

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

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UMDNJ - RUTGERS MEDICAL SCHOOL,

Respondent,

-and-

Docket No. CI-86-37-162

ROSE MARIE MENZIUSO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint, based on an unfair practice charge, filed by Rose Marie Menziuso against UMDNJ-Rutgers Medical School. The charge alleged the Medical School violated the New Jersey Employer-Employee Relations Act when it refused to process two grievances she had filed; when it directed her to attend a meeting without union representation and threatened to suspend her if she did not; and when her immediate supervisor referred her to the Employee Assistance Program. The Commission, applying the governing test of In re Bridgewater, 95 N.J. 235 (1984), agrees with the Hearing Examiner and finds that Menziuso did not prove the allegations contained in the charge by a preponderance of the evidence.

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Appearances:

For the Respondent, W. Cary Edwards, Attorney General
(Barbara Harned, Deputy Attorney General)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.
(Mark J. Blunda, of counsel)

DECISION AND ORDER

On December 20, 1985, and January 15, 1986, Rose Marie Menziuso filed an unfair practice charge and an amended charge. The charge, as amended, alleged that UMDNJ - Rutgers Medical School ("UMDNJ") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3), (4), (5) and (7),^{1/} when it refused to process two grievances she

^{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; (4) Discharging or otherwise discriminating against any

had filed; when it directed her to attend a meeting without union representation and threatened to suspend her if she did not; and when her immediate supervisor referred her to the Employee Assistance Program ("EAS"). The amended charge also alleged a pattern of harassment, intimidation and coercion, including meetings, alterations of documents, threats of job sanctions and an order not to commit to writing questions about financial aid files.

On April 24, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing on all portions of the amended charge except those alleging a refusal to process grievances.^{2/}

On May 12, 1986, UMDNJ filed its Answer. It admitted that it directed Menziuso to attend a meeting without union representation, threatened to suspend her if she did not and referred her to EAS; but denied that any of these actions were illegal. It also admitted that Menziuso was told not to write so

1/ Footnote Continued From Previous Page

employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

2/ UMDNJ and Menziuso's union had a collective negotiations agreement with a self-executing grievance procedure. Englewood Bd. of Ed., E.D. No. 76-36, 2 NJPER 175 (1976).

many notes, but denied the allegations of harassment, intimidation and coercion.

On June 9 and 11, 1986, Hearing Examiner Richard C. Gwin conducted a hearing. After Menziuso presented her case, UMDNJ moved to dismiss the Complaint. Menziuso's attorney argued that this motion could not be granted if a scintilla of evidence suggested a violation. Applying this standard, the Hearing Examiner denied the motion. UMDNJ then presented its case. The parties waived oral argument, but filed post-hearing briefs.

On November 17, 1986, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 87-34, ___ NJPER ___ (¶ _____ 1986) (copy attached). Applying the standards in In re Tp. of Bridgewater, 95 N.J. 235 (1984), he concluded that Menziuso had not proved by a preponderance of the evidence that UMDNJ was hostile toward her protected activity or that her supervisors had interfered with her rights.

On December 8, 1986, Menziuso filed exceptions. She asserts that the Hearing Examiner: (1) failed to find that UMDNJ had issued two postings concerning her job; (2) made unsubstantiated findings of fact and omitted other facts; (3) misapplied Bridgewater; and (4) failed to consider whether UMDNJ independently violated subsection 5.4(a)(1).

On December 26, 1986, UMDNJ filed a response to each exception.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-12) are accurate. We accept his credibility determinations.^{3/} We add a few facts.

In September 1984 and June 1986, UMDNJ posted notices of vacancies in many positions, including head clerk in the financial aid department. These notices briefly described each position. A 1981 job description gave a more detailed description of the head clerk position. All three documents list the duties of maintaining records of financial aid awards, recording transactions and accounts, and preparing tuition and fee listings. The 1981 description and the 1984 notice list preparation of various reports while the 1981 and 1986 documents list screening of student questions. The 1981 description specifies work on indebtedness sheets, cashier notes, monthly account printouts, work-study time sheets and liaison duties. The 1986 notice states that supervisory experience is preferred.

