

P.E.R.C. NO. 90-67

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (GLASSBORO STATE COLLEGE),

Respondent,

-and-

Docket No. CO-H-88-212

IFPTE, LOCAL 195,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by IFPTE, Local 195 against the State of New Jersey (Glassboro State College). The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act by interfering with an internal election for Local 195 chapter officers and attempting to dominate chapter members' freedom of choice. The Commission finds that the employer neither expressly authorized nor ratified a supervisor's payment of union dues so that another employee could run for chapter president. The Commission further finds that the facts do not support a finding that the action was impliedly authorized or within the supervisor's apparent authority.

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Appearances:

For the Respondent, Peter N. Perretti, Jr., Attorney  
General (Michael Diller, Deputy Attorney General)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen  
(Sanford R. Oxfeld, Esq., of counsel)

DECISION AND ORDER

On February 19 and March 11, 1988, IFPTE, Local 195 filed an unfair practice charge and an amended charge against the State of New Jersey (Glassboro State College). The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), and (3), by interfering with an internal election for Local 195 chapter officers and attempting to dominate chapter members' freedom of choice.

On April 13, 1988, a Complaint and Notice of Hearing issued. On April 27, the State filed its Answer denying that it violated the Act. It asserts that any "actions taken by employees of the College which may have adversely affected elections of the Charging Party were taken without approval and authority of the

management of the College." It also asserts that the employees involved were officers or representatives of the charging party or other labor unions.

On September 14, 1988, Hearing Examiner Joyce M. Klein conducted a hearing. Local 195 examined two witnesses and sought immunity for a third who had invoked his Fifth Amendment privilege against self-incrimination. When Local 195's request for immunity was denied, it rested. The State then rested without calling any witnesses. Both parties filed briefs.

On November 21, 1989, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 90-24, 16 NJPER \_\_\_\_ (¶\_\_\_\_ 1989). She found that a supervisor was not acting as the employer's agent when he paid another employee's back union dues so that employee could run for chapter president. She concluded that the supervisor's action could not be imputed to the employer and accordingly recommended dismissing the Complaint.

The Hearing Examiner served her report on the parties and informed them that exceptions were due December 5, 1989. Neither party requested an extension of time.

On December 13, 1989, Local 195 filed a letter stating that it relies on its post-hearing brief. On December 19, the employer filed a letter urging adoption of the recommendation and stating that it relies on its post-hearing brief.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-8) are accurate. We incorporate them here.

N.J.S.A. 34:13A-5.4(a) prohibits "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 "(2) Dominating or interfering with the formation, existence or administration of any employee organization." N.J.S.A. 34:13A-3(e) defines representative, in part, as "any person authorized or designated by a public employer...to act on its behalf and represent it...." An employer is responsible for the actions of its supervisors which are impliedly authorized or within the apparent authority of the actor. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83), citing Gorman, Basic Text on Labor Law, at 134-137 (1976). Whether the specific acts were actually authorized or subsequently ratified is not controlling.

The employer here neither expressly authorized nor ratified this payment of union dues. Nor do the facts support a finding that the action was impliedly authorized or within the supervisor's apparent authority. Accordingly, we find that the record does not support finding that the employer violated subsections 5.4(a)(1) and (2).<sup>1/</sup>


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<sup>1/</sup> We agree with the Hearing Examiner that there are no facts to support finding a violation of subsection 5.4(a)(3). That subsection prohibits public 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."

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
January 31, 1990  
ISSUED: February 1, 1990

H.E. NO. 90-24

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

In the Matter of

STATE OF NEW JERSEY (GLASSBORO  
STATE COLLEGE),

Respondent,

-and-

Docket No. CO-H-88-212

IFPTE, LOCAL 195,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the State of New Jersey did not violate the New Jersey Employer-Employee Relations Act when a supervisor at Glassboro State College wrote a money order for union dues to IFPTE, Local 195 so that an employee could run for chapter president. The Hearing Examiner finds that the supervisor was not acting within the scope of his apparent authority.

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.

H.E. NO. 90-24

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

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IFPTE, LOCAL 195,

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Appearances:

For the Respondent, Peter N. Perretti, Jr., Attorney General  
(Michael Diller, Deputy Attorney General)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,  
Levine & Brooks (Sanford R. Oxfeld, Esq.)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On February 19, and March 11, 1988, IFPTE, Local 195  
("Local 195") filed an unfair practice charge and amendment with the  
Public Employment Relations Commission alleging that the State of  
New Jersey (State) violated subsections 5.4(a)(1), (2) and (3) of  
the New Jersey Employer-Employee Relations Act., N.J.S.A. 34:13A-1  
et seq. ("Act") <sup>1/</sup> when it interfered with the conduct of an

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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. (2) Dominating or

Footnote Continued on Next Page

internal election of the Local 195 chapter at Glassboro State College ("College") and attempted to dominate the freedom of choice of Local 195's members.

