

P.E.R.C. NO. 83-130

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OFFICE OF THE BERGEN
COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. CO-81-278-39

COUNCIL NO. 5, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Office of the Bergen County Prosecutor violated subsections 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it denied a stenographer union representation at an interview which she reasonably believed might result in discipline and when it discharged the stenographer because she sought union representation.

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COUNCIL NO. 5, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Roger W. Breslin, Jr., Bergen
County Prosecutor

For the Charging Party, Hogan & Palace, Esquires
(Thomas A. Hogan, of Counsel)

DECISION AND ORDER

On March 16, 1981, Council No. 5, New Jersey Civil Service Association ("Council No. 5") filed an unfair practice charge against the Office of the Bergen County Prosecutor ("Prosecutor's Office"). The charge alleges that the Prosecutor's Office violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et. seq. ("Act"), specifically subsections 5.4(a)(1), (2), (3), and (4),^{1/} when it terminated Josephine Vantresca, a legal stenographer, for exercising her rights

^{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; (2) Dominating or 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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit or complaint or given any information or testimony under this act."

to file a grievance concerning her evaluation and to request representation in the processing of the grievance. The charge also alleges that Vantresca's termination was motivated by anti-union animus and a desire to discourage other employees from exercising their right to process grievances.

On September 17, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 9, 1981, the Prosecutor's Office submitted an Answer stating that Vantresca was terminated for her negative and insubordinate attitude, and not because she requested union representation.

On April 5, 1982, Commission Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses, presented evidence, and argued orally. Both parties filed post-hearing briefs.

On December 21, 1982, the Hearing Examiner issued his report and recommendations, H.E. No. 83-20, 9 NJPER 83 (¶14046 1982) (copy attached). He found that Vantresca was denied union representation at an investigatory interview which she reasonably believed might result in disciplinary action, and was terminated in violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) as a direct outgrowth of that meeting. The Hearing Examiner did not comment on whether the Prosecutor's Office violated subsection 5.4(a)(2), as alleged. The Hearing Examiner did not find a violation of subsection 5.4(a)(4).

The parties have been served with copies of the Hearing Examiner's report. No Exceptions have been filed.

In In re East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in part, rev'd in part App. Div.

Docket No. A-280-79 (6/18/80), we held that an employer interferes with the exercise of rights protected by the Act and therefore violates §5.4(a)(1) when it denies an employee's request for union representation at an interview which the employee could reasonably believe might result in discipline. We relied upon NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975) ("Weingarten"), where the United States Supreme Court endorsed an identical rule of law, and Red Bank Regional Ed. Assn. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978), where the New Jersey Supreme Court held that §5.3 of the Act guarantees employees the right to have grievances presented by the majority representative. Since East Brunswick, the Commission has applied the Weingarten rule in cases where the facts indicate an objectively reasonable belief that an interview may result in discipline. In re Camden County Vocational Technical School, P.E.R.C. No. 82-16, 7 NJPER 466 (¶12206 1981); In re County of Cape May, P.E.R.C. No. 82-2, 7 NJPER 432 (¶13193 1981); In re Township of East Brunswick, P.E.R.C. No. 83-16, 8 NJPER 479 (¶13224 1982). See also R. Jacobs, Weingarten Rights in the Public Sector, New Jersey Law Journal, p. 1 (Dec. 9, 1982).

We have reviewed the record. Based on this review, we adopt the Hearing Examiner's findings of fact, conclusions of law, and recommended order. We are specifically convinced, under all the facts of this case, that it was reasonable for Vantresca to believe discipline might result from the Monday morning meeting with the Prosecutor and his staff, in view of the events which occurred the preceding Friday. Therefore, the Prosecutor's Office violated subsection

5.4(a)(1) when it denied Vantresca's request for union representation at that meeting. We are also convinced that a substantial or motivating factor in Vantresca's discharge was her attempt to exercise her right to "call the union in." Therefore, the Prosecutor's Office violated subsection 5.4(a)(3) when it discharged Vantresca.^{2/}

We agree with the Hearing Examiner that no violation of subsection 5.4(a)(4) occurred in this case. We also find no violation of subsection 5.4(a)(2).

Based on our conclusion that the employer violated subsections 5.4(a)(1) and (3), we would ordinarily require the employer to reinstate the aggrieved employee with full back pay. Here, however, Council No. 5's attorney has stated that Vantresca is not seeking reinstatement, and no demand was made for back pay. Accordingly, we enter the following limited order.

ORDER

IT IS ORDERED that the Respondent Office of the Bergen

^{2/} There is no intimation that the meeting resulting in the employee's discharge may have been called to discuss a grievance. Council No. 5 has not claimed that the Monday meeting with the prosecutor and his staff was a grievance meeting and the prosecutor is not a regular participant at any step of the contractual grievance process. Instead, the Monday meeting was called solely to investigate the possibility of discipline arising from Vantresca's alleged absence from her desk on the previous Friday, her refusal to meet with First Assistant Leaman on Friday without her union representative, and her negative attitude. Accordingly, we analyze that second meeting only in terms of the right to representation associated with disciplinary meetings and not in terms of the right to representation associated with grievance proceedings.

