

P.E.R.C. NO. 2018-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GOVERNMENT WORKERS UNION,

Respondent,

-and-

Docket No. CO-2017-074

AFSCME DISTRICT COUNCIL 71,
LOCAL 3408,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission substantially adopts a Hearing Examiner's report and recommended decision finding that GWU violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when its agents removed funds from the bank account of Local 3408, the then incumbent majority representative of certain Atlantic county employees, for the purpose of purchasing gift cards to distribute to the employees to induce them to sign authorization cards for GWU to replace Local 3408 as majority representative. The Commission agrees with the Hearing Examiner that Local 3408's then president and secretary-treasurer were acting as GWU's agents when they removed the Local's funds and told employees they would receive gift cards purchased with the funds if they voted for GWU. The Commission finds that the promised benefit of gift cards as inducement to secure signatures in support of GWU violates subsection 5.4b(1) of the Act because it would tend to interfere with and coerce unit members in the exercise of their rights under the Act to select, or change, a majority representative. The Commission modifies the Hearing Examiner's remedy that would have precluded the processing of petitions on behalf of GWU to represent unit members until the open period after a second successor agreement (or until 2022), and instead limits the representation bar until the open period after the collective negotiations agreement now in effect or being negotiated. The Commission also declines to order GWU to modify its website to include a link to the Commission's decision.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Government Workers Union (David L. Tucker, President)

For the Charging Party, Law Office of David Beckett, attorneys (David B. Beckett, of counsel)

DECISION

This case is before the Commission on exceptions filed by the Government Workers Union (GWU) to a Hearing Examiner's Report and Recommended Decision, H.E. 2017-7, 43 NJPER 362 (¶104 2017). The Hearing Examiner concluded that GWU and its agents violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by removing \$20,000 from the bank account of AFSCME District Council 71, Local 3408 (Local 3408), the majority representative of certain employees at Atlantic County's Meadowview Nursing Home, for the purpose of purchasing gift cards and distributing them to the employees to induce them to sign

authorization cards for GWU and to oust Local 3408 as majority representative.

PROCEDURAL HISTORY

On September 6, 2016, GWU filed a Petition for Certification by election (RO-2017-007) with the Commission seeking to represent a negotiations unit of approximately 170 employees of Atlantic County who work at the County Meadowview Nursing Home and the County Kitchen/Warehouse. See County of Atlantic, D.R. No. 2017-9, 43 NJPER 213 (¶65 2016). Local 3408, as the incumbent union, intervened in that matter. Ibid.

On October 5, 2016, Local 3408 filed an unfair practice charge against GWU and its agents alleging that GWU's representation petition was filed with authorization cards obtained under false pretenses seeking to supplant Local 3408 as the majority representative.^{1/} Specifically, the charge alleges that on or about August 20, 2016, Local 3408 President Eric McGlone and Treasurer India Cooper diverted \$20,000 from Local 3408's bank account so that they could redistribute the funds as gift cards that GWU's agents were promising to Local 3408 members in exchange for signing authorization cards for GWU.^{2/} The

1/ The original charge also named the County as a respondent, but Local 3408 withdrew its charge against the County via an amendment filed on November 1, 2016.

2/ Signed authorization cards demonstrating a showing of interest from not less than 30 percent of the unit must be
(continued...)

charge asserts that this conduct violated sections 5.4(b)(1), (2), and (5) of the Act.

On October 6, 2016, the Assistant to the Director of Representation notified the parties that Local 3408 was seeking to block further processing of GWU's representation petition based on the unfair practice charge. On November 3, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the allegation that GWU's conduct violated subsection 5.4(b)(1) of the Act.^{3/} On November 10, GWU filed an Answer denying the allegations. On November 16, the Director of Representation issued a written decision blocking further processing of GWU's representation petition pending litigation of the unfair practice charge at issue here. D.R. No. 2017-9, supra.

The Hearing Examiner conducted hearings on November 28 and 30, 2016. On January 27, 2017, GWU withdrew its representation petition. On January 30, Local 3408 filed a post-hearing brief.^{4/}

2/ (...continued)
filed with a representation petition. N.J.A.C. 19:11-1.2(a)(9).

