

P.E.R.C. NO. 93-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER TOWNSHIP DISTRICT NO. 4
BOARD OF FIRE COMMISSIONERS,

Respondent,

-and-

Docket No. CO-H-91-125

CAMDEN COUNTY UNIFORMED FIREFIGHTERS
ASSOCIATION, IAFF LOCAL 3249, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission reopens the record and remands allegations concerning N.J.S.A. 34:13A-5.4(a)(5) to its Hearing Examiner. Before considering those allegations, the Commission wants to be sure that the Gloucester Township District No. 4 Board of Fire Commissioners understood that those allegations were still alive, despite some procedural confusion, and that the Board had an opportunity to respond to them.

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ASSOCIATION, IAFF LOCAL 3249, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Glickman & Ruderman, attorneys
(Steven Glickman, of counsel)

For the Charging Party, John Pilles, attorney

DECISION AND ORDER

On November 29, 1990, the Camden County Uniformed Firefighters Association, IAFF Local 3249, AFL-CIO filed an unfair practice charge against the Gloucester Township District No. 4 Board of Fire Commissioners. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), and (5),^{1/}

^{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 and 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...."

when it replaced a full-time apparatus mechanic who had firefighting duties and who was in IAFF's unit with a part-time apparatus mechanic who did not have firefighting duties and who was therefore outside IAFF's unit. The charge specifies that the Board removed firefighting duties from the apparatus mechanic to exclude that position from the unit.

On April 23, 1991, a Complaint and Notice of Hearing issued. On May 3, the Board filed an Answer denying that it had violated the Act.

On June 18, 1991, Hearing Examiner Susan Wood Osborn conducted a hearing. The parties examined witnesses and introduced exhibits. At the conclusion of the charging party's case, the Board moved to dismiss the allegations. The IAFF opposed this motion generally, but conceded that there was no evidence "that there's been a non-negotiation in good faith" and thus the allegation that subsection 5.4(a)(5) had been violated could be properly dismissed. The Hearing Examiner granted the motion with respect to the allegations that the Board had violated subsections 5.4(a)(2) and (5), but not with respect to the allegations that the Board had violated subsections 5.4(a)(1) and (3). The parties waived oral argument and post-hearing briefs.

On January 13, 1992, the Hearing Examiner issued her report and recommendations. H.E. No. 92-19, 18 NJPER 109 (¶23053 1992). She concluded that the Board had violated subsections 5.4(a)(1) and (5) by not negotiating before taking work away from the IAFF's unit and subsections 5.4(a)(1) and (3) by replacing a unit employee with

a non-unit employee to avoid its negotiations obligation. She recommended that the Board be ordered to fill the vacant mechanic/firefighter position in the IAFF's unit; restore the apparatus mechanic work to unit employees; and post a notice.

On January 27, 1992, the Board filed exceptions to the Hearing Examiner's analysis, conclusions, and recommended order. It specifically asserted that outside contractors had previously performed work done by the apparatus mechanics and therefore it had not violated subsection 5.4(a)(5). However, the Board did not assert that the Hearing Examiner had erred in considering in her report whether subsection 5.4(a)(5) had been violated. The IAFF filed a response urging adoption of the Hearing Examiner's recommendations.

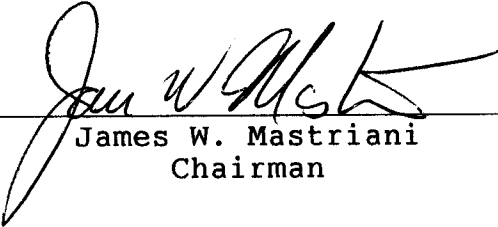
Procedural confusion surrounds the subsection 5.4(a)(5) allegations. To dispel that confusion, we reject the Hearing Examiner's initial recommendation that those allegations be dismissed at the conclusion of the charging party's case-in-chief and we reopen the record and remand those allegations to the Hearing Examiner. Before considering the subsection 5.4(a)(5) allegations, we want to be sure that the Board understood that the allegations were still alive and that the Board had an opportunity to respond to them. If any further proceedings are needed, we ask the Hearing Examiner to conduct them expeditiously.^{2/}

^{2/} Given this ruling, we need not and do not intimate any opinion about the merits of any of the unfair practice allegations.

ORDER

The record is reopened with respect to the subsection 5.4(a)(5) allegations. The case is remanded to the Hearing Examiner for further proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Regan and Wenzler voted in favor of this decision. None opposed. Commissioners Grandrimo and Smith abstained from consideration.

