P.E.R.C. NO. 82-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MOORESTOWN,

Respondent,

-and- Docket No. CO-81-275-133

COUNCIL 16, 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 Township of Moorestown did not violate N.J.S.A. 34:13A-5.4(a)(2) when it sent letters to its employees urging that they vote "no" in the upcoming representation election, and held a meeting in which employee attendance was voluntary. Both the letter and the meeting were found to be devoid of threats or promises of benefit.

P.E.R.C. NO. 82-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MOORESTOWN,

Respondent,

-and- Docket No. CO-81-275-133

COUNCIL 16, N.J.C.S.A.,

Charging Party.

Appearances:
For the Respondent, Capehart & Scatchard, Esqs.
(Bruce L. Harrison, of Counsel)

For the Charging Party, Deitz, Allen & Sweeney, Esqs.
(John A. Sweeney, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on March 11, 1981 by Council 16, N.J.C.S.A. (the "Charging Party" or "Council 16") alleging that the Township of Moorestown (the "Respondent" or the "Township") 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"). It was alleged that the Respondent, after having entered into a consent agreement for an election among its clerical employees on January 12, 1981, thereafter sent letters to all eligible voters containing false information and illegally promising future benefits. It was further alleged that on February 10, 1981, the Respondent conducted a meeting with eligible voters for the purpose of unlawfully influencing them to vote against the Charging Party, and as a result of which the Charging Party failed to attain a majority of the ballots cast at

an election on February 12, 1981. All of this was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(2) of the Act.[1/]

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 April 9, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 9, 1981 before Hearing Examiner Alan Howe, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by July 8, 1981.

The Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-5, 7 NJPER ___ (¶_____ 1981) on August 11, 1981. He concluded that the conduct engaged in by the Respondent was not violative of subsection (a)(2) of the Act in that there was no evidence adduced suggesting any domination or interference with Council 16. Furthermore, the Hearing Examiner ruled that even assuming arguendo that the Charging Party had alleged a subsection (a)(1) violation at the outset,[2/] no such violation could be found, considering that the letters did not contain

1/ This subsection prohibits public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization."

2/ Opportunity had been afforded to the Charging Party, by the Hearing Examiner, to amend its charge upon motion by making reference to another subsection of the Act; however, no such amendment was requested until the Charging Party filed its post-hearing brief. At that time, the Charging Party alleged that the Respondent had violated subsection 5.4(a)(1). The Hearing Examiner ruled said motion to be untimely, however, he did set forth his analysis of the merits of this allegation.

threats, coercion, or promises of benefit. The meeting which was held, with employee attendance being only voluntary, was also found by the Hearing Examiner to be void of threats or promises of benefit and not violative of the Act.

Neither party has filed exceptions to the report of the Hearing Examiner. We have reviewed the entire record in this matter and hereby adopt the findings of fact and conclusions of law made in H.E. No. 82-5. We find that the Township's actions did not violate N.J.S.A. 34:13A-5.4(a)(2) by its conduct, nor would such conduct be violative of subsection (a)(1). We adopt his recommendation that the Complaint be dismissed in its entirety.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Newbaker, Parcells and Suskin voted in favor of this decision. Commissioners Graves and Hipp voted against the decision.

DATED: Trenton, New Jersey
October 2, 1981
ISSUED: October 5, 1981

82 35

H.E. No. 82-5

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

In the Matter of

TOWNSHIP OF MOORESTOWN,

Respondent,

Docket No. CO-81-275-133

COUNCIL 16, N.J.C.S.A.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Township did not violate Subsection 5.4(a)(2) of the New Jersey Employer-Employee Relations Act during an election campaign where it sent two (2) letters to its clerical employees and conducted a meeting with said employees prior to the election of February 12, 1981. The letters and meeting did not demonstrate that the Respondent Township made threats or promises of benefit to the clerical employees. The Hearing Examiner noted that the Charging Party had not filed objections to the conduct of the election and that Council 16's Unfair Practice Charge was an attempt to circumvent the normal procedure of filing post-election objections. Finally, there was no evidence adduced that the Respondent Township attempted to dominate or interfere with the Charging Party as alleged.

A Hearing Examiner's Recommended Report and Decision is not 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.

