

P.E.R.C. NO. 81-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-80-239-72

MIDDLESEX COUNCIL #7,
N.J.C.S.A.,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission, noting the absence of exceptions, adopted the Hearing Examiner's findings of fact, conclusions of law and recommended order for the reasons cited by the Hearing Examiner.

The Commission agrees with the Hearing Examiner's conclusion that the County of Middlesex violated N.J.S.A. 34:13A-5.4(a)(3) by transferring the Workhouse shop steward from the Workhouse to the County Jail because the transfer was motivated at least in part by anti-union animus. The proffered business justification of poor work performance was found to be pretextual. The Commission also adopts the Hearing Examiner's finding of an independent violation of subsection (a)(1) when the County ordered the shop steward to cease processing employee grievances at the Workhouse.

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MIDDLESEX COUNCIL #7,
N.J.C.S.A.,

Charging Party.

Appearances:

For the Respondent, Henry H. Orsulski, Labor
Relations Specialist

For the Charging Party, Borrus, Goldin & Foley, Esqs.
(James F. Clarkin, III, Esq.)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on February 11, 1980 by Middlesex Council #7, NJCSA (the "Charging Party" or the "Council") alleging that the County of Middlesex (the "County" or the "Respondent") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, Council #7, alleges the County violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (4)^{1/} by transferring Peter Gambino, Food Service Supervisor

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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act."

because he actively processed grievances in his capacity as Union shop steward and that the conduct of the County had the "effect" of discouraging employees in the exercise of their protected rights.^{2/}

It appearing that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a complaint and notice of hearing was issued on March 7, 1980. Pursuant to the complaint and notice of hearing, hearings were held on April 29 and 30, 1980, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties submitted post-hearing brief and the record was closed July 16, 1980. On October 31, 1980, the Hearing Examiner issued her Recommended Report and Decision, H.E. No. 81-18, 6 NJPER _____ (¶ _____ 1980). A copy of the Report is attached hereto and made a part hereof. Neither party filed exceptions to the Report.^{3/} This matter is now properly before the Commission for decision pursuant to N.J.A.C. 19:14-8.1. The Hearing Examiner, in her Recommended Report and Decision, found the following facts:

1. Peter Gambino was originally hired December 5, 1977 as a Senior Cook at the County Jail. Later, in April 1979,

^{2/} The charge was amended at hearing with the consent of the Respondent.

^{3/} N.J.A.C. 19:14-7.3(b) provides in pertinent part: "Any exception which is not specifically urged shall be deemed to have been waived."

he was transferred to the Adult Detention Center (Workhouse) as an acting supervisor and subsequently, upon the recommendation of the Chief Food Supervisor, was nominated to be Food Service Supervisor at the Workhouse by Director of Corrections Joseph A. Feconda.

2. December 20, 1979, Gambino was elected Shop Steward of Middlesex Council #7 for employees at the Workhouse to succeed Sidney Adelman. Notice was sent to the employer on December 28, 1979.

3. Gambino filed several grievances between December 20, 1979 and February 8, 1980 on behalf of employees at the Workhouse including some that Adelman had previously refused to process.

4. Immediately following his participation in a grievance meeting on January 4, 1980 with Warden Johnson, Gambino was notified of his transfer back to the jail effective the following Monday.

5. After his transfer back to the jail, Gambino continued to process grievances for employees of the Workhouse until February 8, 1980 when he was ordered by the County to cease processing grievances and conducting any union business at the Workhouse.

The Hearing Examiner found that the County violated Section 5.4(a)(3) of the Act when it transferred Gambino from the workhouse to the jail. She found a sufficient nexus between the timing of the transfer and the events relating to

Gambino's processing of grievances to infer that anti-union animus motivated the transfer of Gambino.^{4/}

At the hearing the County raised the affirmative defense of legitimate business justification, alleging that Gambino was transferred because of his unsatisfactory work performance during the prior 5-6 months. However, the evidence was insufficient to substantiate the County's reasons and the Hearing Examiner concluded that the defense of substantial business justification was not proven.

The Hearing Examiner thus concluded that the County had violated Section 5.4(a)(3) because the transfer was motivated at least in part by anti-union animus.^{5/} The proffered business justification of poor work performance was found to be pretextual.