County Prosecutor:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the right to representation guaranteed to them by the Act, particularly, by refusing employees' requests, such as that of Josephine Vantresca, for representation by N.J.C.S.A. Council #5 at meetings where an employee might reasonably believe that discipline may result.

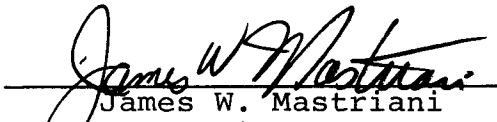
2. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights to representation guaranteed to them by the Act, particularly, by refusing employees' requests, such as that of Josephine Vantresca, for representation by N.J.C.S.A. Council #5 at meetings where an employee reasonably believes that discipline may result.

B. Take the following affirmative action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notices on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Hartnett, Butch, Graves and Newbaker voted for this decision. Commissioner Suskin voted against this decision. Commissioner Newbaker dissented from that portion of the decision finding an (a)(3) violation.

DATED: Trenton, New Jersey
April 19, 1983
ISSUED: April 20, 1983

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the right to representation guaranteed to them by the Act, particularly, by refusing employees' requests, such as that of Josephine Vantresca, for representation by N.J.C.S.A. Council #5 at meetings where an employee might reasonably believe that discipline may result.

WE WILL NOT discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of rights to representation guaranteed to them by the Act, particularly, by refusing employees' requests, such as that of Josephine Vantresca, for representation by N.J.C.S.A. Council #5 at meetings where an employee reasonably believes that discipline may result.

OFFICE OF THE BERGEN COUNTY PROSECUTOR
(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

OFFICE OF THE BERGEN COUNTY
PROSECUTOR,

Respondent,

-and-

Docket No. CO-81-278-39

COUNCIL NO. 5, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner finds that the Office of the Bergen County Prosecutor committed an unfair practice when Josephine Vantresca was discharged as a result of her conduct during an investigatory interview.

It was found that the Charging Party Vantresca asked for but was denied union representation at the interview. The meeting continued in spite of the denial of representation. The testimony made it clear that the discharge was a direct result of Vantresca's conduct at the investigatory interview. Such a discharge is unlawful pursuant to NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975) and Twp. of E. Brunswick and E. Brunswick PBA Local 145 and Patrolman James Sullivan, P.E.R.C. No. 83-16, 8 NJPER ____ (1982).

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.

STATE OF NEW JERSEY
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Charging Party.

Appearances:

For the Respondent, Roger W. Breslin, Jr., Pro Se

For the Charging Party, Hogan & Palace, Esqs.
(Thomas A. Hogan, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On March 16, 1981, Council No. 5 of the New Jersey Civil Service Association filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the Office of the Bergen County Prosecutor violated the New Jersey Employer-Employee Relations Act, as amended (the Act) when Josephine Vantresca, an employee of the Prosecutor's Office, was discharged because she exercised protected rights, specifically, she had filed a grievance concerning an evaluation and it was claimed that because of her filing that grievance and her insistence upon union representation in the grievance process her employment was terminated. It was claimed that this conduct violated §5.4(a)(1), (2), (3) and

(4) of the Act. 1/

It appearing that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a complaint was issued by the Director of Unfair Practices on September 17, 1981, pursuant to which a hearing was originally scheduled for January 6 and 7, 1982, and the matter was ultimately heard on April 5, 1982. Both parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. Both parties submitted briefs which were received by May 24, 1982.

Josephine Vantresca was employed as a Legal Stenographer with the Office of the Bergen County Prosecutor on June 16, 1980. Vantresca was evaluated pursuant to a newly instituted procedure. 2/ Mrs. Vantresca was unhappy with her evaluation and on Friday, February 6, 1981, she phoned the Office Manager, James Murphy, to discuss her complaint. Mr. Murphy declined to discuss the evaluation with her and told her she would have to follow the proper appeal procedure. (Vantresca also filed a grievance about the evaluation and wrote a letter protesting the evaluation and addressed it to Prosecutor Breslin, First Assistant Leaman and Office Manager Murphy.) That afternoon Vantresca's supervisor reported to Murphy that Vantresca had been absent without authorization from her desk at

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2/ This procedure was instituted in February of 1981.

the steno pool for over an hour.

During this same period, Vantresca was observed talking with the President of Council No. 5, Agnita Hastings. [Vantresca testified that no such meeting took place.]

Murphy relayed this information to First Assistant Leaman and at 4:30 p.m., Leaman called Vantresca into his office. Vantresca was accompanied by Hastings. Leaman refused to meet with the Association representative present and no meeting took place.

On the following Monday morning Breslin called Vantresca into his office. Murphy and Leaman were present.

