

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JEFFERSON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-336-30

JEFFERSON TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice which was submitted by the Association alleging that the Board had engaged in a pattern of harrassment, intimidation, coercion and discipline against two bus driving employees and a general secretary in the negotiating unit in violation of the Act, the Commission found that there was insufficient evidence to demonstrate any anti-union animus by the Board and held that no violation had occurred. The Board's Transportation Coordinator had written a series of negative memos and job evaluations of the three unit members; however, no evidence was found to link these actions with the union activity of those three. Additionally, all of the bus drivers had had their routes monitored, and the two drivers involved herein had been called at their residences by the Transportation Coordinator; however, these actions were justifiable and not motivated by anti-union animus.

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ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Murray, Granello & Kenney, Esqs.
(James P. Granello, Esq.)

For the Charging Party, John W. Davis, Field Represent-
tive, NJEA UniServ Regional Office

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on May 15, 1980, and amended on June 7, 1980, by the Jefferson Township Education Association (hereinafter the "Charging Party" or the "Association"), alleging that the Jefferson Township Board of Education (hereinafter the "Respondent" or the "Board") 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"). It was alleged that the Respondent had engaged in a pattern of harrassment, intimidation, coercion and discipline directed against bus driver employees who were members of the Association; all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)

(1) and (3) of the Act.^{1/}

It appearing that the allegations of the unfair practice charge, as amended, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing were issued on October 10, 1980. Hearings were held on January 19 and 20, 1981 in Newark, New Jersey before Hearing Examiner Alan Howe, 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 March 11, 1981.

The Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-30, 7 NJPER _____ (1981), on March 13, 1981. He concluded that the Charging Party had failed to prove by a preponderance of the evidence that the conduct of the Respondent was discriminatory and motivated, in whole or in part, by anti-union animus and therefore recommended that the Complaint be dismissed.

In particular, the facts of this case involve certain actions taken by the Transportation Coordinator for the school district in response to the job performance of two bus drivers, Catherine Culp and Patricia Yavit, who were also representatives of the Association, and actions taken against Helen Jamieson, a

^{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.

general secretary also in the negotiating unit. Adelaid Manchester, the Transportation Coordinator, had written a series of negative memos and job evaluations of the three unit members while Ms's Culp and Yavit were representatives. However, the Hearing Examiner also found that the evidence indicated that Manchester had begun her negative evaluations of these two employees prior to the time she learned they were the bus drivers' representatives to the Association. The Hearing Examiner found no evidence linking any of these actions with the fact that Jamieson, Culp or Yavit were Association members or actively involved in the organization. The only evidence offered was an isolated statement made by Manchester, in response to an inquiry as to whether she wanted to join the Association, in which she indicated that she did not believe that she needed a union. The Hearing Examiner did not find this evidence to be sufficient to demonstrate anti-union animus by the Board.

Additionally, the Hearing Examiner found that the Board did not independently violate subsection (a)(1) of the Act by its conduct. The Coordinator's negative memos and evaluations related to the inadequate job performance of Jamieson, Culp and Yavit, and no connection was established between the exercise of activity protected by the Act and the negative memos and evaluations. Additionally, all of the bus drivers had been subject to monitoring of the bus routes by Manchester and an Assistant as part of their supervisory responsibilities, and the evidence did not establish that these particular drivers had been singled out for non-business reasons. The surveillance of Culp specifically related to a verification of a request for overtime compensation due to the length of Culp's bus route.

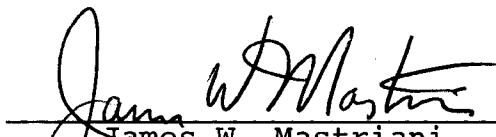
The Association also claimed that Manchester had engaged in **harrassing tactics** by telephoning Culp and Yavit at their residences. These calls, however, were found by the Hearing Examiner to be legitimate and not harrassment at all. The calls were made merely to ascertain their work availability at a time when both were on standby duty.