Additionally, the Hearing Examiner found the County violated the Act when it ordered Gambino to cease processing employee grievances at the Workhouse. She found an independent violation of subsection (a)(1) as the employer's activities, even absent proof of anti-union animus, tended to interfere with, restrain or coerce the employee in the exercise of protected rights and no legitimate and substantial business justification

4/ At hearing, the parties stipulated that Gambino was engaged in protected activity in processing grievances as a shop steward and that Respondent had actual knowledge of Gambino's activity. N.J.S.A. 34:13A-5.4(a)(5) prohibits employers from "refusing to process grievances presented by the majority representative."

5/ See In re Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (¶4123 1973), affmd App. Div. Docket No. A-4824-77 (1/9/80).

6/
existed for the employer's actions.

There was no evidence adduced at the hearing to support a charge of Respondent's violation of N.J.S.A. 34:13A-5.4(a)(4). Therefore, the Hearing Examiner recommended the Commission dismiss that section of the complaint.

Upon review of the entire record in this matter, and in the absence of exceptions to the Recommended Report and Decision, we adopt the Hearing Examiner's findings of fact and conclusion of law for the reasons cited by the Hearing Examiner.^{7/} We have modified the proposed order, eliminating the requirement to retransfer Gambino back to the Adult Detention Center (the Workhouse) from the County Jail as he has left employment with the County.^{8/}

ORDER

IT IS HEREBY ORDERED that Respondent, its officers, agents, successors or assignee shall:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by

6/ See New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10284 1979).

7/ While we agree that the County independently violated subsection (a)(1) of the Act, we do not rely upon the breach of the collective agreement regarding transfer of shop stewards to support this violation.

8/ On November 14, 1980, Charging Party notified the Commission that Peter Gambino recently terminated employment in the County and requested the reassignment remedy not be adopted by the Commission.

the Act, particularly, by transferring union shop stewards, such as Peter Gambino, to discourage the exercise of such rights and by refusing to allow shop stewards, such as Peter Gambino, to process grievances in their designated union area of responsibility.

2. 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 the Act, particularly, by the transfer of Shop Steward Peter Gambino.

B. Respondent County shall take the following affirmative action:

1. Post at all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A". Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent County's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent County to ensure that such notices are not altered by the Respondent County to ensure that such notices are not altered, defaced or covered by other material. ^{9/}

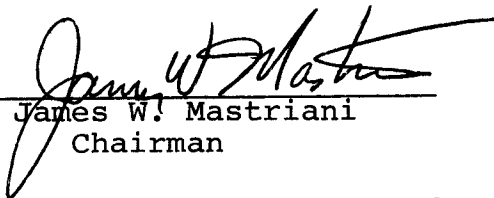
9/ Notice to Employees must be posted at the following locations:

- a. Administration Building, New Brunswick, NJ 08903
- b. County Jail, 61 Bayard Street, New Brunswick, NJ 08903
- c. Adult Detention Center (Workhouse)

2. Notify the Chairman of the Commission within twenty (20) days of receipt of this decision what steps the Respondent County has taken to comply herewith.

C. The allegations in the complaint that the Respondent County violated subsection 5.4(a)(4) of the Act are dismissed in their entirety.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
January 20, 1981
ISSUED: January 21, 1981

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly, by transferring union shop stewards to discourage the exercise of such rights and by refusing to allow shop stewards to process grievances in their designated union area of responsibility.

WE WILL cease and desist from 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 the Act.

(Public Employer)

Dated _____

By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-80-239-72

MIDDLESEX COUNCIL #7,
N.J.C.S.A.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent County violated subsections 5.4(a)(1) and (3) of the Act when it transferred Shop Steward Peter Gambino in violation of the collective negotiations agreement and then refused to allow the shop steward to process grievances at his prior workplace. The Hearing Examiner concluded that the County failed to establish a legitimate business justification for the transfer.

The Hearing Examiner, by way of remedy, recommended that the Commission order that Gambino be retransferred to his original workplace. She found the transfer to be discrimination in regard to a term and condition of employment since the Commission had previously ruled that involuntary reassignment or transfer of union officers and stewards to be a mandatory subject of bargaining which had been included in the parties' collective negotiations agreement. The Hearing Examiner also recommended that the Commission order the County not to refuse to allow shop stewards to process grievances in their designated union areas of responsibility.

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.

