

P.E.R.C. NO. 87-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONROE TOWNSHIP,

Respondent,

-and-

Docket No. CO-86-300-194

LOCAL 711, INTERNATIONAL
FEDERATION OF LABOR UNIONS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that Monroe Township violated the New Jersey Employer-Employee Relations Act when it refused to meet with Local 711, International Federation of Labor Unions, and negotiate in good faith.

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Charging Party.

Appearances:

For the Respondent, Joseph R. Scranton, Business
Administrator/Director of Finance

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

DECISION AND ORDER

On April 21, 1986, Local 711, International Federation of
Labor Unions ("IFLU") filed an unfair practice charge against the
Township of Monroe ("Township"). The charge alleged that the
Township violated subsections 5.4(a)(1) and (5)^{1/} of the New

^{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 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.

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to meet with IFLU and negotiate in good faith.

On June 12, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On June 18, the Township's mayor filed a letter Answer. He asserted that he, the business administrator, and IFLU's business representative had met often and discussed contract negotiations; that the Council's 1986 budget provided for 8.5% salary increases for all Township employees; and that he did not have authority to negotiate a contract beyond this limitation.^{2/}

On June 26, Hearing Examiner Jonathon Roth conducted a hearing. He denied IFLU's motion for summary judgment based on the Township's failure to serve its Answer on IFLU, but denied the Township's request to admit the June 18 letter into evidence as an Answer.^{3/} The parties then stipulated facts, examined witnesses and introduced exhibits. They submitted post-hearing briefs by August 14.

On October 10, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-24, 12 NJPER (¶ 1986) (copy attached). He concluded that the Township had violated

^{2/} The Township hand delivered this Answer to the Commission, but did not simultaneously serve it on IFLU.

^{3/} We hold that this letter should have been admitted as the Township's Answer despite the failure to make simultaneous service. This letter was received by the IFLU no later than June 26, which was within the time limits of N.J.A.C. 19:14-3.1 for service.

subsections 5.4(a)(1) and (5) by refusing to meet with IFLU and negotiate in good faith. He recommended an order requiring the mayor to authorize a representative or bargaining committee to negotiate in good faith with IFLU and the Township to post a notice of its violation and the remedial action taken.

The Hearing Examiner served his report on the parties and informed them that exceptions were due by October 24, 1986. Neither party has filed exceptions or requested an extension.

On October 20, the mayor filed with the Commission copies of letters dated October 17 and sent to IFLU's business representative, IFLU's attorney and the Township council. These letters stated that the mayor had appointed the council to act as the bargaining committee.

On October 20, the council president filed with the Commission a copy of a letter dated October 17 and sent to the mayor. The letter objected to the mayor's appointing the council as the bargaining committee. It asserted that the Faulkner Act, N.J.S.A. 40:69A-1 et seq., places administrative responsibilities with the mayor and legislative responsibilities with the council. It further asserts that administrative responsibilities include negotiating municipal contracts.

We agree with the Hearing Examiner that the Township has violated subsections 5.4(a)(1) and (5) by refusing to meet with IFLU and negotiate in good faith. That the mayor and the council cannot agree who should negotiate is not a defense. The Faulkner Act

provides that the mayor shall exercise administrative and executive functions and the council shall exercise legislative and investigative functions. N.J.S.A. 40:69A-32. The Act further specifies that the mayor retains full control over the administration of municipal services, N.J.S.A. 40:69A-37.1, and that his responsibilities include negotiating contracts for the municipality, subject to council approval. N.J.S.A. 40:69A-40. This statute thus contemplates that the negotiation of a contract is an administrative or executive function which must be discharged by the mayor. After the mayor has discharged that function, the approval of the negotiated contract becomes a legislative function. We will therefore issue an order requiring the mayor or a lawful representative of the executive to negotiate with IFLU over a successor contract.

ORDER

The Township of Monroe is ordered to:

I. Cease and desist from:

1. Refusing to negotiate in good faith with the IFLU over a collective negotiations agreement for its blue and white collar employees.

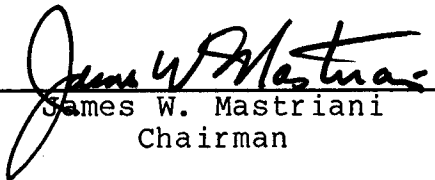
II. Take the following affirmative action:

1. The mayor or a lawful representative of the executive shall meet as soon as possible with IFLU representatives and negotiate in good faith over a collective negotiations agreement.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice 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 at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
October 30, 1986
ISSUED: October 31, 1986

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 refusing to negotiate in good faith with the IFLU over a collective negotiations agreement for its blue and white collar employees.