3/ This provision prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

4/ On the same date, GWU filed a motion for summary judgment on the ground that the charge was rendered moot by the withdrawal of its representation petition. Upon the denial
(continued...)

On March 10, 2017, the Hearing Examiner issued his decision finding that GWU violated the Act and recommended the following remedies: a one-year election bar from the date of the decision to allow Local 3408 to negotiate a successor CNA with Atlantic County; a ban on petitions from GWU or its agents seeking to represent these Meadowview employees until the open period in a second successor CNA between Local 3408 and Atlantic County, provided that no agreement exceeds an expiration date of December 31, 2022.^{5/} Additionally, he recommended that GWU post on its website, for 60 consecutive days, a hyperlink to the Notice to Employees attached to the Hearing Examiner's Report.^{6/}

On March 20, 2017, GWU filed exceptions to the Hearing Examiner's report. On March 27, Local 3408 filed a response.

4/ (...continued)
of that motion by the Hearing Examiner, GWU filed a motion "for summary judgment to dismiss," which was treated as a request seeking special permission to appeal under N.J.A.C. 19:14-4.6(b). On February 13, the Commission Chair denied the application, and on the same date, GWU submitted a "submission in lieu of closing argument." The Hearing Examiner declined to accept the submission, finding it to be untimely.

5/ Normally, an existing CNA applicable to county employees bars the filing of a representation petition except during the 30-day "open period" in the final year of a CNA of no more than 3 years in length. N.J.A.C. 19:11-2.8(c)(2).

6/ The Hearing Examiner's recommended order also gives Local 3408 the option, if the County assents, to post the same notice on workplace bulletin boards.

EXCEPTIONS

GWU advances procedural exceptions that the Hearing Examiner should have accepted its post-hearing brief and that its motions to the Hearing Examiner and Commission Chair should not have been denied.^{7/} GWU's other exceptions assert:

- That the Hearing Examiner should not have referenced a previous GWU representation petition, RO-2016-043, involving another AFSCME local, 2783, in Findings of Fact 7, 8, and 9;
- That the Hearing Examiner should not have inferred in Finding of Fact 9 that the AFSCME Local 2783 President in that case worked with GWU President Tucker in providing those unit members with checks for "union rebates" around the time when GWU filed its petition to represent them;
- That the Hearing Examiner erroneously determined that there was an "agency" relationship between Local 3408 officers and GWU; and
- That the Hearing Examiner's citation of a particular Commission case as analogous to this case was incorrect.^{8/}

GWU also excepts to the Hearing Examiner's conclusion that GWU dissipated Local 3408 funds. GWU asserts that given its withdrawal of the representation petition, no further remedy is required.

Local 3408 responds that GWU's summary judgment motion was out of time and lacked merit and, further, that GWU's post-

^{7/} See note 4.

^{8/} The case objected to by GWU is Hillside Tp., H.E. No. 77-8, 3 NJPER 1, 9 (1976), aff'd, P.E.R.C. No. 77-47, 3 NJPER 98 (1977). H.E. at 33.

hearing brief was properly rejected because it was filed two weeks late. Local 3408 asserts that GWU's exceptions provide no legal or factual basis to dispute the Hearing Examiner's central findings that GWU's agents diverted \$20,000 from Local 3408 on the advice of GWU President David Tucker in order to offer gift cards for supporting GWU in its representation contest with Local 3408. Local 3408 asserts that GWU's exceptions to the Hearing Examiner's references to RO-2016-043 have no legal authority because that representation petition file is public record and the Hearing Examiner could take administrative notice of it pursuant to N.J.A.C. 19:14-6.6. Local 3408 disputes GWU's contention that no remedy is needed beyond its withdrawal of the representation petition, arguing that the strongest possible remedy is required.

STANDARD OF REVIEW

In analyzing GWU's exceptions, we are constrained by the standards of review set forth in N.J.S.A. 52:14B-10(c). We may not reject or modify any findings of fact as to issues of lay witness credibility unless we first determine from our review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence. See New Jersey Div. of Youth and Family Services v. D.M.B., 375 N.J. Super. 141, 144 (App. Div. 2005);

Cavalieri v. PERS Bd. of Trustees, 368 N.J. Super. 527, 537 (App. Div. 2004).