The Hearing Examiner found that Menziuso had started a practice of writing critical memos to other financial aid staff. Menziuso was told to stop writing these memos because the staff found them disruptive and any errors would be routinely corrected in the reconciliation process. Hope Lewis, a senior financial aid assistant, testified that some of the omissions may have affected

^{3/} We thus accept his findings that CP-5 was not written in response to CP-4 and that Vlachakis did not threaten Menziuso.

total income, but not enough to change total aid. Elaine Pappas, a financial aid coordinator, testified that Menziuso wrote her 30 to 40 such notes between September and December 1985 while Lewis testified she received notes every day. Pappas was also bothered by Menziuso's interruptions when Pappas was meeting with students.

The Hearing Examiner found that Hanos, Katz and Vlachakis referred Menziuso to EAS in good faith because of their concerns about her attitude, emotionalism, and over-documentation, not because they wished to harass her or discriminate against her. He specifically found that Menziuso had an emotional outburst when she confronted Lewis with a mistake. These problems were not the subject of memos before the referral. Nor was Menziuso told before November 1985 that she need not evaluate tax returns.

At the outset of our analysis, we stress what is not before us. The train of events started when Menziuso requested a title upgrade. We do not decide whether this request was justified. We simply decide, first, whether UMDNJ officials retaliated against Menziuso in violation of subsections 5.4(a)(3) and, derivatively, (a)(1) because she filed grievances seeking an upgrade or engaged in other protected activity and, second, whether UMDNJ officials interfered with Menziuso's rights in violation of subsection 5.4(a)(1) independently.^{4/}

^{4/} The amended charge also alleged violations of subsection 5.4(a)(4) and (7). We dismiss these unsubstantiated allegations.

The answer to the retaliation question depends on the motive or motives of UMDNJ officials. Determining motivation, in turn, requires an application of the Bridgewater standards.

Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason

for the personnel action. Conflicting proofs concerning the employer's motives are for us to resolve.^{5/}

Menziuso asserts that once the motion to dismiss was denied, she had automatically met her burden of proving an illegal motive and the burden therefore shifted to the employer to prove it would have done the same things absent her protected activity. This argument confuses the standards for ruling on motions to dismiss after one party's case with the standards for determining ultimate issues of motivation upon all the evidence.

When a respondent moves for dismissal at the end of the charging party's case, the Hearing Examiner must accept as true all the evidence supporting the charging party's position and must give the charging party the benefit of all reasonable inferences. Bexiga v. Havir Mfg. Co., 60 N.J. 402, 409 (1972); Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969); New Jersey Turnpike Auth., P.E.R.C. No. 79-81, 5

^{5/} Besides Bridgewater, see NLRB v. Transportation Management Corp. ___ U.S. ___, 103 S.Ct. 2469, 76 L.Ed.2d 667 (1983); Wright Line, 251 NLRB No. 150, 105 LRRM 1169 (1980); In re Ocean Cty. College, 204 N.J. Super. 24 (App. Div. 1985); East Orange Pub. Library v. Taliaferro, 180 N.J. Super. 155 (1981); Morris, The Developing Labor Law (2d ed. 1983) at 191-92; and Bartosic and Hartley, Labor Relations Law in the Private Sector (2d ed. 1986) at 115-16. Before Wright Line, the NLRB would find a violation if the record established that anti-union animus was a substantial or motivating factor in a personnel action; proof that an action would have occurred anyway affected only the remedial issue of whether the action should be rescinded. Now, proving that anti-union animus was a substantial or motivating factor establishes an apparent violation subject to a finding of no liability at all if the employer proves it would have done the same thing anyway.

NJPER 197 (¶10112 1978). The Hearing Examiner must then deny the motion if there is a scintilla of evidence to prove a violation.

The Bridgewater standards are much different. The charging party must prove that an illegal motive contributed to the challenged personnel actions. In determining whether this burden has been met, the trier-of-fact must review the record as a whole, make credibility determinations, resolve conflicts and draw appropriate inferences.

