P.E.R.C. NO. 89-120

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-H-89-62

TEAMSTERS UNION LOCAL NO. 11,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission in the absence of exceptions, dismisses a complaint based on an unfair practice charge filed by Teamsters Union Local No. 11 against Middlesex County College. The charge alleged that the College violated the New Jersey Employer-Employee Relations Act by discriminating against a shop steward and assistant shop steward because of their union activity.

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Charging Party.

Appearances:

For the Respondent, Jackson, Lewis, Schnitzler & Krupman, Esqs. (Jeffrey J. Corradino, of counsel)

For the Charging Party, Joseph Girlando, Business Representative

DECISION AND ORDER

On August 24, 1988, Teamsters Union Local No. 11 filed an unfair practice charge against Middlesex County College. The charge alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (3),[1/] by discriminating against a shop steward and assistant shop steward because of their union activity.

On October 21, 1988, a Complaint and Notice of Hearing issued. On November 4, the College filed an Answer denying that 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, 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."

steward and assistant shop steward were engaged in protected union conduct or that it discriminated against them for such conduct.

On December 5 and 6, 1988, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. The College waived oral argument but filed a post-hearing brief on January 25, 1989. Local No. 11 waived both.

On March 29, 1989, the Hearing Examiner recommended that the Complaint be dismissed. H.E. No. 89-28, 15 NJPER ___ (¶ 1989). He found no evidence that the College was hostile toward the employees' exercise of protected rights.

The Hearing Examiner served his report on the parties and informed them that exceptions were due April 12, 1989. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's findings of fact are accurate. I incorporate them here.

Acting pursuant to authority granted to me by the full Commission in the absence of exceptions, I agree that Local No. 11 failed to prove hostility to protected rights. Accordingly, the Complaint is dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 1, 1989

H.E. NO. 89-28

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

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Respondent,

-and- Docket No. CO-H-89-62

TEAMSTERS UNION LOCAL NO. 11,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss the Complaint which alleged that the Respondent College violated §§5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act by discriminatorily evaluating the Shop Steward and the Assistant Shop Steward because of their activities on behalf of the Charging Party, which evaluations were allegedly in retaliation for the filing and processing of a grievance by the Steward and his Assistant. The Unfair Practice Charge warranted dismissal because of the total failure of the Charging Party to prove hostility or animus under the first part of the Bridgewater test, citing as authority Lyndhurst Bd. of Ed., P.E.R.C. No. 87-139, 13 NJPER 482 (¶18177 1987).

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.

H.E. NO. 89-28

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

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Respondent,

-and- Docket No. CO-H-89-62

TEAMSTERS UNION LOCAL NO. 11,

Charging Party.

Appearances:

For the Respondent
Jackson, Lewis, Schnitzler & Krupman, Esqs.
(Jeffrey J. Corradino, of counsel)

For the Charging Party
Joseph Girlando, Business Representative

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on August 24, 1988 by Teamsters Union Local No. 11 ("Charging Party" or "Local 11") alleging that Middlesex County College ("Respondent" or "College") has 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. ("Act"), in that in July 1988, the Respondent discriminated against the Shop Steward and the Assistant Shop Steward by giving them a performance evaluation appraisal which was "discriminatory" because of their protected union activities and thereafter by rejecting the Shop Steward's grievance for overtime compensation,

instead awarding such overtime compensation to a non-grievant; all of which is alleged to be in 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, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 21, 1988. Pursuant to the Complaint and Notice of Hearing, hearings were held as scheduled on December 5 and December 6, 1988, 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 Respondent College only filed a post-hearing brief on January 25, 1989.[2/]

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

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."

2/ The Hearing Examiner inquired directly of the Charging Party as to whether it intended to file a post-hearing brief and was advised on January 26, 1989, that it would not do so.

