

P.E.R.C. NO. 85-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JOHN E. RUNNELLS HOSPITAL,

Respondent,

-and-

Docket No. CI-84-55-138

ROCCO GORNELLI,

Charging Party.

UNION COUNCIL NO. 8, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Respondent,

-and-

Docket No. CI-84-56-139

ROCCO GORNELLI,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses Complaints based on unfair practice charges Rocco Gornelli filed against John E. Runnells Hospital and Union Council No. 8, New Jersey Civil Service Association. The charge had alleged the Hospital denied Gornelli union representation at a meeting concerning his discharge and that Council 8 violated the Act when it refused to represent him. The Hearing Examiner found that Gornelli did not request Council 8 to represent him at the meeting and that Council 8 did not breach its duty of fair representation. Based on these findings and in the absence of exceptions, the Commission agrees that the Complaints should be dismissed.

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Appearances:

For the Respondent Hospital, Weinberg & Manoff, Esqs.
(Irwin Weinberg, of Counsel)

For the Respondent Association, Fox & Fox, Esqs.
(Frederic M. Knapp, of Counsel)

For the Charging Party, Rocco Gornelli, pro se

DECISION AND ORDER

On January 24, 1984, Rocco Gornelli filed unfair practice charges against the John E. Runnells Hospital ("Hospital") and Union Council No. 8, NJCSA ("Council 8") with the Public Employment Relations Commission. Gornelli alleges that the Hospital violated subsection 5.4(a)(1)^{1/} of the New Jersey Employer-Employee

^{1/} 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."

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it denied him union representation at a meeting concerning his discharge.

Gornelli also alleges that Council 8 violated subsection 5.4(b)(1)^{2/} when it allegedly refused to represent him during or after this meeting.

The Hospital asserts that Gornelli was not entitled to union representation at the September 22, 1983 meeting because he had not completed his working test period and because the sole purpose of the meeting was to tell Gornelli of his termination.

Council 8 denies having refused to represent Gornelli.

On May 7, 1984, the Administrator of Unfair Practice Proceedings issued Complaints and Notices of Hearing and an order consolidating these cases.

On August 14, 1984, Hearing Examiner Nathaniel L. Fulk conducted a hearing. The parties examined witnesses and introduced exhibits. Following the charging party's case, the Hearing Examiner granted a motion to dismiss the Complaint against the Hospital based on uncontested testimony that the purpose of the September 22, 1983 meeting was to advise Gornelli of his termination rather than to investigate alleged misconduct.

The Hearing Examiner also granted a motion to dismiss the portion of the Complaint alleging that Council 8 violated its duty

^{2/} This subsection prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

of fair representation by failing to attend the meeting. He found that Gornelli never requested Council 8 to represent him at the meeting and that Gornelli had no right to a union representative at this meeting. The Hearing Examiner denied Council 8's motion to dismiss those allegations concerning Council 8's actions after the termination meeting.

On November 21, 1984, the Hearing Examiner issued a report recommending dismissal of the Complaint. H.E. No. 85-22, 10 NJPER ____ (Para. ____ 1984). Finding no evidence of conduct that was arbitrary, discriminatory or in bad faith, the Hearing Examiner concluded that Council 8 did not breach its duty of fair representation.

The Hearing Examiner served copies of his report on the parties and advised them of their right to file exceptions by December 4, 1984. No exceptions were filed.

We have reviewed the record. The Hearing Examiner's findings of fact (pp.3-9) are accurate and we adopt them here. Based on these findings, and in the absence of exceptions, we agree with the Hearing Examiner's conclusion that the Complaint should be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
February 25, 1985
ISSUED: February 26, 1985

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that Union Council No. 8, New Jersey Civil Service Association did not violate the New Jersey Employer-Employee Relations Act when it failed to represent the Charging Party after he had been terminated from his position. The Hearing Examiner concluded that Council No. 8's actions toward the Charging Party were not arbitrary, discriminatory, or made in bad faith and that the Charging Party had never requested Council No. 8 to represent him. The Hearing Examiner also concluded that the John E. Runnells Hospital did not violate the New Jersey Employer-Employee Relations Act when it did not permit the Charging Party to have a representative present at a meeting held solely for the purpose of informing him that he was being terminated, and granted the Hospital's Motion to Dismiss on the record.

