

P.E.R.C. NO. 88-146

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-87-181-127
(PART B)

LOCAL UNION NO. 153, OPEIU,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Local Union No. 153, OPEIU against the County of Essex. The charge alleges the County violated the New Jersey Employer-Employee Relations Act when it fired Owen Haveson because he helped organize Local 153. The Commission finds that Local 153 did not establish that Haveson's firing was because of his union activity.

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Appearances:

For the Respondent, H. Curtis Meanor, Acting County
Counsel (Lucille LaCosta-Davino, of counsel)

For the Charging Party, Schneider, Cohen, Solomon, Leder &
Montalbano, Esqs. (Bruce D. Leder, of counsel)

DECISION AND ORDER

On March 23, 1987, Local Union No. 153, OPEIU ("Local 153")
filed an unfair practice charge against the County of Essex
("Essex"). The charge alleges that the County violated the New
Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,
specifically subsections 5.4(a)(1), (3) and (5),^{1/} when it fired

^{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

Owen Haveron because he had helped organize Local 153.^{2/}

On March 25, 1987, a Complaint and Notice of Hearing issued. The County filed an Answer asserting that legitimate business reasons, not anti-union animus, motivated Haveron's discharge.

On November 20, 1987, Hearing Examiner Mark A. Rosenbaum conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by March 4, 1988.

On April 15, 1988, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 88-51, NJPER (¶ 1988). Absent proof of the County's hostility towards Haveron's organizing, the Hearing Examiner found that Haveron's organizing was not a motivating factor in his discharge.

On June 9, 1988, after receiving an extension of time, Local 153 filed exceptions. It asserts that the Hearing Examiner erred in not concluding that the County was hostile to Haveron's organizing. The County has filed a response supporting dismissal of the Complaint. It has also filed its own exceptions asserting that

1/ Footnote Continued From Previous Page

condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The charge also alleged certain unilateral changes in terms and conditions of employment. These allegations were severed and have been decided. Essex Cty., P.E.R.C. No. 88-123, 14 NJPER (¶ 1988).

the Hearing Examiner should have granted its motion to dismiss at the end of the charging party's case and that the Hearing Examiner erred in inferring that the County Executive knew of Haveron's organizing.^{3/}

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-6) are accurate. We incorporate them. We do not agree with Local 153 that findings 9-11 are irrelevant. We add to finding 12 that Lucia Tarantino filed an unfair practice charge alleging that the County laid her off in May 1987 in retaliation for her organizing on Local 153's behalf. We add a new finding that Ed Dalzel, Al Hennen, Emelie Weber and Sam Spina helped form Local 153 and are still employed by the County. Spina has been transferred laterally.

Under In re Bridgewater Tp., 95 N.J. 235 (1984), the charging party may prove discriminatory motive by proving that the discharged employee engaged in protected activity, the employer knew of this activity and the employer was hostile towards it. If the charging party succeeds, the burden shifts to the employer to prove that it would have discharged the employee absent his protected activity.

Haveron engaged in protected activity: he and several other employees organized Local 153. The Hearing Examiner inferred that the County Executive knew of Haveron's activity because his soon-to-be chief of staff knew of it and the County Executive did

^{3/} The County attaches an affidavit of the executive's chief of staff. We do not consider it.

not testify. We will assume this inference was justified. Nevertheless, Local 153 has not proved that the County was hostile towards Haveron's organizing. The unfair practices found in Essex Cty., P.E.R.C. No. 88-123, involved unilateral changes in terms and conditions of employment, rather than discriminatory personnel actions. Here, 20 provisional employees, including Haveron, were discharged after the change in administration and based on the recommendations of the County's new personnel director. The director held Haveron responsible for certain deficiencies in the computer system. That judgment was rushed and may not have been justified, but on this record it was not discriminatory. We must therefore dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
June 23, 1988
ISSUED: June 24, 1988

H.E. NO. 88-51

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

In the Matter of

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-and-

Docket No. CO-87-181-127
(PART B)

LOCAL UNION NO. 153, OPEIU,

Charging Party.

SYPNOSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint alleging that the County of Essex violated subsection 5.4(a)(3) when it terminated the employment of OPEIU leader Owen Haveron. The Hearing Examiner finds that although Haveron engaged in protected activity with the knowledge of the employer, there is no evidence of employer hostility to the protected activity. A key fact is that the County notified Haveron, along with nineteen others, of the proposed layoff prior to the County's knowledge of Haveron's protected activity.

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. 88-51

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

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Appearances:

For the Respondent
H. Curtis Meanor, Acting County Counsel
(Lucille LaCosta-Davino, of counsel)

For the Charging Party
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(Bruce D. Leder, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On March 23, 1987, Local Union No. 153, OPEIU (OPEIU) filed an unfair practice charge against the County of Essex (County) with the Public Employment Relations Commission (Commission). The charge alleged that the County violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically

subsection 5.4(a)(1), (3) and (5)^{1/} when it terminated Owen Haveron in retaliation for the exercise of protected rights.^{2/}

On March 25, 1987, a Complaint and Notice of Hearing issued. On April 30, 1987, the County filed its Answer. It denied Haveron was discharged in retaliation for the exercise of protected rights and maintains it had a legitimate business justification for its action.