Neither party has filed material exceptions to the report of the Hearing Examiner which would alter the decision in this matter.^{2/} 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. 81-30, with the one modification that Jamieson had resigned voluntarily. We find that the Board's actions did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) by its conduct herein with respect to Jamieson, Culp and Yavit. 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, Parcels & Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 10, 1981

^{2/} An exception was filed by the Respondent concerning one statement in the Hearing Examiner's Report pertaining to Jamieson. The Examiner stated that Jamieson had resigned from her position involuntarily, when in fact the record shows that her resignation was a voluntary one. It is apparent that the Hearing Examiner's use of involuntary rather than voluntary was nothing more than a clerical error in his recommended decision, and the recommended decision is modified to reflect that her resignation was voluntary.

H. E. No. 81-30

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

In the Matter of

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Respondent,

-and-

Docket No. CO-80-336-30

JEFFERSON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board did not violate Subsections 5.4 (a)(1) and (3) of the New Jersey Employer-Employee Relations Act by the conduct of its Transportation Coordinator and Assistant Transportation Coordinator. The Association had alleged that since December 1979 the Respondent's agents and representatives had engaged in a pattern of conduct against members of the collective negotiations unit of bus drivers by which the bus drivers and their representatives had been harassed, intimidated, coerced and disciplined in violation of the Act. The Association failed to prove its charges of illegal conduct by a preponderance of the evidence.

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 and fact and/or conclusions of law.

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Docket No. CO-80-336-30

JEFFERSON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Jefferson Township Board of Education
Murray, Granello & Kenney, Esqs.
(James P. Granello, Esq.)

For the Jefferson Township Education Association,
John W. Davis, NJEA UniServ Representative

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on May 15, 1980, and amended on June 7, 1980, by the Jefferson Township Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Jefferson Township Board of Education (hereinafter the "Respondent" or the "Board") 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, by its Transportation Coordinator and Assistant Transportation Coordinator, has since December 1979 engaged in a pattern of conduct against members of the collective negotiations unit of bus drivers by which the bus drivers have been harrassed, intimidated, coerced and disciplined, the effect of which has been to discourage

employees in the exercise of guaranteed rights, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act. ^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice Hearing was issued on October 10, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on January 19 and 20, 1981 in Newark, 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 March 11, 1981.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations 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 Jefferson Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Jefferson Township Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

^{1/} These Subsections prohibit public employers, their representative 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."

3. The most recent collective negotiations agreement between the parties pertinent to the instant dispute was effective during the term July 1, 1979 through June 30, 1981. ^{2/}

4. The Respondent's Transportation Department has been supervised by its present Transportation Coordinator Adelaide Manchester since June 6, 1977. There is also an Assistant Transportation Coordinator Lynne Stanlick, who has been in this position since December 1978. Manchester's duties as Transportation Coordinator include being the first line of supervision for the bus drivers and also being responsible for maintenance of buses, bus routes, scheduling, etc.

5. The collective negotiations unit represented by the Association includes both certificated and non-certificated personnel (J-1, p.1). Included among the non-certificated personnel are approximately 35 bus drivers, who have two of their own elected representatives. Catherine Culp and Patricia Yavit were the two bus driver representatives for the 1979-80 school year. As a matter of practice the Association has not notified the Board's administration of the names of its bus driver representatives. Thus, Manchester did not learn that Culp was a representative until January 1980 and did not learn that Yavit was a representative until December 1980.

6. Charging Party witness Helen Jamieson, a general secretary in the Transportation office until January 1980, testified that she overheard Manchester say that the Association is "not necessary" and that, on at least one occasion after December 1979, she overheard Manchester make a statement to Stanlick in the office that the "union" was not of any "need to herself." However, the Hearing Examiner credits Manchester's testimony that in December 1979 she may have said something regarding the Association to Anthony Galfo, who was in

^{2/} A Memorandum of Agreement, which was executed March 20, 1979, was received in evidence as J-2 and is an extension with certain modifications of the 1977-79 Basic Agreement, which was received in evidence as J-1.

Stanlick's office having coffee and, when Galfo tried to get Manchester to join his union, she replied: "I don't need a union--I'm a supervisor." Thus, the Hearing Examiner finds as a fact that Manchester never made any statement either purporting to undermine the Association or indicating anti-union animus.

