appeal was refused since her suspension was for less than five days (see R-2: "ID" only). The contractual grievance procedure [C-5, pp. 37-39] is consistent with the provisions of Title 4A of N.J.S.A. cited in R-2 ("ID" only).

process does not involve the actual weighing of the evidence, some consideration of the worth of the evidence presented may be necessary. Thus, if evidence "beyond a scintilla" exists in the proofs adduced by the Charging Party, the motion to dismiss must be denied.

Since Walters has alleged that the County violated §§5.4(a)(1) and (3) of the Act, the analysis enunciated by the New Jersey Supreme Court in Bridgewater Township v. Bridgewater Public Works Association, 95 N.J.. 235 (1984) may also be utilized in disposing of the Respondent's Motion to Dismiss at the conclusion of the Charging Party's case. In Bridgewater the Court adopted the analysis of the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980) in "dual motive" cases, where the following requisites are utilized in assessing employer motivation: (1) the Charging Party must make a prima facie showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision to discipline; and (2) once this is established, the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected activity (95 N.J. at 242). The Court in Bridgewater further refined the test, supra, by adding that the protected activity engaged in must have been known by the employer and, also, it must be established that the employer was hostile towards the exercise of the protected activity (95 N.J. at 246).

The Respondent's Motion To Dismiss Is Granted Since The Charging Party Has Failed To Adduce Even A Scintilla Of Evidence That Subsections (a)(1) And (3) Of The Act Were Violated By The Suspensions Of Walter on May 3, 1988 and April 13, 1989.6/

Aside from the "scintilla" and the Bridgewater tests for determining whether or not Walters established a prima facie case that the Respondent was illegally motivated when it suspended her effective May 3 and April 13, 1989, the Hearing Examiner notes that it is an established principle that an employer may legally discipline an employee for any cause so long as the motivation is not interference with rights protected under the Act: NLRB v. Eastern Smelting and Refining Corp., 598 F.2d 666, 669 (1st Cir. 1979). Similarly, an employer can discipline or suspend an employee for good, bad, or no reason at all, so long as the purpose is not to interfere with union activities: NLRB v. Loy Foods Stores, Inc., 697 F.2d 798, 801 (7th Cir. 1983).

The Hearing Examiner is persuaded that when the testimony and the documentary evidence is viewed most favorably to Walters as the Charging Party, she has failed to prove by even a scintilla of evidence that she engaged in any protected activity during the course of her employment with the County. The Hearing Examiner concludes that the conduct that Walters engaged in constituted

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6/ The Hearing Examiner dismisses the allegation of the Charging Party that the County violated §5.4(a)(7) of the Act since no evidence was adduced to support this allegation.

nothing more than personal complaints or gripes, regarding her efforts to secure redress from her suspensions.

Consider the sources of employee rights in the public sector. First, there is the New Jersey Constitution, which provides in part, in Article I, Paragraph 19 that "Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing." The Legislature, in amplifying upon the Constitution, supra, provided, in part, in Section 5.3 of the Act that "... public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity..."7/

The Commission in North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (1978) set forth a broad definition of individual employee conduct, which would constitute protected activity, citing several Federal Courts of Appeals decisions. In footnote 16 it is stated, "We find that individual employee conduct, whether in the nature of complaints, arguments, objections, letters or other similar activity relating to enforcing a collective

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7/ In the private sector, the National Labor Relations Act, as amended, provides in Section 7 that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection..."

negotiations agreement or existing working conditions of employees in a recognized or certified unit, constitute protected activities under our Act." (4 NJPER at 454). Note carefully the limitation placed by the Commission on protected individual conduct, namely, that it must occur in the context of enforcing an agreement or existing working conditions in a recognized or certified unit. Plainly, Walters does not fall within the North Brunswick definition, supra, since she never filed a grievance or sought to enforce the collective negotiations agreement.

The Commission has set a low threshold for proving that an employee has engaged in protected activity under Bridgewater: Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). There the Commission stated that under Bridgewater "...any level of protected activity could satisfy the first part of the test if that activity motivated the discipline..." [12 NJPER at 9]. This would appear to follow directly from No. Brunswick, supra.

Turning to the private sector, the Hearing Examiner refers to several Courts of Appeals decisions, which sustained employer disciplinary action because of the absence of protected activity on the part of the employees. In Pelton Casteel, Inc. v. NLRB, 627 F.2d 23, 105 LRRM 2124, 2129 (7th Cir. 1980) an employee was protesting his overtime and job rates, which was deemed individual griping. The Court said that the public venting of personal grievances, even if shared by others, is not a protected activity. In Koch Supplies, Inc. v. NLRB, 646 F.2d 1257, 107 LRRM 2108, 2109

(8th Cir. 1981) the Court recognized as lawful the discharge of a competent bilingual secretary, who was upset when she received no promotion. Thereafter, she constantly complained to supervision regarding her personal gripe over a new employee receiving vacation. The Court concluded that the discharge was because of persistent personal griping, which was not protected under the Act.