H.E. No. 82-5

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

In the Matter of

TOWNSHIP OF MOORESTOWN,

Respondent,

-and-

Docket No. CO-81-275-133

COUNCIL 16, N.J.C.S.A.,

Charging Party.

Appearances:

For the Township of Moorestown
Capehart & Scatchard, Esqs.
(Bruce L. Harrison, Esq).

For Council 16, N.J.C.S.A.
Deitz, Allen & Sweeney, Esqs.
(John A. Sweeney, Esq).

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 11, 1981 by Council 16, N.J.C.S.A. (hereinafter the "Charging Party" or "Council 16") alleging that the Township of Moorestown (hereinafter the "Respondent" or the "Township") 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. (hereinafter the "Act"), in that the Respondent, after entering into a consent agreement for an election among its clerical employees on January 12, 1981, thereafter on January 21 and February 6, 1981 sent letters to all eligible voters containing false information and illegally promising future benefits and, further, on February 10, 1981, conducted a meeting with eligible voters for the purpose of unlawfully influencing them to vote against the Charging Party, as a result of which the Charging Party failed to attain a majority of the ballots cast at an election on February 12, 1981, all of which was alleged to be a violation

of N.J.S.A. 34:13A-5.4(a)(2) of the Act. [1/]

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 April 9, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 9, 1981 in Trenton, New Jersey, at which time the parties were given an opportunity to examines witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by July 8, 1981.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violation of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

FINDINGS OF FACT

1. The Township of Moorestown is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Council 16, N.J.C.S.A. is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. Council 16 has for sometime represented the blue collar public works employees of the Township.

4. Under date of October 23, 1980 the attorney for Council 16 sent to the Commission a Petition for Clarification of Unit, which sought to include twenty-one (21) white collar clerical employees within the blue collar public works unit, and which was docketed on October 27, 1980 under Docket No. CU-81-26 (R-1 & R-2).

1/ This Subsection prohibits public employers, their representatives or agents from:

"(2) Dominating or interfering with the formation, existence or administration of any employee organization."

5. Under date of November 7, 1980 Alfred S. Harding, Township Manager, sent a letter to the Commission objecting to Council 16's Petition for Clarification of Unit, stating that it was inappropriate to place the white collar clerical employees with the blue collar public works employees because of a lack of community of interest. The letter concluded with the statement that Council 16 should be required to "first organize these employees." (CP-4).

6. Thereafter, Council 16 withdrew its Petition for Clarification of Unit, which was approved by the Director of Representation on December 9. 1980 (R-3).

7. Under date of December 10, 1980 the attorney for Council 16 sent to the Commission a Petition for Certification of Representative, which was duly docketed on December 11, 1980 under Docket No. RO-81-148. The requested unit included all clerical employees of the Township and excluded all blue collar employees. (R-4A, R-4B).

8. An Agreement for Consent Election was executed by the parties on January 12, 1981 with an election to be held on February 12, 1981 (J-2). Several weeks prior to the election a "Notice of Election" was posted and thereafter Council 16 did not conduct a campaign among the said clerical employees between the date of the posting of the Notice and the date of the election on February 12, 1981.

9. John J. Logue, Deputy Township Manager, drafted a salary ordinance for clerical employees in or around December 6, 1980, which had its first reading by the Twonship Council on December 8, 1980, and which provided for salary increases for clerical employees of 8-1/2% in 1981 and 9-1/2 % in 1982 (CP-3).

10. Logue testified credibly that on December 5, 1980 he spoke to certain clerical employees regarding a salary increase at the request of Harding and that he, Logue, mentioned 8-1/2% for 1981 and either 9-1/2% or 8-1/2% plus a personal day for 1982.

11. The foregoing actions of Logue took place prior to the filing of the Petition for Certification of Representative by Council 16 (see Finding of Fact No. 7, supra).

12. Under date of January 21, 1981 Harding sent a letter to all eligible clerical employees, making reference to the "Notice of Election," in which he invited the clerical employees to a meeting on February 10, 1981 at 2:30 p.m. in the second floor conference room at the Town Hall to discuss the subject of the election and to give Harding an opportunity to "share the information I have with those attending the meeting." The letter stated that attendance at the meeting was "strictly voluntary." (CP-1).