STATE OF NEW JERSEY
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Appearances:

For the County of Middlesex
Henry H. Orsulski, Labor Relations Specialist

For Middlesex Council #7, N.J.C.S.A.
Borrus, Goldin & Foley, Esqs.
(James F. Clarkin III, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed by Middlesex Council #7, N.J.C.S.A. ("Charging Party" or the "Council") with the Public Employment Relations Commission (the "Commission") on February 11, 1980, alleging that the County of Middlesex (the "County" or the "Respondent") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4(a) (1), (3), and (4) ^{1/} by transferring Food Service Super-

1/ These subsections prohibit 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; (4) discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act."

visor Peter Gambino because he actively processed grievances in his capacity as union shop steward. The charge was amended at the hearing with the consent of Respondent to allege that the conduct of the County had the "effect" of discouraging employees in the exercise of their protected rights (Tr. I-9).

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 7, 1980. Pursuant to the Complaint and Notice of Hearing, hearings were held on April 29 and 30, 1980, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing briefs were submitted by both parties by July 16, 1980.

An Unfair Practice Charging having been filed with the Commission, a question concerning alleged violations of the Act exists, and, after hearing, and after consideration of the entire record, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

The County of Middlesex is a public employer within the meaning of the Act and Middlesex Council #7, N.J.C.S.A. is a public employee representative within the meaning of the Act and both are subject to its provisions and the parties have so stipulated. They have also stipulated the following facts. ^{2/}

^{2/} (The transcript of April 29, 1980, will be designated as I-page reference and April 30, 1980, as II-page reference.) See Tr. I-6-8.

Middlesex Council #7, N.J.C.S.A. is the recognized majority representative of certain white and blue collar workers. Peter Gambino is a public employee within the meaning of the Act and a member of Middlesex Council #7 who was promoted to the title of Food Service Supervisor on April 19, 1979, and at all times relevant herein a provisional food service supervisor. Peter Gambino was elected shop steward on December 20, 1979. Warden Rudolph Johnson and Workhouse Director Joseph Feconda were aware that Gambino was shop steward at the time he processed certain grievances. He presented a grievance on behalf of John Hardy to Rudolph Johnson on January 4, 1980, and a grievance on behalf of Theodore Pachucki to the warden on January 7, 1980. Processing grievances by a shop steward is a protected union activity under the Act.

Findings of Fact

Peter Gambino was employed by the County as a Senior Cook in the County Jail on December 5, 1977. ^{3/} On October 1, 1978, Mr. Gambino was transferred to the Adult Detention Center commonly referred to as the Workhouse. Gambino went to the Workhouse as the acting food service supervisor of the workhouse. On April 19, 1979, Gambino was promoted to Food Service Supervisor (CP-4 in Evid.).

The Chief Food Service Supervisor (Head Dietitian) Albert Kruszewski recommended to the Director of the Department of Corrections Joseph A. Feconda that Gambino fill the vacancy that existed at the Workhouse as the acting food service supervisor. While there was a permanent food service supervisor at the jail, a smaller insti-

^{3/} Gambino was trained and became a cook in the service, following which he became head chef in several institutions, beginning in 1959, including Gambino's Inn, Rutgers Alumni and Faculty Center and the Ryland Inn.

tution, Feconda relied on Kruszewski's recommendation without question and transferred and ultimately promoted Gambino (Tr II-72 to 74, 93). In response to a question as to what factors Feconda considered in the Gambino promotion he testified: "I didn't consider any factors at that time. All I did was accept the recommendation of Mr. Kruszewski, who was, I thought, the proper person to make the recommendation." (Tr II-93)

Peter Gambino was elected shop steward for Middlesex Council #7 on December 20, 1979. He succeeded Sidney Adelman. Adelman was reluctant to process grievances on behalf of Council members. Ann F. Montanti, grievance chairperson for Council #7, testified as to a specific grievance he refused to handle or sign. Montanti said Adelman told her he did not want to "talk to the Director if it came to that". (Tr II-47) and Montanti signed the grievance. She also testified she never received a grievance executed by Adelman (Tr II-46, 47). Theodore A. Pachucki, an employee at the workhouse testified he pleaded with Adelman to present a grievance on his behalf and he refused and told Pachucki to present the grievance himself because he didn't want to get involved (Tr II-56). ^{4/} Gambino subsequently presented the Pachucki grievance (CP-6 in Evid.)

After Gambino's election as shop steward on December 20, 1979, he very soon presented grievances. Following New Year's Eve he presented a grievance to Warden Johnson concerning alleged disparate treatment of employees as to early release from work (Tr II-50).