The mayor or a lawful representative of the executive will meet as soon as possible with IFLU representatives and negotiate in good faith over a collective negotiations agreement.

MONROE TOWNSHIP

(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, 495 West State Street, Trenton, NJ 08608, (609) 292-9830.

H.E. NO. 87-24

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

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TOWNSHIP OF MONROE,

Respondent,

-and-

Docket No. CO-86-300-194

LOCAL 711, INTERNATIONAL
FEDERATION OF LABOR UNIONS,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Township of Monroe violated subsections (a)(5) and derivatively (a)(1) of the Act when it ceased collective negotiations on and after April 9, 1986. In the mayor-council form of government a dispute between the mayor and council does not discharge the Township's legal obligation to negotiate terms and conditions of employment with the majority representative.

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. 87-24

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Appearances:

For the Respondent
Joseph R. Scranton,
Business Administrator/Director of Finance

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

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On April 21, 1986, Local 711, International Federation of Labor Unions ("IFLU" or "Union") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Township of Monroe ("Township" or "Employer") had engaged in unfair practices within the meaning of N.J.S.A.

34:13A-5.4(a)(1) and (5).^{1/} Specifically, the Union alleged that the Township refused to negotiate in good faith since April 9, 1986.

On May 30, 1986, the Township filed an Answer. Asserting that the Town Council had "for all intents and purposes negotiated the funds available for 1986" and calculated an increase in salaries for the calendar year, the Mayor stated that he requested the Union to prepare and forward a proposal as to how the monies would be disbursed to the unit employees, but that he received no response. The Mayor further averred that while he was willing to allow the Town Council to conclude negotiations, he wanted the Council to conduct this business in a forum open to the general public.^{2/}

On June 12, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On June 26, 1986, I conducted a hearing in this matter at which time the parties were given the opportunity to introduce evidence, examine and cross-examine witnesses and argue orally. Post-hearing briefs were submitted by August 14, 1986.

^{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; 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 Township hand-delivered its Answer and may have failed to provide a copy to the Union. I deny the Union's motion for summary judgment against the Township for its failure to file a copy of the Answer with the Union. See N.J.A.C. 19:14-3.2 and 19:14-4.8.

Based upon the entire record I make the following:

FINDINGS OF FACT

1. The Township of Monroe is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

2. Local 711, IFLU is a public employee representative within the meaning of the Act.

3. The Township and the Union executed a collective negotiations agreement which provides terms and conditions of employment for all blue and white collar employees of the Township. The agreement, which also covers dispatchers and excludes supervisors and managerial executives runs from January 1, 1984 until December 31, 1986 (C-2). C-2 contains wage schedules for only 1984 and 1985.

4. The parties stipulated that on June 6, 1985 the Business Administrator confirmed in writing his receipt of the Union's request to reopen negotiations for 1986 salaries for unit employees (1T 14, J-1). J-1 states that when the Township receives the Union's "formal presentation" it will "look towards providing [its] proposal and schedule a meeting to discuss these matters." The Union's request to reopen was dated May 14, 1985 (T 14, see J-1).

5. The parties stipulated that they met and negotiated on September 30, October 25, November 4, November 13, December 2, 1985 and April 9, 1986 (T 15-16). The parties stipulated that no tentative agreement was reached at the April 9 session.

6. Louis Grasso is the Business Agent and negotiator for the Union (T 23). He testified that he and four other union representatives attended the April 9, 1986 negotiations session with representatives of the Township, including its Business Administrator. The negotiations session ceased after five minutes. Grasso testified that the Business Administrator stated he would not continue negotiations in the presence of a Township Councilman who was observing the session (T 25).

7. Grasso and the Business Administrator testified that since April 9 the Union has repeatedly requested to negotiate with the Township and that no negotiations sessions have been arranged (T 26, 40). Grasso also testified that he requested negotiations with the Mayor, who has refused to negotiate (T 26). He testified that a State mediator was appointed to assist the parties in reaching an agreement. I take administrative notice that the Union filed a notice of impasse, that a mediator has been assigned to the matter and that no sessions have been scheduled. See N.J.A.C. 19:14-6.6.

8. The Business Administrator stated that until April 9th the Township had negotiated in good faith toward an agreement with the Union for 1986 wages and an extension of the agreement through 1988. Grasso acknowledged that he was appointed to negotiate an agreement with the Township on March 11, 1986 and attended no negotiations sessions before April 9. Some earlier sessions were attended by the Union's previous Business Agent. In its post-hearing brief the Township stated that the Town Council had

made a provision for an 8.5% wage increase for all Township employees, including those represented by the IFLU.

