

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LINDEN-ROSELLE SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-78-144-66

DISTILLERY, WINE AND ALLIED WORKERS
INTERNATIONAL UNION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding the Commission finds that the record as a whole supports the Hearing Examiner's findings and conclusions that there was no evidence in the record to indicate anti-union animus on the part of the Authority in its termination of employment of one Joseph Stracuzzi. The Commission reiterates that an employer's legitimate concerns which are unrelated to union activities may be exercised relative to discharge, suspension and promotion; therefore, the Commission dismisses the complaint in its entirety.

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DISTILLERY, WINE AND ALLIED WORKERS
INTERNATIONAL UNION,

Charging Party.

Appearances:

For the Respondent, Raymond G. Tomaszewski, Esq.

For the Charging Party, George J. Orlando, General
Secretary-Treasurer

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on December 30, 1977 by the Distillery, Wine & Allied Workers International Union (hereinafter the "Union") alleging that the Linden-Roselle Sewerage Authority (hereinafter the "Authority") had engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Authority, on December 2, 1977, terminated Joseph Stracuzzi, the "prime mover" in a recently concluded union organization of the Authority in August 1977. The termination alleged was related to Stracuzzi's union activities. This was asserted to be a violation of N.J.S.A. 34:13A-5.4(a) (3) of the Act.^{1/}

^{1/} This subsection prohibits employers, their representatives or agents from: "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."

It appearing that the allegations of the above charge, if true, may constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 20, 1978. Pursuant to the Complaint and Notice of Hearing, a hearing was held before Alan R. Howe, Hearing Examiner of the Commission, on May 2, 1978 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present evidence and argue orally. Both parties argued orally at the conclusion of the hearing. There were no post-hearing briefs filed by either party.

On June 28, 1978, the Hearing Examiner issued his Recommended Report and Decision^{2/} which included findings of fact, conclusions of law, and a recommended order. The original of this report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof.

The Hearing Examiner found that, "Mr. Stracuzzi's problems with the Authority arose solely because of his having been arrested by the Linden Police on October 7, 1977." Following a stakeout on the Authority's premises, it was reported that he was "caught red-handed" in one of the contractor's trailers and that a subsequent search of his home disclosed a "basket of tools" which were identified by the contractors as having been their property. The Authority suspended Mr. Stracuzzi without pay pending the outcome of legal proceedings. Although Mr. Stracuzzi was found not guilty as charged, the Authority subsequently decided to terminate Mr.

^{2/} H.E. No. 78-33, 4 NJPER 239 (Par. 4121 1978).

Stracuzzi based upon his having been "caught red-handed" and the fact that in the interim period the Authority became aware of his having a prior arrest record which was not indicated on his employment application.

The Hearing Examiner found absolutely no evidence of anti-union animus in the Authority's actions toward Mr. Stracuzzi. The Hearing Examiner took note of the fact that, among other things, Mr. Stracuzzi's own testimony indicated that no other union activists had been fired or suspended and that the record was bare of any causal connection between Mr. Stracuzzi's union activities and his suspension and discharge. The Hearing Examiner therefore recommended the dismissal of the complaint in its entirety.

Pursuant to the Commission's Rules and an approved request for an extension of time, exceptions to the Hearing Examiner's Recommended Report and Decision were filed by the Union on July 26, 1978.

The Union takes exception to the Hearing Examiner's conclusion that Mr. Stracuzzi's discharge was not a result of his union activities. The exceptions note that the Municipal Court Warrant does not reflect the testimony offered by the Authority's Mr. Fredricks that the police reported to him that Mr. Stracuzzi was in possession of keys for the other trailers and that a basket of tools was found at the Stracuzzi home. The exceptions also reiterate the fact that Mr. Stracuzzi was found not guilty. Finally, the exceptions point to the fact that another part of Mr. Stracuzzi's

employment application failed to indicate that he was a diabetic; yet subsequent discovery of that "falsification" did not prompt any disciplinary action.

The Commission finds that the record as a whole supports the findings and conclusions of the Hearing Examiner. There is no evidence in the record to indicate anti-union animus on the part of the Authority related to its actions toward Mr. Stracuzzi. Despite the fact that the Municipal Court Warrant does not reflect Mr. Fredricks' testimony about the keys to other trailers or the basket of tools, it does indicate a complaint based upon the allegation that Mr. Stracuzzi entered a trailer and had in his possession certain tools.

It is true that the initial suspension indicated that it was pending the outcome of legal proceedings against Mr. Stracuzzi and it is also true that he was found not guilty. However, the fact of the discovery of the failure to indicate a prior, related arrest on his employment application supports the Hearing Examiner's conclusion that there was no anti-union animus in the ultimate termination of Mr. Stracuzzi's employment with the Authority.