We have reviewed the record. N.J.A.C. 19:14-7.2.^{9/} We adopt and incorporate the Hearing Examiner's findings of fact, which are generally correct and supported by citations to the record (H.E. at 4-26).

FACTS

We briefly summarize the essential facts. In August 2016, unit member McGlone was Local 3408's President, unit member Cooper was Local 3408's Secretary-Treasurer, and unit member Kay Austin was Local 3408's Secretary. H.E. at 6-7. They were also members of Local 3408's executive board. Id.

AFSCME locals have been authorized to distribute \$25-50 gift cards to their members, normally around holidays, following majority votes of their executive board and general membership. H.E. at 8. The general membership may vote to increase or decrease the gift card amount. 2T10.^{10/} Mattie Harrell,

^{9/} "The record shall consist of the charge and any amendments; the complaint and any amendments; notice of hearing; answer and any amendments; motions; rulings; orders; any official transcript of the hearing; and stipulations, exhibits, documentary evidence, and depositions admitted into evidence; together with the hearing examiner's report and recommended decision and any exceptions, cross-exceptions, and briefs and answering briefs in support of, or in opposition to, exceptions and cross-exceptions."

^{10/} References to "1T_" and "2T_" are to the transcripts of the first and second day of hearing, respectively.

Executive Director of AFSCME District Council 71, testified that in her experience the highest gift card amount was \$100. Id.

McClone testified that on an unspecified date in August 2016, prior to August 17, GWU President Tucker attended a Local 3408 executive board meeting and provided authorization cards for unit employees to sign indicating their interest in being represented by GWU. H.E. at 14. During the meeting, executive board members were deadlocked over whether they wanted to be represented by GWU instead of Local 3408. Id. On a second unspecified date in August 2016, Tucker met with about 18 to 20 Local 3408 members. H.E. at 15. At one of these meetings, Local 3408's executive board recommended that Local 3408's funds be used to provide "gift card" rebates or "dues reimbursements" to the membership. Id.; 2T174.

On August 18, 2016, McGlone and Cooper wrote a Local 3408 check for \$20,000 payable to cash and opened an account in their names for that amount at a local TD Bank Branch. H.E. at 21. Their intent was to redistribute those funds as gift cards to the membership. Id. About \$3,200 remained in Local 3408's bank account. Id. On August 19, the TD Bank fraud department called Council 71 and told Executive Director Harrell that Cooper had deposited the \$20,000 Local 3408 check into a personal account. H.E. at 22. Harrell contacted Local 3408 officials and demanded an accounting and explanation. Id. Harrell and Council 71

Associate Director Joseph Waite met with McGlone and Cooper at Meadowview that day. Id. McGlone admitted the diversion of funds for the purpose of dues reimbursement gift cards. Id.

Cooper refused to provide Harrell with the executive board or membership meeting minutes or notes, and refused Harrell's demand to return the money to AFSCME. Id. Austin, as Local 3408's Secretary at the August 17, 2016 membership meeting, testified that she recorded the minutes but did not include in them the membership vote approving the distribution of Local 3408 funds as gift cards. 2T146-151. During McGlone's testimony, he acknowledged that Harrell asked him to turn over minutes and that he never did so. 2T96-97.

Harrell called the local police and an officer arrived and questioned McGlone and Cooper, both of whom declined to provide statements. H.E. at 23. Immediately after the police questioned her, Cooper was observed by other unit members at the Meadowview facility acting flustered. Id. Unit member Lannavia Wright testified:

[Cooper] said that she took the money out and put it in her account. . . . She said that Mr. Tucker had her covered. And that he told her how to go about doing this, that she took out \$20,000 and left \$3,000 and some odd dollars in the account, she left in there, to make it seem like it wasn't stealing the money.

[Id.]

In the absence of either Cooper's or Tucker's rebuttal or denial, the Hearing Examiner credited Wright's testimony and found that Cooper's admissions regarding Tucker's instructions about how to divert Local 3408 funds were excited utterances, rendering them especially reliable. H.E. at 24.

On August 23, 2016, AFSCME removed Local 3408's executive board and imposed an administratorship pending a hearing. Around September 14, AFSCME international representatives from other locations, Patricia George and Cleodis Mobley, Jr., were assigned to Meadowview to assist and train the membership on union issues. H.E. at 24-25.