^{4/} Director Feconda testified "he thought" Adelman discussed an issue with him concerning uniforms (Tr II-114)

That same week, on Friday, January 4, 1980, he presented another grievance to Warden Johnson on behalf of John Hardy. He and Hardy presented the grievance to Johnson. Director Feconda was also present. Hardy and Gambino left Johnson's office and Gambino was requested to wait in the outer office. He was soon called back in and told he was being retransferred to the jail. Gambino testified Feconda told him they just wanted to bring the jail food service supervisor to the workhouse and that he "didn't do nothing bad. We just want to bring Stanley [Conover] up." (Tr I-60) He was told to report to the jail on Monday (Tr II-6).

As soon as Gambino left the Warden's office he had a telephone conversation with Ann Montanti. She first spoke to Hardy concerning his grievance, then spoke to Gambino, and testified that Gambino "just didn't sound right to me. I said, 'What's the matter, Pete? Is there another problem?' He said, 'Well, I was just told, also, that as of Monday, I am being transferred over to the jail.' So I said to him, 'For what reason? What was the reason given for that?' He said, 'They didn't give a reason. I asked them if it was due to my work or whatever and they said no. So I don't know. They didn't give a reason.'"

Director Feconda testified that Gambino was transferred because of his unsatisfactory work performance for five or six months. He testified that Gambino's immediate supervisor, Al Kruszewski, had had many discussions with him concerning Gambino's work and Kruszewski ultimately recommended the transfer (Tr II-95, 96). Kruszewski was not called as a witness.

Feconda testified he personally inspected the kitchen facility with Warden Johnson and found certain deficiencies but only discussed the problems with Johnson. Kruszewski apparently played no role in these inspections.

Rudolph Johnson became acting warden of the Workhouse on October 1, 1979, three months prior to Gambino's transfer. When Johnson started at the Workhouse Gambino was responsible for supervising food service as well as the in-house laundry and janitorial and clothing supplies, but Johnson then removed the laundry responsibilities from the food service supervision of Gambino. Johnson testified that he was dissatisfied with the condition of the kitchen. He testified concern as to budget overexpenditures (Tr II-127) but admitted that was not Gambino's responsibility and that purchasing and menu preparation were the responsibility of Kruszewski (Tr II-135). He also testified that unsatisfactory progress was made in improving poor sanitary conditions in the kitchen that existed prior to Johnson's assignment. He also felt Gambino left the institution to pick up supplies too frequently when he should have delegated such duties. Kruszewski's responsibility for these conditions and their improvement was unclear and he was not called as a witness. Johnson testified that he recommended Gambino be retransferred to the jail (Tr II-137) which was contrary to Director Feconda's testimony that it was Kruszewski who recommended the transfer (Tr II-96) and that he totally relied on Kruszewski. This disputed testimony was not cleared up and I cannot therefore credit the testimony of either witness as to business justification for the transfer.

On Monday, January 7, 1980, Gambino returned to the jail. He filed a grievance alleging the transfer of a shop steward was a breach of the collective negotiations agreement between the parties. ^{5/} He continued to act as shop steward for Middlesex Council #7 employees at the Workhouse. On or about February 6, 1980, while at the Workhouse getting supplies, he verbally presented a grievance on behalf of Simon Rowell to Warden Johnson (Tr I-68). On Friday, February 8, 1980, Gambino was ordered by Jail Warden Daly not to conduct union business at the workhouse (Tr II-70). Gambino immediately advised Ann Montanti who contacted the president of Middlesex Council #7, Charles King. He also filed a written grievance (CP-8 in Evid.). King testified he discussed the matter with Warden Johnson and Director Feconda. Johnson told King he did not think it was necessary for Gambino to go to the workhouse to process grievances (Tr II-38). Feconda told King he had had a discussion with Daly on the subject but could not recall whether he ordered Daly not to allow Gambino to process grievances at the Workhouse (Tr II-39). Nevertheless, Feconda sent a memo to Daly that Gambino was to be allowed to conduct "Union business (grievances, etc.)...away from his work at the institution [jail]." (CP-9 in Evid.)

