

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and-

Docket No. CO-80-367-16

BRIDGEWATER PUBLIC WORKS,

Charging Party.

SYNOPSIS

The Township filed a Motion for Reconsideration as to a particular aspect of the Commission's decision, P.E.R.C. No. 82-3, 7 NJPER ____ (¶ ____ 1981). In that decision, the Commission found that the Township had violated sections 5.4(a)(1) and (a)(3) when it transferred an employee from his position of Assistant Park Foreman to another job in the Road Department which paid \$.25 less per hour in reprisal for his exercise of rights protected under the Act.

Upon review of the record, the Commission found no basis to disturb its original decision. The Motion for Reconsideration is denied.

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Appearances:

For the Respondent, Lanigan, O'Connell & Jacobs, Esqs.
(Daniel F. O'Connell, of Counsel)

For the Charging Party, Fox & Fox, Esqs.
(Richard H. Greenstein, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On June 11, 1980, the Bridgewater Public Works Association (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Township of Bridgewater (the "Township") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Unfair Practice Charge was heard before Hearing Examiner Alan R. Howe, and a Recommended Report and Decision, H.E. No. 81-31, 7 NJPER 174, (¶112077 1981) was issued on March 17, 1981. Exceptions to this report were filed by the Association and reviewed by the Commission resulting in the issuance of a Decision and Order by the Commission, P.E.R.C. No. 82-3, 7 NJPER ____ (¶ _____ 1981).

Pursuant to N.J.A.C. 19:14-8.4, the Township has filed a Motion for Reconsideration as to a particular aspect of the Commission's decision. In that decision, the Commission found that the Township had violated sections 5.4(a)(1) and (a)(3)^{1/} when it transferred an employee, Anthony Longo, from his position of Assistant Park Foreman to another job in the Road Department, which paid \$.25 less per hour in reprisal for his exercise of rights protected under the Act. The Commission also ordered that the Township make Longo whole by paying him the difference between the wages he has received since his transfer in April 1980 and the wages he would have received had he not been so transferred, together with interest, and then continuing him at the wage rate he would have received had he not been transferred, including increases, if any, to which he would have been entitled.

The Township has alleged several grounds for its motion and the Commission has studied each of these and finds no basis on which to reconsider its earlier decision. The motion is therefore denied. The Commission will, however, detail its reasoning in reaching this conclusion and will treat each ground raised by the Township.

^{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."

The Township claims that the Commission decision is grounded in several factual inaccuracies, the first of which was the Commission's interpretation of the actions of Cynthia Blodgett, the Parks Department Director, at a special meeting which she had called with the Parks' employees. The Township claims that the meeting was not called to offer the employees wage increases without an Association representative being present, but rather to proffer improved job descriptions. The Commission fully recognized this in its decision and stated:

The Hearing Examiner found that there was never any mention by Blodgett to the employees that these increases were given as inducements to leave the Association, nor that the increases were conditional upon such an occurrence. The Township stated that the reason for this meeting was to change job description for the Parks' employees which better suited their responsibilities and to create more levels of promotion for which their salaries could be increased. Under the old system apparently, the Parks and Road Departments both had the same job titles and salary increases, but the job titles and promotions were geared best for the Road Department and not for Recreation and Parks.
Bridgewater, 7 NJPER ____ (¶ ____ 1981).

Additionally, it was also stated that "[a]lthough Blodgett did not ask the employees to leave the Association or condition their receipt of wage increases on such an occurrence, these facts alone are not sufficient to relieve the Township of liability for such an action."

The improper action was the granting of wage increases without negotiating with an Association representative. The

Township is under the false impression that the reason for the meeting justifies the action that was taken and that is not the case. The violation was not premised on the Township's motive in exercising what it describes as its managerial prerogatives but rather on the act of offering the wage increases directly to employees without first negotiating with an Association representative. This is an act which certainly can induce the choice of those employees with respect to their negotiating agent and cannot be allowed.

The second factual misrepresentation alleged by the Township involved the Commission's finding that although the Township had claimed that one of the reasons it had transferred Longo was his inability to get along with his supervisors, Blodgett and Barack, the record was devoid of any such difficulties and in fact Longo had been promoted during the time he was said to have not gotten along with those supervisors. During the hearing, the Hearing Examiner had restricted introduction of Township testimony concerning Longo's job performance stating that the question of performance was not an issue. The Township claims that because this testimony was not permitted into the hearing, it is unfair for the Commission to note in its decision that Longo's record was devoid of complaints.

The Commission does not find this claim to be influential, however. The Mayor of the Township had stated several times that the problems between Longo and his supervisors dictated that he be transferred into another department; however, there was not

any mention of trouble found in Longo's records. Whatever his job performance was had no bearing on the Commission's decision. It was the inconsistency that had been created by the assertion that Longo had an uncooperative attitude and could not get along with his supervisors, using this as a reason for his transfer, and then the promotion of Longo by one of those supervisors, that helped to create the conclusion reached by the Commission. The record which the Commission found to be devoid of any complaints referred only to the rumored problems Longo had with his supervisors and not to the quality of his job performance.

The third factual misrepresentation alleged by the Township arises out of the following statement made by the Commission in its decision:

In June 1979, Longo was promoted to the position of Assistant Foreman with a salary increase of \$.33 per hour. Thereafter, Longo was active in organizing the seven Recreation and Parks Department employees into the Association.