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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For the Respondent Association, Fox & Fox, Esqs.
(Frederic M. Knapp, of Counsel)

For the Charging Party, Rocco Gornelli, pro se

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On January 24, 1984, Rocco Gornelli ("Mr. Gornelli") filed unfair practice charges against both the John E. Runnells Hospital ("Hospital") and Union Council #8, N.J.C.S.A. ("Council #8") with the Public Employment Relations Commission. The first charge alleges that the Hospital violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq ("Act"), specifically subsection 5.4(a)(1) when it denied his request for union representa-

tion on September 22, 1983 at "a hearing concerning the termination of my employment." ^{1/} The charge further alleges that he was told by the superintendent of the Hospital and a supervisor, that he had no rights to representation nor the right to appeal the termination decision. The second charge alleges that Council #8 violated the Act, specifically subsection 5.4(b) (1) when it failed to represent him or intervene in any manner either during the hearing or subsequent thereto. ^{2/}

It appearing that the allegations of the unfair practice charges may constitute unfair practices within the meaning of the Act, two Complaints and Notices of Hearing, along with an Order Consolidating Cases were issued on May 7, 1984. The Hospital filed an Answer in which it stated that Mr. Gornelli was hired as an electrician on June 27, 1983, and that his working test period, pursuant to Civil Service Rules and Regulations ended on September 27, 1983. It further stated that on September 22, 1983, Mr. Gornelli was called into a supervisor's office and informed that he would be terminated effective September 27, 1983. The Hospital denies that this meeting was an investigatory hearing, and states that the meeting's sole purpose was to inform Mr. Gornelli that he was being terminated. It further denies that Mr. Gornelli made any request for union representation at that meeting. On May 21, Council #8 filed its

1/ 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."

2/ This subsection prohibits employee organizations, their representatives or agents from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

Answer. It denied having refused to represent Mr. Gornelli and stated that it has met its legal obligations concerning him.

A hearing was held in this matter on August 14, 1984, in Newark, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence, and argue orally. ^{3/} No post-hearing briefs were filed. ^{4/}

Unfair practice charges having been filed with the Commission, questions concerning alleged violations of the Act exist, and after hearing, the matter is appropriately before the Commission by its designated Hearing Examination for determination.

Upon the entire record the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The John E. Runnells Hospital is a public employer within the meaning of the Act and is subject to its provisions.
2. Union Council No. 8, N.J.C.S.A. is an employee representative within the meaning of the Act and is subject to its provisions. It represents all white and blue collar employees employed by the County of Union, including probationary and part-time employees.
3. Mr. Gornelli was hired by the Hospital as an electrician on June 27, 1983, and pursuant to Civil Service Rules and Regulations, he was given a probationary working test period which

^{3/} This matter was originally scheduled for hearing on June 13, 1984, however at the prehearing conference Mr. Gornelli requested that it be rescheduled in order to give him time to consult with an attorney. The hearing was then rescheduled to July 11, 1984, however Mr. Gornelli again asked for and received another postponement to August 14, 1984.

^{4/} The transcript was received in the Commission's Trenton office on October 16, 1984, and the parties were then given three weeks from that date to file post-hearing briefs.

lasted until September 27, 1983. See N.J.S.A. 11:12-1.

4. On July 29, 1983, Mr. Gornelli was approached by his supervisor, Mr. Leroy Weeks, who asked him to go to the hospital clinic and undergo some type of medical test (T 18, 55). ^{5/} Mr. Gornelli refused to submit to this medical test and was asked to go home (T 17, 20). ^{6/}

Mr. Weeks then punched out Mr. Gornelli's time card, but rather than leave the grounds, Mr. Gornelli contacted his shop steward Daniel Bragg, and asked for assistance (T 21, 56, 57, 58). A meeting was conducted in Mr. Bragg's office immediately, and at this meeting Mr. Weeks told Mr. Bragg that he was sending Mr. Gornelli home because he refused to take a medical examination. Mr. Bragg then told Mr. Weeks that Mr. Gornelli looked fit to work (T 18, 22, 57, 59).

Mr. Gornelli stated to Mr. Weeks that he would go home if Mr. Weeks prepared a note that said that he was fit to work but that he was going home because he refused to submit to a medical

^{5/} All transcript citations will include a T, followed by the page number or numbers.

^{6/} Mr. Gornelli testified that Mr. Weeks never told him the reason why he was requested to take a medical test (T 55, 56, 58, 59). He did testify however that Mr. Weeks asked him if he was on drugs and that his shop steward had told Mr. Weeks that Mr. Gornelli was neither drunk nor high (T 18). Later Mr. Gornelli stated that he remembered why he was asked to undergo a medical examination, but he did not elaborate any further (T 60).

