

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KEARNY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-2006-027

ANN TAYLOR et al.,

Charging Parties.

Appearances:

For the Respondent, Genova, Burns & Vernioia (Joseph M. Hannon, of counsel)

For the Charging Parties, Bucceri & Pincus (Gregory Syrek, of counsel)

DECISION

On January 4, 2006, Ann Taylor and other individuals^{1/} filed an unfair practice charge against the Kearny Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (4)^{2/}, when it changed the charging

1/ Charging Parties are Ann Taylor, Mary Bartiromo, Patricia Edwards, Dianne Foray, Dolores Leadbeater, Veronica Green, Linda Renshaw and Nancy Rowe.

2/ These provisions 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
(continued...)

parties' status from full-time to part-time, thus eliminating their eligibility for medical benefits, in retaliation for their filing a representation petition seeking to organize a negotiations unit of full-time aides.

A Hearing Examiner conducted a hearing and recommended that we dismiss the Complaint. H.E. No. 2008-3, 33 NJPER 303 (¶115 2007). The charging parties filed exceptions, including an objection to the Hearing Examiner's rejection of certain testimony as hearsay. The Board filed an answering brief asserting that the exceptions should be rejected.

The charging parties argue that testimony about two alleged statements should not have been ruled inadmissible as hearsay. In the first instance, an aide, Patricia Edwards, testified that the Board president stated that "she felt like she had been stabbed in the back" when Edwards questioned her about a pay scale for full-time aides. In the second instance, another aide, Ann Taylor, testified that the business administrator stated that "certain board members were irate, that [the aides] were pursuing a bid to become a union and take our medical benefits and they would prefer not to have to deal with this at all if that was possible." We agree with the charging parties that the testimony

2/ (...continued)
act"; and "(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."

about these statements is admissible under N.J.R.E. 803(b). The statements, if they were made, constitute party admissions because the president and business administrator were Board agents and representatives. Regardless of whether the Board actually authorized such statements to be made, the statements, if made, concerned matters within the scope of the agency or employment of the president and business administrator -- discussions about a pay scale and health benefits. Further, the admissibility of party admissions is not conditioned upon having a party's agents or representatives testify in rebuttal to that testimony; the party can call its agents or representatives itself and the finder of fact can determine whether the statements were made based upon the credibility of whatever witnesses testify about them.

Given our evidentiary ruling, we must remand the case to the Hearing Examiner to make additional findings of fact and issue a supplemental report. The Hearing Examiner should determine whether the alleged statements were made. If the answer is yes, the Hearing Examiner should further consider how those findings factor into the application of the tests under In re Bridgewater Tp., 95 N.J. 235 (1984), for determining whether an unfair practice occurred.

ORDER

_____The case is remanded to the Hearing Examiner to make additional findings of fact and issue a supplemental report.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Branigan was not present.

ISSUED: February 28, 2008
Trenton, New Jersey