DATED: December 17, 1992
Trenton, New Jersey
ISSUED: December 18, 1992

H.E. NO. 92-19

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

In the Matter of

GLOUCESTER TOWNSHIP DISTRICT 4
BOARD OF FIRE COMMISSIONERS
Respondent,

-and-

Docket No. CO-H-91-125

CAMDEN COUNTY UNIFORMED FIREFIGHTERS
IAFF LOCAL 3249, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated Sections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it hired a non-unit employee to maintain the fire apparatus rather than filling the full-time unit position of firefighter/apparatus mechanic. The Hearing Examiner found by assigning work traditionally performed by firefighters to a non-unit employee without first negotiating with the IAFF, the Board violated (a)(5).

The Hearing Examiner also found that the Board also violated subsection 5.3 (a)(3) of the Act by its illegally motivated decision to replace the full-time unit position of mechanic/firefighter with a non-unit mechanic to avoid its negotiations obligations with the IAFF. The Board's defense--that it had not filled the unit position because it was awaiting a State Department of Personnel determination on whether a test was needed--was rejected as pretextual.

The Hearing Examiner recommended that the Commission order the mechanic work restored to the IAFF unit and the vacant mechanic/fire position filled.

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.

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ASSOCIATION, IAFF LOCAL 3249, AFL-CIO,

Charging Party.

Appearances:

For the Respondent,
Glickman & Ruderman, Attorneys
(Steven Glickman, of Counsel)

For the Charging Party,
Schlessinger, Mintz & Pilles, Attorneys
(John Pilles, of Counsel)

HEARING EXAMINER'S
REPORT AND RECOMMENDED DECISION

On November 29, 1990, the Camden County Uniformed Firefighters Association IAFF Local 3249 ("IAFF") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Gloucester Township Fire District No. 4 Board of Fire Commissioners ("Board") violated subsections 5.4(a)(1),(2),(3) and (5)^{1/} of the New Jersey Employer-Employee

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by removing firefighting duties from the mechanic's position to keep the mechanic out of the firefighters' negotiations unit.

On April 23, 1991, the Director of Unfair Practices issued a Complaint and Notice of Hearing. At the hearing conducted on June 18, 1991,^{2/} the parties examined witnesses and presented evidence. The parties waived post-hearing briefs and the record closed July 24, 1991. Upon the entire record, I make the following:

FINDINGS OF FACT

1. The Gloucester Township Fire District No. 4 Board of Fire Commissioners operates two fire stations in Gloucester Township--one in Blackwood and one in Cherrywood--and employs paid firefighters and other employees. It also uses many community volunteers to respond to fire calls. The Board is a "civil service"

1/ Footnote Continued From Previous Page

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. (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 transcript of the hearing will be referred to as "T-"; Charging Party's exhibits will be referred to as "CP- "; Respondent's exhibits will be referred to as "R- "; and joint exhibits will be referred to as "J- ".

employer, under the jurisdiction of the New Jersey State Department of Personnel ("Civil Service").^{3/}

2. The IAFF is the exclusive negotiations representative of the Board's paid firefighting personnel.

3. In October, 1989, the Board's paid firefighters joined the IAFF Local 3249. At that time, the Board's paid fire staff consisted of one fire official, Rodman Meyer, and two maintenance mechanics, John French and Keith Kemery. Although French and Kemery both worked under the general job description for maintenance mechanic (CP-1),^{4/} Kemery was primarily responsible for the general maintenance and upkeep of the district's two fire stations, while French's duties primarily involved maintenance of the fire apparatus. As apparatus mechanic, French maintained, repaired and cleaned the fire apparatus, including the trucks. Both mechanics assisted each other depending upon their workload demands and the scope of the project at hand. In addition, both French and Kemery responded to all fires during working hours, pursuant to their job description. At fires, French and Kemery performed all of the regular functions of a firefighter. (J-6; T27-T28; T31-T32; T36; T40).

4. On November 20, 1989, the IAFF filed a representation petition seeking to represent District 4's maintenance mechanics and the fire official (J-1).

^{3/} The parties consistently referred to the State Department of Personnel, formerly the Department of Civil Service, as "Civil Service." For consistency, I will use the parties' reference.

^{4/} The parties stipulated that job description CP-1 was in effect for the mechanic until French resigned (T25).

In an Agreement for Consent Election signed by the parties on January 22, 1990 (J-1), both parties stipulated that the appropriate collective negotiations unit consists of:

Included: All employees engaged in firefighting duties including fire official and maintenance mechanics employed by the Board of Fire Commissioners, District 4, Township of Gloucester.