It is readily apparent from this testimony that Mr. Weeks believed Mr. Gornelli was under the influence of some kind of controlled substance, and I believe Mr. Gornelli was aware of that fact.

In a memo to Mr. White dated July 29, 1983, Mr. Weeks stated that he was informed that Mr. Gornelli was "in the same condition as another occasion" and that he called the Employee Clinic and asked them to determine if it was safe to allow Mr. Gornelli to continue his work. He further stated that when Mr. Gornelli refused to go, he was escorted to the Clinic by the County police, where he still refused to submit to a "medical procedure" which included the taking of his blood pressure. (R-9 in evidence).

examination (T 18, 20, 21). The note was written by an assistant of Mr. Weeks (T 61) and when it was completed, Mr. Bragg, acting in defense of Mr. Gornelli, stated that Mr. Weeks was no doctor and that he had no authority to send Mr. Gornelli home. The note was torn up at Mr. Bragg's request (T 18, 20, 62, 63, 64, 127). Mr. Gornelli went home anyway and received pay for that day (T 64, 67). ^{7/}

5. On September 22, 1983, at 10:30 a.m., Mr. Gornelli's foreman, Frank Romano, contacted Mr. Gornelli at his job site and told him that he was to report to the office of the superintendent of the building, Mr. White. Upon entering Mr. White's office, he also found Mr. Romano and Mr. Weeks (T 9). Mr. Gornelli was told that the purpose of the meeting was to inform him of his termination. ^{8/} Mr. Gornelli asked for reasons, and reasons were given which Mr. Gornelli disputed (T 9, 10, 11, 12, 13, 37, 42, 43). Mr. White then read to him the following letter from William M. Stillwell, Hospital Administrator:

Please be advised that effective September 27, 1983, at 4:00 p.m. you are terminated from employment at the John E. Runnells Hospital of

^{7/} Mr. Gornelli testified that it was Mr. Bragg who told him to go home (T 67). Mr. Bragg however testified that he never told Mr. Gornelli to go home because he had no authority to do so. He also testified that the sole purpose of the meeting was to prevent Mr. Weeks from sending Mr. Gornelli home and that after he had succeeded, he assumed that Mr. Gornelli returned to work (T 125, 129).

I credit Mr. Bragg's testimony and believe that he did not tell Mr. Gornelli to go home especially when considering that Mr. Gornelli testified that it was Mr. Bragg who had prevented Mr. Weeks from sending him home (T 64).

^{8/} Mr. Gornelli classified this meeting as a termination "hearing" (T 10), however I am convinced that there was no "hearing" per se and that the only event which occurred during this time was Mr. White's informing him of his termination and then supplying him with reasons for that determination.

Union County for lack of performance during your probation period as required by the standards of the County of Union.

You are entitled to three vacation days which you will take Friday, Monday and Tuesday, September 23, 26 and 27, 1983. (R-1 in evidence)

After hearing of the reasons for his termination, Mr. Gornelli asked Mr. White for a union representative and was told that he had no right to one (T 13, 15, 43). The meeting lasted approximately fifteen minutes (T 14).

6. Following the meeting, an inventory of the tools in Mr. Gornelli's possession was taken and he was asked to sign a form stating that he was returning these materials to the County. He refused to sign the form because it indicated that he had received all of his pay at the time he signed (T 45). It was after refusing to sign this form and approximately one-half hour after leaving Mr. White's office that he spoke with Mr. Bragg ^{9/} (T 46).

9/ There is a great deal of confusion as to what transpired between the time Mr. Gornelli left Mr. White's office and finally got in touch with Mr. Bragg. In the charge, Mr. Gornelli states that he did not get in touch with Mr. Bragg until 11:55 a.m. which was over an hour past the time the meeting had concluded in Mr. White's office (C-1 in evidence), and that it was Mr. Bragg who contacted him.

During the hearing however he stated that only a half hour passed and that it was Mr. Weeks who first called Mr. Bragg at Mr. Gornelli's request, but that Mr. Weeks would not let Mr. Gornelli speak with him (T 46). He later testified however that he did not know why Mr. Weeks had called Mr. Bragg and that he had not requested him to do so (T 70, 71). Mr. Bragg testified that Mr. Weeks called him to tell him that Mr. Gornelli had refused to sign the inventory form and that without his signature, the Hospital could not issue a check (T 108, 109).