On September 22, 2016, George attended a meeting at which Cooper and McGlone advocated on behalf of GWU to unit members. H.E. at 25. Cooper and McGlone advocated for GWU while campaigning against AFSCME by claiming that AFSCME took the unit members' money and Harrell was there to get their money. H.E. at 25-26. Mobley testified that "during the whole time [we were training membership], and this came from two ladies in particular. They were saying that . . . 'If we go to this other union, we would get gift cards.'" 2T21. George testified that the topic of gift cards came up every day that she was at Meadowview, and that "the way it was presented to them was that

the gift cards were a benefit of membership if they were with the GWU." 2T21; 1T139-141.^{11/}

ANALYSIS

Initially, we reject GWU's exception to the Hearing Examiner taking administrative notice of a representation petition GWU filed in April 2016 to represent AFSCME Local 2783. By Commission rule, hearing examiners may take administrative notice of facts, including facts within the Commission's specialized knowledge. N.J.A.C. 19:14-6.6(a) provides, in pertinent part:

Notice may be taken of administratively noticeable facts and of facts within the Commission's specialized knowledge. The material noticed shall be referred to in the hearing examiner's report and recommended decision, and any party may contest the material so noticed by filing timely exceptions pursuant to N.J.A.C. 19:14-7.3 (exceptions; cross-exceptions; briefs; answering briefs).

Commission hearing examiners have previously taken administrative notice of facts contained in other closed or pending Commission files, including facts from representation files for use in unfair practice proceedings. See, e.g., Downe Twp. Bd. of Ed., P.E.R.C. No. 87-154, 13 NJPER 576 (¶18211 1987), adopting H.E. No. 87-53, 13 NJPER 245 (¶18099 1987) (notice of a prior Commission decision for evidence of anti-union animus);

^{11/} We clarify the Hearing Examiner's report (H.E. at 25) in that George did not testify that she heard McGlone and Cooper tell unit members that the gift cards "were a benefit of GWU membership."

Essex Cty., H.E. No. 89-40, 15 NJPER 351 (¶20158 1989), adopted P.E.R.C. No. 89-133, 15 NJPER 416 (¶20171 1989) (notice of facts in representation and decertification petitions); and State of New Jersey, H.E. No. 90-30, 16 NJPER 72 (¶21031 1989), adopted P.E.R.C. No. 90-100, 16 NJPER 303 (¶21125 1990) (notice of documents from representation petition critical to dismissal of unfair practice charge).

Thus, the Hearing Examiner did not abuse his discretion in taking notice of the matter involving AFSCME Local 2783. Moreover, there is sufficient record evidence, without considering the Local 2783 matter, to sustain the Hearing Examiner's ultimate conclusion that GWU violated subsection 5.4(b)(1) of the Act.

Next, we consider GWU's exception to the finding that Local 3408's President McGlone and Secretary-Treasurer Cooper were acting as agents of GWU when they removed Local 3408 funds and told unit members that they would be reimbursed with "union rebates" or "gift cards" if they supported and voted for GWU. The Hearing Examiner properly relied upon the following evidence in coming to that conclusion:

- The un rebutted testimony of unit member Wright that Cooper told her that GWU President Tucker instructed Cooper on how to remove money from Local 3408's account and put it into her account without making it appear that she was stealing. H.E. at 23-24, 29-31.

- The uncontroverted testimony of AFSCME employee George that at a meeting, apparently with unit members at Meadowview, on an undisclosed date she heard Cooper say, "basically, you're not getting them [gift cards] if you go with AFSCME." 1T147.
- George's testimony, based upon questions she fielded from County employees at Meadowview, that "the way it was presented to them was that the gift cards were like a benefit of membership if they were with the GWU." 1T140.
- The close timing between Tucker's attendance at two meetings in August 2016, one with the Local 3408's executive board, and one with the general membership, and the September 6 filing of GWU's representation petition.

