

P.E.R.C. NO. 84-152

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-83-103-80

RIDGEFIELD PARK EDUCATION
ASSOCIATION - NJEA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge that the Ridgefield Park Education Association-NJEA filed against the Ridgefield Park Board of Education. The charge had alleged that the Board violated the New Jersey Employer-Employee Relations Act when its high school principal criticized the Association at an Advisory Council meeting and suggested that the Association's vice-president resign from the Advisory Council. Under all the circumstances of this case, the Commission agrees with its Hearing Examiner that the comments were within the sphere of permissible criticism and discussion. The principal in fact did not threaten any employees, change any terms and conditions of employment, or seek to undermine the exclusive representative status of the Association. His exchange with the vice-president was brief, non-coercive, and a match between equals which ended as soon as she suggested the principal resign as well and he replied "touche."

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-83-103-80

RIDGEFIELD PARK EDUCATION
ASSOCIATION - NJEA,

Charging Party.

Appearances:

For the Respondent, Aron & Salsberg, Esqs.
(Stephen R. Fogarty, Of Counsel)

For the Charging Party, Vincent Giordano, Field Rep.,
NJEA UniServ Regional Office

DECISION AND ORDER

On October 25, 1982, the Ridgefield Park Education Association ("Association") filed an unfair practice charge against the Ridgefield Park Board of Education ("Board") with the Public Employment Relations Commission. The charge alleges that the Board violated subsections 5.4(a)(1), (2), and (3)^{1/} of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq., when its high school principal criticized the

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; and (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."

Association at an Advisory Council meeting^{2/} and suggested that the Association's vice-president resign from the Advisory Council.

On March 23, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Board then filed an Answer denying that any of the principal's comments at the Advisory Council meeting violated the Act.

On May 9, 1983, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses and introduced exhibits. At the close of the hearing, the Hearing Examiner granted the Board's motion to dismiss that portion of the charge alleging a subsection 5.4(a)(3) violation since there was no proof of a change in any employee's terms or conditions of employment. The parties filed post-hearing briefs.

On April 9, 1984, the Hearing Examiner issued a report recommending dismissal of the Complaint, H.E. No. 84-52, 10 NJPER ____ (¶ ____ 1984) (copy attached). Relying upon In re Black Horse Pike Regional Bd. of Ed., P.E.R.C. NO. 82-19, 7 NJPER 502 (¶12223 1981) ("Black Horse Pike"), he found that the principal's comments, under all the circumstances of the case, were not threatening and did not interfere with the rights of the employees or the Association under the Act.

^{2/} Article 29 of the parties' collective negotiations agreement provides that the faculty of each school shall elect an Advisory Council to meet monthly with the building principal to discuss local problems and practices and to help in the revision and development of building policies. The Board retains the right of final approval over subjects which are not mandatorily negotiable.

On April 27, 1984, after receiving an extension of time, the Association filed exceptions. It asserts that the Hearing Examiner misapplied Black Horse Pike and that the principal's comments crossed over the line between permissible criticism of a union and its leadership and impermissible interference and intimidation.

On May 8, 1984, the Board filed a response supporting the Hearing Examiner's findings and conclusions.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-4) are accurate. We adopt and incorporate them here. We add the following facts.

At the outset of the October 19, 1982 high school Advisory Council meeting, the Council president sought to discuss certain items of concern to the faculty. Included among these items was the teachers' desire to receive permission to leave school early when they had dentists' and doctors' appointments or had emergencies. The principal asked the president to hold off on discussing specific items so that the purpose and ground rules of the Advisory Council could first be discussed. He expressed a concern that the Advisory Council would not be able to function effectively if every time he approved a request (for example, to leave early for a doctor's appointment), a precedent for a binding past practice claim would be created.^{3/} In particular, he noted what he perceived as an inordinate number of grievances raising such claims and stated that he felt bound to follow the letter of

^{3/} The Association's vice-president testified that she was not surprised about this concern since past practice arguments could legitimately be raised in grievances.

the contract. He specifically noted that he had twice tried, but had been unable, to obtain waivers from the Association of contract requirements and asked if the Advisory Council, as representatives of a cross section of high school faculty, would consider asking the Association's Executive Committee to reconsider these denials. The faculty members on the Council declined, and the principal did not pursue the matter further.