Mr. Gornelli also testified that Mr. Weeks spoke with Mr. Bragg twice from the administration building and that during one of those conversations, Mr. Weeks gave him the phone and he spoke with Mr. Bragg (T 72, 73). He then testified that he was not sure if he had spoken with Mr. Bragg from the administration building but that he remembered speaking with him in the cafeteria (T 73). He changed his mind again and stated that it was Mr.

(continued)

During this conversation, Mr. Gornelli told Mr. Bragg about the termination meeting and asked if there was anything that could be done. Mr. Bragg informed Mr. Gornelli that he was not a permanent employee but rather had just completed his working test period and that the Hospital had the right to dismiss him at the end of that period if it did not believe he had adequately performed his duties. Mr. Bragg explained that if he chose to appeal the Hospital's decision, he could do so with the Civil Service Commission and gave him directions to that office (T 15, 48, 90, 110). Mr. Gornelli did not request Mr. Bragg or Council #8 to represent him before Civil Service (T 78, 112). Mr. Bragg never heard anything more from Mr. Gornelli following this conversation (T 116).

Mr. Bragg also informed Mr. Gornelli about the need to sign the Hospital's inventory form and that it had nothing to do with the correctness of the Hospital's termination decision, but only served to show that he had returned all of his tools to the Hospital (T 109). 10/

9/ (continued)

Bragg who called him and that this call was a result of a message which Mr. Gornelli had left for Mr. Bragg (T 81). Mr. Bragg testified that he spoke with Mr. Gornelli immediately after speaking with Mr. Weeks (T 108).

I am not inclined to credit Mr. Gornelli's testimony. He frequently appeared confused and unsure of himself as is evidenced by the above, and his answers were oftentimes unresponsive.

10/ Mr. Gornelli also testified that he asked Mr. Bragg if his termination meant anything since he was not allowed to have a representative present at the meeting. He testified that Mr. Bragg's response was that it was the Hospital's option to grant him his representation request since he was not a permanent employee (T 74, 75). Mr. Bragg however testified that he told Mr. Gornelli that the Hospital had the right to discharge him under Civil Service rules but that he had the right to appeal (T 118).

I do not believe that Mr. Bragg told Mr. Gornelli that he had no right to a union representative because he was not a permanent employee, but believe that Mr. Gornelli misinterpreted Mr. Bragg's

(continued)

7. After receiving this assistance from Mr. Bragg, Mr Gornelli travelled to the Civil Service office in Newark where he was told to write a letter to Mr. Peter Calderone, Assistant Commissioner in the Division of Appellate Practices and Labor Relations, and ask for an appeal of the Hospital's termination decision (T 77). On September 27, 1983, Mr. Gornelli sent the following letter to Mr. Calderone:

I was hired by Union County as lead electrician for John E. Runnells Hospital, after taking and passing the Civil Service exam and becoming a certified electrician for that county, on June 27, 1983. I was also made permanent on June 27, 1983.

My services have been terminated as of September 27, 1983 without my union representative being present (The New Jersey Civil Service Association, Union Council #8) of which I am a paying member. I was terminated on the grounds that my work was unsatisfactory, which I know is not true, also I have never received any written or verbal reprimands. Because of this treatment I am making an appeal and would like to be granted a hearing to express my claim (C-1 in evidence). 11/

8. Sometime near the end of the second week in October, 1983, Mr. Gornelli received a form letter from Marie J. Hart, Council #8's Membership Chairperson. 12/ The letter states in part:-

10/ (continued)

response. In any event, it is abundantly clear from the record that Mr. Gornelli never asked Mr. Bragg to represent him at the meeting in Mr. White's office.

11/ Mr. Gornelli's appeal with the Civil Service Commission was transmitted to the Office of Administrative Law as a contested case, and an initial decision was issued on May 4, 1984, by Administrative Law Judge R. Jackson Dwyer, OAL Docket No. CSV 9280-83. Judge Dwyer concluded that the Hospital had acted correctly in removing Mr. Gornelli at the end of his working test period (R-2 in evidence).

12/ The letter was undated, however the envelope in which it came was postmarked October 13, 1984.

Thank you for your interest in seeking to become a member of Union Council No. 8, New Jersey Civil Service Association. You will be voted into membership on Thursday, October 20, 1983.

Meetings are held on the third Thursday of each month 8:00 p.m. (except July and August), at the Veterans of Foreign Wars Building...If you cannot make this meeting, you may be sworn in at another time.

