P.E.R.C. NO. 87-157

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BERKELEY
(OCEAN COUNTY),

Respondent,

-and- Docket No. CI-87-12-28

MARIE VENEDICKTOW,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Marie Venedicktow against the Township of Berkeley. The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act when it downgraded her position in retaliation for her union activity. The Commission, in agreement with a Hearing Examiner, finds that anti-union animus did not motivate this personnel action.

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MARIE VENEDICKTOW,

Charging Party.

Appearances:

For the Respondent, Murray & Granello, Esqs.
(James P. Granello, of counsel)

For the Charging Party, Colflesh & Burris, Esqs.
(Ralph Henry Colflesh, of counsel)

DECISION AND ORDER

On August 19 and October 3, 1986, Marie Venedicktow filed an unfair practice charge and amended charge against her employer, the Township of Berkeley (Ocean County) ("Township"). The charge, as amended, alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1),(2),(3),(5) and (7),[1/] when,

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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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of

Footnote Continued on Next Page

allegedly in retaliation for her union activity, it initiated a Civil Service audit, resulting in a downgrading of her title; unilaterally set a salary for the downgraded title below the salary she had been receiving; constructively forced her to bump laterally into a non-unit position; reduced the salary for her new position, and afterwards harassed her.

On September 4, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Township then filed an Answer and an Amended Answer which denied any violations of the Act and asserted numerous affirmative defenses, including challenges to the charge's timeliness, Venedicktow's standing as an individual employee to allege a refusal to negotiate, the Commission's lack of jurisdiction to undo the results of the Civil Service audit, and its own legitimate reasons which motivated the audit request and its other actions.

On November 6 and December 11, 1986, Hearing Examiner Stuart Reichman conducted hearings. The parties made opening statements, examined witnesses, introduced exhibits and filed

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1/ Footnote Continued From Previous Page

employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; and (7) Violating any of the rules and regulations established by the commission."

post-hearing briefs, the last of which was received on March 12, 1987.

On April 14, 1987, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 87-59, 13 NJPER 338 (¶18139 1987) He found some evidence suggesting that the Township Administrator may have been hostile towards Venedicktow because of her support for the Berkeley Township Municipal Employees Association ("BTMEA"), but concluded that the preponderance of the evidence did not establish that this hostility was a substantial or motivating factor in the Civil Service audit or any other personnel actions. He also found that Venedicktow did not have standing as an individual employee to allege that the Township refused to negotiate with the majority representative over her salary.

On April 27, Venedicktow filed exceptions. She alleges that the Hearing Examiner erred in failing to find that anti-union animus motivated the disputed personnel actions and that she had been constructively discharged.

On May 11, the Township filed a response supporting the Hearing Examiner's recommendations and noting that Venedicktow had not been discharged and that, according to exhibits R-41 and R-42, the Civil Service department had determined the salary range for the downgraded position Venedicktow refused to accept.

On May 18, Venedicktow filed a response asserting that R-41 and R-42 were not part of the record.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-20) are a model of accuracy and thoroughness. We adopt and incorporate them here.2/

Under all the circumstances of this case, we also adopt the Hearing Examiners's recommendation that this Complaint be dismissed. In particular, we accept his credibility findings that the concerns of the Chief of Police about confidentiality, rather than the hostility of the Township Administrator towards protected activity, led to the Civil Service audit which in turn led to that department's independent determination that her position should be downgraded and the Township's further determination (made before the distribution of CP-8) setting the salary for Venedicktow's downgraded position. Venedicktow did not have standing to allege that the Township refused to negotiate over the salary for the downgraded position, and the Township had no obligation to negotiate over her salary in her new position since she is now a confidential employee. Last we agree with the Hearing Examiner that the record does not establish a pattern of harassment or discrimination forcing

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2/ Venedicktow asserts that the Hearing Examiner erred in stating that she issued a notice (CP-8) relating to all part-time employees instead of just permanent part-time employees. The notice is in fact addressed to all part-time employees and refers to a battle BTMEA won for part-timers, although other parts of the notice speak of permanent part-timers only. We agree with Venedicktow that R-41 and R-42 are not part of the record; the Hearing Examiner did not consider these documents either.

Venedicktow to exercise her bumping rights or making her new position unbearable.[3/] Accordingly, we dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid and Wenzler voted in favor of this decision. Commissioners Bertolino and Smith were opposed.

DATED: Trenton, New Jersey
June 17, 1987
ISSUED: June 18, 1987

3/ We judge only the legality under our Act of the disputed personnel actions, not their fairness or harshness under "just cause" or other standards.

H.E. NO. 87-59

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

In the Matter of

TOWNSHIP OF BERKELEY (OCEAN COUNTY),

Respondent,

-and- DOCKET NO. CI-87-12-28

MARIE VENEDICKTOW,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Township of Berkeley (Ocean County) did not violate section 5.4(a)(1), (2), (3), (5) or (7) of the New Jersey Employer-Employee Relations Act when it requested that the Department of Civil Service (now the Department of Personnel) perform a desk audit of the Charging Party's job and, subsequently, reduced her salary. The Hearing Examiner found that the Charging Party did not establish a causal connection between the Township's request for a desk audit and subsequent salary reduction and her participation in protected activity. However, even if the Township's actions were motivated by the Charging Party's participation in protected activity, the Hearing Examiner found that the Township would have taken the same actions even in the absence of protected activity.

Additionally, the Hearing Examiner found that the Charging Party was not constructively discharged when she laterally transferred from her position in the police department to a position in the Township Administrator's office.

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. 87-59

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

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TOWNSHIP OF BERKELEY (OCEAN COUNTY),

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Appearances

For the Respondent
Murray & Granello
(James P. Granello, of counsel)

For the Charging Party
Colflesh & Burris
(Ralph Henry Colflesh, of counsel)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

On August 19, 1986, Marie Venedicktow ("Venedicktow" or Charging Party") filed an unfair practice charge against the Township of Berkeley, Ocean County ("Township") (C-1)[1/] with the Public Employment Relations Commission ("Commission"). On October 3, 1986, the Charging Party filed an amendment to the charge (C-3). The charge alleges that the Township violated the New Jersey

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1/ C-1 refers to Commission exhibit 1 received in evidence; CP-1 refers to Charging Party exhibit 1 received in evidence; R-1 refers to respondent Township exhibit 1 received in evidence.

Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. ("Act"), specifically subsections 5.4(a)(1), (2), (3), (5) and (7),[2/] when it reduced Venedicktow's salary without negotiating with the majority representative in retaliation for participation in union activity. Additionally, Charging Party alleges that she was constructively discharged from her Administrative Clerk position in the police department.

On September 4, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-2).

On September 26, 1986, the Township filed an Answer generally denying that it retaliated against the Charging Party and that any unfair practice occurred (C-4). The Township raised numerous affirmative defenses including (1) the Charging Party, as an individual employee, lacks standing to present a claim alleging a violation of section 5.4(a)(5) of the Act, (2) the actions taken by the Township are all justified by legitimate and substantial

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2/ 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the commission."

business reasons, (3) certain actions taken by the Township raised in the charge occurred more than six months prior to the filing of the charge and (4) the Commission lacks jurisdiction to reinstate Venedicktow to her former position as Administrative Clerk since such charge was made pursuant to a job classification evaluation conducted by the Department of Civil Service (now the Department of Personnel). On October 21, 1986, the Township filed an Answer to the amended charge, generally denying any wrong-doing (C-5).

Hearings were conducted on November 6, and December 11, 1986, at the Commission's offices in Trenton, New Jersey, at which time the Parties were afforded the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. The Parties filed post-hearing briefs. The Charging Party's brief was received February 13, 1987 and the Township's brief was received on February 9, 1987. The Township filed a reply letter memorandum on March 2, 1987, and the Charging Party filed a reply brief on March 12, 1987.

Upon the entire record, I make the following:

FINDINGS OF FACT

The Township of Berkeley, Ocean County, is a public employer within the meaning of the Act (TA 8).[3/]

3/ TA 1 refers to the transcript dated November 6, 1986, page 1; TB 1 refers to the transcript dated December 11, 1986, page 1.

Marie Venedicktow is a public employee within the meaning of the Act (TA 8-9). Venedicktow began employment with the Township over twelve years ago as a temporary clerk typist. Later she was hired as a full-time police records clerk. In 1979, Samuel Britton, the Chief of Police at that time, requested that the Department of Civil Service perform a job classification review (desk audit) of Venedicktow's job. As a result of the desk audit, Venedicktow's job was upgraded to Administrative Clerk. (TA 45). Since the up-grading in 1979 until she left the Administrative Clerk's position in the Police Department in June, 1986, Venedicktow's duties remained basically the same (TA 45).

Prior to 1981, the IBEW represented Venedicktow and certain other employees employed by the Township. Venedicktow was one of about twelve employees who founded the Berkeley Township Municipal Employees Association ("BTMEA") in 1981. Venedicktow's job title remained in the collective negotiations unit. The BTMEA succeeded the IBEW as majority representative. In May, 1986, the International Brotherhood of Teamsters ("IBT") succeeded the BTMEA as majority representative (TA 72; TA 104). During the time the BTMEA was majority representative, Venedicktow served as secretary for the organization, and, for a short period of time, vice president (TA 47). As secretary, Venedicktow's initials appeared on every piece of correspondence sent to the Township from the BTMEA (TB 125). Venedicktow served on the BTMEA's board of arbitration and would attend arbitration hearings when a grievance progressed to

that step of the grievance procedure. Venedicktow was also a member of the BTMEA's negotiations team (TA 47-48).[4/] The BTMEA negotiated one contract (TA 48). Meetings between the Township and the BTMEA for a successor agreement were halted in early January 1986, when the IBT filed its representation petition. The IBT won the representation election, consequently, negotiations between the Township and the BTMEA never resumed (TA 105-106; TB 65).

Joseph V. Cara, Township Business Administrator represented the Township in negotiations with the BTMEA. The spokespersons for the BTMEA were Mr. Mark Blunda, BTMEA attorney, Mr. Walters, labor consultant and Mr. Villano. While Venedicktow attended the negotiations as a member of the BTMEA's negotiating team, Cara very rarely addressed her directly (TB 641).

Cara rarely had direct contact with Venedicktow on any labor relations matters. Most frequently, Cara dealt with Messrs. Blunda and Walters on grievances filed by the BTMEA and on occasion with the president of the Association (TB 62-63).

However, there were specific instances when Cara did deal directly with the Charging Party on labor relations matters. Some time in the latter part of 1985, Cara had a meeting with representatives of the BTMEA and the topic of job classifications arose. The record is unclear whether the discussion took place

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4/ Venedicktow was not a regular member of the IBT's negotiations team. She attended one negotiating session between the Township and IBT in late May or early June (TA 72).

after an aborted arbitration hearing which turned into a negotiations session (TA 54) or at a regularly scheduled negotiations session (TB 25; TB 104-5; TB 126). During the session, the BTMEA raised the issue of job classifications. It was the BTMEA's position that employees were working in lower classifications than was appropriate for the actual duties performed. In response, Cara said that a number of unit employees were working in higher job classifications than their actual duties warranted. Cara stated that this observation even applied to some of the employees sitting at the negotiations table (TB 25; TB 104-5). The BTMEA responded that if, in fact, employees were working out-of-title, then it was Cara's responsibility to do something to correct that situation (TB 25).

Venedicktow was one of the employees attending the negotiations session at which Cara said that some of the employees at the table were working out-of-title (TB 105). While Cara said that he did not refer to Venedicktow specifically at that time (TB 105), Cara admitted that at some time he asked Venedicktow directly how she received her salary increase when she was promoted to Administrative Clerk. I find that the conversation between Venedicktow and Cara took place during the negotiations session (TA 54; TB 126). Venedicktow testified: "...I told him that the union, which was the IBEW at that time, bargained with the mayor. And then he [Cara] asked me who the mayor was at the time. And I said. James Morey, and that was the end of the conversation." (TA 54).

There is no indication in the record that Cara asked any other employee how he/she received his/her raise.

Another instance where Cara and Venedicktow came into direct contact with each other concerned a group grievance filed by the BTMEA on October 15, 1985, regarding drinking water purity in Township buildings (TA 50; CP-1). The grievance was typed by Venedicktow and signed by Ralph Ellis, BTMEA President (TA 99). Cara called Venedicktow because of "something that [he] was told by one of the employees and by the Chief regarding the water in the police station" (TB 63) and because Ellis works at the parks and beaches and is difficult to contact (TA 51). During Cara's phone conversation with Venedicktow regarding the grievance, he angrily asked Venedicktow what was wrong with her. Venedicktow responded by stating that the grievance was from five departments and Cara should not single her out (TA 51-52). Cara never spoke to Ellis about the grievance (TA 51-52). On October 21, 1985, Cara sent Ellis a written response denying the grievance on the basis of tests conducted by an independent laboratory showing the water quality to be within accepted standards (CP-1). The grievance ended at that point (TA 52; TB 64). Venedicktow did not know why the BTMEA did not pursue the grievance after Cara issued his October 21, 1985, response (TA 52).