On April 13, 1988, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On April 27, 1988, the State filed an Answer denying that it violated the Act. It asserts that any actions taken by College employees which may have affected a Local 195 chapter election were taken without the College's approval or authority. It argues that the employees involved were not management, but were members of another labor organization. The State further argues that the charge is untimely.

I conducted a hearing on September 14, 1988. The parties examined witnesses and introduced exhibits. Frank Hadry, a Local 195 witness, exercised his Fifth Amendment privilege during direct examination.<sup>2/</sup> Local 195 then requested an adjournment of the hearing so it could pursue use immunity for Hadry (T103).<sup>3/</sup> After

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1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (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."

2/ Keith Anderson Esq. appeared to represent Frank Hadry in his exercise of his constitutional rights.

3/ The transcript of the hearing conducted on September 14, 1988 are cited as T. Commission exhibits are cited as C. Joint exhibits are cited as J and charging party's exhibits are cited as CP.



the State was given the opportunity to cross-examine Hadry on his testimony thus far, the hearing was adjourned.

On March 7, 1989, Local 195 notified me that its request for use immunity for Hadry was denied and that it rested. On April 10, 1989, the State filed a letter brief stating that it rested without calling witnesses. The State filed a summation and brief. After several postponements, Local 195 filed a brief on September 22, 1989 and I closed the record.

Based upon the entire record, I make the following:

Findings of Fact

1. Local 195 represents a unit of non-supervisory security and maintenance employees at the State colleges, including a chapter at Glassboro State College. On February 19, 1987 the Glassboro chapter held a meeting to nominate candidates for chapter offices.

Before that meeting George Sinitsky, a security officer, told many people at the College that he wanted to run for president (T47-48). Sinitsky decided to run for president because he thought that Gary Devine, the incumbent chapter president was a hindrance to the members (T46). Sinitsky made the decision on his own without discussing it with any management representative (T52).

Sinitsky attended the February 19 chapter meeting and was nominated for president by someone in the security department (T13, T47, T48). Ernie Butler, a maintenance employee, questioned Sinitsky's ability to run because he was not a Local 195 member (T14). Until the February 19 meeting, Sinitsky paid an agency fee

(T14, CP-1). After the meeting, Sinitsky was given a membership application and joined Local 195 (T14, T15, CP-1). Devine told Butler that Sinitsky could run and he was nominated (T14).

2. On March 13, 1987, Carl Lofasso, chairman of Local 195's election committee, wrote a letter to Sinitsky indicating that he was not a member of Local 195 in good standing when he was nominated (CP-2). The letter stated that if Sinitsky wished to run for chapter president he had to pay back dues for February, March and April amounting to \$27.50 (CP-2). Sinitsky called Devine and told him that he would not pay back dues (T16). A few days later, Sinitsky received a second letter from Lofasso, dated March 18, 1987, notifying him that the first letter was incorrect. Since Sinitsky had been paying an agency fee of 85 percent, only \$4.12 in back dues was owed (CP-3). On March 25, 1987 Sinitsky replied stating that that he would not pay any amount of back dues (CP-4).

3. Sinitsky did not attend the next chapter meeting on March 19, 1987. He gave Anne Lowe, the chapter secretary, the same letter he sent to Lofasso (CP-4) and asked Lowe to ask Devine to read it at the meeting (T26). He hand-wrote a note at the bottom of the letter asking Devine to read it at the meeting (T59). The note stated that Sinitsky would not pay the back dues (T18).

Early the next morning, Sinitsky saw Stephen Rauer, a security department employee and shop steward, at the time clock. Rauer was waiting to punch out after working from midnight until 8 a.m. Sinitsky was waiting to punch in at 8 a.m. Evelyn Mischevage,

the dispatcher heard the conversation between Sinitsky and Rauer (T71-72).

Sinitsky asked Rauer if Devine read his letter at the meeting (T71). Rauer replied that he did not attend the meeting and told Sinitsky that his back dues were going to be "taken care of" (T21, T61, T72, CP-6, CP-7).<sup>4/</sup> Sinitsky told Rauer that no one should pay his back dues (T22).

Sinitsky dropped off the previous night's reports in the maintenance office and saw Devine by the maintenance garage. He asked Devine about Rauer's representation that the dues would be paid. Devine laughed and said he would call Rauer at home and said "wait until I get a hold of him" (T22).