We hope you will become familiar with our policies and Constitution. One point we refer to you is that it is our policy to carefully screen requests for representation on matters which occurred prior to membership. Of course, at all times we will fairly represent employees when it is proper to do so.

Dues are \$48.00 a year. Your dues for 1983 will be \$12...

I, personally, look forward to meeting you and welcoming you as a member of Union Council No. 8.
(C-1 in evidence) 13/

Two days after receiving the above letter, Mr. Gornelli phoned Olga Sachenski, President of Council #8, to complain about Mr. Bragg's lack of assistance during the time of his termination meeting and immediately following it. She told him that she would not go over Mr. Bragg's head. 14/ There was no mention by Mr. Gornelli that he had appealed his termination nor was there any request for Council #8's assistance in the procedure (T 22, 54, 78, 79, 116). 15/

13/ Mr. Gornelli signed an application for membership on July 11, 1983 (C-1 in evidence).

14/ Mr. Bragg testified credibly that in the normal course of operations, Mrs. Sachenski would not get involved in the handling of grievances until it was referred to her by a union representative and that until she heard from that representative, she would not respond to an inquiry.

15/ Mr. Bragg testified that this was the first time he was aware of that anyone in Council #8's unit was ever dismissed at the end of a working test period and that Council #8 had never established a practice in handling these matters (T 113, 133).

DISCUSSION

The issue to be determined concerns only Mr. Gornelli's allegation that Council #8 violated its duty of fair representation when it failed to properly assist him following the Hospital's decision to terminate his employment, all other matters were treated on the record. 16/

In Vaca v. Sipes, 386 U.S. 171, 190 (1967), the United States Supreme Court held that: "A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 17/

16/ At the close of the presentation of Mr. Gornelli's case, the Hospital's attorney made a motion to dismiss Mr. Gornelli's charges against the Hospital. This motion was granted on the record because it was determined that Mr. Gornelli did not have the right to representation at a meeting held solely for the purpose of informing him that he was being terminated. (T 95-101). This was not a situation where the Hospital was conducting an investigatory interview, where the right to union representation is well established. See Weingarten v. U.S., 420 U.S. 257, 85 LRRM 2681 (1975).

A similar motion was made by Council #8. It was granted as it concerned that portion of Mr. Gornelli's charge which alleged that Council #8 violated its duty of fair representation in failing to attend the termination meeting on September 22, 1983. It was denied however, as the charge concerned any of Council #8's actions subsequent to the meeting (T 102-106).

17/ The National Labor Relations Board has interpreted Vaca to mean that:

"...so long as it exercises its discretion in good faith and with honesty of purpose, a collective bargaining representative is endowed with a wide range of reasonableness in the performance of its duties for the unit it represents. Mere negligence, poor judgment, or ineptitude in grievance handling are insufficient to establish a breach of the duty of fair representation." Service Employees International Union, Local No. 579 AFL-CIO, 229 NLRB 692, 695, 95 LRRM 1156 (1977). See also Printing and Graphic Communication Local 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed for other reasons 110 LRRM 2928 (1982).

I am not convinced that Council #8 breached its duty of fair representation. In order to prevail in this matter, Mr. Gornelli would have had to have shown that Council #8's conduct toward him was arbitrary, discriminatory, or in bad faith, and this he has failed to do. The record in fact indicates that the only time Mr. Gornelli requested Council #8's assistance, Mr. Bragg immediately came to his aid and was able to prevent the Hospital from sending him home because of its suspicion that he was under the influence of a controlled substance.

On the day Mr. Gornelli was notified of his termination, he never first requested that a Council #8 representative accompany him to the office of Mr. White. Mr. Gornelli testified that prior to the meeting, he asked his supervisor Mr. Weeks, what the meeting was about, but asked no one else (T 52). Following the termination meeting, Mr. Gornelli spoke with Mr. Bragg and asked him what he could do about the termination. Mr. Bragg told him that he could appeal the decision and Mr. Gornelli seemed satisfied with that information. Mr. Gornelli never asked Council #8 to represent him and in fact never even told any Council #8 representative that he had appealed the Hospital's decision.

In N.L.R.B. v. El Dorado Mfg. Co., 108 LRRM 2600 (1981), a federal appeals court stated a standard for determining a union's liability in failing to process a discharge grievance. "Liability for failure to process discharge grievances cannot attach unless the grievances would have been meritorious and unless the Union's failure to process was in bad faith." El Dorado at 2606. ^{18/} In

^{18/} See also Hines v. Anchor Motor Freight Co., 424 U.S. 554, 570 91 LRRM 2481 (1976).

the present instance, it has been determined by an Administrative Law Judge that the Hospital acted appropriately in terminating Mr. Gornelli and I see no reason to believe that the result would have been any different had Mr. Gornelli been represented by Council #8 in that proceeding.