Charles F. DeMey became Chief of Police in the Township on November 13, 1984. Venedicktow has reported to DeMey since his appointment (TA 23). From the time that DeMey became Chief until

June 1986, when Venedicktow transferred into Cara's office, her job duties did not change (TA 40). In or around early January 1986, DeMey and Cara had one or more informal discussions regarding the Charging Party (TA 27; TB 23-24). DeMey was concerned with Venedicktow's access to confidential labor relations information in the police department and, in light of her level of participation in the BTMEA, asked Cara if the Administrative Clerk position could be replaced with a confidential secretary (TA 41; TB 24). DeMey never complained to Cara about the quality of Venedicktow's work (TA 25).[5/] During their conversation, Cara asked DeMey if Venedicktow was performing any administrative functions. Cara explained to DeMay that by "administrative functions" he was asking whether Venedicktow was considered second in command. DeMey said that Venedicktow was not second in command (TA 27). Cara told DeMey that he (Cara) would look into DeMey's request and take certain actions. However, Cara also told DeMey that he could have either a confidential secretary or an Administrative Clerk, but not both (TB 24).

5/ DeMey's and Cara's testimonies conflict on the point of whether DeMey complained to Cara about the quality of Venedicktow's work. I credit DeMey's testimony. DeMey was Venedicktow's immediate supervisor and would have direct knowledge of whether problems existed regarding Venedicktow's work. I can find no reason why DeMey would not testify concerning any performance problems, if they existed. However, Cara's testimony on this point is inconsistent. At one point Cara states that Chief DeMey never notified him of any problems with the Charging Party's work (TB 85), yet later in his testimony, Cara says that DeMey and the former Chief had complained to him about problems with Venedicktow (TB 86-87).

On January 10, 1986, Cara sent DeMey a copy of the official Civil Service job specification for the Administrative Clerk position and asked DeMey to review same and respond with a detailed outline of the actual duties Venedicktow was then performing (TA 29; R-1). DeMey sent Cara a hand written outline accurately comparing the duties set forth in the job specification with those actually performed by Venedicktow (TA 32; R-3).[6/] From DeMey's hand-written response, Cara prepared a letter addressed to himself on police department stationary showing DeMey as the author (TA 38-39; R-2). The last paragraph of R-2 said:

> However, since being appointed as Chief of Police over a year ago, I have not observed any instance in which the position held by Mrs. Venedicktow should be classified as 'Administrative Clerk'.

The above-quoted paragraph was not part of DeMey's original hand written response, but was inserted by Cara. When DeMey questioned Cara about the paragraph, Cara said he included the paragraph because he (Cara) wanted to request that a desk audit be performed by Civil Service, and, in order for Cara to seek the desk audit, a request for job classification review must be made to Cara by the department head. DeMey said that if Cara wanted a desk audit, then he would cooperate by signing the letter (TA 32; TA 39). DeMey

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6/ The last paragraph on page 2 of R-3 was modified by someone in Cara's office after DeMey submitted it to Cara to read as follows: "Has no supervisory responsibilities or decision or admin[istrative] requirements." DeMey's original said: "No supervisory responsibilities" (TA 41).

testified that he would not have independently requested a job audit (TA 39). However, he believed that bringing in Civil Service to perform a desk audit of Venedicktow's job was the fairest thing to do (TA 42).

In correspondence addressed to Donald G. Bennett, Regional Administrator, Division of County and Municipal Government Services, Department of Civil Service, dated January 31, 1986, Cara requested that a desk audit of Venedicktow's job be conducted (R 32 1). The audit was conducted by a Civil Service staff agent on February 19, 1986 (R-20). The staff agent assigned to conduct the desk audit of Venedicktow's job gave DeMey only one hour advance notice of the audit. DeMey told Venedicktow that Civil Service was coming to conduct a desk audit of her position in one hour; until that time, Venedicktow was not aware of the Township's intention to have her job reviewed (TA 55-56), and no one in the Township knew the time or date the audit would be conducted.

DeMey and Venedicktow simultaneously attended the meeting with the Civil Service staff agent. The agent directed questions to DeMey and Venedicktow separately, each listening and agreeing to the answers of the other (TA 34; TA 95). Notwithstanding the short notice of the meeting, neither DeMey nor Venedicktow indicated that he/she was unprepared to proceed with the audit. DeMey told the agent he had no problem with Venedicktow's job title or the quality of her work (TA 34).

On April 7, 1986, Civil Service issued a determination and advised Cara and Venedicktow that the Administrative Clerk title held by the Charging Party was more properly classified as and should be downgraded to a Principal Clerk Typist. Civil Service ordered the Township to either assign Venedicktow the functions and responsibilities commensurate with her permanent Administrative Clerk title or initiate demotional procedures which would become effective at the end of the work day on June 6, 1986 (R-20). On April 11, 1986, Venedicktow appealed the classification review to Robert P. DeNicholas, Director of County and Municipal Government Services, Department of Civil Service. On May 22, 1986, DeNicholas advised the Charging Party and Cara that he found the Principal Clerk Typist position to be the proper classification for the job and sustained the April 7, 1986 determination. DeNicholas informed Venedicktow of her right to appeal his decision (TA 97; R-20). Venedicktow appealed DeNicholas' decision, however, she subsequently withdrew it (TA 98).

Cara has requested Civil Service to conduct desk audits on other Township employees. Pursuant to the Township policy, developed and implemented by Cara in April 1982, department heads and supervisors were required to obtain Cara's consent before they could contact Civil Service in order to request a desk audit of a position (TB 26-27; R-29). On June 27, 1984, Ruth A. Hardie, Township Tax Assessor, sent a letter to Cara requesting title changes for two employees in her office: Kathleen Ferrante and

Arlene Pullen (TB 36; R-32d). Cara requested Civil Service to conduct a desk audit which ultimately resulted in the upgrading of the employees' titles (R-32a; R-32e).

