H.E. NO. 82-7

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

In the Matter of

BOROUGH OF HIGHLAND PARK,

Respondent,

-and-

Docket No. CO-81-311-12

HIGHLAND PARK PBA LOCAL NO. 64,
INC., GREGORY KRONOWSKI, FRANK
ATHERTON and PATRICK REAGAN,

Charging Party.

SYNOPSIS

A Hearing Examiner denied a Motion by a Respondent Employer to defer an Unfair Practice hearing to Binding Arbitration. The Hearing Examiner found that the gravamen of the complaint is a §5.4(a)(3) violation and such alleged violations, in keeping with NLRB policies, are not appropriate for deferral.

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Appearances:

For the Respondent, Aron, Till & Salsberg, Esq. (Richard M. Salsberg, Esq.)

For the Charging Party, Robert Bradley Blackman, Esq.

DECISION AND MOTION

Highland Park PBA Local 64, Inc. filed an Unfair Practice Charge with the Public Employment Relations Commission on April 7, 1981. It was alleged that the Borough of Highland Park violated N.J.S.A. 34:13A-5.4(a)(1) and (3) when it imposed an assignment rotation system which adversely affected only three patrolmen, all of whom were PBA officers. It was alleged that this action was motivated by anti-union animus.

On July 24, 1981, the Director of Unfair Practices, Carl Kurtzman, issued a Complaint and Notice of Hearing and hearing dates of October 5th and 6th were set in this matter.

On July 31, 1981, the Respondent Borough filed a motion with the undersigned requesting that the prosecution of the instant

unfair practice be deferred to the parties' arbitration procedure as set forth in their current collective negotiations contract, and on August 14, 1981, the Charging Party filed a brief in opposition thereto.

In East Windsor Bd/Ed, E.D. No. 76-6, 1 NJPER 59 the Commission adopted the NLRB's Colloyer Wire deferral policy. This policy is in accordance with Lullo v. Int'l Assn. of Fire Fighters, 55 N.J. 409 (1970). See Galloway Twp. Bd/Ed v. Galloway Twp. Assn. of Ed'l Sec'ys, 78 N.J. 1, 9 (1978).

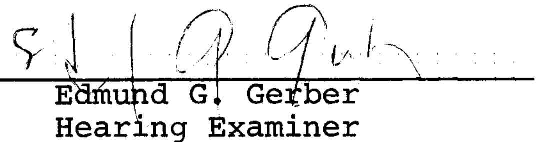
The Commission's deferral policy holds that when an issue of contract interpretation, raised by the opposing positions of the parties, is subject to final resolution by the grievance procedure of the contract, public policy favors the utilization of that procedure. East Windsor, supra. [1/]

However, the issue here is not whether the contract is violated. The charge in this matter does not even allege a violation of §(a)(5). The charge alleges the Borough's actions were motivated by anti-union animus in violation of §(a)(3). The NLRB will not defer to arbitration in an 8(a)(3) case. See General American Transportation Corp., 288 NLRB 808, 94 LRRM 1483 (1977) and Roy Robinson, Inc. d/b/a Roy Robinson Chevrolet, 228 NLRB 828, 94 LRRM 1474 (1977).

1/ To this end, whether or not a charge goes to complaint is of no consequence in determining whether or not to invoke the deferral policy.

In keeping with Lullo, supra, unless a charging party otherwise initially consents to defer to arbitration, as in Medford Bd/Ed, 6 NJPER (¶11070, 1980), aff'd 6 NJPER (¶1114, 1980), §5.4(a)(3) cases should not be deferred.

Accordingly, the Respondent's motion to compel the implementation of the instant matter is denied. The hearing will proceed as scheduled.



Edmund G. Gerber
Hearing Examiner

DATED: September 2, 1981
Trenton, New Jersey