13. Under date of February 6, 1981 Harding sent a second letter to all eligible clerical employees, making reference to the election of February 12, 1981 and explaining that the employees would be given a paper ballot by a representative of the Commission and would place an "X" in "in the box of your choice" (CP-2). The letter urged a "No" vote as being in the employee's "best interest." The Hearing Examiner finds as a fact that the letter contained no threats nor did it contain any promises of benefit, notwithstanding that it made reference to the salary ordinance (CP-3, supra) and the fact that the clerical employees would be receiving an increase of 8-1/2% in 1981 and 9-1/2% in 1982 and further drew an unfavorable comparison with the salary increases obtained by the blue collar public works employees represented by Council 16.

14. On February 10, 1981 Harding conducted the meeting referred to in CP-1, supra, and spoke from a prepared outline (R-5). As reference to R-5 makes clear there was nothing in the outline of Harding's remarks, which in anyway indicated threats, coercion or promises of benefit.

15. Two (2) clerical employees, Carol Adams and Jean R. Madden, testified for the Charging Party. Adams said that about twenty (20) clerical employees attended the meeting. Adams testified that Harding referred to CP-1 and CP-2, stating that the employees "were doing very well without having to pay union

dues" (Tr.36). Adams testified that Harding also made reference to clericals not having to punch a time clock and said to please vote and that a "No" vote was in your best interest. Adams and Madden each testified that neither CP-1, CP-2, nor the meeting of February 10, 1981 had any impact or effect upon them.

16. At the election of February 12, 1981 there were twenty (22) eligible clerical employees, nineteen (19) of whom voted, and the tally of ballots indicates that eighteen (18) voted against employee representation and one (1) voted for Council 16 (J-1).

17. No objections to the conduct of the election were filed by Council 16 pursuant to N.J.A.C. 19:11-9.2(h). Accordingly, a Certification of Results was issued on February 23, 1981 (J-3). Council 16 filed the within Unfair Practice Charge on March 11, 1981 (C-1).

THE ISSUE

Did the Respondent Township violate Subsection(a)(2) of the Act by its conduct herein, particularly by sending to eligible clerical employees the letters of January 21 and February 6, 1981, and by conducting a meeting among said employees on February 10, 1981?

DISCUSSION AND ANALYSIS

Respondent Township Did Not Violate Subsection(a)(2) Of The Act By Its Conduct Herein

The Hearing Examiner finds and concludes that based upon the instant record the Respondent Township in no way violated Subsection(a)(2) of the Act nor, for that matter, any other provision of Section 5.4(a) of the Act, by its conduct herein.

Subsection(a)(2) is quite explicit in its reference to "any employee organization," as to which a public employer may not dominate or interfere with the "formation, existence or administration" of the said employee organization. The only "employee organization" involved in the instant case is Council 16.

There is not involved an independent association of employees, which sought to organize the Township's clerical employees and thereafter affiliate with Council 16.

For an actual violation of Subsection(a)(2) to have occurred the Respondent Township would have to have engaged in conduct, which constituted domination of or interference with Council 16. Plainly, there was no evidence adduced whatever by the Charging Party suggesting any domination of or interference with Council 16 by the Respondent Township. Thus, the allegation that the Respondent Township violated Subsection(a)(2) of the Act must be dismissed.

In support of his conclusion that no other provision of Section 5.4(a) was violated the Hearing Examiner explicates as follows:

At the opening of the hearing, the Hearing Examiner said that he "... may, however, permit the Charging Party to amend its charge upon motion at any time upon such terms as may be deemed legal and just ..." (Tr.3,4). Notwithstanding this statement, the Charging Party at no time sought to amend its charge by making reference to another Subsection of the Act, such as Subsection(a)(1). The Charging Party had a clear opportunity to move to amend the Unfair Practice Charge by alleging a Subsection(a)(1) violation when the Respondent made a motion to dismiss at the conclusion of the Charging Party's case. Counsel for the Respondent stated at one point that "... the section cited by the Charging Party is inappropriate ..." (Tr.61).

What clearer signal could the Respondent have given to the Charging Party that a timely amendment might at that point have been made. However, the Charging Party remained mute until the filing of its post-hearing brief wherein the Charging Party stated that the Hearing Examiner "... should allow an amendment to the Complaint to conform to the evidence so that the unfair labor practice charge alleges a violation of Subsection 5.4(a)(1)..." The Hearing Examiner finds and

concludes that the Charging Party's motion to amend at the post-hearing brief stage is untimely and would be prejudicial to the Respondent Township.

