

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
CITY OF ENGLEWOOD,

Respondent,

-and-

LOCAL 29, RWDSU, AFL-CIO,

Docket No. CO-81-388-43

Charging Party,

-and-

ENGLEWOOD TEACHERS ASSOCIATION,
NJEA,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies a Request for Review filed by Local 29, RWDSU, AFL-CIO ("Local 29"). Local 29 sought review of a Hearing Examiner's decision granting a motion to dismiss a Complaint based on an unfair practice charge which Local 29 had filed. The Hearing Examiner properly denied Local 29's request to reopen the case so it could call two additional witnesses since the request was not made until: (1) the Charging Party had rested, and (2) the Board's representative stated he had not heard any evidence which required a response.

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Appearances:

For the Respondent, John Miraglia, Labor Consultant

For the Charging Party, Osterweil, Wind & Loccke, Esqs.
(Manuel A. Correia, of Counsel)

For the Intervenor, Schneider, Cohen, Solomon &
DiMarzio, Esqs.
(Bruce D. Leder, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge in this matter was filed with the Public Employment Relations Commission on June 29, 1981, and amended on August 10, 1981, by Local 29, RWDSU, AFL-CIO ("Local 29") alleging that the Board of Education of the City of Englewood (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. In particular, it was alleged that the Board allowed custodial staff members to attend meetings of the Englewood Teachers Association (the "Association") during working hours without allowing Local 29 the similar privilege. Additionally,

the charge alleged that the Board stopped deducting dues for members of Local 29 without proper deauthorizations, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), and (7).^{1/}

A Complaint and Notice of Hearing was issued by the Commission's Director of Unfair Practices on October 21, 1981, and pursuant to N.J.A.C. 19:14-5.3, the Association filed a motion for leave to intervene which was granted on November 18, 1981 by Hearing Examiner Joan Kane Josephson. A hearing was held on November 30, 1981 before Ms. Josephson. At the close of Local 29's case, the Board and the Association made motions to dismiss the Complaint. Said motions were granted on the record by the Hearing Examiner.

Motions to Dismiss are governed by N.J.A.C. 19:14-4.7. A Motion to Dismiss may be granted if, in the judgment of the Hearing Examiner after granting every favorable inference to the Charging Party, the Charging Party has not established a prima facie case. The Charging Party is entitled to obtain a review of the Hearing Examiner's decision by filing a request for review with the Commission within ten (10) days of the ordered dismissal. Pursuant to this rule Local 29 filed a request for review on December 9, 1981 alleging that the Hearing Examiner failed to

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (7) Violating any of the rules and regulations established by the commission."

allow Local 29 to fully present its case with all testimony and documentation in support of its position.

Based upon a careful consideration of the request for review and the record of the entire proceeding, the Commission determines that the appeal of Local 29 is without merit. In its submissions supporting its appeal, Local 29 alleges that the Hearing Examiner erred in granting the Motion to Dismiss and denying Local 29 the opportunity to have an additional day of hearing to further prosecute its case.

In its exceptions to the Hearing Examiner's decision on motion, Local 29 argues the Hearing Examiner improperly denied its then counsel^{2/} the opportunity to call two additional witnesses, particularly since the following day had already been scheduled as a hearing date. However, the Charging Party's allegations do not accurately reflect the status of the parties at the time the motion was granted.

The request to call two additional witnesses was not made until: 1) the Charging Party had rested, and 2) the Board's representative at the hearing stated on the record that he had not heard any evidence introduced by the Charging Party that required a response by the Board. It is important to remember that an unfair practice proceeding is an adversarial process in which the Charging Party must prosecute the action as well as bear the burden of proof. N.J.A.C. L9:14-6.8. A Charging Party rests when it believes it has satisfied its duty of proving the allegations in the Complaint by a preponderance of the evidence. The Hearing

^{2/} Counsel for Local 29 for the purposes of this appeal was not the counsel for Local 29 during the conduct of the hearing before the Hearing Examiner.

Examiner has no obligation to insure that the Charging Party meets its burden of proof or to make an independent inquiry to establish the facts alleged.

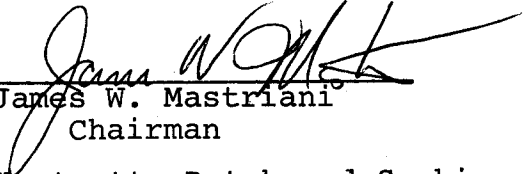
In the instant case, the Charging Party was given a full opportunity to present its case. After it rested, and after a recess had been taken, the Charging Party's attorney indicated that he would like the Hearing Examiner to conduct her own inquiry by directing the Board to produce its dues checkoff records since Charging Party had expected that its witnesses would have had "more knowledge" of what had happened. (T.p 86) The argument of counsel on the Board's motion to dismiss the Complaint revealed that the Charging Party's subsequent request to call two witnesses was not made because it had good faith knowledge that these individuals could testify to the facts alleged in the Complaint, or even that there was a good faith basis for believing that the facts were as alleged in the charge, but rather because the Charging Party, without knowledge as to these facts, was hopeful that the Board's records might support its allegations.

Charging Party was, of course, free to subpoena any of these records or witnesses as part of its case. However, after its witnesses could not support its allegations and after it had rested, the Hearing Examiner did not act improperly by denying the Charging Party's request to adjourn the hearing and permit it to reopen its case at another day of hearing to subpoena new witnesses in the hope that they might have information to support its allegations. Even on this motion Charging Party has not indicated what its good faith basis is for believing that these two additional witnesses can support its position.

We are convinced, from a thorough study of the record, that Local 29 did not prove the allegations of its complaint by a preponderance of the evidence and that this matter was appropriately dismissed by the Hearing Examiner. We find that the Hearing Examiner fairly and properly conducted the hearing and permitted a full opportunity for the disclosure of all relevant evidence.

Accordingly, based upon the foregoing discussion, we hereby deny the request for review herein by Local 29.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch and Suskin voted in favor of this decision. Commissioners Hipp, Graves and Newbaker abstained.

DATED: Trenton, New Jersey
January 12, 1982
ISSUED: January 13, 1982