In In re Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71 (1977) this Commission specifically stated that an employer's legitimate concerns which were unrelated to union activities may be exercised relative to discharge, suspension or promotion:

The two-fold test upholds the employer's legitimate prerogative to discharge, suspend or refuse to promote employees for reasons unrelated to union activities. The employer may take such action for any cause or no cause

at all as long as it is not retaliatory.
It is the Charging Party that must prove its case by the preponderance of the evidence (citing N.J.A.C. 19:14-6.8). (Emphasis supplied in part) (3 NJPER at 72)

It is true, under our test, that where an employer's discriminatory acts are motivated even in part by an attempt to encourage or discourage an employee in the exercise of his protected rights, a violation of N.J.S.A. 34:13A-5.4(a)(3) will be found.^{3/} However, the record in the instant matter does not establish any anti-union motivation on the part of the Authority relative to the suspension and discharge of Mr. Stracuzzi.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the Complaint in this matter is dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Schwartz voted for this decision. Commissioners Hipp and Graves voted against this decision.

DATED: Trenton, New Jersey
September 19, 1978
ISSUED: September 20, 1978

3/ In re Haddonfield Borough Board of Education, supra.

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

In the Matter of

LINDEN-ROSELLE SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-78-144-66

DISTILLERY, WINE AND ALLIED WORKERS
INTERNATIONAL UNION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices against the Authority, which alleged that the Authority had on December 2, 1977, terminated Joseph Stracuzzi, the "prime mover" in the union organization of the Authority in August 1977, on account of Mr. Stracuzzi's union activities.

The Hearing Examiner found that although the Authority had actual knowledge of Mr. Stracuzzi's union activities since May 1977, the Union had failed to prove any anti-union animus or any causal connection between Mr. Stracuzzi's exercise of protected rights under the New Jersey Employer-Employee Relations Act and his termination. The Hearing Examiner credited the Authority's contention that it had terminated Mr. Stracuzzi because of his arrest for theft in October 1977 and his concealment of a prior criminal record at the time of hire.

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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Docket No. CO-78-144-66

DISTILLERY, WINE AND ALLIED WORKERS
INTERNATIONAL UNION ^{1/}

Charging Party.

Appearances:

For the Linden-Roselle Sewerage Authority
(Raymond G. Tomaszewski, Esq.)

For the Distillery, Wine and Allied Workers International Union
(George J. Orlando, General Secretary-Treasurer)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 30, 1977 by the Distillery, Rectifying, Wine & Allied Workers International Union of America (hereinafter the "Union") alleging that the Linden-Roselle Sewerage Authority (hereinafter the "Authority") 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 (hereinafter the "Act"), in that the Authority on December 2, 1977 terminated one Joseph Stracuzzi, the "prime mover" in a recently concluded union organization of the Authority in August 1977, the termination allegedly being for Stracuzzi's union activities, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(3) of the Act. ^{2/}

1/ As amended at the hearing.

2/ This subsection prohibits employers, their representatives or agents from:
"(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."

It appearing that the allegations of the above charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 20, 1978.

Pursuant to the Complaint and Notice of Hearing, a hearing was held on May 2, 1978 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present evidence and argue orally. Both parties argued orally at the conclusion of the hearing. There were no post-hearing briefs filed by either party.

An unfair practice charge having been filed with the Commission, a question concerning an alleged violation of the Act, as amended, exists and, after hearing and after consideration of the oral argument of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

FINDINGS OF FACT

1. The Linden-Roselle Sewerage Authority is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Distillery, Wine and Allied Workers International Union is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Joseph Stracuzzi was employed by the Authority as a plant operator on July 8, 1974.
4. Early in April 1977 Mr. Stracuzzi was instrumental in setting up a first meeting between several employees of the Authority and two representatives of the Union, one of whom was George J. Orlando, the General Secretary-Treasurer. At a second meeting, about two weeks later, a majority of the employees were present, including Mr. Stracuzzi, union authorization cards were circulated and signed by those present, and on April 25, 1977 Mr. Orlando wrote a letter to Mr. Jerome A. Frederick, Superintendent of the Authority, stating that the Union represented a majority of its employees and demanding recognition (CP-1).
5. The first knowledge of Mr. Stracuzzi's activities on behalf of the Union, attributable to the Authority, would have occurred upon the receipt of a letter dated May 5, 1977 from Mr. Orlando to Mr. Frederick wherein Mr. Stracuzzi is noted as receiving a copy (CP-3.)
6. After some preliminary exchanges between the Union and the Authority with respect to resolving the Union's request for recognition, a petition was filed

by the Union with the Commission, Docket No. RO-77-193. An election was conducted on August 3, 1977, at which Mr. Stracuzzi was the observer for the Union, and the Union was certified on August 11, 1977.