Cara also requested Civil Service to conduct a desk audit of Joseph Paplowski's job duties. Paplowski was serving in the position of Golf Course Superintendent, a title included in the negotiating unit. The desk audit revealed that Paplowski did not meet the requirements to fill the Golf Course Superintendent position and ordered the Township to either transfer him to a position he was qualified and eligible to fill or terminate him. Effective May 7, 1985, the Township transferred Paplowski to the position of Truck Driver in the Street and Road Division (TB 36-37; R-32F).

On or about February 20, 1986, Cara asked Civil Service to perform a desk audit on Rose Russo's position. Ms. Russo is serving in the position of Administrative Secretary (Recreation). On August 6, 1986 Cara sent Civil Service a follow-up letter inquiring into the status of Russo's desk audit, however, by the close of the hearing in this matter, Civil Service had not yet conducted a desk audit (TB 106-107; R-32j & i).[7/] There is no evidence showing

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7/ Civil Service sent Cara a letter dated September 11, 1986, in which it advised Cara that if Russo's position had altered substantially so as to require a job classification other than Administrative Secretary, the Township could simply file the appropriate Civil Service form to change the title. Civil Service further advised that it would hold the Township's request for audit in abeyance pending such possible Township action on Russo's title. The record does not indicate whether the Township ever subsequently acted to modify Russo's title.

whether Russo is active in the BTMEA.

Cara's role in the job classification review process is limited to filing the request for a desk audit with Civil Service. Once filed, Civil Service conducts an independent investigation into the job duties, and neither Cara nor any other Township official exercises any control over the outcome. Consequently, it is solely Civil Service that determines whether an audited job warrants the same, higher or lower job title (TB 37).

Employee evaluation reports pertaining to Venedicktow were received in evidence for 1980, 1981, 1983 and 1984 (CP 3 through CP 6). The reports show that Venedicktow's overall work performance was considered above average for the periods covered. In 1983 the Township stopped giving merit pay increases and since 1984, no longer required supervisors to complete evaluation reports on their subordinate employees (TA 60). Thus, Chief DeMey was never required to file a formal evaluation report on the Charging Party (TA 24; TA 94). Cara was aware that all of Venedicktow's performance evaluations were satisfactory (TB 86).

Civil Service issued its determination on Venedicktow's desk audit on April 7, 1986. On or shortly thereafter, Venedicktow was advised that effective June 6, 1986, her position would be downgraded to Principal Clerk Typist from Administrative Clerk (R-20). The demotion would take place pursuant to Civil Service rules and regulations. Venedicktow asked Civil Service to provide her with information concerning her bumping rights. Civil Service

advised the Charging Party that she had lateral bumping rights into the Administrative Clerk's position working directly for Township Administrator Cara (TA 78). Cara advised Venedicktow that she would become a confidential employee within the meaning of the Act if she moved into the Administrative Clerk position in his office (TA 78; TA 82; TB 38-39, R 39). Due to a delay in the development of her bumping rights, Venedicktow had only 5 days to decide whether she would bump into that position (TA 107; TA 110). On June 5 or 6, 1986, the Charging Party sent Cara a letter informing him that she would accept the transfer into the position in his office (TA 79; TA 110, CP 13). Venedicktow's lateral transfer occurred on June 6, 1986 (TA 79-80).

Until June 6, 1986, when Venedicktow transferred from the police department to Cara's office, her base salary was $16,520 (TA 78; R-28). On June 9, 1986, the Charging Party's base salary was reduced to $14,920 (TB 21; R-28; R-4). Shortly after he received the results of the desk audit indicating that Venedicktow was not working as an administrative clerk, Cara decided to reduce Venedicktow's salary in the police department (TB 93-95). Between January and June 6, 1986, while in the police department, Venedicktow's job duties had not changed (A 46). On May 30, 1986, Cara advised the Township's Assistant Treasurer that once Venedicktow's demotion became effective, the salary for the Principal Clerk Typist position would be $14,920 (CP-12). Chief DeMey showed Venedicktow a copy of CP-12 around May 30, 1986 (TA

77). However, approximately one month prior to seeing CP-12, Venedicktow saw a new salary ordinance establishing the salary for her new position. This information (the salary ordinance reducing her salary) prompted Venedicktow to contact Civil Service in order to obtain her bumping rights (TA 77-78).

Shortly after Venedicktow's bumping rights were provided to the Parties by Civil Service, Cara called a meeting among the potentially affected employees -- Kathleen Kane, Rosemary Dmitruck and Venedicktow -- in order to explain the possible consequences of their being displaced (TB 132). Kane served in the title Administrative Clerk for approximately 3 1/2 years and in June, 1986, received a base salary of $18,706 (R-40). During the meeting, Cara told Venedicktow that if she chose to displace Kane, she (Venedicktow) would be paid less than the salary that Kane was then earning. However, Cara stated no specific salary figure during the meeting (TA 83; TB 133).[8/] Thus, when Venedicktow decided to bump Kane on June 6, 1986, Venedicktow only knew that she would be making less than Kane but didn't know how much less. Venedicktow thought she would receive a salary of about $17,000 a year if she moved into

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8/ Cara testified that he told Venedicktow that her salary would be the same whether she bumped into Kane's position or stayed in the police department (TB 98-99). However, it is clear from the record that Cara is unsure of himself on this point. Kane corroborates the Charging Party's testimony that she was only told that her salary would be lower than Kane's, but no specific dollar figure was mentioned. Accordingly, I credit Venedicktow's version.

Kane's position (TB 140). It was not until June 12, 1986, that Venedicktow found out that her base salary as Administrative Clerk in Cara's office would be $14,920; the same salary she would have received had she remained in the police department (R-4).[9/] The Township never entered into negotiations with the IBT concerning Venedicktow's reduction in salary (TB 94).

The salary ordinance in effect pertaining to Kane's position for 1986 established a salary rate of $18,706 (TB 148). On July 14, 1986 a new salary ordinance was introduced establishing a salary range of $14,920 to $20,015 for Venedicktow's job (CP-15). Because the ordinance was not properly published, its final passage was delayed until November 24, 1986 (TB 144).