Here, the Hearing Examiner denied the employer's motion to dismiss after Menziuso's case-in-chief. Accepting her testimony and granting her all reasonable inferences, he perceived at least a scintilla of evidence that the employer's actions may have been infected by animus toward her protected activity. After the record closed, however, the Hearing Examiner reviewed all the evidence, made credibility determinations in favor of the employer's witnesses, drew the inferences he believed appropriate and determined that an illegal motive had not in fact contributed to the employer's conduct concerning Menziuso. Therefore he was not obligated to determine whether the employer would have acted the same if Menziuso had not filed grievances seeking an upgrade. Based on our review of the entire record, we agree with his assessment of the motivational issues and dismiss this aspect of the Complaint.^{6/}

^{6/} We specifically reject Menziuso's contention that the differences between the 1981 job description and the 1984 and 1986 postings warrant a finding of anti-union animus. The differences are slight and natural in light of the documents' different functions; they do not evidence hostility.

Menziuso also contends that the employer independently violated subsection 5.4(a)(1). An employer violates this subsection if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Gorman, Basic Text on Labor Law, (1976) at 132-34. The charging party need not prove an illegal motive. The Developing Labor Law at 75-78.

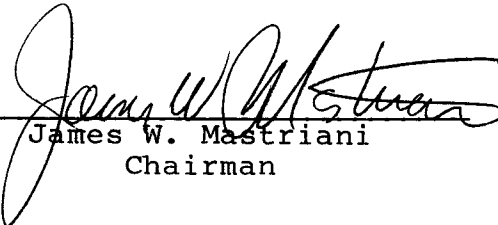
Menziuso alleged, but did not prove, several independent violations of this subsection. Menziuso had no right to insist upon union representation at the meeting called to review the work-study program or to refuse to attend that meeting. Contrast Dover Tp. Municipal Utilities Auth., P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984) (employees entitled to union representation upon request in investigatory interviews which may result in discipline). The referral to EAS was an attempt to help, not harass Menziuso. The Hearing Examiner discredited Menziuso's testimony that her superiors threatened her. He also rejected Menziuso's claim that she was being harassed by the removal of files since the employer's witnesses credibly testified that it was no more difficult to locate files than before. Whether we view these claims separately or

together, we find no interference with Menziuso's rights. We therefore dismiss this aspect of the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
January 16, 1987
ISSUED: January 16, 1987

H.E. NO. 87-34

STATE OF NEW JERSEY
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Docket No. CI-86-37-162

ROSE MARIE MENZIUSO,

Charging Party.

SYNOPSIS

The Hearing Examiner recommends dismissal of a Complaint alleging that the Rutgers Medical School harassed a head clerk for requesting a title upgrade and filing grievances. The Hearing Examiner finds that the head clerk has failed to prove a prima facie violation under In re Bridgewater, 95 N.J. 235 (1984), because she failed to demonstrate that the Medical School was hostile toward her exercise of protected activity.

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.

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For the Respondent,
W. Cary Edwards, Attorney General
(Barbara Harned, D.A.G.)

For the Charging Party,
Oxford, Cohen & Blunda
(Mark J. Blunda, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On January 15, 1986, Rose Marie Menziuso filed an amended unfair practice charge alleging that Rutgers Medical School, UMDNJ ("University" or "Medical School") violated sections 5.4(a)(1), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act,

^{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

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N.J.S.A. 34:13A-1 et seq. ("Act"). Menziuso alleged that the University harassed her because she requested an upgrade of her head clerk title and filed grievances. She also alleged that the University refused to process the grievances and refused her request for union representation at a meeting with her supervisors.

On April 24, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Director refused, however, to issue a complaint on those portions of Menziuso's charge which allege that the University refused to process her grievances.^{2/}

On May 12, 1986, the University filed an Answer denying any violation of the Act.

On June 9 and 11, 1986, I conducted a hearing. The parties examined witnesses and introduced documents. They waived oral argument but filed briefs, the last of which I received on August 5, 1986.

Based on the entire record, I make the following:

1/ Footnote Continued From Previous Page

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."

2/ The collective negotiations agreement between the University and the union representing Menziuso contains a grievance procedure culminating in binding arbitration. Therefore, the section 5.4(a)(5) allegations were dismissed. See, Englewood Bd. of Ed., E.D. No. 76-36, 2 NJPER 175 (1976).

