

P.E.R.C. NO. 79-43

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF RANOCAS  
VALLEY REGIONAL HIGH SCHOOL,

Respondent,

-and-

Docket No. CO-76-118-4

RANOCAS VALLEY REGIONAL EVENING  
HIGH SCHOOL TEACHERS' ASSOCIATION,  
INC.,

Charging Party.

SYNOPSIS

In an unfair practice decision, the Commission, in agreement with the Hearing Examiner, found that the Board of Education violated the Employer-Employee Relations Act by not rehiring two employees in retaliation for their involvement in protected activity. Accordingly, the Commission ordered that these individuals be reimbursed for the equivalent of the salaries that they would have earned for teaching in the evening program less any monies actually earned.

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Appearances:

For the Respondent, Dietz, Allen,  
Radcliffe & Sweeney, Esqs.  
(John A. Sweeney, Esq.)

For the Charging Party, Joel S. Selikoff, Esq.

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on October 29, 1975 by the Rancocas Valley Regional Evening High School Teachers' Association (the "Association") against the Board of Education of Rancocas Valley Regional High School (the "Board") alleging unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). In particular, the Charge alleges unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (3) by virtue of the Board's threats, through its agent Mr. Bulotovich, to teachers and the eventual discharge of Edward Boyle and Robert Clarke.

The Charge was processed pursuant to the Commission's Rules, and it appearing to the Commission's Director of Unfair Practices that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 9, 1976.

Five days of hearing were held before Hearing Examiner Edmund G. Gerber commencing on September 23, 1976 and concluding on April 19, 1977 at which both parties were represented and were afforded an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally.

On October 5, 1978 the Hearing Examiner filed with the Commission and served on the parties his Recommended Report and Decision, H.E. No. 79-18, 4 NJPER \_\_\_\_ (¶ 1978), a copy of which is attached hereto and made a part hereof.

The Hearing Examiner concluded that the Board, through its agent Bulotovich, interfered with, restrained and coerced the Charging Party in the exercise of its guaranteed rights in violation of N.J.S.A. 34:13A-5.4(a)(1). In addition, the Hearing Examiner found that the Board's decision not to renew the employment contracts of Boyle and Clarke for the 1975-76 school year was motivated, at least in part, by anti-union animus and was violative of N.J.S.A. 34:13A-5.4(a)(3).

Pursuant to N.J.A.C. 19:14-7.3(a) and approved requests for extensions of time within which to file, the Board on November 17, 1978 filed exceptions to the Hearing Examiner's Report and the Association, on December 14, 1978, filed a Reply to

to Respondent's exceptions and a Brief in Support of the Hearing Examiner's Report.

The Board initially excepts to the Commission's issuance of a Complaint in this matter which it is alleged was untimely filed. According to Respondent, the last operative event upon which the Charging Party can rely occurred on April 29, 1975, more than six months prior to the filing of the Charge.

The Association contends that the essence of the instant Charge is that Boyle and Clarke were not renewed as teachers in Respondent's evening school program because of their union related activities. Notice of such non-renewal was not received until August 13, 1975, well within the six month limitation. Thus, it is maintained that Clarke and Boyle, as well as the Association, were "prevented" from filing the instant Charge until August 13, 1975.

The Commission finds no merit in Respondent's first exception. Even if the last operative event took place on April 29, the Charge, which was filed by October 29, would comply with the six month limitation period. Furthermore, N.J.S.A. 34:13A-5.4(a)(3) clearly states that public employers are prohibited from discriminating in regard to hire or tenure of employment to discourage employees in the exercise of their

protected rights. Therefore, the allegation that Association members were discharged due to their organizational activities sets forth an operative event upon which basis a complaint may issue. As is clearly indicated in the record, notices of non-renewal were received by Boyle and Clarke on August 13, well in advance of the expiration of the six month time bar, and they did not lose their jobs until September 1975. Thus, no matter how viewed, this charge was timely filed.

Respondent also excepts to the Hearing Examiner's credibility judgments and argues that the record fails to support his conclusions as to the merits of the instant charge. In particular, the Board objects to the reliance which was placed upon the testimony of Grogan, Boyle and Brockow, three key Association witnesses whose credibility, it is maintained, was found to be questionable by the Hearing Examiner. Furthermore, the Board claims that proper weight was not accorded the Superintendent's explanation that Boyle and Clarke were not rehired due to declining enrollments and insufficient funding.