Since 1982 or 1983, part-time Township employees have filed a number of grievances regarding the Township's refusal to provide such employees with various paid leave benefits (TA 53). The part-time employees alleged that they were eligible to receive paid personal, holiday, vacation and sick leave on a pro-rata basis pursuant to Civil Service rules and regulations. Ultimately, the Parties sought PERC's assistance in their efforts to resolve the

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9/ Had Venedicktow remained in the police department as Principal Clerk Typist she also would have received the negotiated raises pursuant to the collective negotiations agreement. However, since the Administrative Clerk's position in Cara's office was a confidential position and not covered by the agreement (TB 141), Venedicktow did not receive any raises while working in Cara's office (R-28).

matter. In October, 1985[10/] the Parties entered into a settlement agreement whereby the BTMEA agreed to drop its demands concerning the receipt of pro-rata paid personal and holiday leave, and the Township agreed to recognize certain part-time employees as part of the collective negotiations unit and to provide pro-rata paid sick and vacation leave to such eligible employees (TB 43-44; TB 114-115). However, the settlement agreement did not dispose of the question as to the identity of the particular part-time employees eligible for the leave benefits. The Township refrained from providing the leave benefits provided for in the settlement agreement until clarification concerning the identity of eligible part-time employees was obtained from Civil Service (TB 116; TB 120).

Venedicktow was not involved in the part-time employees' leave benefits grievances, and throughout the lengthy period over which the dispute stretched, the Township dealt directly with the BTMEA's attorney and/or labor consultant (TA 53; TB 45; TB 49). However, in the latter part of April 1986, Lois Anderson, one of the part-time employees who filed a grievance on this issue years earlier, showed Venedicktow a letter addressed to Cara dated April 15, 1986, from Donald Bennett, Regional Administrator, Department of Civil Service (CP-9). Bennett's letter requested information

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10/ I take administrative notice of the information contained in the file pertaining to the matter of Berkeley Township and Berkeley Township Municipal Employees Association (Docket No. RO-85-89).

regarding whether the Township was in compliance with Civil Service rules requiring the Township to provide pro-rata paid sick and vacation leave to its permanent part-time employees. It was the issuance of CP-9 by Civil Service that, in late April 1986, prompted Venedicktow , on behalf of the BTMEA, to compose and distribute a notice to all part-time employees, advising them that they would soon be eligible to receive pro-rata paid sick and vacation leave (TA 68; CP-8).

In response to CP-8, the Township's part-time employees contacted Cara's office in order to obtain additional information regarding the leave benefits (TB 48). Believing Venedicktow's notice to have been prematurely issued (TB 123), Cara took exception to the distribution of the notice, since Civil Service had not yet identified any part-time employees eligible to receive the leave benefits. Notwithstanding the fact that Cara possessed a copy of CP-9 when Venedicktow distributed CP-8 (TB-119-120), on April 28, 1986, he sent Venedicktow a letter (CP-7) advising her that he found her "...notice to be somewhat deceiving since Berkeley Township has never refused to pay the vacation time and sick time to those employees entitled to these benefits." Cara went on to note that "...we have only recently requested a list from Civil Service as to what employees are eligible for the benefits based on their employment status..." Cara concluded his letter by requesting that the Charging Party advise him regarding "...what information you [Venedicktow] have that prompted this 'Notice'."

Between the latter part of April and June 1986, Cara and Bennett had conversations that resulted in Civil Service's compilation of a list of part-time employees eligible to receive the sick and vacation leave benefit. The Civil Service list identified only 7 part-time employees as eligible to receive the pro-rata paid leave benefits (TB 120; CP-10).

On June 6, 1986, Cara took steps to effectuate Venedicktow's transfer by ordering her to report to his office at 1:00 p.m. (TA 79-80). Between 1:00 p.m. and the end of the work day (approximately 3 hours), Kane trained Venedicktow in the job (TA 110). Venedicktow received no other training or orientation for the position. On June 9, 1986 Kane reported to the police department to replace Venedicktow in the principal clerk typist position. As of June 13, 1986, Kane's salary was reduced to $14,920 (R-40).

Cara has not been satisfied with Venedicktow's work performance since her transfer into what the Parties admit is a very busy office. Cara has written numerous letters to Venedicktow complaining about her work (R 8; R 10; R 11; R 13; R 15; R 16; R 17 and R 19). Venedicktow has written numerous responses to Cara's criticisms, at times admitting that she made mistakes and at other times refuting the legitimacy of the criticism (TA 112-113; TA 121; R 7; R 9; R 12 and R 14).

In the latter part of July 1986, Cara decided that Venedicktow was not fulfilling all of the job duties required of an Administrative Clerk in his office, therefore, he contacted Civil

Service in order to initiate the downgrading of the position to Clerk Typist (TB 6-20; R 22 through R 25). However, Venedicktow's demotion was rescinded on the day it was to become effective because the notice of demotion was not properly posted in accordance with Civil Service rules and regulations (TB 18; R 26 and 27). Currently, no personnel action affecting Venedicktow is pending and she continues in her Administrative Clerk position in Cara's office (TB 20).

At various times after Venedicktow's transfer into Cara's office, she asked Cara for permission to use some accrued personal leave or vacation time. Some of this time had been requested and granted while Venedicktow was still in the police department (TA 86). Cara denied Venedicktow's requests for time off on the basis that she was not current in her work (TB 68).

The Township operates pursuant to the Faulkner Act's mayor/council form of government. The Township council acts in a legislative capacity and administrative and operational authority resides in the mayor. The Township Administrator reports directly to the mayor (TB 55).

ANALYSIS

The primary issue in this case is to determine whether the Township illegally discriminated against Marie Venedicktow in retaliation for her participation in protected activity in violation of §5.4(a)(3) and, derivatively, (a)(1) of the Act. The Charging Party alleges that the Township's request to the Department of Civil

Service for the conduct of a job classification review (desk audit) of her job and the resulting decrease in salary were illegally motivated.