7. After the certification of the Union, three employees, Mr. Stracuzzi, Terry Firestone and John Romanowski were designated as the negotiating committee and as temporary stewards on their respective shifts. These names and designations were posted with the approval of Mr. Frederick, the Superintendent. Mr. Stracuzzi wrote a notice of a general membership meeting of the Union to be held September 13, 1977, which was likewise approved for posting by Mr. Frederick. (Tr. 21-24; CP-6).

8. After complaints by contractors working on the premises of the Authority that their trailers had been broken into and that tools were missing, a stake-out was established by the Linden Police. It was subsequently reported to Mr. Frederick by the Police that (1) Mr. Stracuzzi was "caught red-handed" in one of the trailers; (2) he was in possession of keys for all of the other trailers; and (3) a search of his home had disclosed a "basket of tools", which were identified by the contractors and their employees as having been their property. Mr. Stracuzzi was arrested on October 7, 1977. (Tr. 71-73; 51).

9. Following the arrest of Mr. Stracuzzi, Mr. Frederick reported the foregoing events to the members of the Authority and on the same day, October 12, 1977, Mr. Frederick wrote a letter to Mr. Stracuzzi suspending him without pay pending the outcome of legal proceedings against him. (GP-7). The action of suspension without pay was ratified by the Authority at its next meeting on the fourth Wednesday of October 1977. (Tr. 73, 74).

10. Under date of November 7, 1977, Mr. Orlando wrote to Mr. Frederick advising him that Mr. Stracuzzi had been found not guilty as charged and requested Mr. Frederick to reinstate Mr. Stracuzzi as soon as practicable. (CP-8).

11. Between the October and November meetings of the Authority Mr. Frederick obtained information from Mr. Tomaszewski, the attorney for the Authority, that Mr. Stracuzzi had, prior to his employment with the Authority, been found in possession of burglary tools and that the City of New York had a warrant out for his arrest for armed robbery. (Tr. 74, 75). ^{3/} An examination by Mr. Frederick of Mr. Stracuzzi's employment application, dated July 3, 1974, indicated that there was no response to the question: "Have you ever been arrested?" (R-1).

12. At the November 23, 1977 meeting of the Authority the members thereof decided to terminate Mr. Stracuzzi, notwithstanding his having been found not guilty,

3/ Mr. Stracuzzi admitted his prior record on cross-examination. (Tr. 51-53).

because of the fact that Mr. Stracuzzi had been "caught red-handed", that he had a prior record and that he had failed to respond on his employment application (Tr. 74-77, 92). Based on a plea by Mr. Stracuzzi's wife the members of the Authority decided to pay Mr. Stracuzzi during the period of his suspension (Tr. 77).

13. Mr. Frederick credibly testified that he had advised Mr. Stracuzzi a year earlier to get together and form a union. He also testified that he was aware of Mr. Stracuzzi's union activities along with other employees of the Authority, including Mr. Romanowski. Mr. Frederick testified he was not aware that Mr. Stracuzzi was the "prime mover". To the contrary, he testified that he thought Mr. Romanowski had "spear headed" the Union and that he had most of his contact with respect to the Union with Mr. Romanowski (Tr. 78,79,87,88).

14. Mr. Andrew Stoffa, an Authority member, testified credibly that at the November 23, 1977 Authority meeting he had no knowledge of Mr. Stracuzzi's union activities and was under the impression that it was Mr. Romanowski who was involved with the union (Tr. 93).

15. Mr. Frederick wrote two letters of recommendation for Mr. Stracuzzi requesting that he be permitted to take a State licensing examination as a plant operator, the first on May 19 and the second on September 8, 1977 (R-2, R-3).

16. As of the date of hearing, no collective negotiations agreement had been consummated (Tr.20). Thus, there is no issue of deferral to arbitration.

THE ISSUE

Did the Authority violate subsection (a)(3) of the Act when it first suspended and then terminated Mr. Stracuzzi?

DISCUSSION AND ANALYSIS

The Authority Did Not Violate The Act When It First Suspended and Then Terminated Mr. Stracuzzi

The Commission in Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71 (1977) adopted the following standard in cases alleging a violation of subsection (a)(3) of the Act:

"...A violation of N.J.S.A. 34:13A-5.4(a)(3) should be found if it is determined that a public employer's discriminatory acts were motivated in whole or in part by a desire to encourage or discourage an employee in the exercise of rights guaranteed by the Act or had the effect of so encouraging or discouraging employees in the exercise of those rights.

"Application of this two-fold standard will normally involve a preliminary showing by the Charging Party of

two essential elements. There must be proof that the employee was exercising the rights guaranteed to him by the Act, or that the employer believed said employee was exercising such rights, and proof that the public employer had knowledge, either actual or implied, of such activity.