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

FINDINGS OF FACT

1. Middlesex County College is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Teamsters Union Local No. 11 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. Gary V. Noto and Linda M. Bridge are public employees within the meaning of the Act, as amended, and are subject to its provisions. Noto is a Mechanic II and Bridge is a Mechanic I in the Respondent's Maintenance Department. At the time of the hearing Noto had been the Shop Steward for Local 11 since September 1987 and Bridge had been the Assistant Shop Steward for an undetermined period of time and prior thereto she had been the Chief Shop Steward for four years (1 Tr 10, 11, 72).

4. Local 11 is recognized as the sole and exclusive collective negotiations representative for the Respondent's custodial, warehouse, grounds and maintenance employees (J-1, p. 1). There are approximately sixty (60) employees currently in the unit (1 Tr 61).

5. Among the levels of supervision in the Respondent's Maintenance Department, there is a Director of Plant Operations, Jerome M. Holzman, and a Supervisor of Maintenance, Joseph Fragaso (1 Tr 87, 88; 2 Tr 5).

6. The College presently has five collective negotiations units and David C. Morris, the Assistant to the President for Employee Relations, etc., is responsible for the labor relations oversight of these five collective negotiations units, his contractual role beginning at the Fourth Step of the grievance procedure (2 Tr 57, 58; J-1, pp. 16, 17).

7. It appears that at least once a year all employees are required to produce their "ID" card and sign for their pay checks on a given payday (2 Tr 61). May 13, 1988, was such a payday and on that date night shift employees were unable to receive their checks until the end of the shift and Noto appeared to represent them in the ensuing dispute. The problem was quickly resolved and the night shift employees received their checks. [1 Tr 11-14; 2 Tr 61, 62]. However, Noto, at about 9:00 a.m., encountered Morris, who got Noto into a corner and stated to him, "Listen here, you got me on this one you Son-of-a-Bitch," following which Noto asked Morris if he was taking the matter personally and stated that he was only doing his job as Shop Steward. Morris responded, "Oh, no, no..." Noto testified further that he had received nothing but trouble since that incident. [1 Tr 15, 16]. However, when Morris was questioned on cross-examination as to this incident he categorically denied ever having referred to Noto as an "SOB," adding, that he has never spoken "...in those terms...in my over 20 years in this field...to employees...in that way..." (2 Tr 71). In evaluating the respective demeanors of Noto and Morris on this issue, the Hearing Examiner

credits the denial of Morris, particularly, since the May 13th encounter described by Noto makes it highly unlikely that an administrator of Morris' experience would have, in these circumstances, used the term "SOB."

8. Noto was evaluated on June 2, 1987, and received "Acceptable" ratings in the following nine categories: Initiative; Attitude; Interpersonal Skills; Timeliness of Work, Communication Skills, Amount of Work; Quality of Work; Job Knowledge; and Job Judgment (R-1).

9. However, on July 13, 1988, Noto received an evaluation which indicated that he was "Acceptable" in only two of the above nine categories, namely, Attitude and Interpersonal Skills (R-1). His evaluator was John V. Mondano, who had been Noto's foreman for only the prior four months. Mondano rated Noto as "Below Average" in the following six out of nine categories: Initiative; Timeliness of Work; Amount of Work; Quality of Work; Job Knowledge; and Job Judgment (R-2). Only in the category of Communications Skills did Mondano rate Noto "Above Average." Mondano added a personal comment to Noto's evaluation to the effect that he "...should continue attending trade schools...." Mondano acknowledged that Fragaso, his immediate supervisor, had assisted him in the evaluation of Noto since he, Mondano, had only been on the job as foreman for four months. [2 Tr 6-11].