In Bridgewater Twp. v. Public Works Ass'n., 95 N.J. 235 (1984) ("Bridgewater"), the New Jersey Supreme Court adopted the private sector dual motive test in analyzing (a)(3) cases and established the standards to be applied in such cases. The standard is set forth as follows:

> ...the employee must make a prima facie showing sufficient to support the inference that the protected union conduct was a motivating factor or a substantial factor in the employer's decision. Mere presence of anti-union onimus is not enough. The employee must establish that the anti-union onimus was a motivating force or a substantial reason for the employer's action. Transportation Management, supra, ___ U.S. ___, 103 S. Ct. at 2474, 76 L. Ed. 2d at 675. Once that prima facie case is established, however, the burden shifts to the employer to demonstrate by a preponderance of evidence that the same action would have taken place even in the absence of the protected activity. [Id. at 242]

The New Jersey Supreme Court has recognized, that anti-union motivation can be inferred from certain employer conduct. Id. at 247; Borough of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶ 17193 1986); University of Medicine & Dentistry of New Jersey, P.E.R.C. No. 86-5, 11 NJPER 447 (¶ 16156 1985); New Jersey Department of Higher Education, P.E.R.C. No. 85-77, 11 NJPER 75 (¶ 16036 1985), aff'd App. Div. Docket No. A-3124-84T7 (1986); Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333 (¶

15157 1984); In re Gattoni, P.E.R.C. No. 81-32, 6 NJPER 443 (¶ 11227 1980); Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (¶ 4123 1978), aff'd. App. Div. Docket No. A-48244-77 (1980). In Bridgewater, supra, the Supreme Court affirmed the Commission's analysis that "...in the absence of any direct evidence of anti-union motivation for [an adverse personnel action], a prima facie case must be established by showing that the employee engaged in protected activity, that the employer knew of this activity and that the employer was hostile toward the exercise of protected rights." Bridgewater, 95 N.J. at 246.

In this case, Venedicktow has engaged in protected activity. She was an officer in the BTMEA and served as a representative on the board of arbitration and the negotiations team. Furthermore, the Township had knowledge of Venedicktow's participation in protected activity. All of the correspondence prepared by the BTMEA to be delivered to the Township was typed by Venedicktow and her initials appeared on each document. She personally attended arbitration hearings and negotiations sessions with representatives of the Township.

Of course, evidence that the employee has engaged in protected activity and that the employer was aware of it does not establish a violation of the Act. The critical element is the requirement that the employer was hostile towards the protected activity. While hostility may be established by inference, it is not sufficient merely to establish "the presence of anti-union

animus." Under the Bridgewater test, "[m]ere presence of anti-union animus is not enough." Id. at 242. Thus, it is not sufficient to find that animus played a part in the decision, rather, the test requires that such animus was a "motivating force or a substantial reason for the employer's action." Id.

Some of the evidence in this case would support a finding of hostility. Cara singled out Venedicktow for her participation in protected activity in October 1985, pertaining to the processing of a group grievance on drinking water purity. The Commission has often held that the filing of a grievance is protected activity. See, State of New Jersey, P.E.R.C. No. 87-88, 13 NJPER 117, (¶ 18051 1987); Hunterdon County Sheriff, P.E.R.C. No. 87-13, 12 NJPER 685 (¶ 17259 1986); Pine Hill Bd. of Ed., P.E.R.C. No. 86-126, 12 NJPER 434 (¶ 17161 1986); Lakewood Bd. of Ed., P.E.R.C. No. 79-17, 4 NJPER 459 (¶ 4208 1978). While there is no evidence that Cara actually threatened Venedicktow for her role in the processing of the grievance, I find that the nature of the conversation could tend to intimidate the Charging Party and interfere with her exercise of protected activity.[11/]

However, the analysis of this incident in terms of this case's alleged (a)(3) violation of the Act cannot stop at this point. Aside from the phone conversation, Venedicktow's only other

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11/ Since this incident happened more than 6 months from the filing of the charge, I make no determination regarding whether a violation of the Act occurred.

participation in the drinking water grievance involved her typing it. The grievance was signed by Ralph Ellis, President of the BTMEA and Cara sent him the Township's written response. Ellis did not consult with Venedicktow regarding any aspect of the processing or the settlement of the grievance. She was not aware of the reasons why the BTMEA decided not to pursue the grievance. Thus, while I find that the Charging Party played a role in the processing of the grievance, it is equally clear that her role was a very limited one. Cara's phone call to her seems more fortuitous than sinister. While I do not condone Cara's conduct during the phone conversation, I find it plausible, especially in light of the way in which the Township and the BTMEA resolved the grievance, that Cara merely lost his temper. Finding this to be the case, I further note that Cara did not threaten Venedicktow's job or attempt to coerce her into settling the grievance. See, Black Horse Pike Reginal Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶ 12223 1981).

The Charging Party argues that there were two other occasions showing hostility on the part of the Township. In late 1985, the Township and the BTMEA conducted a negotiations session during which the subject of job classifications arose. Cara asked Venedicktow how she received her salary increase when she was promoted to Administrative Clerk. Venedicktow told Cara that the mayor and the majority representative negotiated her salary. Venedicktow identified the mayor and the conversation ended. Even though Cara did not ask any other employee who attended the session

how he/she received a salary increase after promotion, I do not find the contents of this very brief conversation between the Charging Party and Cara to establish hostility.

Another incident alleged by the Charging Party to show that the Township was hostile toward her protected activity involved the distribution of a notice to part-time employees advising them of their eligibility for pro-rata paid leave benefits (CP-8). Venedicktow argues that the Township's hostility toward her involvement in the part-time employee leave issue can be inferred from Cara's April 28, 1986 letter (CP-7). I disagree. Over the lengthy period during which the dispute ran, Cara had been dealing with the BTMEA's attorney or labor consultant and not with Venedicktow. Cara knew that a question remained as to the identity of the particular part-time employees eligible to receive the leave benefit, and, consequently, merely requested additional information from Venedicktow which finally resolved the leave benefit problem. A plain reading of CP-7 demonstrates that the letter did not contain any threats of reprisal or force or promise of benefit. Commission cases clearly establish that such letters are not violative of the Act. See, Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (¶ 16208 1985); and Camden Fire Dept., P.E.R.C. No. 82-103, 8 NJPER 309 (¶ 13137 1982). Nor does Cara's characterization that Venedicktow's letter was "somewhat deceiving" violate the Act or constitute evidence of hostility in this case. "A public employer is within its rights to comment upon those activities or attitudes of an

employee representative which it believes are inconsistent with good labor relations." Black Horse Pike Regional Bd. of Ed., supra.

I have found only limited evidence in regard to the drinking water grievance from which hostility may be inferred and no evidence of hostility arising out of encounters between Venedicktow and Cara pertaining to the job classification review issue which arose during negotiations and concerning paid leave benefits for part-time employees. However, having found some evidence of hostility, I note that under Bridgewater the presence of anti-union animus alone is not enough. The Charging Party must establish a causal connection between the animus and the adverse personnel action. See, University of Medicine and Dentistry of New Jersey, H.E. No. 85-26, 11 NJPER 109 (¶ 16048 1985), aff'd. P.E.R.C. No. 86-5, 11 NJPER 447 (¶ 16156 1985); Lodi Bd. of Ed., H.E. No. 84-8, 9 NJPER 511 (¶ 14209 1983), aff'd. P.E.R.C. No. 84-40, 9 NJPER 653 (¶ 14282 1983); Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980). I find that the facts fail to support Charging Party's claim that animus on the part of the Township was a motivating force or a substantial reason for the employer's action.