A few weeks later, Sinitsky saw Rauer and Devine waiting to meet with Mr. Toughill, director of security. Sinitsky raised the dues issue and Devine told Sinitsky that he had misunderstood Rauer (T23). Sinitsky, Rauer and Devine then went to hear Mischevage's account of the conversation (T23). After she repeated the

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<sup>4/</sup> Rauer admitted to telling Sinitsky that he was sure it would be taken care of. Sinitsky's testimony suggests that Rauer told him that the money would be paid and he would be able to run for president. Rauer characterized the context differently. He testified that he told Sinitsky "...if you feel that you have that many friends thats (sic) going to vote for you, I'm sure that it will be taken care of, to pay the difference in the money, you know, the back dues" (T72). In her statement to the College security department, Mischevage said that Sinitsky told Rauer that he was not going to pay the back union dues. Rauer told Sinitsky not to worry because it had been taken care of (CP-6). Mischevage's statement supports Sinitsky's testimony. I credit Sinitsky.

conversation for Devine and verified Sinitsky's version of the conversation, Devine told Rauer that he was talking too much and should keep his mouth shut (T76, CP-6, CP-7).

By letter dated April 1, 1987, Local 195 informed Sinitsky that since he would not pay the \$4.12 in back dues, he was not eligible to run for chapter president (CP-8).

4. Between March 20, and the April 15, 1987 election, Local 195's election committee received a money order for \$4.12 in its East Brunswick office (J-3, J-4). The signature on the March 20, 1987 money order read "G. Frieson" and listed the address as Glassboro State College. The check was enclosed in a College envelope and "Geo Frierson Maint Dept" was written over the College insignia in the top left-hand corner of the envelope (J-4). George Frierson is the director of housing maintenance at the College (T35). He is represented by CWA, Local 1031 in a supervisor's unit (T39).

After Local 195 received the money order, Sinitsky was called to assistant vice president Collard's office where he had a telephone conversation with Donald Buchanan, vice president of Local 195 (T37-38, T42). Buchanan asked Sinitsky to reconcile his written pledge not pay \$4.12 in back dues with Frierson's payment of the dues for him (T37). Sinitsky told Buchanan that he knew Frierson and that they were friendly, but that he had not asked Frierson or anyone else to send the money order (T35).

Sinitsky subsequently went to a meeting at Local 195's office where he saw the money order for the first time (T35, T40, T41). Devine and LoFasso also attended that meeting. No management representatives were present (T41). Sinitsky did not ask or authorize Frierson or anyone else to send the money order on his behalf (T35). Frierson's name on the money order and the envelope were not written in Sinitsky's handwriting (T37, J-3, J-4).

Frierson told Sinitsky that he did not send the money order and that he had heard that his name was spelled wrong (T57). Frierson did not ask Sinitsky if he sent Local 195 the check with Frierson's name on it (T57).

5. Local 195 turned the money order over to the Glassboro State College Campus Police who sent it to the State Police Laboratory for handwriting analysis (J-2). Based upon the handwriting analysis, on August 25, 1987 the State Police laboratory concluded that Frank Hadry completed the money order and addressed the envelope (J-5).<sup>5/</sup> Hadry was a College employee from September 1979 until he left on disability in May 1987 (T91). Hadry held several maintenance jobs during that period and was represented by Local 195 until he was promoted to senior operator/refrigeration

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<sup>5/</sup> Hadry exercised his Fifth Amendment privilege not to answer questions concerning the money order. In the absence of evidence or testimony to the contrary, I must rely on the laboratory report. Based upon the laboratory report, I find that Hadry wrote the money order and addressed the envelope. I make no finding as to who sent the money order.

services in 1984 or 1985 (T88-T90).<sup>6/</sup> Before he went on disability leave, Hadry was a foreman and supervised eight employees (T107). Hadry reported to Charles Whitman who reported to Dennis Carr, the director of maintenance (T107). Carr reported to Collard and then to Vice President Reader (T108).

When Hadry was promoted to a supervisory position, he joined the supervisory unit, CWA, Local 1031 (T90). Hadry was a shop steward for CWA, Local 1031 until he became the health and safety officer (T108). When he took that position, he stepped down as shop steward (T108).

As health and safety officer, Hadry served on the joint safety committee as Local 1031's representative (T91). Devine served as Local 195's representative to the same committee.

#### Analysis

The State argues that the charge is untimely. N.J.S.A. 34:13A-5.4(c) provides that:

no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

The charge was initially filed on February 19, 1988. The money order bearing the name of George Frierson, a supervisor at the College was dated March 20, 1987. The laboratory report on the

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<sup>6/</sup> Devine was not president of the College chapter of Local 195 when Hadry was a member.

handwriting analysis concluding that Frank Hadry filled out the money order issued on August 27, 1987.