10. Unlike Noto, there was not offered in evidence the 1987 evaluation for Bridge. Thus, no comparison can be made between

her 1987 evaluation and that on July 13, 1988 (R-4). Bridge's 1988 evaluation was also made by Mondano, who rated her "Below Average" as to Attitude; but "Acceptable" as to Interpersonal Skills, Communications Skills and Job Knowledge. Finally, Bridge was rated "Above Average" as to Initiative, Timeliness of Work, Amount of Work, Quality of Work and Job Judgment. Mondano's personal comment was that Bridge should improve her "...attendance and tardiness..." and attain "...additional trade courses..." (R-4). Bridge also testified that she was evaluated by Mondano and Fragaso (1 Tr 83). Bridge also acknowledged that her evaluation by Mondano was "fair and accurate" "for the most part..." (1 Tr 77). Bridge subsequently testified that she refused to sign her evaluation of July 13, 1988, because, after 15 years of employment, she disagreed with Mondano's rating that her Job Knowledge was just "Acceptable" (1 Tr 82, 83).3/

11. Notwithstanding that Local 11 alleged in its Unfair Practice Charge that Noto and Bridge, as its Shop Steward and Assistant Shop Steward, respectively, received a "discriminatory" performance evaluation because of protected activity (C-1), Noto testified that Mondano never took any action against him because of

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3/ The Hearing Examiner perceives no relevance to the fact that Noto and Bridge received improved reevaluations several days prior to the commencement of the instant hearing on December 5, 1988, [1 Tr 22, 67, 79; 2 Tr 13, 14] since these reevaluations occurred after the filing of the Unfair Practice Charge on August 24, 1988 (C-1) and are, thus, not probative on the issue of alleged discrimination by the College.

his "union activities." (1 Tr 33, 34). Mondano, whose demeanor impressed the Hearing Examiner as that of a candid and truthful witness, testified credibly that Noto's evaluation was based upon Noto's abilities to perform the work of a Mechanic II (2 Tr 6, 10, 11, 29, 40). The Hearing Examiner has attached no weight to Noto's testimony that his 1988 evaluation as a Mechanic II was "bad" as compared to his 1987 evaluation as a Mechanic III, which was "very good" (1 Tr 21; R-1, R-2) since there had been a change in Noto's evaluating supervisor [Sil D'Arco in 1987 and Mondano in 1988; R-1 & R-2]. Thus, reasonable judgments of performance might differ. Also, Noto's 1987 evaluation was made by D'Arco when Noto was a Mechanic III while Noto's 1988 evaluation was made by Mondano when Noto was a Mechanic II, the job duties of which were acknowledged by Noto to be "...a little more difficult" (1 Tr 36). Further, the Hearing Examiner attaches no weight to the testimony of Noto and Bridge that each was handed their evaluation late in the day (1 Tr 78) and that, following their refusal to sign their evaluations, a memo to that effect was placed in each of their personnel files (1 Tr 69-71, 78; R-3, R-5) since the refusal to sign the evaluation carries no discipline (1 Tr 70, 71).

12. One-third of the testimony adduced by the parties during the two days of hearing in this matter concerned the circumstances surrounding the filing of a grievance by Noto on July 19, 1988. [CP-1; 1 Tr 16-21, 46-59, 72-77, 84-86, 88-96; 2 Tr 14-21, 63-65]. The apparent reason for this emphasis by the

Charging Party on Noto's having filed a grievance on July 19th was the testimony of Noto that his evaluation (R-2, supra) occurred after he filed the grievance (CP-1, supra) [see 1 Tr 21] when in fact the evaluation was made by Mondano with the assistance of Fragaso on July 13, 1988, six days earlier.[4/]

13. Noto's grievance of July 19th was filed by him individually with Bridge as Steward (1 Tr 53-55). The thrust of the grievance was that Mondano as a non-unit supervisor performed bargaining unit work on Saturday, July 16, 1988, and Noto claimed that he should have been paid for the time that Mondano worked (1 Tr 16, 17).[5/] In the course of adjusting Noto's grievance, Holzman contacted Morris, who spoke specifically about whether or not a foreman should have been allowed to perform bargaining unit work (1 Tr 90, 95). The response of Morris to Holzman was that if the work was not of an emergency nature, then the College had violated the

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4/ If it is the contention of the Charging Party that the Hearing Examiner should draw an inference that the College discriminated against Noto because he received a less than favorable evaluation on July 13, 1988, in retaliation for his having filed a grievance (CP-1) on July 19th, then the Hearing Examiner must reject this contention since no causal connection exists between the two events. The record is clear that the grievance filing occurred six days after the evaluation (R-2) and, thus, there is no nexus.