FINDINGS OF FACT

The Medical School is a public employer within the meaning of the Act and is subject to its provisions. Menziuso is a public employee within the meaning of the Act and is subject to its provisions. She was hired in September 1984 as a head clerk in the Medical School's Financial Aid Office at Piscataway. She maintains financial aid records. Working with her in the Financial Aid Office are Hope Lewis, a Senior Financial Aid Assistant; Elaine Papas, a Coordinator of Financial Aid; and Helen Vlachakis, an Associate Director of Financial Aid. Vlachakis is Menziuso's immediate supervisor. Michael Katz is the University's Director of Financial Aid. Roger Hanos is the Manager of Human Resources.

Menziuso brought to her job a great deal of work experience, particularly in accounting. She had worked in the import/export business in New York; had worked 8 or 9 years with Johnson and Johnson; and, for approximately three years, had held the title of Grants Administrator with the University. Katz interviewed Menziuso for the head clerk job. He was concerned that she might be overqualified. Menziuso assured him that the head clerk job was what she was looking for.

The University uses the Hayes system of evaluation. The head clerk title is classified at Range 15. Menziuso was hired at step 1 on the Range 15 salary schedule. Katz testified that, due to budget limitations, all new hires in the financial aid office start at step one.

In September 1985, Vlachakis completed Menziuso's first performance evaluation. She rated Menziuso "outstanding" in all categories of performance and noted that Menziuso was an exceptional employee and an asset to the office. Menziuso signed the evaluation but noted that she felt she "should be placed at step 4 [of the salary schedule] with [her] qualifications and quality of work" (CP-1). This was the first time that Menziuso raised the issue of her placement on the salary guide. She had apparently heard that an employee in another department had been hired at step 4. Menziuso also asked Vlachakis about upgrading the head clerk title. Vlachakis told her that she would discuss the matter with Katz.

Menziuso met with Vlachakis and Katz on October 25, 1985. In anticipation of this meeting, Menziuso prepared a job description and sent it to Katz. At the meeting Katz told Menziuso that he saw no reason to reclassify the head clerk title. (The title had been upgraded in 1980 and again in 1981 or 1982.) Katz did state that he would reconsider Menziuso's request when the financial aid office became automated. He also told Menziuso that he would talk to Hanos about a reclassification.

On November 6, 1985, Menziuso again met with Vlachakis and Katz. Katz informed Menziuso that Hanos shared his opinion about the reclassification. Katz and Vlachakis also discussed some of Menziuso's responsibilities with her, pointing out that she was performing unnecessary tasks, specifically the evaluation of tax returns of students' parents. They discussed a problem about

misunderstood instructions to financial aid staff. Katz also told Menziuso that he and Vlachakis felt that her qualifications surpassed the responsibilities of her title.

On November 12, 1985, Menziuso sent a memo to Hanos requesting a review of her employment status. The memo states:

I respectfully request a review of my employment status in view of the job description...I have been performing since my hire and because of the following developments in my department:

The Secretary (R13) who was bidding on my position (R15), prior to my hire, has now been promoted to R15, placing her at the same level as I, while in the past my position was above hers and my predecessor wasn't nearly doing all that I do.

The Senior Financial Aid person has now been promoted to Coordinator. Yet, why in my job description of 1981, (which I only received on September 25, 1985 after requesting it) states I "assist in the preparation of reports?" Spreadsheets which I prepare and constitute a minimum of 80% of the preparation of these reports should make me eligible for my job description to read, "I prepare the reports and she assists." Not that I assist and someone else prepares it when the major portion of the work I do and have done for the past year.

Lastly, my position, HEAD CLERK, R15, requires three or more years of experience in the maintenance of records and statistics, at least two of which shall have been in a financial environment. How then was I, with all my experience placed at Step 1, while the present Senior Financial Aid Assistant with only 7 months experience as a temporary, Needs Analyst at Rutgers University able to have stepped into her Exempt position?

Let me inform you that absolutely never did Michael Katz inform me to discontinue analyzing Budget Status Reports, as he claimed in our discussion of November 6, 1985. [CP-4].

On the same date, November 12, 1985, Menziuso received a memo from Vlachakis and Katz, dated November 6, 1985. That memo states:

This is to summarize our meeting of November 6, 1985 regarding your position in the Financial Aid Office. As a result of our meeting with Mr. Roger Hanos, in Personnel, you were informed that your current position would not be re-classified at this time as the position is correctly described. We did mention however, that a re-evaluation of the position could possibly take place at a future date, particularly at the time the operation becomes automated.