However, even assuming arguendo that the Charging Party had alleged a Subsection (a)(1) violation from the outset, the Hearing Examiner would still dismiss the Unfair Practice Charge based on the instant record. The conduct complained of by the Charging Party consists of Harding's two (2) letters to eligible clerical employees sent under the dates of January 21 and February 6, 1981 (CP-1 & CP-2) and Harding's having conducted of a meeting of clerical employees on February 10, 1981.

It is noted first that Council 16 elected to conduct no campaign whatever in the several weeks prior to the election of February 12, 1981. Thus, the only campaign conducted was that of the Respondent, which consisted of foregoing two (2) letters and Harding's meeting of February 10. The letter of January 21 was merely an invitation to employees to attend the February 10, 1981 meeting with the statement that the subject would be the election and Harding's desire to share information, which he had with those attending the meeting (see Finding of Fact 12, supra). The Hearing Examiner has found as fact that the February 6 letter while urging a "No" vote and reciting the raises to be received by clerical employees in 1981 and 1982 did not contain any threats or promises of benefit (see Finding of Fact No. 13, supra). Finally with respect to the February 10 meeting, Harding spoke from a prepared outline and the Hearing Examiner has found as a fact that it contained no threats, coercion or promises of benefit (see Finding of Fact No. 14, supra). The two (2) Charging Party employee witnesses testified credibly as to what was said by Harding at the February 10 meeting and the Hearing Examiner finds and concludes that based on the testimony of these witnesses Harding made no threats or any promises of benefit. Significantly, these two (2) witnesses testified that neither CP-1, CP-2 nor the meeting of February 10 had any impact or effect upon them (see Finding of Fact No. 15, supra).

Thus, the Respondent Township's conduct from January 21 through February 10, 1981 was clearly within the parameters delineated by the United States Supreme Court in NLRB v. Gissel Packing Co., 395 U.S. 575, 618, 71 LRRM 2481, 2497 (1969) where the Court said:

> "... Thus, an employer is free to communicate with his employees any of his general views about unionization or his specific views about a particular union, so long as his communications do not contain a 'threat of reprisal or force or promise of benefit' ..."

The Charging Party has cited Colony Printing & Labeling, Inc., 249 NLRB No. 2, 104 LLRM 1108 (1980) as supporting its contention that the Respondent Township violated Subsection(a)(1) of the Act. However, an examination of Colony Printing shows clearly that the letter therein involved, which was found to be a violation of Section 8 (a)(1) of the NLRA, was clearly coercive in that employees were told that if they signed a union card they gave up their right to speak to their employer about hours and working conditions, which was clearly contrary to a proviso to Section 9 (a) of the NLRA. The Respondent Township's letter of February 6 (CP-2) clearly does not fall into this category.

Finally, when one examines the requested relief set forth in the instant Unfair Practice Charge it is obvious that the charge was filed as a belated objection to the conduct of the election of February 12, 1981. The Charge's prayer for relief asks first that the election be set aside and, although not explicitly asking for a new election, clearly indicates that a new election would follow if the "objections" set forth in the Charge were validated.

The Hearing Examiner herein refers to N.J.A.C. 19:11-9.2(h), which provides that objections to the conduct of an election shall be filed "Within five days after the tally of ballots has been furnished." The instant tally was issued on February 12, 1981 (J-1) and thus Council 16 had seven calendar days, or until February 19, 1981, to file objections to the conduct of the election. It is

here noted that the Director of Unfair Practices found that the filing of an Unfair Practice Charge in the nature of objections to the conduct of an election does not provide the basis for the issuance of a Complaint in Weehawken Educational Association and SEIU, Local 389, D.U.P. No 81-25, 7 NJPER 371 (1981).

Based upon all of the foregoing, the Hearing Examiner will recommend dismissal of the instant Complaint and Unfair Practice Charge.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Township did not violate N.J.S.A. 34:13A-5.4(a)(2) by its conduct in sending out to clerical employees two (2) letters under dates of January 21 and February 6, 1981 and thereafter conducting a meeting of clerical employees on February 10, 1981.

RECOMMENDED ORDER

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

Alan R. Howe
Hearing Examiner

Dated: August 11, 1981
Trenton, New Jersey