5/ Holzman, the Director of Plant Operations, testified credibly that because Noto had filed a "general grievance" he assumed that he was filing it in his position as Shop Steward (1 Tr 89).

contract and "...somebody had to get paid..." (2 Tr 64).[6/] Thereafter Holzman spoke with Mondano and ascertained that he had performed bargaining unit work on the day in question; thus, Holzman decided to "pay" (1 Tr 94). Holzman answered the grievance following a grievance hearing on July 27, 1988, as follows: "It is agreed that John Mondano performed work, as noted herein, rightly belonging to a bargaining unit member. Therefore, proper compensation will be allowed." (CP-1, emphasis supplied; 1 Tr 94). Holzman testified without contradiction that he made no determination as to who would be paid and he instructed Mondano to check his records to find out which Mechanic I will be eligible as the "low man" (1 Tr 94). This meant that the "low man" on the overtime sheet for Mechanic I was to be paid and it was ultimately determined that Kenneth Sobie was the employee to be paid (1 Tr 95, 96).[7/] Although Noto, as a Mechanic II, insisted in his testimony that Holzman on two occasions after July 27, 1988, stated that he, Noto, would be paid, the Hearing Examiner finds more credible the testimony of Holzman, supported by Mondano, that payment was to be

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6/ Article XVI, Section 3 provides that: "In the absence of emergency conditions, employees not included in the bargaining unit shall not be permitted to perform duties of employees in the aforesaid bargaining unit..." (J-1, p. 19).

7/ The result sought by Holzman of seeking out the "low man" is consistent with the provision in Article V, Section 7, regarding the distribution of overtime, which provides that "Overtime shall be distributed... as equitably as practical among the employees qualified and capable of performing the work available..." (J-1, p. 4).

made to a Mechanic I, who was "low man" and that this individual was ultimately determined to be Sobie (1 Tr 19-21, 89-92; 2 Tr 21).

14. Noto testified that as Shop Steward he spends ten to 15 hours per week on union business (1 Tr 60, 61). From the time that Noto became Shop Steward in September 1987, the policy was that he could request permission to conduct union business (1 Tr 23, 25, 27). However, Noto testified that after he filed his grievance in July 1988 (CP-1, supra) Mondano told him that Morris "would like" him to punch his time card "in and out" when going on union business, which Noto claimed was contrary to the prior policy of the College (1 Tr 25). Noto immediately went to see Morris to verify the change in procedure. When Mondano stated that he wanted Noto to punch in and out, Noto refused and thereafter he was not required to do so. No one in administration has taken any action against Noto for his refusal to punch in or out. [1 Tr 62, 63; 2 Tr 25]. Mondano testified that his request that Noto punch in and out occurred in either April or May 1988[8/] and resulted from his having asked Morris if he could alter the prior practice (2 Tr 22, 23, 26, 27). Morris agreed that he could require Noto to punch in and out but that it was not necessary (2 Tr 22, 23, 27). When Noto refused Mondano's request that he punch in and out before undertaking union

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8/ Given Noto's lack of precision in recalling times and dates, the Hearing Examiner credits the testimony of Mondano that his request that Noto punch in and out before conducting Union business occurred in April or May 1988, prior to the filing of CP-1. [See, for example, Finding of Fact No. 12, supra, and 1 Tr 21].

business, it was mutually agreed that Noto would notify Mondano "...when he left and...when he returned" (2 Tr 25).

DISCUSSION AND ANALYSIS

The Respondent College Did Not Violate §§5.4(a)(1) And (3) Of The Act Since There Was No Proof Of Animus And Because It Established A Legitimate Business Justification For Its Actions.