We discussed some of your responsibilities and indicated that these are aspects of your job that you are doing on your own accord, and are not required such as tax return evaluation. We also told you from this point forward that all questions must be directed to the Assistant Director unless she is not present. Although we did mention this during our meeting, it is not necessary for you to ask these questions in the form of a memo. This is time consuming and can be handled verbally (memo of 11-5-85). In addition, regarding the College Work Study, you were told that an analysis of the monthly budget transaction statements and Labor Distribution are no longer necessary. Instead you will be analyzing a new report prepared by the Newark Grant's Department.

We talked about what appears to be a communications problem in that instructions between staff members are not understood and can change frequently. Communication appeared to be a problem during our meeting today in that it was necessary to repeat points to make sure that we were understanding each other. We will have to work on this during regular office hours so that policies and procedures are clearly understood.

We stated that it was our opinion that your performance and skills during the past year appear to surpass the responsibilities of the Head Clerk position. You indicated to us that you were already looking at postings for another position. We discussed with Roger Hanos and told you that he would work with you in attempting to secure a position for which you may qualify. We even mentioned that he told us of an available position possibly better suited to your background.

Please remember our doors are always open and feel free to discuss these or other issues with us.
[CP-5].

Menziuso claims that the memo (dated November 6, 1985) from Vlachakis and Katz was a response to her "November 12" memo to Hanos. She also claims that it does not accurately depict what occurred at the meeting of November 6, 1985, particularly those portions about her "looking at postings for another position." Hanos assisted Katz and Vlachakis in preparing the memo dated November 6. Hanos and Katz both deny having first seen Menziuso's memo.

I credit Katz's and Hanos' testimony that they and Vlachakis prepared the "November 6" memo before receiving Menziuso's "November 12" memo. The "November 6" memo is dated six days earlier than Menziuso's. Menziuso did, however, date stamp this memo when she received it on November 12, 1985. The dates of the documents notwithstanding, an examination of the memoranda reveals that the Katz/Vlachakis memo is simply not "responsive" to Menziuso's memo. The only topic common to the memoranda is Menziuso's role in the preparation of monthly budget transaction statements. Menziuso does not claim that she did not talk about that with Katz and Vlachakis at the November 6 meeting. She merely claims that Katz had never told her (prior to the meeting) that she was not to prepare the reports. Finally, Katz and Hanos testified in a matter-of-fact and forthright manner about the memo. I credit Menziuso's testimony that she did not receive the Katz/Vlachakis memo until November 12, 1985. I simply find here that the "November 12" memo was not prepared as a response to Menziuso's.

Shortly after Menziuso sent her memo to Hanos, he called her and arranged a meeting for November 21, 1985. Menziuso, Hanos, Katz, Vlachakis and Yvonne Harris, Menziuso's shop steward, attended the meeting. Hanos stated that he wanted to straighten the matter out. He said that no one was out to get Menziuso and that he was afraid that friction would develop and that Menziuso might become alienated. Vlachakis stated that Menziuso had already become alienated. She was referring to an incident that occurred in her office involving Menziuso and Hope Lewis. Vlachakis had been talking to Lewis when Menziuso entered the office. Menziuso complained to Lewis that she had forgotten to list some information on a financial aid document. Lewis said, "So what? I made a mistake." Menziuso then apparently drew a circle on a pad of paper and said something like, "You all get a piece of the pie. I want my piece of the pie." Menziuso banged the pad on Vlachakis' desk and raised her voice.

Another topic that was discussed at the November 21 meeting was Menziuso's recently acquired habit of writing short, critical memos to other financial aid staff, citing their failures to list certain information on financial aid documents. Menziuso had previously simply made the corrections without circulating the files with memos about the omissions. The posting omissions were not critical and were routinely corrected in a reconciliation process. The financial aid staff found Menziuso's memos to be annoying and disruptive.

During the meeting Menziuso took extensive notes of what was said. Several times she interrupted a speaker to ask him or her to slow down or repeat a statement. Hanos also told Menziuso that he would deny a grievance about the denial of an upgrade unless Menziuso could point to job duties that exceeded those of the Range 15 title.