Applying the foregoing authorities to the facts established by Walters in her case in chief, supra, it is clear to the Hearing Examiner that Walters has failed to meet either the "scintilla" standard or the requisites of the Bridgewater test. Thus, the Respondent's Motion to Dismiss at the conclusion of the Charging Party's case must be granted. One searches in vain for any evidence whatsoever that Walters engaged in protected activity with respect to her two suspensions in May 1988 and June 1989. The above Findings of Fact demonstrate clearly that Walters' suspension on May 3, 1988, occurred because of the conclusion of supervision, as related to Walters by Gannon at the suspension meeting, that Walters had verbally threatened Lancaster and followed her home after the conclusion of the preceding shift in the morning of May 3rd.

This action of the County was unrelated to any exercise of protected activities by Walters who had never filed a grievance nor had she engaged in any activities recognized as protected under our Act. The suspension imposed on Walters was of three days' duration, an action which did not entitle her to a hearing under Title 4A (R-2, supra) but which could have been the subject of a grievance

under the collective negotiations agreement, resulting in final and binding arbitration (C-5, pp. 37-39).[8/]

After Walters' return to work on May 12, 1989, on the day shift rather than the night shift, Walters failed to appear at a hearing scheduled on her suspension on May 16, 1988. Her union was willing to represent her at that hearing but Walters failed to avail herself of that opportunity.[9/]

The incident in February 1989, involving nursing supervisor Maro, cannot arise to a violation of the Act since, even assuming Maro's supervisory status, since all that Maro did was solicit the signature of Shaw to a letter charging the Union with holding back a pay increase. Walters refused to sign this letter because she had not had an opportunity to read it. Maro's alleged conduct cannot be construed as any action on the part of the County which would violate our Act. Maro was not seeking to decertify the Union but only to register a complaint, joined in by other employees, that the Union was allegedly holding up the implementation of a pay increase. Walters was in no way coerced by Maro.

8/ The policy of the Commission as set forth in many cases since 1976 has been to encourage parties to collective negotiations agreements to resolve their differences through the negotiated grievance procedure: see N.J. Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419, 420, 421 (¶15191 1984).

9/ At the original suspension hearing on May 3, 1988, Walters testified that no shop steward was present but there was no evidence adduced by Walters that she requested a shop steward and was therefore denied representation. Thus, no Weingarten violation can be alleged in this proceeding.

Finally, with respect to the suspension of Walters for one day on April 13, 1989, this arose from Walters' alleged failure to report for work or to call in on May 31, 1989. Walters acknowledged that she filed no grievance. In connection with Union representation, Walters claimed that she could not reach Murphy, the Grievance Chairman. This can in no way be imputed to the County as a violation of our Act even by the scintilla standard set forth previously.

It is apparent to the Hearing Examiner that Walters had had difficulty in her relationship with other co-workers at the Facility, particularly Lancaster. However, the interpersonal relationships of employees cannot arise to protected activity under our Act when they involve mere personal irritations and gripes among co-workers inter se. But, See Pelton Casteel and Koch Supplies, supra.10/

Even if the Hearing Examiner was to assume arguendo that Walters had engaged in protected activities under the Act, he would necessarily have to conclude that Walters failed completely to establish any evidence of hostility or anti-union animus by the County in retaliation for her exercise of protected activities. This Hearing Examiner has had occasion twice to dismiss a complaint

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10/ The instant case is on all fours with this Hearing Examiner's decision in State of New Jersey, Public Defender (Rau), H.E. No. 85-48, 11 NJPER 425 (¶16147 1985), adopted P.E.R.C. No. 86-67, 12 NJPER 12 (¶17003 1985), aff'd App. Div. Dkt. No. A-2435-85T6 (1987).

in the last two years because of the total absence of hostility or animus: Lyndhurst Bd. of Ed., H.E. No. 87-56, 13 NJPER 285 (¶18119 1987), adopted P.E.R.C. No. 87-139, 13 NJPER 482 (¶18177 1987) and Southeast Morris County Mun. Utilities Auth., H.E. No. 89-9, 14 NJPER 591, 593 (¶19251 1988).

Not only has Walters failed to satisfy by a scintilla of evidence the Bridgewater test, supra, with respect to alleged §§5.4(a)(1) and (3) allegations but she has also failed to establish any independent violation of §5.4(a)(1) of the Act within the meaning of Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988) and the cases cited by the Hearing Examiner therein [14 NJPER at 303].

The foregoing discussion and analysis clearly dictates the conclusion that Walters failed to establish by even a scintilla of evidence that she has engaged in activities protected under the Act or that there was any hostility or animus manifested against her by the County under the decisions of the Commission and the several Courts of Appeals, supra. Having failed in these basic proofs by even a "scintilla" of evidence, the Hearing Examiner must conclude that upon the testimony of the Charging Party and the documentary evidence adduced in this proceeding that the complaint of Jacqueline M. Walters must be dismissed. Accordingly, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

The Respondent County did not violate N.J.S.A. 34:13A-5.4(a)(1), (3) or (7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Respondent's Motion to Dismiss on the record be granted and that the Complaint be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

Dated: June 21, 1989
Trenton, New Jersey