

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-94-18

NEWARK TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains a Hearing Examiner's decision dismissing a Complaint based on an unfair practice charge filed by the Newark Teachers Association against the Newark Board of Education. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act by refusing to appoint Diane Williams to the position of Deputy Director of Cafeterias in retaliation for her role on behalf of the Association. The Commission finds that the charging party has shown that the employer knew of her protected activity and that persons with the same test scores who engaged in less protected activity were promoted to Deputy Director and she was not. Accepting her testimony as true and granting her every reasonable inference, the Commission agrees with the Hearing Examiner that the charging party has not shown that the City's decision not to promote Williams was motivated by her involvement in protected activity.

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

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Appearances:

For the Respondent, Marvin L. Comick, General Counsel  
(Samuel M. Manigault, Associate Counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,  
attorneys (Nancy I. Oxfeld, of counsel)

DECISION AND ORDER

On July 13, 1993, the Newark Teachers Association filed an unfair practice charge against the Newark Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (3),<sup>1/</sup> by refusing to appoint Diane Williams to the position of Deputy Director of Cafeterias in retaliation for her role on behalf of the Association.

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<sup>1/</sup> 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."

On January 24, 1994, a Compliant and Notice of Hearing issued. On February 18, the employer filed its Answer denying that protected activity motivated its decision to appoint two other employees instead of Williams as deputy directors.

After a number of postponements, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties introduced exhibits and examined and cross-examined Williams, the charging party's only witness. At the end of the charging party's case-in-chief, the Hearing Examiner granted the respondent's motion to dismiss. He found no evidence of hostility to protected rights and could not infer any anti-union animus from the fact that other employees had been promoted.

On March 13, 1995, after an extension of time, the charging party requested review pursuant to N.J.A.C. 19:14-4.7. She argues that the Hearing Examiner improperly applied the standards concerning anti-union animus. She also argues that the Hearing Examiner improperly gave the respondent the benefit of inferences.

We have reviewed the record. We summarize the pertinent facts as presented by the charging party.

Williams engaged in protected activity. She was a union officer. She received satisfactory to outstanding evaluations in her job. Williams first applied for the position of deputy director of cafeterias in 1989. Tonya McGill-Riggins was appointed instead. The position was apparently reposted and Williams reapplied. McGill-Riggins was appointed again. It appears that the position

was posted through Civil Service in August 1990 and February 1992. We cannot determine if there were three or four postings, but that fact is not critical to our determination.

As a result of the Civil Service testing procedure, Williams, McGill-Riggins and a third candidate, Folkes-Epps, all received the same test score. McGill-Riggins was ranked first as a resident.<sup>2/</sup> McGill-Riggins was appointed in November 1992 and Folkes-Epps was appointed in March 1993.

In New Jersey Turnpike Auth., P.E.R.C. No. 79-81, 5 NJPER 197 (1979), we set forth the standards for determining whether to grant a motion to dismiss:

[T]he Commission utilizes the standard set forth by the New Jersey Supreme Court in Dolson v. Anastasia, 55 N.J. 2 (1959). Therein the Court declared that when ruling on a motion for involuntary dismissal the trial court "is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion" (emphasis added).  
[Id. at 198]

The charging party has shown that the employer knew of her protected activity and that persons with the same test scores who engaged in less protected activity were promoted to deputy director and she was not. Accepting her testimony as true and granting her every reasonable inference, we agree with the Hearing Examiner that

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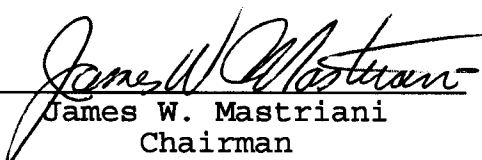
<sup>2/</sup> Nothing in the record suggests that McGill-Riggins was selected because of a residential preference or entitled to such a preference.

the charging party has not shown that the City's decision not to promote her was motivated by her involvement in protected activity. The Hearing Examiner therefore properly granted the motion to dismiss.

ORDER

The decision dismissing the Complaint is sustained.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Boose abstained from consideration.

DATED: September 21, 1995  
Trenton, New Jersey  
ISSUED: September 22, 1995