This case is governed by Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984) where the New Jersey Supreme Court adopted the analysis of the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980)[9/] in "dual motive" cases, involving an alleged violation of Section 8(a)(1) or Section 8(a)(3) of the National Labor Relations Act.[10/] In such cases, Wright Line and Bridgewater articulated the following test in assessing employer motivation: (1) the Charging Party must make a prima facie showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision; and (2) once this is established, the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected activity (see 95 N.J. at 242), i.e., the employer must establish a legitimate business justification for its action.

9/ The United States Supreme Court approved the NLRB's "Wright Line" analysis in NLRB v. Transportation Mgt. Corp., 562 U.S. 393, 113 LRRM 2857 (1983).

10/ These provisions of the NLRA are directly analogous to Sections 5.4(a)(1) and (3) of our Act.

The Court in Bridgewater further refined the above test by adding that the protected activity engaged in must have been known by the employer and, also, it must be established that the employer was hostile towards the exercise of the protected activity (see 95 N.J. at 246).[11/] Finally, as in any case involving alleged discrimination, the Charging Party must establish a causal connection or nexus between the exercise of the protected activity and the employer's conduct in response thereto: see Lodi Bd. of Ed., P.E.R.C. No. 84-40, 9 NJPER 653, 654 (¶14282 1983) and University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 86-5, 11 NJPER 447 (¶16156 1985).

As to the first part of the Bridgewater test, it is clear that Noto was engaged in protected activity under the Act when he initiated a grievance under the contractual grievance procedure and, further, that Bridge was also like engaged when she signed Noto's grievance (CP-1) as Steward (see Findings of Facts Nos. 12 & 13, supra). The Commission has held on many occasions that the filing of a grievance is protected activity: Lakewood Bd. of Ed., P.E.R.C. No. 79-17, 4 NJPER 459, 461 (¶4208 1978); Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333, 338 (¶15157 1984); Pine Hill Bd. of Ed., P.E.R.C. No. 86-126, 12 NJPER 434, 437 (¶17161

11/ The Court in Bridgewater stated further that the "Mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or a substantial reason for the employer's action" (95 N.J. at 242).

1986); and Hunterdon Cty. Sheriff, P.E.R.C. No. 87-13, 12 NJPER 685 (¶17259 1986).[12/]

The next area of inquiry is whether or not there is prima facie evidence that the College manifested hostility or anti-union animus towards Noto and Bridge, sufficient to satisfy the Bridgewater caveat, supra, that the "Mere presence of anti-union animus is not enough..." The Charging Party must also establish that "...anti-union animus was a motivating force or a substantial reason..." for the College's alleged discrimination in the evaluations of Noto and Bridge on July 13, 1988, and the failure of the College to pay Noto pursuant to his grievance of July 19th (CP-1, supra). It appears to the Hearing Examiner that the Bridgewater caveat also requires that the Charging Party establish a causal nexus between Noto's having initiated a grievance, Bridge having represented him, and the manifestation of hostility or animus by the College in response, i.e., the less than favorable evaluations of Noto and Bridge on July 13th and the failure of the College through Holzman to resolve Noto's grievance by payment to him for the work done by Mondano on the Saturday prior to the filing of the grievance.

While it is clear that Noto and Bridge engaged in protected activities under the Act, and that the College necessarily had

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12/ Since the College necessarily had knowledge of the grievance activity of Noto and Bridge, Local 11 has met the first and second requisites of the first part of Bridgewater, supra.

knowledge of their activities, the Hearing Examiner finds no prima facie evidence that the College manifested hostility or animus toward Noto and Bridge in response to their exercise of protected activities.

No evidence of animus can be found from the May 13, 1988, pay check incident since the Hearing Examiner has credited the denial by Morris that he referred to Noto as an SOB. [See Finding of Fact No. 7, supra]. Even if the Hearing Examiner was to assume that Morris had in fact used the term "SOB" in referring to Noto, it could be interpreted as banter or "shop talk." Thus, it appears that however the testimony of Noto is viewed, there is no evidence which would support a finding that the College through Morris manifested hostility or animus toward Noto on May 13th.