"...Discriminatory acts by employers, even if only partly motivated by an employee's union activities, or acts that would discourage exercise of such rights, would clearly tend to frustrate the express intent of the Act.

"Furthermore, the two-fold test upholds the employer's legitimate prerogative to discharge, suspend or refuse to promote employees for reasons unrelated to union activities. The employer may take such action for any cause or no cause at all as long as it is not retaliatory. It is the Charging Party that must prove its case by the preponderance of the evidence (citing N.J.A.C. 19:14-6.8)." (Emphasis supplied in part)
(3 NJPER AT 72)

See also, City of Hackensack, P.E.R.C. No. 77-49, 3 NJPER 143 (1977), appeal pending App. Div. Docket No. A-2546-76.

In Haddonfield, supra, the Commission agreed with the Hearing Examiner in that case that the Charging Party had failed to meet its burden of proof by a preponderance of the evidence. So, too, must the Hearing Examiner conclude in the instant case.

The foregoing Findings of Fact demonstrate amply that Mr. Stracuzzi was engaged in protected activities within the meaning of N.J.S.A. 34:13A-5.3 ^{4/} at least since early April 1977. The Authority is charged with first knowledge of Mr. Stracuzzi's activities on behalf of the Union upon receipt of a letter dated May 5, 1977 from Mr. Orlando to Mr. Frederick wherein Mr. Stracuzzi is noted as receiving a copy of the said letter (see Findings of Fact Nos. 4 and 5, supra).

As indicated in Findings of Fact Nos. 6 and 7, supra, Mr. Stracuzzi was the observer for the Union at the election on August 3, 1977 and was also one of three members of the negotiating committee and a temporary steward. Mr. Frederick had knowledge of Mr. Stracuzzi's capacity in these respects.

Thus, the Union has clearly met its preliminary showing that Mr. Stracuzzi was exercising rights guaranteed by the Act and that the employer had, in this case, actual knowledge of such activity.

^{4/} "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from such activity..."

As noted, in the above-quoted portions of the decision of the Commission in Haddonfield, the test adopted by the Commission for subsection (a)(3) discrimination clearly recognizes the prerogative of the employer to suspend and/or discharge "...for reasons unrelated to union activities" and, further, that the employer "...may take such action for any cause or no cause at all as long as it is not retaliatory..."

Mr. Stracuzzi's problems with the Authority arose solely because of his having been arrested by the Linden Police on October 7, 1977. As indicated in Finding of Fact No. 8 he was, following a stakeout, "caught red-handed" in a contractor's trailer while in possession of keys for other trailers, and a search of his home resulted in the recovery of tools which were identified by the contractors and their employees as the property of the latter. It is true that Mr. Frederick's letter of suspension of October 12, 1977 (CP-7) did indicate that the initial suspension was "pending the outcome of legal proceedings against you." It is likewise true that Mr. Orlando wrote Mr. Frederick on November 7, 1977 stating that Mr. Stracuzzi had the previous week been found "not guilty as charged". (CP-8).

However, the Authority by the time of its November 23, 1977 meeting, had before it the initial arrest of October 7 coupled with the additional information that Mr. Stracuzzi had, prior to his employment with the Authority, been found in possession of burglary tools and that the City of New York had a warrant out for for his arrest for armed robbery. Also, the Authority, through Mr. Frederick, had had brought to its attention the fact that Mr. Stracuzzi's employment application was blank in response to the question as to whether or not he had ever been arrested. Mr. Stracuzzi admitted his prior record on cross-examination. By way of mitigation the Union introduced two favorable reports from his probation officer. (CP-10, CP-11).

In finding absolutely no evidence of anti-union animus (Findings of Fact Nos. 13, 14 & 15) the Hearing Examiner takes especial note of the testimony of Mr. Frederick and Mr. Stoffa that they believed that Mr. Romanowski was the principal union activist. Also, Mr. Stracuzzi acknowledged on cross-examination that no other employees of the Authority, who had engaged in union activities, had been fired or suspended. (Tr. 50).

The Union, having failed to prove any anti-union animus by the Authority against Mr. Stracuzzi, and further, having failed to prove any causal connection between Mr. Stracuzzi's union activities and his suspension and discharge, the Hearing Examiner must recommend dismissal of the Complaint.

* * * *

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

CONCLUSIONS OF LAW

The Authority did not violate N.J.S.A. 34:13A-5.4(a)(3) when it suspended and then terminated Joseph Stracuzzi.

RECOMMENDED ORDER

The Authority not having violated the Act, supra, it is **HEREBY ORDERED** that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

DATED: June 28, 1978
Trenton, New Jersey