Sometime in mid-November, Menziuso talked to the Dean of the University about her request for reclassification. Menziuso testified that the conversation was quite friendly. The Dean apparently told Vlachakis that he had met with Menziuso but did not discuss the particulars of the meeting. On the same day Menziuso spoke with Vlachakis and asked her why everyone else in the office had been promoted. Vlachakis told her that she was not responsible for promotions. Menziuso testified she responded, "What goes around comes around," and Vlachakis retorted, "just wait and see what happens to you." Vlachakis denies making the statement. I credit her testimony. It was the more candid and forthright.

On November 26, 1985, Menziuso filed a grievance about the refusal to reclassify her title. The grievance was denied on December 3, 1985 by Vlachakis because it failed to specify the contract article alleged to be violated.

On December 2, 1985, Menziuso filed the following grievance:

The responsibility of analyzing student's financial aid files and recording necessary data onto the History Spreadsheets, which I was definitely assigned to by my supervisor and which I have performed for over one (1) year

now and which I performed with extreme accuracy, otherwise my "outstanding" evaluation would have stated differently, has suddenly become extremely difficult to continue, due to the confused state of the files.

I suspect this is a deliberate attempt to harass me into giving up this responsibility, resigning or discrediting the entire one (1) year that I have been doing this job.

I expect complete and full compensation which is justified.
[CP-7]

Menziuso claims that the preparation of spread sheets is an example of a duty that exceeds those required of a head clerk. Her predecessor in the title did not prepare them. The preparation of spread sheets involves the posting of financial aid information on a ledger-sheet. Menziuso was told, when hired, that it would be part of her job. Vlachakis denied the grievance on December 3, 1985 because Menziuso had failed to state the contract article alleged to be violated.

The grievance also raises the issue of "the confused state of the files." Menziuso claims that this was one of the forms of harassment that she was faced with after she requested a reclassification. It is unclear whether Menziuso accuses her supervisors or her co-workers for the state of the files. All of the financial aid office staff credibly testified that it has always been difficult to locate files and that it is no more difficult now than it has ever been. The difficulty in locating files stems from the fact that everybody in the office works with them.

At about this time, Katz called Menziuso about a meeting to discuss a new college work study program. Katz asked Menziuso to

attend the meeting. Menziuso said she wanted union representation there. After speaking with Hanos, Katz informed Menziuso that she could not have a union representative at the meeting. Menziuso was adamant about the issue. On December 4, 1985, with the assistance of Hanos, Katz prepared a memo to Menziuso. The memo states:

On Tuesday, December 10, 1985 at 9:30 a.m., I will be meeting with Helen and you in the Financial Aid Office to review and reconcile the College Work-Study Program expenditure summary prepared by the Grants Department.

Your request to have a union representative present is inappropriate. This meeting does not involve any personal issues.

If you fail to attend you will be suspended for three (3) days without pay for insubordination.
[CP-9].

Menziuso prepared this responsive memo:

I have no objection to our meeting, however, I would appreciate knowing why our meetings are not held on a one to one basis. Why I must meet with you together with Helen and no one represent me.

In all my past years of experience, I only had to meet with my immediate supervisor and she/he would relate the requests of her/his supervisor. It appears in our department, it doesn't quite work that way.

If you cannot discuss your work problem directly to Helen who in turn will discuss it with me, then I believe I have the right to have my union representative with me also, due to the misunderstanding of our last meeting as you so declared.

Otherwise, I accept being suspended for three (3) days without pay.
[CP-10].

The meeting was held in mid-December, 1985. The only topic of conversation at the meeting was the work study program. Menziuso attended and was not disciplined.

On December 13, 1985, Vlachakis wrote a memo referring Menziuso to the Employee Assistance Program. Vlachakis wrote that she was concerned about Menziuso's "attitude, emotionalism and over-documentation." She pointed out that use of the EAS was voluntary and confidential.

Menziuso did not seek assistance from the EAS. She did, however, see her family doctor, complaining of chest pains and insomnia. Her doctor diagnosed work-related depression, for which she is receiving treatment.