7. Charging Party witnesses Jamieson, Culp and Yavit testified that Manchester, beginning in December 1979, embarked on a campaign of criticizing their job performance in a series of negative memos and job evaluations (see CP-1, CP-2, CP-5, CP-6, CP-12, CP-13, CP-14, CP-27 and CP-31). By way of defense, the Respondent offered in evidence a series of negative memos and job evaluations covering several years prior to December 1979 with respect to Jamieson, Culp and Yavit (see R-1 through R-23). Additionally, Manchester testified regarding the deficiencies in the job performance of Jamieson, Culp and Yavit in the 1979-80 school year, especially beginning in or about December 1979. The Hearing Examiner, based on his evaluation and appraisal of the foregoing documentary evidence and the testimony of the witnesses, finds as a fact that Manchester did not engage in conduct constituting harrassment of Jamieson, Culp or Yavit because of their membership in or activities on behalf of the Association. ^{3/}

^{3/} Jamieson did not testify as to having engaged in any protected activities on behalf of the Association. On the other hand, Culp as a bus driver representative, was an active spokesman on behalf of the bus drivers both at a meeting of the drivers on December 10, 1979, regarding unresolved problems and grievances, and at a meeting with the Board's administration and Association representatives on either January 31 or February 4, 1980 where Culp was the spokesman for the bus drivers. Yavit's testimony indicated while she was a bus driver representative her activities in that capacity were minimal.

THE ISSUES

1. Did the Respondent Board violate Subsections (a)(1) and (3) of the Act by its conduct herein with respect to Helen Jamieson, Catherine Culp and Patricia Yavit.

2. Did the Respondent Board independently violate Subsection (a)(1) of the Act by its conduct herein with respect to Jamieson, Culp and Yavit?

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate Subsections (a)(1) and (3) of the Act By Its Conduct Herein With Respect To Jamieson, Culp and Yavit

In order for the Charging Party to prevail it must demonstrate by a preponderance of the evidence that the Respondent Board's conduct with respect to Helen Jamieson, Catherine Culp and Patricia Yavit was "discriminatory" and was motivated, in whole or in part, by anti-union animus, the effect of which was to discourage employees in the exercise of rights protected by the Act. See Haddonfield Borough Board of Education, P.E.R.C. No. 77-36, 3 NJPER 71, 72 (1977) and City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143, 144 (1977).

The Hearing Examiner finds and concludes that the Charging Party has failed to prove by a preponderance of the evidence that the conduct of the Respondent was discriminatory and was motivated, in whole or in part, by anti-union animus toward Jamieson, Culp and/or Yavit.

Haddonfield requires that the Charging Party demonstrate preliminarily that an employee was exercising rights guaranteed by the Act and that the employer, either expressly or impliedly, knew that the employee was exercising such rights. In the instant case there was no proof whatever that Jamieson at any time material hereto engaged in the exercise of rights protected by the Act. She did respond to memos from Manchester but never filed a grievance or attempted to file a grievance. Finally, Jamieson resigned involuntarily so that there could be no issue involved of coercion in her resignation.

Culp engaged in the exercise of a right protected by the Act by virtue of her status as a bus driver representative during the 1979-80 school year, and particularly, by having appeared as a representative of the bus drivers at the January 31 or February 4, 1980 meeting with representatives of the Respondent, supra. Notwithstanding the allegation of the Charging Party that Manchester, beginning in December 1979, embarked on a campaign of criticizing Culp's job performance, the Respondent, by way of defense, offered in evidence a series of negative memos and job evaluations covering several years prior to December 1979. Thus, did the Hearing Examiner find as a fact that Manchester did not engage in conduct constituting harrasment of Culp because of her membership in and activities on behalf of the Association (see Finding of Fact No. 7, supra).