In a brief exchange with the Association's vice-president and grievance chairperson, the principal questioned whether her position as grievance chairperson would compromise her objectivity on the Advisory Council and suggested that maybe she should resign; she demurred and noted that the same point applied to him since he took his orders from higher ranking administrators. He replied "touché," and the matter was dropped.

As the Hearing Examiner found, one teacher testified that he was worried about whether his participation in the Advisory Council meeting that day would adversely affect his employment status. He further testified, however, that he was not necessarily taking "a shot" at the principal and that he approved the principal's attempts at that meeting to clear the air, although he disapproved his questioning of the vice-president/grievance chairperson's position on the Council.

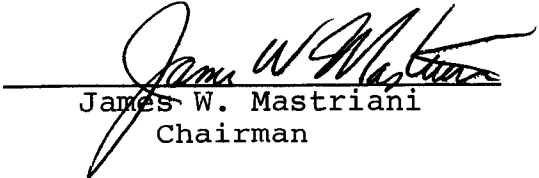
The Advisory Council has functioned smoothly since the October 19, 1982 meeting. The principal testified that he and the vice-president/grievance chairperson have been able to discuss matters objectively.

Under all the circumstances of this case, we agree with the Hearing Examiner that the principal's comments at the Advisory Council meeting did not violate subsections 5.4(a) (1), (2), or (3) of the Act. The principal's comments were within the sphere of permissible criticism and discussion under Black Horse Pike. The principal did not threaten any employees, change any terms and conditions of employment, or seek to undermine the exclusive representative status of the Association. His exchange with the vice-president/grievance chairperson was brief, non-coercive, and a match between equals which ended as soon as she parried his comment; since then, these two individuals and the Advisory Council have worked together smoothly and effectively. Under all these circumstances, we dismiss the Complaint.^{3/}

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Suskin and Wenzler voted in favor of this decision. Commissioner Graves was opposed. Commissioners Hipp and Newbaker abstained. Commissioner Butch was not present.

DATED: Trenton, New Jersey
June 25, 1984
ISSUED: June 26, 1984

^{3/} We do not pass judgment on the propriety of the principal's comments except to say that they do not rise to the level of an unfair practice.

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

In the Matter of

RIDGEFIELD PARK BOARD OF
EDUCATION,

Respondent,

- and -

Docket No. CO-83-103-80

RIDGEFIELD PARK EDUCATION
ASSOCIATION - NJEA,

Charging Party.

SYNOPSIS

In an action brought by the Ridgefield Park Education Association it was recommended by a Commission Hearing Examiner that the Commission find the Ridgefield Park Board of Education did not violate the Public Employer-Employee Relations Act when a Principal in the school district criticized certain union officials for their insistence on grieving certain matters and "constantly giving the union line". He requested that the Vice President of the Association resign from a certain elected position. It was found, however, that the statements were made at a meeting with employees who were elected to a committee that was created by the contract. The employees at the meeting were elected representatives. The parties were not functioning as employer-employees but rather the employees were serving on an Association committee and were on an equal footing with the principal. Under these circumstances the employer was within his rights to criticize the actions of the Association which he believes are inconsistent with good labor relations.

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
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF
EDUCATION,

Respondent,

- and -

Docket No. CO-83-103-80

RIDGEFIELD PARK EDUCATION
ASSOCIATION - NJEA,

Charging Party.

Appearances:

For the Respondent
Aron & Salsberg
(Stephen R. Fogarty, Of Counsel)

For the Charging Party
Vincent Giordano, UniServ Rep.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On October 25, 1982, the Ridgefield Park Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission"). The Association alleged that the Ridgefield Park Board of Education ("Board") violated N.J.S.A. 34:13A-5.4(a)(1), (2), and (3) of the New Jersey Employer-Employee Relations Act, ^{1/} when certain statements were made by the Principal of the Ridgefield Park High School, Mr. Joseph Celauro, at a meeting between

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; (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."

himself and members of the Advisory Council, a body created by the collective negotiations contract between the Association and the Board.

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 23, 1983. On April 14, 1983, the Respondent, Board, filed an answer admitting that a meeting took place between the Advisory Council and Celauro but denies that the statements made by Celauro were violative of the Act. On May 9, 1983, a hearing was held before the undersigned at which time the parties were given an opportunity to examine and cross-examine the witnesses, present evidence and argue orally. At the conclusion of the hearing, the Board moved to dismiss the count of the complaint alleging that it had violated §(a)(3) of the Act. Following arguments by the respective parties, the undersigned dismissed the §(a)(3) count of the complaint. Accordingly, that portion of the complaint will not be dealt with here. Both parties submitted post-hearing briefs which were submitted by November 28, 1983. The essential facts in this matter are not in dispute.