The next question concerns whether Council #8 exhibited bad faith in not representing Mr. Gornelli. It first is important to note that Council #8 never refused to represent him. Mr. Bragg in his testimony stated that he had never refused to represent anyone and I do not doubt his statement. Mr. Bragg's testimony was forthright and convincing and his answers were always responsive and direct.

The Commission has held that an employee organization does not violate its duty of fair representation when it fails to initiate a grievance on behalf of an employee who has never made that request known to his employee representative. In re N.J. Sports and Exposition Authority, P.E.R.C. No. 84-66, 10 NJPER 23 (¶15013 1983). While in the instant case Mr. Gornelli asked his shop steward if the Hospital's termination decision could be appealed, I do not perceive this as being a request to Council #8 that it appeal the decision. After receiving the requested information from Mr. Bragg, Mr. Gornelli went off on his own, never advising Council #8 that he had filed an appeal. It is obvious that Mr. Gornelli was dissatisfied with Mr. Bragg, but I believe this dissatisfaction stems only from the fact that Mr. Bragg was unable to be present at the termination meeting on September 22, 1983, and that Mr. Bragg was unable to convince anyone immediately following

that meeting, that Mr. Gornelli's services should not have been terminated. I do not know what more either Mr. Bragg or Council #8 could have done on behalf of Mr. Gornelli, absent giving him representation at his appeal. This representation was never requested either immediately after his termination or several weeks later when Mr. Gornelli phoned Council #8's president to complain about Mr. Bragg.

In this conversation Mr. Gornelli testified that he called the president and stated that Mr. Bragg had not "helped much." When Mr. Gornelli was asked what he had asked the president to do, he responded:

A "I just told her that--I said Mr. Bragg didn't even talk to Mr. White or the superintendent about when I was terminated.

Q At this meeting?

A At the termination meeting. (T 78)

It is not certain what Mr. Gornelli wanted Mr. Bragg to do at the termination meeting except to be a witness to the events that were transpiring, but it is certain that Mr. Bragg had no right to be at the meeting as Mr. Gornelli's representative. After the meeting perhaps Mr. Gornelli wanted Mr. Bragg to raise questions concerning the termination, but he never made this request known, either on that day or on the days following.

Mr. Bragg also testified that Mr. Gornelli was the only unit member of whom he knew who was terminated at the end of a working test period. Because of this, there is no previous incident with which to compare Council #8's actions, which might indicate that Council #8 acted in bad faith regarding Mr. Gornelli.

The only indication which supports Mr. Gornelli's allegation is found in the form letter which was signed by Council #8's membership chairperson. The letter states, inter alia: "One point we refer to you is that it is our policy to carefully screen requests for representation on matters which occurred prior to membership." While this alone would certainly place into doubt whether Council #8 adheres to its duty of fairly representing all employees within its unit, I believe that the surrounding factors sufficiently dispel that doubt. 19/

Mr. Bragg explained that the letter which was sent to Mr. Gornelli was a form letter sent to all new members (T 114) and that this very same letter has been sent to new members for many years (T 134, 135). He further testified that this letter was meant to discourage employees who sought Council #8 membership solely to utilize the legal services of Council #8's attorney (T 115). He stated as well, and I find his testimony to be credible, that Council #8 represents everyone in its unit (T 121). In support of this statement, at least as it concerns Mr. Gornelli, is the fact that Mr. Bragg came to his aid and represented him on July 29, 1983, even though he was not a member of Council #8.

It is apparent from the foregoing that 1) Mr. Gornelli was not entitled to union representation at the meeting in which his termination was announced; 2) Mr. Gornelli never requested any assistance from Council #8 outside of asking Mr. Bragg if the Hos-

19/ N.J.S.A. 34:13A-5.3 in part states: "A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership."

pital's decision could be appealed; and 3) whatever action Council #8 did or did not take in regard to Mr. Gornelli, it did not act arbitrarily, discriminatorily, or in bad faith.

Based upon the foregoing, I recommend that the charge against Council #8 be dismissed in its entirety.

Nathaniel L. Fulk
Nathaniel L. Fulk
Hearing Examiner

Dated: November 21, 1984
Trenton, New Jersey