9. The Administrator stated that negotiations came to a "stop and hold" on April 9 (T 31). He also stated that negotiations had been conducted by a shop steward in the past. Grasso denied that the steward had any authority to negotiate on behalf of the Union.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides in part:

...the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes and other terms and conditions of employment.

In NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962) the Supreme Court stated:

...the duty to bargain collectively...is the duty to "meet and confer" in good faith with respect to wages, hours and other terms and conditions of employment. Clearly, the duty thus defined may be violated without a general failure of subjective good faith; for there is no occasion to consider the issue of good faith if a party has refused even to negotiate in fact - "to meet and confer" about any of the mandatory subjects. Id at 50 LRRM 2180.^{3/}

^{3/} The New Jersey Supreme Court has held that the experiences and adjudications under the Labor Management Relations Act, 29 U.S.C. *141 et seq. are appropriate guides in determining unfair labor practices because the content and purposes of our Act and the LMRA are substantially the same. In re Bridgewater, 95 N.J. 235, 240-241 (1984), Galloway Tp. Bd. of Ed v. Galloway Tp. Ass'n of Educ. Sec., 78 N.J. 1, 9 (1978).

As a matter of law parties are required to meet at reasonable times and negotiate in good faith concerning terms and conditions of employment. On April 9 the Township ceased negotiations and refused to meet with the Union again. That the parties may have discussed a percentage wage increase before April 9 does not discharge the employer's legal obligation. Even if the Council provided an 8.5% wage increase in its budget, the Township cannot by passage of a local ordinance, unilaterally preempt the area of negotiable terms and conditions of employment; only a specific state statute could do so. In re Paterson, App. Div. Docket No. A-1318-79 (2/10/81), aff'g P.E.R.C. No. 80-99, 6 NJPER 91 (¶11046 1980). Furthermore, even if the parties agreed to a percentage wage increase, the Mayor has stated in his Answer that no agreement had been reached on the distribution of monies. The Mayor has not alleged that the Township waived its right to negotiate the distribution of the increase. Accordingly, it has not fulfilled its duty to negotiate that term and condition of employment. Moreover, the employer has not alleged that it presented a "firm position" which in other circumstances could fulfill its legal duty to negotiate in good faith. See In re Council of N.J. State College Locals, E.D. No. 79, 1 NJPER 39 (1975), aff'd sub nom State v. Council of N.J. State College Locals, 141 N.J. Super. 470 (App. Div. 1976).

The Township's principal defense is that the Mayor refused to continue or conclude negotiations because of a dispute with Township Council concerning the appropriate forum for negotiations.

The Township's internal political difficulties cannot properly be a defense to the unfair practice charge in this case. Moreover, N.J.S.A., 40:69A-1 et seq. resolves any hierarchical disputes between the Mayor and Council concerning negotiations obligations with public employee representatives. N.J.S.A. 40:69A-32 provides, in part:

...any administrative or executive functions assigned by general law to the governing body shall be exercised by the mayor, and any legislative and investigative functions...shall be exercised by the council.

N.J.S.A. 40:69A-10 is a list of mayoral duties which includes:

j. Negotiate contracts for the municipality subject to council approval.

The statute thus places a collective negotiations responsibility with the mayor subject to council approval. Even if a mayor and council do not have a cooperative relationship, the Township has an obligation to negotiate terms and conditions of employment and, minimally, to authorize a representative to conduct those negotiations.^{4/} The Township has failed to engage any representative to conduct negotiations. Under all the circumstances of this case, I find that the Township of Monroe has violated subsection (a)(5) and derivatively (a)(1) of the Act by refusing to negotiate with the Union on and after April 9, 1986.^{5/}

^{4/} See also Ass'n of N.J. State College Faculty v. Bd. of Higher Ed., 112 N.J. Super. 237 (Law Div. 1970).

^{5/} No evidence adduced at the hearing supports a finding that the Township engaged in an independent violation of subsection 5.4(a)(1). See Township of Mine Hill, P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986).

RECOMMENDED ORDER

I recommend that the Commission ORDER that:

A. The Respondent cease from

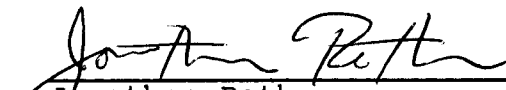
1. Refusing to negotiate in good faith with Local #711, IFLU a collective negotiations agreement for its blue and white collar employees.

B. That Respondent take the following affirmative action:

1. The Mayor shall forthwith authorize a representative or bargaining committee to negotiate in good faith with the Union concerning terms and conditions of employment.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice 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 at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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


Jonathon Roth
Hearing Examiner

Dated: October 10, 1986
Trenton, New Jersey