It is the Association's position that the credibility determinations of an administrative law judge are normally accorded great weight. Furthermore, it is maintained that the Hearing Examiner's credibility findings with regard to Grogan, Boyle and Brockow have been unfairly characterized by Respondent. Of the above named witnesses, only Grogan's testimony was termed less than credible. Although Boyle was found to be lacking in

openess and candor, it is the Association's opinion that this conclusion was based upon the Examiner's observation that Boyle appeared argumentative and tense. Furthermore, the Charging Party points out that Brokow's testimony was considered to be less than credible on two specific points only. To refute Respondent's depiction of Superintendent Clark's testimony as "very credible", the Association makes reference to what it views as a crucial contradiction in the Superintendent's testimony regarding the posting of evening school positions.

After a careful, independent review of the record, the Commission adopts the Hearing Examiner's findings in their entirety and dismisses the Respondent's exceptions as being without merit. We are in agreement with the Association's position that the Hearing Examiner's credibility judgments should be accorded great weight. Absent persuasive evidence to the contrary, the Commission will not substitute its judgment for that of the Hearing Examiner where questions of credibility are concerned.<sup>1/</sup>

In In re Haddonfield, P.E.R.C. No. 77-36, 2 NJPER 71 (1977), the Commission adopted a two-fold standard for determining whether a violation of N.J.S.A. 34:13A-5.4(a)(3) exists. A violation of §(a)(3) should be found if an employer's discriminatory acts were motivated in whole or in part by a desire

<sup>1/</sup> In re Long Branch Bd. of Ed., P.E.R.C. No. 77-30, 3 NJPER 30 (1977); In re Hudson County Bd. of Chosen Freeholders, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4141 1978).

to discourage an employee in the exercise of rights guaranteed by the Act or had the effect of discouraging employees in the exercise of those rights. Application of the standard normally involves a preliminary showing of two essential elements: 1) that the employee was exercising protected rights or that the employer believed said employee was exercising such rights, and 2) that the employer had either actual or implied knowledge of such activity. The record contains uncontroverted testimony which demonstrates that Boyle and Clarke engaged in protected activity and that the Superintendent and the Principal had actual knowledge of such activities and that the Board had at least implied knowledge. The record is replete with numerous instances of threats and warnings by Bulotovich directed toward active Association members including Boyle and Clarke. On several occasions testimony corroborated by Association witnesses revealed that the Principal had warned that if organizational efforts continued, certain individuals might not be rehired. The fact that Boyle and Clarke were the only two teachers not renewed, both of whom happened to be the prime movers behind the organizing drive, provides further support for the Hearing Examiner's conclusions.<sup>2/</sup> Although Superintendent Clarke maintained that budget reductions,

<sup>2/</sup> Although the Board contends that in addition to Boyle and Clarke, two other teachers, Mrs. Thomas and Mrs. Hoffer, were not rehired, the Hearing Examiner accurately pointed out that the former stopped teaching during the middle of the 1974-75 year due to lack of enrollment and the latter was not renewed as a result of the discontinuation of the typing program. On the other hand, the programs taught by Boyle and Clarke were continued the following year with Clarke being replaced by a much less experienced teacher. Finally, the only letters of non-renewal entered into evidence were those sent to Boyle and Clarke.

a drop in enrollment, and a hiring policy which gave preference to day teachers from the Rancocas Valley Regional School District were responsible for the Board's decision, the Hearing Examiner noted that Clarke's testimony contained certain key inconsistencies and thus found that the Board's explanation to be spurious.

Based upon our review of the record, the Commission agreed that the Board failed to supply a legitimate business or educational justification for its conduct and therefore did not overcome the prima facie case made out by the Charging Party. Thus, we find that Boyle and Clarke were not rehired in retaliation for their involvement in protected activity and that the Board's actions in this regard were violative of N.J.S.A. 34:13A-5.4(a)(1) and (3).

#### ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Respondent shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing employees in the exercise of their rights to form, join and assist an employee organization by threatening its employees with discharge if they participate in protected activities;

(b) 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 to form,



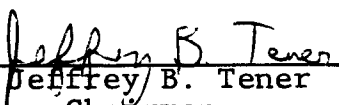
join and assist an employee organization by failing to grant employment contracts to employees who have engaged in protected activities.

2. Take the following affirmative action<sup>3/</sup> which is deemed necessary to effectuate the policies of the Act:

(a) Reimburse Edward Boyle and Robert Clarke the equivalent of the salaries they would have earned as teachers in the Evening High School during the 1975-76 academic year had they been awarded contracts by the Board of Education of Rancocas Valley Regional High School, less any monies they may have actually earned on those evenings when they would have otherwise been in the employ of the Board of Education of Rancocas Valley Regional High School.

(b) Notify the Chairman, in writing, within 20 days from the date of receipt of this Order what steps have been taken to comply herewith.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Hipp and Schwartz abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey  
January 16, 1979  
ISSUED: January 17, 1979

<sup>3/</sup> The evening school program was discontinued after the 1975-1976 academic year. Accordingly, our back pay order is limited to that year and we deem it unnecessary to order the posting of a notice.