Additionally, the Hearing Examiner notes that the Association has failed to prove that Manchester was motivated by anti-union animus. The only proffered evidence of animus by Manchester was the testimony of Jamieson that she overheard Manchester make a statement to Stanlick that the "union" was not of any "need to to herself," Manchester, and was "not necessary." The Hearing Examiner has credited Manchester's testimony that she did not need a union because she was a Supervisor (see Finding of Fact No. 6, supra.)

With respect to Yavit, there was only the minimal exercise of protected activity by virtue of being a bus driver representative, which status did not commence until July 1980 and was not known to Manchester until December 1980. Her only grievance activity as a representative occurred in December 1980, a date well after the period alleged in the Charge, i.e., on and after December 1979. As in the case of Culp, the Respondent introduced affirmative evidence of poor job performance in evaluations with respect to Yavit.

Thus, on balance, given the absence of anti-union animus by Manchester toward Jamieson, Culp and Yavit the Hearing Examiner finds no evidence sufficient to support a violation of Subsections (a)(1) and (3) of the Act. The Respondent's conduct was not discriminatory as to these three employees. As noted previously, Jamieson engaged in no activity protected by the Act; Yavit's activity was minimal and occurred very late in the game; and Culp's activity, although more substantial, was not casually connected by the evidence with discriminatory conduct by Manchester as an agent of the Respondent.

Thus, the Hearing Examiner will recommend dismissal of allegations in the Complaint with respect to a violation Subsection (a)(3), and, derivatively, Subsection (a)(1) of the Act.

The Respondent Board Did Not
Independently Violate Subsection
(a)(1) of the Act by its Conduct
Herein With Respect to Jamieson,
Culp and Yavit

The standard for an independent Subsection (a)(1) violation is set forth in the Commission's decision in New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550, 551 (1979) where it was stated that:

"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." (Emphasis supplied).

Further the Commission stated in New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (1978) that it will consider the totality of evidence and the competing interests of the employer and the employee organization in determining initially whether particular actions tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act.

The activities of the Respondent, which could conceivably provide the basis for a finding that the rights of Jamieson, Culp and Yavit were interfered with involve the negative memos and evaluations with respect to all three of said employees, plus the surveillance and telephone calls, the latter of which involve only Culp and Yavit. The Hearing Examiner finds and concludes that the Respondent Board has not independently violated Subsection (a)(1) of the Act by its conduct with respect to Jamieson, Culp and Yavit. In other words, the Respondent has adequately demonstrated a legitimate and substantial business justification for its conduct herein.

The negative memos and evaluations which originated with Manchester were demonstrably related to the inadequate job performance of Jamieson, Culp and Yavit. The time span covered a substantial period both prior to and subsequent to the six-month operative period of the Unfair Practice Charge. The time frame of the negative memos and evaluations was in no way proven to be related to the exercise of activity protected by the Act. Thus, there was no interference with, restraint, or coercion of employee rights protected by the Act.

The surveillance and telephone calls pertained only to Culp and Yavit. As to surveillance of bus routes, the Hearing Examiner is satisfied that the monitoring done by Manchester and Stanlick applied to all bus drivers and that, in the case of Culp the purpose of the surveillance was to verify a request for overtime compensation due to the length of Culp's bus route. With respect to the telephone calls, which were made by Manchester to the homes of Culp and Yavit, the Hearing Examiner is satisfied that the calls were made for the demonstrably legitimate business purpose of ascertaining their work availability since both Culp and Yavit were on standby duty during

portions of the day. There could, this, be no meaningful communication to employees on stand-by duty other than by calls directed to their homes.

Thus, the Hearing Examiner will recommend dismissal of the allegations in the Charge that the Respondent independently violated Subsection (a)(1) of the Act.

* * * *

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

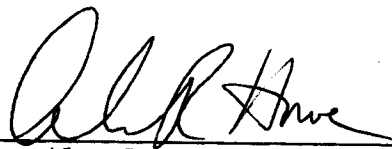
CONCLUSIONS OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4 (a)(1) and (3) by its conduct herein with respect to Helen Jamieson, Catherine Culp, and Patricia Yavit.

RECOMMENDED ORDER

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

DATED: March 13, 1981
Trenton, New Jersey



Alan R. Howe
Hearing Examiner