The Association and the Board are parties to a collective negotiations agreement, wherein, Article 29 provides that the faculty of each school building shall elect an Advisory Council which shall meet with the Building Principal at least once a month, during the school day, to review and discuss local problems and practices and to play an active role in the "revision or development of building policies."

Pursuant to this provision, the High School Principal, Joseph Celauro, met with the Association's High School Advisory Council on

October 19, 1982. After some preliminary discussion, Celauro stated that he: "thought that the Advisory Council could work at a higher level, maybe act to handle some of the more important problems that were facing the district and the high school." The Principal asked the members of the Advisory Council if they, as a group, felt free to approach the Executive Committee of the Association and ask for certain accommodations which deviated from the contract which, according to Celauro, would be of benefit to both the teachers and the students. The response from two of the Advisory Committee members, Alyse Gutter and Crystalline Posze, was that they would not go to the Executive Committee of the Association for it would seem as though they were undermining the Executive Committee itself. As this conversation continued, Celauro suggested that the Advisory Council was simply giving the "union line" and that the Association Executive Board was not truly representing the faculty because the union was filing too many grievances thereby "gumming up the works" and that the union's insistence upon grieving matters on the basis of "past-practice" prevented the Board from being flexible for such flexibility may be called a past-practice in a future grievance.

Celauro singled out Alyse Gutter, Vice President of the Association, and stated that he believed she could not serve on the Advisory Council because she could not be objective. Accordingly, he called upon her to resign.

As a result of this meeting, one of the members of the Council, a teacher, Paul White, testified that he was "worried about his future in the system and felt worried about how his role in the whole thing is perceived" and further that his participation in the

Advisory Council that day and the discussion that ensued could adversely effect his employment status.

The Commission has long noted the dual role of a teacher who also serves in a union capacity. There is no dispute here that the members of the Advisory Council including Gutter, were serving in such a dual capacity.

In Blackhorse Pike Regional Bd. of Ed., P.E.R.C. No. 82-19,
7 NJPER 502 (¶ 12223 1981) the Commission stated:

A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor realtions, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. However, as we have held in the past, ...the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer. See, In re Hamilton Township Board of Education, P.E.R.C. No. 79-59, 5 NJPER 115 (¶ 10068 1979) and In re City of Hackensack, P.E.R.C. No. 78-30, 4 NJPER 21 (¶ 14001 1977).

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions; one is not the subordinate of the other. It either acts in an inappropriate manner or advocates positions which the other finds irresponsible criticism may be appropriate and even legal action...may be initiated to halt or remedy the other's actions. However...where the employee's conduct as a representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the individual's employment.

. . . .

The Board may criticize employee representatives for their conduct. However, it cannot use its power as

employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity.

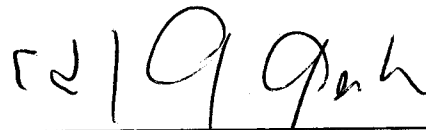
See also Commercial Twp. Bd. of Ed., P.E.R.C. No. 83-25,
8 NJPER 550 (¶ 13253 1982).

In spite of White's testimony that he somehow felt threatened by Celauro's statements, those statements were clearly made in a setting where the parties were equals. The statements made were nothing more than Celauro's opinion and no threats were made by him. His comments calling on Gutter to resign were not an order directing her to do so. The use of the word resign here is significant, Celauro asked Gutter, of her own volition, to remove herself from the Advisory Committee. No threats were stated or implied as to the jobs held by the individual Advisory Committee members or as to any of their assignments nor was there any evidence indicating that disciplinary action was taken against them. Celauro was simply expressing his displeasure with the activities of the Association which he has a right to do.

The fact that one or more teachers may have felt threatened does not make Celauro's statements violative of the Act. The statements, within the context of how, and where, they were made, did not interfere with, restrain or coerce the exercise of protected rights, nor do they dominate or interfere with the employee organization.

Recommended Order

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



Edmund G. Gerber
Chief Hearing Examiner

DATED: April 9, 1984
Trenton, New Jersey