The Issues

1. Did the Respondent County violate subsections (a) (1) and (3) of the Act when it transferred Gambino?

2. Did the Respondent County violate subsection (a) (1)

^{5/} The contract provides that stewards will not be reassigned during the contract year (C-# in Evid.).

when it transferred Shop Steward Gambino, which is prohibited under the collective negotiations agreement between the parties, and also when it refused to allow Gambino to return to the Workhouse to process grievances?

3. Did the Respondent County discourage or transfer Gambino because he processed grievances in violation of subsection (a) (4)?

Discussion and Analysis

Based upon the foregoing Findings of Fact, the Hearing Examiner finds and concludes that the Charging Party has proven by a preponderance of the evidence that the Respondent County violated subsection (a) (3) of the Act when Peter Gambino was transferred from the County Workhouse to the County Jail because its actions were motivated, at least in part, if not exclusively by (anti-) union animus:" Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (¶4123, 1978), PERC affmd App Div Docket No. A-4824-77 (1/9/80).

The parties stipulated that Peter Gambino was exercising protected union activities under the Act in processing grievances as a shop steward and that Respondents had actual knowledge of his activity. ^{6/}

The Charge alleges Gambino was retransferred "[A]s a direct result of his active and intensive processing of employee grievances in his capacity as Shop Steward..."

^{6/} For the Commission standard in finding (a) (3) violations see Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71, 72 (1977) and City of Hackensack, P.E.R.C. No. 77-49, 2 NJPER 143, 144 (1977), rev'd on other grounds, 162 N.J. Super. 1 (App. Div. 1978), aff'd as modified, 81 N.J. 1 (1980).

I find the timing of Gambino's transfer to provide sufficient nexus with the processing of grievances to infer evidence of an anti-union motive. This is particularly so when compared with the prior shop steward who refused to process grievances. These factors are sufficient in the opinion of the undersigned to conclude the County's actions were motivated at least in part by anti-union animus. Having concluded an anti-union motive existed, the burden shifted to the Respondent to present legitimate business justification. Township of Clark, P.E.R.C. No. 80-117, 6 NJPER 186 (¶11088, 1980).

While the Respondent was allowed to amend its response at the hearing to raise for the first time the affirmative defense of legitimate business justification, the Respondent's proofs in this regard are rejected as insufficient. ^{7/}

Overall the credibility of the County's witnesses on the business justification is not so solid as to be free of all taint of animus. The Respondent called no witnesses to clarify the disputed testimony as to whether Johnson or Kruszewski ordered the transfer of Gambino. Initial testimony suggesting that Gambino was responsible for budget overrun was clarified on cross-examination when it was clear that this was the responsibility of Gambino's supervisor. While this argument is repeated in the County's post-hearing brief, I find it to be pretextual.

The County concluded in its brief that Gambino's absence

^{7/} Since the Charging Party was not afforded an opportunity to prepare for this defense, the Hearing Examiner granted its request to be allowed rebuttal witnesses following the County's defense if deemed necessary by the Charging Party.

from work duties increased after he became shop steward. The contract specifically provides that shop stewards may be allowed such time. To admit that his reassignment was partially because of increased time away from work while performing protected union activities also leads the undersigned to conclude that the legitimate business justification is pretextual.

Additionally, the Charging Party points out in its post-hearing brief that the Respondent has never denied allegations that Gambino was transferred because he engaged in protected activities under the Act which must be done under the rules or they are deemed to be admitted. N.J.A.C. 19:14-3. The Hearing Examiner afforded additional time for a response and a letter without proper certification was ultimately filed. The letter did not contain such denial. In Respondent's reply brief submitted after receipt of Charging Party's, this issue is not addressed. Therefore, I must find this fact to be admitted and find Respondent violated subsection (a)(3).

Also, based on the foregoing the Respondent County violated subsection (a)(1) derivatively when it violated subsection (a)(3).

The Respondent County independently violated subsection (a)(1) when it transferred Shop Steward Gambino, which is prohibited under the terms of the collective negotiations agreement between the parties, and also when it refused to allow Shop Steward Gambino to return to the workhouse to process grievances. These actions interfered with, restrained and coerced the majority representative's

right to have their shop stewards pursue legitimate Association activities without being transferred (see C-3 in Evid., Contract between the parties) and the right to process grievances on behalf of their unit members.

The Commission's standard for finding an independent subsection (a) (1) violation is set forth in New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10284, 1979) as follows:

"...It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification."

The Commission has found certain aspects of transfers or reassignments to be mandatory subjects of collective negotiations and one such aspect is provisions granting benefits to certain employees for transaction of union business.