The Township claims that this statement created the inaccurate impression that Longo's union activities commenced after his promotion and that the record shows that he had been promoted after he had commenced organizing the Association in February of 1979. In fact the record shows that the Association was recognized by the Township in October of 1979 and that Longo had been actively organizing the Association prior to that period but it does not reveal whether his activity commenced before or

after he was promoted. In any event, the Commission's decision does not hinge upon when Longo became active in the organizing efforts nor when the Township became aware of such activity. Instead, the dismissal reflects a finding that Longo had been discriminated against for exercising rights guaranteed to him by the Act in protesting the meeting held on March 5, 1980 between Blodgett and the Parks' employees.

The Township has alleged that the Commission erred when it ignored the Hearing Examiner's findings of credibility and cites two instances it believes to be supportive. The first concerned the meeting of March 5, 1980, in which Blodgett discussed changes in job descriptions and offered the employees raises. The Township is correct in its assertion that Longo's protests of the meeting were protected only if Blodgett had coerced the employees or discouraged them from union representation. As was discussed in the decision, there need not be threats or conditions made by the employer in order to violate an employee's rights,^{2/} and the Commission is satisfied that this was not Blodgett's intent. Her intent, however, was not determinative but the effect her actions had on the minds of the employees was. The Commission did not discredit Blodgett's testimony at all and agreed with the Hearing Examiner when he stated in his report that "Blodgett did not in any way seek to induce the said employees to resign

^{2/} See, NLRB v. Exchange Parts Co., 395 U.S. 405, 84 S.Ct. 457, 55 LRRM 2098 (1964); Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 64 S.Ct. 830, 14 LRRM 581 (1944).

from or cease being represented by the Association." H.E. No. 81-31, 7 NJPER 174, 176.

The second instance cited by the Township to show that the Commission had ignored the Hearing Examiner's finding of credibility involved the Commission's findings that the Township's business reasons for transferring Longo were pretextual and not justifiable. The Examiner relied on statements made by the Mayor that there were too many supervisors in Longo's department and that he had a problem in getting along with his supervisors. The Commission's opposite finding does not place into question the Hearing Examiner's conclusion relating to the credibility of the Mayor's testimony. However, it does place a greater weight on other evidence found in the record. Testimony from the Superintendent of Parks herself disclosed that, although Longo had been promoted to Assistant Foreman, it was not because there was a need for anyone in that position or because there were extra duties and responsibilities that an Assistant Foreman would have to perform, but only so that his position would coincide with the pay raise that he had been given. This evidence was weighed more heavily by the Commission than was the Mayor's testimony that there were too many supervisors within the Parks Department.

The final point of contention the Township has with the Commission decision is that the Commission failed to adhere to our own standards for determining anti-union animus in finding a violation on the part of the Township. The Township cites a

recent Commission decision, In re Cape May Board of Education, 6 NJPER 45 (¶11022 1980), which states that, "Once the Charging Party has shown that an employee who has been disciplined, discharged, etc. has engaged in protected activity and that the employer has knowledge of such activity, and was hostile toward a union, a prima facie (a)(3) violation is made out." Cape May at 46. It is the Township's contention that the Association failed to meet these standards and states that the Commission did not find the Township to be hostile to the union.


There are various factors which can be used to show an employer's anti-union animus. In the present decision, the Commission stated that "[t]he timing of Longo's transfer in view of his work record and his promotion, in relation to his activities involving the meeting of March 5, 1980 is sufficient for the Commission to infer that the Township was motivated by anti-union animus." Bridgewater, P.E.R.C. No. 823, 7 NJPER ____ (¶____ 1981). The timing of Longo's transfer soon after he protested the March 5, 1980 meeting, coupled with the fact that he had been promoted and the absence of complaints in his record, provided the Commission a sufficient basis upon which to find anti-union animus.^{3/} The burden then shifts to the employer to provide

^{3/} See, In re Salem County Board for Vocational Education, P.E.R.C. No. 79-99, 5 NJPER 239 (¶10135 1979); and In re County of Middlesex, H.E. No. 81-18, 6 NJPER 596 (¶11296 1980), for similar cases where the timing of the employer's action provided a sufficient nexus to infer anti-union animus.

reasonable business justification for the action taken.^{4/} If such justification can be found, then it becomes the Commission's role as the trier of fact to determine whether the employer's act was in retaliation of protected rights exercised by the employee.^{5/} If the business justification offered by an employer is considered to be pretextual, then there is no reason for the Commission to discern whether the employer would have taken the same action regardless of the protected activity. In this case, the Commission found the Township's business justification to be pretextual. There was no failure on the part of the Commission to adhere to its standards for determining an employer's anti-union animus.

For the foregoing reasons, the Township's Motion for Reconsideration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Graves, Hipp, Newbaker, Parcels and Suskin noted in favor of this decision. None opposed. Oral argument was denied by a vote of 7 to 0.

DATED: October 2, 1981
Trenton, New Jersey

ISSUED: October 5, 1981

^{4/} See, In re Cape May Board of Education, supra.

^{5/} See, In re Township of Teaneck, P.E.R.C. No. 81-142, 7 NJPER
(¶ 1981), for a discussion concerning Wright Line,
A Division of Wright Line, Inc., 251 NLRB No. 150, 105 LRRM
1169 (August 1980), in which the Board held that after an
employee has established a prima facie case of employer
reliance upon a protected activity, the burden shifts to the
employer to demonstrate that the decision would have been the
same in the absence of protected activity.