On November 20, 1987, I conducted a hearing in Newark, New Jersey. Both parties examined and cross-examined witnesses and introduced evidence. Both parties waived oral argument and filed briefs which were received by March 4, 1988.

Based on the entire record, I make the following:

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- 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 and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."
- 2/ The charge also alleged certain unfair practices against the County for unilateral changes in terms and conditions of employment of unit members. Those portions of the charge were severed by agreement of the parties and were redocketed as CO-87-181-127 (Part A). Those matters went to hearing before this matter; I issued a Recommended Report and Decision in Part A on January 21, 1988 (H.E. No. 88-35, 14 NJPER 113 (¶19043 1988)).

FINDINGS OF FACT

1. County of Essex is a public employer within the meaning of the Act and is a Civil Service community.

2. Local 153 OPEIU is an employee representative within the meaning of the Act.

3. Owen Haveron was first employed by the County in 1975. In 1983 or 1984, he became payroll manager. In 1985, he became the manager of employee compensation; his duties included implementation of a new computer system. Haveron never held a permanent Civil Service title with the County of Essex, and was a provisional employee ("T" (Transcript) 22-24).

4. In the fall of 1986, Haveron became active in the organization drive of Local 153, OPEIU. He solicited 50 to 60 signatures on behalf of the union for a representation election. After the election was scheduled, but before it was conducted, Haveron, along with Thomas Havriluk, a representative of Local 153, and Sam Spina, met with management representative Ray Codey to discuss the election and future negotiations. Codey is no longer employed by the County. On December 9, 1986, the employees voted in favor of representation and on December 17, 1986, the Commission certified OPEIU as the majority representative of all "Executive Service II employees of the County of Essex. (T43, 93-94, and Commission File, Docket No. RO-87-58)

5. On December 17, 1986, Haveron appeared before the Freeholders with another employee, Sam Spina. Spina and Haveron introduced themselves to the Freeholders as representatives of the

recently successful union and stated they would be talking with them from time to time. Although County Executive-Elect Nicholas Amato was not present at the meeting, Freeholder John Alati was present. Alati later became Amato's chief of staff. (T48, 83-84)

6. On December 17, 1986, County Executive-Elect Amato sent letters to certain provisional employees of the County, requesting resignations and inviting expressions of interest in future service to the County. Haveron did not tender his resignation, but forwarded his resume to Amato together with a congratulatory letter (Exhibits R-3 and R-4).

7. Don Biase is Special Assistant to the County Executive. In the fall of 1986, Biase was Assistant County Administrator. One of his duties was to direct financial operations; he was Haveron's immediate supervisor. Haveron uniformly received good to outstanding evaluations from Biase. Biase also recommended Haveron for merit increases (T6-8; CP-1 through CP-9).

8. On January 1, 1987, Nicholas Amato became County Executive. In late December or early January, Amato discussed possible personnel cuts with Biase and asked him for a recommendation about Haveron. Biase recommended that Haveron remain in his position. However, on January 12, 1987, Amato sent a Notice of Termination to Haveron as well as to nineteen other provisional employees, effective January 16, 1987. (T11-12, 123, 154; Exhibit J-1)

9. Brenda Veltri became personnel director of the County on January 2, 1987. She was astonished at the condition of the County's records. Personnel records and employee benefits were not computerized; the Personnel Office could not generate a report showing all provisional employees. It was her view that the Personnel Office should have a centralized computer system and that the functional areas of personnel, payroll and pension should be integrated for data processing purposes. Veltri met with Haveron and learned that he was coordinator of the entire computer system. She felt that important personnel information was missing from the computer system and believed that this was Haveron's responsibility. She recommended "office personnel changes" to Amato to correct the problem. Veltri admitted that she did not know who was in charge of the payroll function prior to January 1987. She also admitted she was not certain of the scope of Haveron's duties. Nor was she aware of any problem with the payroll function. Veltri did not know if it was the duty of Personnel or Payroll to actually prepare the data to be inputted into the computer. She also was not aware that he was a member or leader of OPEIU. (T126-131, 154, 155, 175 and 179).

10. Haveron testified credibly that although County Controller Michael Cortese gave him the responsibility to input the computer with respect to payroll, Haveron did not have the raw data for personnel. Haveron had to rely on two people from personnel to supply the data; however, they never supplied the data to him and

the personnel information was not entered (T183-185).

11. Two months after Haveron's discharge on January 16, 1987, he was hired by the Essex County Judiciary.^{3/} His responsibilities were initially assumed by Biase, and later by Marion Gillespie at a salary that was \$7,000 less than that earned by Haveron (T14, 59 and 141-143).