I find that the motivating force behind the Township's request to Civil Service for the performance of a desk audit on Venedicktow's job was because Chief DeMey approached Cara concerning the hiring of a confidential secretary to replace the Administrative Clerk in his office. I consider DeMey's testimony to be highly credible. His testimony does not reflect any ill will toward the

Charging Party in terms of her work performance or otherwise. While DeMey's concern over Venedicktow's position in the BTMEA and her exposure to confidential labor relations material could have and, probably, should have been handled differently, the fact remains that it was DeMey's request for a confidential secretary that initiated the issue of whether Venedicktow's position should be audited. Even though Cara modified DeMey's review of Venedicktow's job description (R-2 & R-3), DeMey thought a Civil Service desk audit was fair and would help resolve his problem. DeMey's actions were not motivated by union animus, nor was there any allegation of such by the Charging Party.

The Charging Party argues that the Township requested the desk audit of her job in retaliation of the BTMEA's position expressed in negotiations concerning employees doing out-of-title work. Cara testified that the issue of out-of-title work was initially brought to his attention by the BTMEA in negotiations. Cara also stated that it was partly as a consequence of the discussions which occurred regarding out-of-title work that he sought Venedicktow's desk audit. However, the evidence shows that in response to the Township's position that employees were serving in higher level titles than is justified by their actual job duties, the BTMEA told the Township that the resolution of that problem was management's responsibility. Additionally, the Township requested a desk audit on Rose Russo's position shortly after it initiated Venedicktow's. There is no evidence that Russo was active in the

BTMEA. Moreover, the Township does not know the outcome of a desk audit until Civil Service issues its determination. An audit can result in the same or higher level title as well as a lower level title. Finally, the Charging Party admits that the employer has the right to request an audit of job titles which it feels are improper (CP post hearing brief pp. 12-13). Therefore, when all of the above-enumerated factors are considered as a whole, I do not find that the Township reacted hostilely to the BTMEA's position on out-of-title work. Even assuming that the Township was hostile to the BTMEA's position, in light of DeMey's request for a confidential secretary and the discussion which occurred in negotiations concerning out-of-title work, I find that the Township would have called for a job audit of Venedicktow's position anyway.

Charging Party argues that the Township's reliance upon the Civil Service job classification review to justify the downgrading of her job was merely a pretext for unilaterally reducing her salary. Charging Party points out that between January and June 6, 1986, her actual job duties in the police department did not change, therefore, the Township had no grounds to unilaterally change her salary. Charging Party also argues that while the Township, pursuant to the Civil Service job classification determination, may have the authority to unilaterally modify her job title, no modification in her salary rate can occur without first negotiating such change with the majority representative. Charging Party asserts that since her salary rate was modified by the Township

without first negotiating with the majority representative, the Township has violated §5.4(a)(5) of the Act.

Normally, the Township is obligated to enter into negotiations with the majority representative prior to effecting a change in a unit employee's salary. Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n. of Ed. Secs., 78 N.J. 1 (1978); Englewood Bd. of Ed. v. Englewood Teachers Ass'n., 64 N.J. 1 (1973); North Brunswick Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶ 16203 1985); Twp. of Gloucester, H.E. No. 87-18, 12 NJPER 671 (¶ 17254 1986) aff'd. P.E.R.C. No. 84-42, 12 NJPER 671 (¶ 17254 19086) aff'd. P.E.R.C. No. 87-42, 12 NJPER 805 (¶ 17308 1986). However, under the facts in this case, I disagree that the Township violated §5.4(a)(5). The Township's obligation runs to the majority representative and not to an individual employee. New Jersey Turnpike Authority and Jeffrey Beal, P.E.R.C. 81-64, 6 NJPER 560 (¶ 11284 1980). Even though the Township failed to initiate negotiations with the majority representative, the facts also show that the majority representative never sought negotiations regarding the salary change nor did it file an unfair practice charge in response to the Township's action. Thus, it is clear that the majority representative acquiesced to the Township's unilateral modification of Venedicktow's salary. However, Venedicktow never charged the majority representative with a breach of its duty of fair representation. It is well established that an employee lacks standing to allege a violation of subsection (a)(5) of the Act, if

the employee does not also allege that the employee organization breached its duty of fair representation. Venedicktow alleges no breach of the duty of fair representation on the part of the IBT and, consequently, does not have standing to allege that the Township breached §5.4(a)(5) of the Act. Township of Warren, P.E.R.C. No. 86-122, 12 NJPER 377 (¶ 17147 1986); City of Jersey City, D.U.P. No. 87-5, 12 NJPER 670 (¶ 17253 1986); Camden County Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶ 15185 1984).

Venedicktow also argues that the timing of the events surrounding her reduction in salary proves that the Township used the results of the Civil Service audit merely as a pretext for unlawful discrimination. Charging Party asserts that the Township took steps to reduce her salary at the same time that she and Cara had a confrontation regarding the distribution of the notice concerning the receipt of paid leave benefits for part-time employees. Venedicktow concludes that the proximity of the confrontation with Cara and the reduction of her salary establishes that the Township's actions were in retaliation for her protected activity.

Certainly, timing is an important factor in assessing motivation and understanding the context of events. Downe Twp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶ 17002 1985). However, when the timing of the critical events in this case is analyzed, it reveals that the Township's decision to reduce Venedicktow's salary was not improperly motivated.

Civil Service issued its determination on Venedicktow's desk audit on April 7, 1986. The results of the desk audit established that Venedicktow was performing the duties of a lower title while receiving the pay for a higher title. Cara stated that he decided to lower the Charging Party's salary shortly after receiving the results of the desk audit. By the end of April 1986, Venedicktow saw a salary ordinance which established the pay rate for the Principal Clerk Typist (the title into which Venedicktow would be demoted if she remained in the police department). It is reasonable to conclude that if Venedicktow saw the salary ordinance at the end of April, the Township had begun the preparation of the ordinance sometime earlier in April. I do not credit the Charging Party's argument that her involvement in the distribution of the notice to part-time employees is the reason for the Township's decision to reduce her salary. Venedicktow did not distribute the notices to part-time employees and the Township did not become aware of its distribution until the end of April 1986. By this time, the Township had already reached its decision and initiated action on the ordinance reducing Venedicktow's salary. Consequently, I find that the motivating factor in the Township's decision to reduce the Charging Party's salary is the Civil Service desk audit. However, even assuming that the Township reduced Venedicktow's salary because of her role in distributing the notices to part-time employees, I find that in light of the results of the Civil Service desk audit, the Township would have reduced the Charging Party's salary anyway.