As previously found, the Hearing Examiner has concluded that there was no taint of retaliation in the evaluations made by Mondano on July 13, 1988, since Noto did not initiate a grievance until July 19th, six days later (see Finding of Fact No. 12, supra). In other words, a causal relationship is lacking. It is interesting to note that Bridge testified that her evaluation by Mondano was "fair and accurate" "for the most part..." (see Finding of Fact No. 10, supra). Also, notwithstanding that the Unfair Practice Charge alleged that Noto and Bridge received performance evaluation appraisals which were discriminatory because

of their protected union activity, Noto testified that Mondano never took any action against him because of his union activities. Further, although Noto and Bridge refused to sign their evaluations, this fact carried no discipline (see Finding of Fact No. 11, supra).

The last possible area of evidence, as to which hostility or animus might be inferred, originated with a subject not contained in the Unfair Practice Charge but was, however, fully litigated.[13/] Here Noto testified about the way in which he has functioned as a Shop Steward since September 1987. While he was originally not required to punch in and out when he went on union business, Mondano changed this policy after speaking with Morris in April or May 1988.[14/] After Noto went to see Morris to verify Mondano's change in procedure, Noto refused to punch in and out and, thereafter, as a result of a mutual agreement, Noto was required only to notify Mondano when he left on union business and when he returned. Since Noto prevailed completely on the issue the College could hardly be found to have manifested hostility or animus toward him.

This Hearing Examiner has recently had occasion to grant a Motion to Dismiss at the conclusion of the Charging Party's case in chief due

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13/ See Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550, 553 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (1983).

14/ The Hearing Examiner credited Mondano as to the date of this change, and did not credit the testimony of Noto that the change occurred after he filed his grievance on July 19, 1988 (see Finding of Fact No. 14, supra).

to the total lack of evidence of hostility or animus as between the employer and the alleged discriminatees: Lyndhurst Bd. of Ed., H.E. No. 87-56, 13 NJPER 285, 287 (¶18119 1987), adopted by the Commission in P.E.R.C. No. 87-139, 13 NJPER 482 (¶18177 1987) and, thus, the complaint was dismissed. The Hearing Examiner cannot distinguish the situation in this case as to the total lack of evidence of hostility or animus even though this case was fully litigated without a motion to dismiss having been made by the Respondent College.

Due to the failure of the Charging Party to have satisfied fully the three requisites of the first part of the Bridgewater test, the Hearing Examiner must recommend that the instant Complaint be dismissed. However, even assuming arguendo that the Charging Party has satisfied the hostility-animus requisite of Bridgewater, the Hearing Examiner concludes that the College has proved by a preponderance of the evidence that it had a legitimate business justification for its activities, namely, the evaluations given to Noto and Bridge on July 13, 1988, and the adverse resolution of Noto's grievance by the payment of the monies due to Mechanic I, Kenneth Sobie.

Findings of Facts Nos. 9-11, supra, regarding the evaluations of Noto and Bridge, and Finding of Fact No. 13, supra, regarding Noto's grievance of July 19th, demonstrate that the College acted evenhandedly and with legitimate reasons for the conduct of its representatives and agents. The testimony of the parties makes

clear that the evaluations were facially untainted by any illegality on the part of the College through Mondano and Fragaso. Finally, there is no evidence that Holzman acted with other than neutrality in deciding how to adjust Noto's grievance after he learned that Mondano had violated the collective negotiations agreement by performing bargaining unit work on the Saturday in question.

* * * *

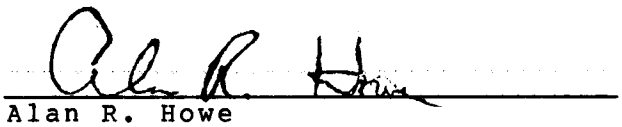
Upon the foregoing, and upon the entire record, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

The Respondent College did not violate N.J.S.A. 34:13A-5.4(a)(1) or (3) by its overall conduct herein with respect to the exercise of protected activities by Shop Steward Gary V. Noto and Assistant Shop Steward Linda M. Bridge.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: March 29, 1989
Trenton, New Jersey