Breslin, Murphy and Leaman all testified that Vantresca immediately asked to have her Association representative Hastings present.

It is noted that Vantresca testified that she did not ask for her representative because the Prosecutor "did not give her enough time."

Here, one must credit the testimony of the Prosecutor and his staff since all three men had the same perception, particularly since this testimony amounts to an admission. I accordingly find that Vantresca did ask that her union representative, Agnita Hastings, be present.^{3/} Breslin denied Vantresca's request to have Hastings present.

Breslin testified that he had reviewed Vantresca's file over the prior weekend and decided that he wasn't going to take any disciplinary action against her, rather, he just wanted to

^{3/} Given the charged nature of the meeting it is not surprising that Vantresca's recollection of the conversations is faulty.

talk to her about her disruptive behavior.

However, Murphy testified that Breslin wanted Vantresca to explain her behavior and I am satisfied that it was reasonable for Vantresca to believe that this meeting was investigatory in nature in light of her filing a grievance and other activities relating to the evaluation. As Vantresca testified, when she was called into the Prosecutor's office, she knew that on the basis of the events of Friday, she "was in trouble."

Breslin told Vantresca that she was a disruptive force in the steno pool with her constant criticizing but he believed that on the whole she had a good evaluation and did not understand why she was so upset. Breslin then told Vantresca to go back to her desk, keep her mouth shut and stop criticizing and disrupting the steno pool. But Vantresca kept arguing with Breslin.

Breslin believed that Vantresca's reaction was insubordinate. "She raised her voice almost to the point of shouting, refused to acknowledge that she was anything but perfect and went on and on in that vein."

Breslin told her that, "I don't think this is going to continue" and he told her her employment was terminated. Breslin testified that he terminated "her because of the way she reacted in my office on that morning."

Vantresca testified that Breslin asked her "what right (she) had calling the union in? This is my domain. I am the chief and you have no business calling in the union." Vantresca's testimony is in accord with Breslin's that he first told her to

-5-

return to her desk but after she protested and "defended herself" Breslin told her she was fired.

Breslin's own testimony is that Vantresca was discharged due to her responses to Breslin's comment at the interview on Monday morning.

The right to union representation during disciplinary interviews is well established. See NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975). ^{4/} Twp. of E. Brunswick and E. Brunswick PBA Local 145 and Patrolman James Sullivan, P.E.R.C. No. 83-16, 8 NJPER ____ (1982); In re E. Brunswick Bd/Ed, P.E.R.C. No. 80-31, 5 NJPER 398 (1979); Camden Cty. Vocational-Technical School, P.E.R.C. No. 82-16, 7 NJPER 466 (1981); In re Cape May Cty., P.E.R.C. No. 82-7, 7 NJPER 432 (1981).

In the instant case Vantresca's right to representation had been violated and the interview was unlawful. Further Vantresca's discharge was a direct outgrowth of this unlawful meeting. It follows that the discharge itself was unlawful. I therefore recommend that the Commission find that Roger Breslin as Bergen County Prosecutor did violate N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act. No evidence was adduced at the hearing to demonstrate a violation of §5.4(a)(4). It is therefore recommended that this subsection be dismissed.

Vantresca's attorney stated that Vantresca is not seeking reinstatement by way of remedy and no demand was made for back pay.

^{4/} The NLRB does not distinguish investigatory interviews from disciplinary interviews. Baton Rouge Water Works Co., 246 NLRB No. 161 (1979); Certified Grocers of California, 227 NLRB No. 52, 94 LRRM 1279 (1977).

Accordingly, I will not recommend reinstatement or back pay as a remedy here.

Recommended Order

I recommend that the Commission ORDER

A) That the Respondent Office of the Bergen County Prosecutor cease and desist from

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing employee's request, such as that of Josephine Vantresca, for representation by a representative of N.J.C.S.A. Council #5 at meetings where an employee might reasonably anticipate that discipline may result.

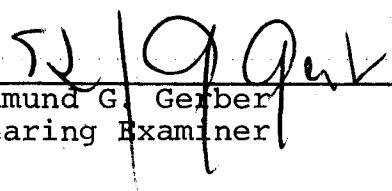
2. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing employees' requests, such as that by Josephine Vantresca, for representation by an N.J.C.S.A. Council #5 representative at meetings where an employee reasonably anticipates that discipline may result.

B) That Respondent Office of the Bergen County Prosecutor take the following affirmative action.

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notices on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60)

consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.



Edmund G. Gerber
Hearing Examiner

Dated: December 21, 1982
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing employees' requests, such as that of Josephine Vantresca, for representation by a representative of N.J.C.S.A. Council #5 at meetings where an employee reasonably anticipates that discipline may result.

we will not discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing employees' requests, such as that by Josephine Vantresca, for representation by an N.J.C.S.A. Council #5 representative at meetings where an employee reasonably anticipates that discipline may result.

OFFICE OF THE BERGEN COUNTY PROSECUTOR
(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.