The Charging Party argues that the Township's actions to reduce her salary while she served in the police department amounts to a constructive discharge from that position.

In Morris County, P.E.R.C. No. 82-28, 7 NJPER 578, 580 (¶ 12259 1981), the Commission, relying on private sector precedent, stated:

> NLRB precedent provides broad authority for the finding of a constructive discharge where the facts reveal that an employee resigned due to an employer's unfair practice or following an employer's imposition of 'onerous working conditions' after the employee's exercise of a protected activity. [citations omitted] For an employer to be held legally responsible, it must be alleged and shown that the termination involved was the culmination of a plan on the employer's part to force such action, or the foreseeable consequence of earlier harassment. Moreover, where constructive discharge has been found, the proper remedy is full reinstatement accompanied by back pay in order to make the affected employee whole. [citations omitted]

In Morris County, supra, the Commission found that following an employee's successful challenge before Civil Service to the County's reduction in hours, she was discriminated against by way of a subsequent reduction to part-time status. The Commission also found that the employee was further harassed by way of assignment to unfavorable shifts, termination of overtime and additional reduction in hours. I do not find a similar pattern of discrimination and harassment in this case.

First, Venedicktow did not resign from employment with the Township. Consequently, no constructive discharge has taken place. However, even assuming that the same concepts of constructive

discharge can be applied in a situation where the employee is "forced" to give up a higher paying and/or higher status job for a lesser job with the employer, I still find that no constructive discharge has occurred in this case.

The Township has committed no unfair practices. Nor has the Township imposed "onerous working conditions" upon the Charging Party. In Morris County, supra, the employer engaged in a pattern of unfavorable shift assignments, reduction in hours and termination of overtime. Here, the Township has not engaged in such a pattern of activity. As was her right under Civil Service rules and regulations, Venedicktow initiated the investigation into her bumping rights. Venedicktow voluntarily decided to exercise her bumping right and transfer into Cara's office. While Vendeicktow's salary decreased, her job title remained the same. The Charging Party repeatedly points out that between January and June 1986, nothing had changed in terms of her job duties and responsibilities. Thus, on the basis of the Charging Party's own testimony, I am constrained to find that the Township did not impose any "onerous working conditions" upon her so as to constitute a constructive discharge; the decrease in her salary, alone, is not enough.

Charging Party further contends that the Township's course of conduct since her transfer into Cara's office constitutes a constructive discharge. Charging Party alleges that such items as the lack of any reasonable training period, repeated unjustifiable

criticisms regarding her work performance, reduction in salary and denial of vacation or personal leave establish a pattern of harrassment designed to force the Charging Party to resign. However, I find Charging Party's allegation of constructive discharge to be premature. Venedicktow is still employed as an Admninistrative Clerk in Cara's office. While Cara did take steps to demote the Charging Party, the action was halted before it was effected and no further action is now pending. Thus, Venedicktow has experienced no diminution in employment status since her voluntary, self-initiated transfer into Cara's office, and has not been constructively discharged.12/

Charging Party argues that the Township improperly reduced the salary of the Administrative Clerk position in Cara's office when she transferred into it. Charging Party contends that since the salary ordinance established a salary of $18,706 for the Administrative Clerk job, the Township acted without authority by paying her at a different rate. I disagree. Venedicktow knew that if she transferred into Kane's position, she would be a confidential employee within the meaning of the Act and, therefore, not remain in the collective negotiations unit. Venedicktow also knew, before she transferred into the position, that she would receive a lower salary than Kane's $18,706. Venedicktow's belief that she would receive a

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12/ I do not address the issue of whether, under these facts, a "constructive discharge" cause of action would ripen should Venedicktow resign or be demoted.

salary of about $17,000 if she moved into Kane's position was purely speculation on her part, yet it demonstrates that the Charging Party was aware of the fact that by transferring into Cara's office and becoming a confidential employee, the Township could and would modify the salary for the job. Moreover, under the Faulkner Act, the Township does not have to enact a salary ordinance in order to set Venedicktow's salary at a rate different than Kane's. See, N.J.S.A. 40:69A-43a. Accordingly, I find that the Township did not violate the Act when it established Venedicktow's salary for the Administrative Clerk in Cara's office without an appropriate salary ordinance in effect.

For all of the reasons set forth above, I find that Venedicktow's participation in protected activity was not a motivating factor or a substantial reason in the Township's decision to request Civil Service to conduct a desk audit of her Administrative Clerk position and reduce her salary level. Accordingly, I find that the Township did not violate §5.4(a)(3) and, derivatively (a)(1).

The Charging Party also alleges that the Township violated §5.4(a)(2) and (7). However, the Charging Party introduced no evidence showing that the Town dominated or interfered with the formation, existence or administration of any employee organization, or violated any of the rules and regulations established by the Commission.

Accordingly, based upon the entire record and the analysis set forth above, I make the following:

CONCLUSIONS OF LAW

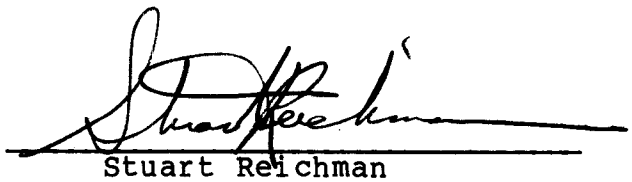
1. The Township of Berkeley (Ocean County) did not violate N.J.S.A. 34:13A-5.4(a)(3) and, derivatively (a)(1) when it requested Civil Service to conduct a desk audit of Marie Venedicktow's Administrative Clerk position while she served in the police department and, subsequently, reduced her salary.

2. Marie Venedicktow does not have standing to allege that the Township of Berkeley violated §5.4(a)(5) of the Act.

3. Marie Venedicktow did not prove, by a preponderance of evidence, that the Township of Berkeley violated any other section of the New Jersey Employer-Employee Relations Act as alleged in her unfair practice charge.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the complaint issued in this matter be dismissed.



Stuart Reichman
Hearing Examiner

DATED: April 14, 1987
Trenton, New Jersey