

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SHEILA GRAFTON,

Appellant,

-and-

OAL Docket No. CSV 5028-94

STATE OF NEW JERSEY (DEPARTMENT
OF HUMAN SERVICES),

Respondent.

STATE OF NEW JERSEY (DEPARTMENT
OF HUMAN SERVICES),

Respondent,

-and-

PERC Docket No. CO-H-95-23

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Communications Workers of America, AFL-CIO against the State of New Jersey (Dept. of Human Services). The Complaint was based on an unfair practice charge alleging that the employer violated the New Jersey Employer-Employee Relations Act by firing Shiela Grafton in retaliation for her efforts as a CWA shop steward and protesting working conditions. Grafton, a Civil Service employee, also appealed her discharge to the Merit System Board. The Complaint and the Appeal were consolidated and heard by an Administrative Law Judge. The ALJ found that Grafton engaged in protected activity, but that she threatened her supervisor and that this threat alone motivated her discharge. The Commission has no basis for disturbing his determinations. It accordingly holds that Grafton's protected activity was not a substantial and motivating factor in her discharge and dismisses the Complaint based on CWA's unfair practice

charge. The matter is transmitted to the Merit System Board to consider whether Grafton's discharge was for legitimate business reasons or was otherwise warranted under Merit System Law.

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.

P.E.R.C. NO. 96-85

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Appearances:

For the Respondent, Deborah T. Poritz, Attorney General
(Meredith Van Pelt, Deputy Attorney General)

For the Appellant-Charging Party, Weissman & Mintz
(Joel N. Weissman, of counsel)

DECISION AND ORDER

Sheila Grafton was employed by the State of New Jersey as an Auditor I in the Office of Auditing in the Department of Human Services. She was fired because she allegedly threatened her supervisor's property and life. Grafton's majority representative, the Communications Workers of America, AFL-CIO, filed an unfair

practice charge alleging that her employer violated subsections 5.4(a)(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by firing her in retaliation for her efforts as a CWA shop steward in protesting working conditions. Grafton, a Civil Service employee, also appealed her discharge to the Merit System Board ("MSB").

Our agency and the MSB consolidated the unfair practice charge and the MSB appeal for a hearing before an Administrative Law Judge ("ALJ"). The agencies further agreed that after the ALJ's initial decision issued, our agency would determine whether Grafton engaged in activity protected under the Act and whether any protected activity was a substantial or motivating factor in her discharge and the MSB would then determine whether Grafton's discharge was for legitimate business reasons and was otherwise warranted under merit system law.

On August 15 and 17 and September 6 and 7, 1995, ALJ Beatrice S. Tylutki conducted a hearing. The record closed on October 3, 1995. The ALJ obtained extensions of time to issue her initial decision.

^{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.

On February 15, 1996, the ALJ issued her initial decision. She concluded that Grafton had engaged in protected activity as a shop steward, but that this activity had not motivated her firing. Instead, the ALJ found that Grafton was fired solely because she had threatened her supervisor and that her discharge for this reason was warranted under merit system law.

CWA has filed exceptions asserting that Grafton did not threaten her supervisor and that she was fired because of her CWA activity. The employer filed a response supporting the ALJ's findings of fact and conclusions of law. We received extensions of time to issue this decision.

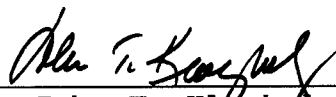
The ALJ found that Grafton engaged in protected activity as a CWA shop steward. That finding is undisputed. We accept it.

The ALJ also found that Grafton threatened her supervisor and that this threat alone motivated her discharge. These findings, while disputed, rest on the ALJ's credibility determinations. We have no basis for disturbing those determinations. We accordingly hold that Grafton's protected activity was not a substantial or motivating factor in her discharge and we dismiss the Complaint based on CWA's unfair practice charge. We will transmit our decision and the record to the Merit System Board to consider whether Grafton's discharge was for legitimate business reasons or was otherwise warranted under merit system law.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



John T. Klagholz
Acting Chairman

Acting Chairman Klagholz, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. Acting Chair Wasell abstained from consideration.

DATED: June 20, 1996
Trenton, New Jersey
ISSUED: June 21, 1996