ANALYSIS

Menziuso claims that the Medical School retaliated against her (harassed her) for requesting an upgrade in title and filing grievances. She also claims that she was unjustly denied union representation at the meeting scheduled by Katz to discuss a new work study program.

In order to prove a violation of 5.4(a)(3), Menziuso must show that she engaged in protected activity, that the University was aware of it and was hostile toward her for it. Tr. of Bridgewater and Bridgewater Publ Works Ass'n, 95 N.J. 235 (1984).

It is undisputed that Menziuso aggressively pursued a title upgrade and, when unsuccessful, filed a related grievance. Katz, Hanos and Vlachakis were obviously aware of this. They were also aware of her grievance about the difficulty in working with financial aid files.

Menziuso alleges that the University's hostility toward her exercise of protected rights is shown by its refusal to upgrade her title, certain claimed inaccuracies in memos, the (allegedly deliberate) disarray of financial aid files, the letter advising her to attend the work study meeting on penalty of suspension, and the referral to the employee advisory service.

I disagree and conclude that Menziuso has failed to demonstrate a prima facie violation under the Bridgewater standard. The preponderance of the evidence reveals that the actions of her supervisors were not intended to harass, coerce, discriminate or interfere with her exercise of protected rights. The evidence shows that the Medical School's actions were directed at the problems which arose as a result of Menziuso's conduct on the job and her difficulty in getting along with her co-workers.

Menziuso was an exemplary employee during her first year of employment. Vlachakis acknowledged this fact in her performance evaluation. Although she was given her increment, Menziuso wanted more money in recognition of her outstanding performance. She sought the money in the form of a title upgrade. The University considered the request but did not feel that the title should be upgraded. There is nothing in the record to suggest that this decision was based on anything but legitimate business reasons. Katz acknowledged that Menziuso was performing duties beyond those called for by her title, but those duties were unnecessary and she was told to stop performing them. This does not constitute proof of hostility.

Nor does the "November 6" memo from Katz and Vlachakis. The memo contains no threat. The claimed inaccuracies are insubstantial. I perceive no attempt to distort or conceal any communication at the November 6, 1985 meeting.


I also find no evidence of hostility in any communication at the November 21 meeting. Hanos told Menziuso that he wanted to straighten things out and avoid friction. He did not want Menziuso to become alienated. They discussed some of the problems that Menziuso was having on the job. She was told that she was performing unnecessary tasks and was not getting along well with office staff. The episode with Vlachakis and Lewis is an example. She had also been writing those memos to her co-workers in what appears to be an attempt to underscore what Menziuso perceived as their inability to properly perform their jobs.

By this time Menziuso became distrustful of her supervisors. She demanded that all correspondence be written. She took excessive notes, disrupting the November 21, 1985 meeting. When Katz asked her to attend the college work study meeting, she refused unless a union representative would be present. She had no right to union representation at that meeting. Its purpose was explained to her and was not disciplinary or investigatory. By any objective standard, she had no reason to fear that discipline may result by her attendance at the meeting. The memo informed her that her failure to attend the meeting would result in discipline posed no threat to her exercise of protected rights. Compare East Brunswick Bd. of Ed., 5 NJPER 398 (¶10206 1979).

Menziuso's claim that she was being harassed by the removal of files is unconvincing. First, it is unclear whether Menziuso is accusing her co-workers or her supervisors for making her work more difficult. Second, the entire office staff testified that it has always been difficult to locate files because everyone works with them and that it is no more difficult now than it has ever been. I have credited their testimony.

Finally, Menziuso cites the referral to EAS as an attempt to harass her. I find to the contrary. I believe, based on what transpired between Menziuso and the office staff and the manner in which Menziuso reacted to her supervisors, that Hanos, Katz and Vlachakis felt that Menziuso might benefit from the assistance of the EAS. The fact that Menziuso's own doctor told her that she was suffering from work-related depression lends credence to the referral.

I conclude that Menziuso has failed to prove that the Medical School was hostile toward her exercise of protected activity. I recommend that the Complaint be dismissed.^{3/}


Richard C. Gwin
Hearing Examiner

Dated: November 17, 1986
Trenton, New Jersey

^{3/} Menziuso presented no proofs relating to a section 5.4(a)(7) violation.