The money order was sent in March 1987, but Local 195 had little reason to believe that Frierson sent it. If the laboratory report had not established that a supervisor sent the money order, Local 195 would not have had reason to file this Charge.<sup>1/</sup> The statute of limitations began to run when the laboratory report issued on August 27, 1987. Since the Charge was filed before February 27, 1988, I find it timely.

Local 195 argues that the State interfered with and attempted to dominate its internal union election when a supervisor sent a money order to Local 195's office to pay for Sinitsky's dues so that he could run for chapter president. The State argues that any employees involved were not management employees.

The standard to determine whether an independent 5.4(a)(1) violation has been committed is set forth in New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979):

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or to coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification.  
[Id. at 551 n. 1]

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<sup>1/</sup> The Charge alleges that Local 195 did not learn the identity of the individual who wrote the money order until February 1988 (C-1). There is no evidence in support of this allegation.

It is immaterial that an employer's allegedly illegal conduct did not actually coerce an employee or was not illegally motivated. It is the tendency of the employer's conduct, not its result or motivation which is at issue. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt No. A-1642-82T2 (12/8/83); Middletown Tp., P.E.R.C. No. 84-100, 10 NJPER 173 (¶15085 1984).

Commission cases dealing with subsection (a)(2) claims generally involve organizational rights or the actions of an employee with a conflict of interest caused by his membership in a union and his position as an agent of an employer. Union County Regional Bd. of Ed., P.E.R.C. No. 76-71, 2 NJPER 50 (1976); Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981); Camden County Board of Chosen Freeholders, P.E.R.C. No. 83-113, 9 NJPER 156 (¶14074 1983). While motive is not an element of an (a)(2) offense, there must be a showing that the acts complained of actually interfered with or dominated the formation, existence or administration of the employee organization. Cf., Charles J. Morris (editor), The Developing Labor Law; The Board, The Courts and the National Labor Relations Act (B.N.A. 2nd ed. 1983), p. 279, citing Garment Workers (Bernard Altman Texas Corp.) v. NLRB, 366 U.S. 731 (1961); Matawan-Aberdeen Regional School District, H.E. No. 89-41, 15 NJPER 356, 375 ( 20159 1989), aff'd P.E.R.C No. 89-130, 15 NJPER 411 (1989), app. pending, App. Div. Dkt. No. A-6054-88T5.



In order to find a violation of the Act, I must find that an agent of the College sent the money order to Local 195's office. In other words, if Hadry sent the money order, he must have been acting as an agent of the College when he sent it.

An employer is responsible for its supervisors' actions which are implicitly authorized or are within their apparent authority. Whether the specific acts were actually authorized or subsequently ratified is not controlling. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982) aff'd App. Div. Docket No. A-1642-82T2 (1983), citing Gorman, Basic Text on Labor Law, pp. 134-137 (1976). The employer's subsequent failure to ratify the employee's actions is relevant. The NLRB will not impute the conduct of low level supervisors who are also bargaining unit members to the employer unless the employer encouraged, authorized or ratified the conduct or led employees to reasonably believe the conduct was authorized. A.T.K. Enterprises, 264 NLRB 1278, 111 LRRM 1371 (1982); Quinn Co., 273 NLRB 795, 118 LRRM 1239 (1984). <sup>8/</sup>

Hadry was a foreman who supervised eight employees included in Local 195's chapter at the College. Hadry did not supervise Sinitsky. The record does not reflect whether Hadry supervised Devine, but Hadry and Devine were both members of a joint safety committee.

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<sup>8/</sup> In those cases, the supervisors were leading efforts to decertify bargaining units to which they belonged.

Purchasing a money order to pay union dues is beyond the scope of a foreman's apparent authority. Absent other evidence of employer involvement, it is not likely that an employer would authorize a low level supervisor to draft a money order in another's name.

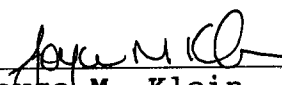
The College did not subsequently ratify Hadry's activity. When Local 195 gave the money order to the College police, the College sent the money order to the State Police Laboratory. If the College had authorized or approved of Hadry's actions, it probably would not have sent the matter to the State Police Laboratory for investigation.

I find that Hadry was not acting as an agent of his employer when he wrote a money order for \$4.12 in another supervisor's name (George Frierson) and addressed the envelope to Local 195.

Since I do not impute Hadry's actions to the employer, I find no violation of subsections 5.4(a)(1) and (2).<sup>9/</sup>

Recommended Order

I recommend that the Commission dismiss the charge in its entirety.

  
\_\_\_\_\_  
Joycel M. Klein  
Hearing Examiner

Dated: November 21, 1989  
Trenton, New Jersey

<sup>9/</sup> Local 195 also alleges a violation of section 5.4(a)(3). Since there are no facts to support a violation of section 5.4(a)(3), I dismiss the Charge with respect to that allegation.