We find it reasonable to conclude from this evidence that Tucker put in motion Cooper's and McGlone's raid on Local 3408's bank account and that the planned distribution of gift cards was intended to encourage Local 3408 unit members to support GWU's efforts to become the new majority representative. Thus, we agree with the Hearing Examiner that Cooper and McGlone were acting as the agents of Tucker and the GWU in raiding the funds for the purpose of influencing the outcome of the GWU representation petition, and we reject all exceptions related to that conclusion. H.E. 28-30.^{12/}

^{12/} We do not decide whether NLRB v. Kentucky Tennessee Clay Co., 295 F.3d 436 (4th Cir. 2002), and its test for determining whether employee conduct during an election should be attributed to the union intended to benefit from the conduct, rather than the usual agency analysis, would be appropriately applied here, where the issue is whether a rival union violated the Act through the conduct of the incumbent union's officers.

We next address GWU's general exceptions to the Hearing Examiner's finding of an unfair practice. An employee organization violates section 5.4(b)(1) of the Act when its conduct tends to interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by the Act. North Bergen Bd. of Ed., P.E.R.C. No. 90-15, 15 NJPER 522 (¶20215 1989). The conferral of benefits or promise of future benefits prior to a union election is improper as it tends to interfere with employees' free choice to select their preferred majority representative or no union. Passaic Valley Sewerage Commission, P.E.R.C. No. 81-51, 6 NJPER 504, 505 (¶11258 1980); Borough of Wildwood Crest, P.E.R.C. No. 88-54, 14 NJPER 63 (¶19021 1987); Cf. Hillside Tp., P.E.R.C. No. 77-47, 3 NJPER 98 (1977) (employer violated 5.4(a)(1) by offering promotion to union president during collective negotiations). Where such conduct is shown to have occurred in an unfair practice charge prior to the election, the Director of Representation may block further processing of the representation petition pending the outcome of the charge. See, e.g., Atlantic City Convention & Visitors Auth., D.R. No. 2002-9, 28 NJPER 170 (¶33061 2002); Leap Academy Charter School, D.R. No. 2006-17, 32 NJPER 142 (¶65 2006).

Pre-election promises of benefits (or threats) in exchange for votes can tend to interfere with or coerce employees in the exercise of their rights under the Act whether that offer comes

from the employer or a union. Cf. County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983) (incumbent union violated 5.4(b)(1) by threatening unit members who solicited signatures for rival union and disrupting its meetings). The National Labor Relations Board (NLRB) has held that:^{13/}

[A] Union . . . is, like an employer, barred in the critical period prior to the election from conferring on potential voters a financial benefit to which they would otherwise not be entitled.

[Mailing Services, Inc., 293 NLRB 565, 565 (1989).]

In NLRB v. Savair Mfg. Co., 414 U.S. 270 (1973), the United States Supreme Court invalidated an election due to the union's pre-election offer to waive its fees. The Supreme Court held:

By permitting the union to offer to waive an initiation fee for those employees signing a recognition slip prior to the election, the Board allows the union to buy endorsements and paint a false portrait of employee support during its election campaign. . . . We do not believe that the statutory policy of fair elections prescribed in the Tower case permits endorsements, whether for or

^{13/} NLRB and federal court decisions interpreting the Labor Management Relations Act in the private sector may be used as a guide in interpreting our Act in representation and unfair practice cases. See, Lullo v. International Ass'n of Firefighters, 55 N.J. 409, 423-424 (1970); Galloway Twp. Ass'n of Educ. Secs., 78 N.J. 1 (1978). Cf. Ridgfield Park Educ. Ass'n v. Ridgfield Park Bd. of Educ., 78 N.J. 144, 159 & n.2 (1978) (cautioning of the limited relevance of private sector precedents with respect to scope-of-negotiations determinations).

against the union, to be bought and sold in this fashion.

[Savair Mfg. Co., 414 U.S. at 276-277.]

Similarly, in Comcast Cablevision-Taylor v. NLRB, 232 F.3d 490 (6th Cir. 2000), the Sixth Circuit Court of Appeals held the union's pre-election offer of transportation and lodging for a weekend trip could have impermissibly influenced employees and thus warranted overturning the election the union had won. The Court stated:

When examining a preelection benefit conferred by a union . . . the first question is whether the benefit is sufficiently valuable and desirable in the eyes of the person to whom it is offered to have the potential to influence that person's vote.

[Comcast Cablevision-Taylor at 495.]