12. The OPEIU has not alleged that any OPEIU leader besides Haveron was terminated or discriminated against by the County for the exercise of protected activity. (Exhibit A-1; T45-46)

ANALYSIS

There is no direct evidence of anti-union motivation for Haveron's discharge. Accordingly, pursuant to Township of Bridgewater, 95 N.J. 235 (1984), the OPEIU must initially establish a prima facie case showing the employee engaged in protected activity, that the employer knew of this activity and that the employer was hostile toward the exercise of the protected rights. If this showing is made, the burden shifts to the County to demonstrate that it would have terminated Haveron even in the absence of protected activity.

^{3/} The Judiciary is not part of the County government and its action has no bearing on this case. Judges of Passaic County, 100 N.J. 352 (1985).

Haveron collected cards and met with a management representative and the County Freeholders on behalf of the OPEIU. He, therefore, engaged in protected activity. Alati, Amato's soon-to-be Chief of Staff, attended the Freeholder meeting (see Finding of Fact Numbers 4, 5 and 6). Although the County argues County Executive Amato, who discharged Haveron, had no knowledge of Haveron's protected activity, it did not call Amato to testify. Absent his testimony to the contrary, I infer that Amato had knowledge of Haveron's activity through Amato's staff.

OPEIU relies on the timing of events to establish Amato's hostility towards Haveron's union activity.^{4/} Haveron received uniformly high evaluations and merit increases for the preceding five years. On December 9, 1986, the union won an election among the highest level employees in the County who enjoy the protection of the Act. On December 17, 1986, Haveron met with the Freeholders on behalf of the Union. On January 1, 1987, a new administration assumed control and on January 12, despite a contrary recommendation by his supervisor, Haveron was discharged (see Finding of Facts Numbers 4, 5, 7 and 8).

^{4/} OPEIU also argues that "Amato has a negative attitude toward this bargaining unit..." (Brief at p. 6), and bases this conclusion on my Recommended Report and Decision in Part A of the charges originally filed by OPEIU (for citation see Footnote 2). However, that recommendation, which is pending before the Commission, makes no finding of anti-union animus by Amato or the County. The case concerns an alleged failure to negotiate in good faith.

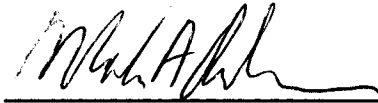
The County argues that the timing of these events must be viewed in the context of the change in administrations on January 1, 1987. It pointed out that when County Executive-Elect Amato sent Haveron a letter on December 17, 1986 requesting his resignation, Haveron had not yet appeared before the Freeholders and Biase had not given his recommendation to Amato. There is no evidence that anyone in the incoming administration was aware of Haveron's protected activity when the proposed layoff letter was sent. According to the County, Haveron was simply one of a number of provisional employees of the County who received form letters requesting their resignations. Although Biase later recommended that Amato retain Haveron, Amato's newly appointed Personnel Director held Haveron responsible for personnel inefficiencies and recommended organizational changes. It is undisputed that Personnel Director Veltri had no knowledge at the time of Haveron's union activities. Haveron was one of twenty provisional employees who were terminated effective January 16, 1987. There is no evidence or allegation that any of the other terminations effective that date were motivated by any improper motive. The County further notes that the OPEIU has not alleged that any other OPEIU leaders were discriminated against by the County; the record reveals that all the

OPEIU leaders identified by OPEIU witnesses, other than Haveron, have retained positions with the County.^{5/}

Reviewing the parties' arguments and the record, I conclude that OPEIU has not demonstrated that the County, in the person of County Executive Amato, was hostile to Haveron's exercise of protected activity. While the timing of Haveron's discharge is close to his exercise of protected activity, the key fact is that Amato notified Haveron of a possible layoff prior to having any knowledge of Haveron's protected activity. Thus, Amato's first step in a process which led to Haveron's termination was not improperly motivated. While I have concluded that Amato later learned of Haveron's protected activity, Haveron's termination, at the same time as nineteen other provisional employees, appears to represent the completion of a process of terminating similar employees--a process which began prior to Amato's knowledge of Haveron's protected activity. The fact that no other OPEIU leaders were allegedly discriminated against further supports the conclusion that the OPEIU has not established that the County was hostile to Haveron's exercise of protected activity.

^{5/} I note that the Director of Unfair Practices has issued a complaint that an OPEIU unit member was allegedly laid off in retaliation for protected activity in May, 1987 (Lucia Tarantino and County of Essex, Docket No. CI-88-3). The matter is pending before an Administrative Law Judge of the Office of Administrative Law, since Tarantino also alleges Civil Service violations. Assuming, arguendo, that the charging party in that matter prevails on the unfair labor practice charges, hostility to protected activity in May, 1987 would not be conclusive as to hostility five months prior.

Accordingly, I recommend that the Commission find that OPEIU has not established a prima facie case for its allegations in this matter, and that the Complaint be dismissed.



Mark A. Rosenbaum
Hearing Examiner

Dated: April 15, 1988
Trenton, New Jersey