In State of New Jersey, P.E.R.C. No. 80-19, 5 NJPER 381 (¶10194, 1979) the Commission found a proposal concerning involuntary reassignment or transfer of association officers and stewards to be mandatorily negotiable.

The parties herein have agreed to such a provision and incorporated it into their agreement. The County transferred Gambino in violation of this provision which states: "These stewards will remain in their locations and will not be reassigned to another section of the County during the contract year." Ignoring the terms

and conditions of employment contained in a collective negotiations agreement without negotiations directly interferes with rights guaranteed by the Act. Modifications of existing terms and conditions of employment must be negotiated with the majority representative before they are established. N.J.S.A. 34:13A-5.3.

The contract also provides that authorized representatives of the Association may conduct duties relative to the "enforcement and policing of the final agreement..." Therefore, refusing to allow the shop steward who is the only shop steward at the workhouse to go to the workhouse to process grievances is also a contract violation as well as tantamount to refusing to process grievances which is a prohibited practice under the Act ^{8/} and interferes therefore in the exercise of rights guaranteed by the Act.

Based on the foregoing I find the Respondent County violated subsection (a)(1).

There was no evidence adduced at the hearing regarding a violation of N.J.S.A. 34:13A-5.4(a)(4). Therefore this section of the Complaint should be dismissed.

The Remedy

Since I have found that the County has discriminated against Food Service Supervisor Peter Gambino in regard to a term and condition of employment because of his exercise of rights guaranteed to him by the Act, I shall recommend as affirmative relief that he be retransferred back to the Adult Detention Center (the

^{8/} Employers are prohibited from "refusing to process grievances presented by the majority representative." N.J.S.A. 34:13A-5.4(a)(5). The parties have stipulated that processing grievances is a protected activity under the Act.

Workhouse) from the County Jail. This recommendation transfer will be in conformity with the provision of the negotiations agreement discussed above. The Respondent agreed contractually not to transfer or reassign shop stewards and, as noted above, this is a mandatory subject of negotiations, a term and condition of employment.

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

Conclusions of Law

1. The Respondent County violated N.J.S.A. 34:13A-5.4 (a) (3) and derivatively 5.4(a) (1) when it transferred Shop Steward Peter Gambino and 5.4(a) (1) independently when it refused to allow Shop Steward Gambino to continue to process grievances and when it violated the contractual agreement not to reassign shop stewards.

2. The Respondent County did not violate N.J.S.A. 34:13A-5.4(a) (4) inasmuch as the Charging Party failed to adduce any evidence of violation of these subsections.

Recommended Order

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent County cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by transferring union shop stewards, such as Peter Gambino, because of exercising such rights and by refusing to allow shop stewards, such as Peter Gambino, to process grievances in their designated union area of responsibility, because of exercising

such rights and by refusing to abide by the collective negotiations agreement not to transfer union shop stewards.

2. 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 the Act, particularly, by the transfer of Shop Steward Peter Gambino.


B. That the Respondent County take the following affirmative action:

1. Reassign Peter Gambino as the Food Service Supervisor at the Adult Correction Center (the Workhouse) where he may process grievances under the terms set out in the collective negotiations agreement.

2. Post at all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent County's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent County to ensure that such notices are not altered, defaced or covered by other material.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent County has taken to comply herewith.

C. That the allegations in the Complaint that the Respondent County violated subsection 5.4(a)(4) of the Act be dismissed in its entirety.


Joan Kane Josephson
Hearing Examiner

DATED: October 31, 1980
Trenton, New Jersey

Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by transferring union shop stewards, such as Peter Gambino, because of exercising such rights and by refusing to allow shop stewards, such as Peter Gambino, to process grievances in their designated union area of responsibility, because of exercising such rights and by refusing to abide by the collective negotiations agreement not to transfer union shop stewards.

WE WILL NOT discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage our employees in the exercise of the rights guaranteed to them by the Act, particularly by the transfer of Shop Steward Peter Gambino.

WE WILL reassign Peter Gambino as the Food Service Supervisor at the Adult Correction Center (the Workhouse) where he may process grievances under the terms set out in the collective negotiations agreement.

WE WILL post at all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent County's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent County to ensure that such notices are not altered, defaced or covered by other material.

WE WILL notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent County has taken to comply herewith.

COUNTY OF MIDDLESEX
(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.