See also Mailing Services, supra, 293 NLRB at 565-566 (election invalidated where union provided free health screenings before election); Owens-Illinois, 271 NLRB 1235, 1235-1236 (1984) (election invalidated where union distributed union jackets before election); and General Cable Corp., 170 NLRB 1682, 1682-1683 (1968) (election invalidated where union distributed \$5 gift cards before election).^{14/}

^{14/} The NLRB has also found that a union's promise to waive accrued back dues during the critical period preceding an election constitutes an objectionable grant of a tangible financial benefit. See Go Ahead North America, LLC, 357 NLRB 77 (2011); McCarty Processors, Inc., 286 NLRB 703 (1987).

Here, GWU, through its President and its agent Cooper, attempted to use the promise of gift cards to Local 3408 members to secure signatures on authorization cards in support of GWU. Such conduct would tend to interfere with and coerce unit members in the exercise of their rights under the Act to select, or change, a majority representative. Therefore, we also conclude that GWU violated subsection 5.4(b)(1) of the Act.

We now address GWU's argument that there should be no remedy given the withdrawal of its representation petition. Our remedial authority under the Act derives from N.J.S.A. 34:13A-5.4(c), which provides:

The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. . . . If, upon all the evidence taken, the commission shall determine that any party charged has engaged or is engaging in any such unfair practice, the commission shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this act.

[Emphasis added.]

Interpreting the statute, the Supreme Court in Galloway Twp. Bd. of Educ. v. Galloway Twp. Ed. Ass'n, 78 N.J. 25, 39 (1978), held that the cessation of conduct violative of the Act does not necessarily render an unfair practice case moot, stating:

By the use of the words "has engaged" in N.J.S.A. 34:13A-5.4(c), we discern a clear legislative intent that PERC's authority to adjudicate unfair practices should apply even where the offending conduct has ceased. We accordingly hold . . . that PERC possesses the authority under that statute to adjudicate and remedy past violations of the Act if, in its expert discretion, it determines that course of action to be appropriate under the circumstances of the particular case.

Moreover, the termination of unlawful conduct by a party charged with unfair practice is similarly immaterial to the issue of the enforceability of PERC's order in an action initiated pursuant to N.J.S.A. 34:13A-5.4(f).

The Court also highlighted the Commission's discretion to issue an order as a deterrent to the resumption of the unlawful conduct:

There can be no guarantee that a party charged with an unfair practice, having voluntarily ceased its unlawful conduct, will not at some future time disavow its adherence to the Act's requirements. The imposition of a continuing obligation on that party to conform its conduct to law is the best means of diminishing the likelihood that it will repeat its demonstrated disdain for employee rights and statutory mandate.

[78 N.J. at 46.]

Consistent with the foregoing, we find that the Hearing Examiner's remedy of allowing Local 3408 a one-year election bar from all representation petitions is a reasonable and appropriate remedy. This restriction will promote the stability of the

employer-employee relationship that GWU and its agents undermined by interfering with employee rights under the Act.^{15/}

However, we decline to impose the Hearing Examiner's additional recommended remedy of precluding the processing of petitions from GWU or its agents to represent County employees at Meadowview until the open period in a second successor CNA. We do so because that bar, given its potential duration through 2022, could infringe upon employee free choice should a majority of the unit desire, in the absence of coercion or interference, to be represented by GWU after the one-year election bar but before 2023. Cf. Galloway, 78 N.J. 1 at 18-19, supra (explaining federal rule that "[although] a union which has been freely chosen by the unit employees as their bargaining representative must be permitted to enjoy that right . . . no injustice is done to the employees who no longer support the union by enforcement of a bargaining order, since they remain free to resort to the representation proceedings available under the LMRA to express their desire to discontinue their representation by the union."). Moreover, the crux of GWU's misconduct was the promise of gift cards by its agents in their effort to supplant Local 3408, not any continuing advocacy against AFSCME by McGlone or Cooper. Barring GWU from filing a representation petition with regard to

^{15/} See Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), for a discussion of the interests served by an election bar under normal circumstances.

County Meadowview employees until the open period prescribed by N.J.A.C. 19:11-2.8(c) (2) after the CNA now in effect or being negotiated, together with the election bar imposed by the Hearing Examiner, strikes the proper balance.^{16/}

We also decline to order GWU to modify its website to include a link to our decision. Our decisions are public record, available on multiple databases, including our website. Also, AFSCME and its locals may choose to disseminate the decision or draw attention to it by methods of their choice. Therefore, we see no reason to rely upon or compel GWU to publicize its unfair practice.

Though we have modified the remedy, we disagree with GWU's assertion that the Hearing Examiner's remedy amounts to "punitive damages." The Commission is not authorized to order punitive damages.^{17/} Galloway, 78 N.J. 1 at 12, supra (affirmative action to effectuate the policies of the Act "is remedial, not punitive"). The Hearing Examiner's remedies were intended not to punish, but to ameliorate the effects of GWU's misconduct while

^{16/} Should the employees already be in a successor CNA, GWU may, like all other parties, file a representation petition during the open period in the final year of a CNA of three years or less, or after the third year of a CNA exceeding three years. See N.J.A.C. 19:11-2.8(c)-(d).

^{17/} Nor is there statutory authorization for an award of attorney's fees. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd, 10 NJPER 78 (¶15043 App. Div. 1983).

also serving to deter future misconduct. Although Local 3408 requested "monetary penalties" and "attorneys fees" in its post-hearing brief, the Hearing Examiner appropriately declined such relief.

We also reject GWU's remaining exceptions, which are without merit or otherwise do not warrant setting aside the Hearing Examiner's report. Thus, we agree with the Hearing Examiner, for the reasons set forth in his letter to the parties dated February 1, 2017, that the withdrawal of GWU's representation petition did not render the unfair practice charge moot.^{18/} He noted the seriousness of the allegations, the potential for the alleged misconduct to recur, the substantial interests implicated in this matter, and the rights protected by the Act. The conduct alleged warranted a remedy to deter future misconduct, not the dismissal of the complaint on procedural grounds. Accordingly, we hold that GWU's withdrawal of its representation petition did not render Local 3408's charge moot.

We also find that the Commission Chair did not err in denying GWU's request for special permission to appeal the Hearing Examiner's denial of summary judgment. As she noted, GWU

^{18/} By the same letter, the Hearing Examiner denied GWU's motion for summary judgment, finding it to be untimely because it was filed after the conclusion of the hearing. While our rules might not specifically say so, they contemplate the filing of such motions before, not after, a hearing. See N.J.A.C. 19:14-4.8.

did not present "special circumstances" warranting interlocutory review. See also, N.J.A.C. 19:14-4.6(a).^{19/}

ORDER

1. AFSCME Local 3408 shall receive the benefit of an election bar of one year from the date of this decision in order to negotiate a successor collective negotiations agreement with Atlantic County. See N.J.A.C. 19:11-2.8(b).

2. The Commission will not process any representation petition filed by GWU or its agents or representatives seeking to represent County employees at Meadview until the open period for a successor collective negotiations agreement between Atlantic County and Local 3408. See N.J.A.C. 19:11-2.8(c)(2).

3. Local 3408, with the County's assent, may post on any bulletin board made available by the County to its employees who work at Meadowview Nursing Home and the County Kitchen/Warehouse and may post in all places where notices to such employees may be customarily posted, copies of the attached Notice. Copies of such notice shall be signed by the Respondent's authorized representative. With regard to postings at County facilities,

^{19/} "Unless expressly authorized by these rules, rulings by the hearing examiner on motions and objections shall not be appealed to the Commission except by special permission of the Commission, but shall be considered by the Commission in reviewing the record, if exception to the ruling or order is included in the statement of exceptions filed with the Commission, pursuant to N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs)."

the notice may then be posted immediately and shall be maintained for at least sixty (60) consecutive days or such shorter period of time to which the County may assent.

4. By written notice to the Chair of the Commission within twenty (20) days of receipt, GWU shall confirm that its authorized representative has signed the attached notice.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Jones and Voos voted in favor of this decision. None opposed. Commissioner Eskilson was not present.

ISSUED: August 17, 2017

Trenton, New Jersey



NOTICE TO 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 Atlantic County employees represented by AFSCME Local 3408:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, particularly by removing \$20,000 from the bank account of AFSCME Local 3408 for the purpose of financially remunerating unit employees for supporting GWU in acquiring an adequate showing of interest in its effort to succeed AFSCME Local 3408 as majority representative of certain employees at Atlantic County's Meadowview Nursing Home.

Docket No. CO-2017-074

Government Workers Union
(Respondent)

Date: _____

By: _____

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372