Excluded: All other employees, including police officers, employees not engaged in firefighting, professional employees, craft employees, supervisors and managerial executives within the meaning of the Act (J-1).

On February 26, 1990, the Commission conducted an election. The three employees voted in favor of representation (J-2). On March 6, 1990, the Commission certified IAFF Local 3249 as the exclusive majority representative of the employees in the unit described above (J-3).

5. In February 1990, shortly after the election, Commissioner Miller sent the employees a memo (CP-3) stating that because "employees now belong to the IAFF as their bargaining agency [sic]...the Board is forced to institute the following [policy]:..." prohibiting them from responding to fire calls as volunteers during off-duty hours because the Board did not want to incur overtime payments (CP-3; T-50).

6. Sometime in February, 1990 John French resigned from his position, reducing the unit to two employees.

7. On May 1, 1990, the Board filed two Clarification of

Unit petitions^{5/} seeking a finding that both titles were inappropriate for representation (J-4; J-5). The Board claimed that the fire official was a managerial executive and/or a supervisory employee. The Board argued that the maintenance mechanic was not engaged in firefighting duties and therefore was not appropriate for unit inclusion.

The Director of Representation dismissed the Board's petitions on August 24, 1990, finding that by signing the Consent Election Agreement just three months before, the Board had waived its right to assert these contentions. The Director further found that these employees were engaged in firefighting and were not supervisors. Accordingly, the Director found no basis to remove either employee from the unit. Gloucester Tp. Fire District #4, D.R. No. 91-6, 16 NJPER 521 (121228 1990).

8. In the Spring of 1990, the Board initiated a program to hire some of its volunteer firefighters for one day a week each to help with station and apparatus maintenance. The IAFF complained to the Board about the rotational use of part-timers, and argued that by hiring the volunteers as part-time employees, the Board may be required by the Fair Labor Standards Act to pay them overtime if they volunteered for fire calls on their working day. At the June 20, 1990 meeting of the Fire Commissioners Board, Commissioner Jay Pantalone asked the Board to discontinue or suspend the use of part-time employees to avoid the risk of overtime payment

^{5/} Commission docket numbers CU-90-67 and CU-90-68.

liability. The Board voted to suspended the part-time program (R-2).

9. At the same June 20 Board meeting, Commissioner Pantalone reported that the Board negotiations committee had met with the employees to negotiate, but no agreement had been reached. The Board scheduled additional negotiations dates for July. Commissioner Pantalone conveyed that high level personnel in the fire service were disappointed by some recent events in the fire district and by a newspaper article about the district. However, at that same meeting, the Board passed a motion commending the paid and volunteer firefighters for doing an excellent job (R-2).

10. Commissioner Miller reported at the June 20 meeting that, although the paid personnel were hired in the titles of fire official and maintenance mechanic, they joined the union and want to be recognized as firefighters. He stated that a determination had been sought from the State concerning their firefighter status. Commissioner Pantalone replied that if it was determined that Kemery and Meyer were firefighters, then Civil Service regulations may require the Board to test for the positions. Kemery, the district maintenance mechanic and the Local 3249 vice-president, addressed the Board, stating that the employees did not intend to be reclassified to only fight fires, but wanted to retain firefighting duties as part of their jobs (R-2).

11. At the June 20, 1990 meeting, several people expressed the view that the vacant full-time firefighter position should be filled quickly. State IAFF Representative Tom Foley spoke about the union's concern for minimum staffing. Foley told the Board it was

necessary to have a minimum of four firefighters. He asked the Board to consider filling the vacant full-time position as soon as possible. The Board received a letter from the Blackwood Fire Company Secretary, requesting that the Board fill the vacant position. One of the volunteer firefighters, as well as a member of the community, also suggested that the third firefighter slot be filled. Blackwood Fire Chief Robb characterized hiring an additional person as an ultimate goal. Commissioner Pantalone replied that the Board is "researching Civil Service rules" to determine whether it must test for the position (R-2; T51).

12. In September, 1990, Fire Chief Robb advised the Board that the equipment and apparatus were not being properly maintained (R-1). Kemery also complained to the Board about the deteriorating condition of the apparatus. Civil Service had not yet responded to the Board's inquiry about testing requirements. The Board decided to advertise for and hire a mechanic on a part-time basis (T79-T80).

13. On October 17, the Board hired Richard Jones as a part-time mechanic to work 16 hours a week. Jones was given the responsibility of maintaining the fire apparatus, but not responding to any fire calls (R-3). Jones performs all of the same duties that French did, except firefighting (T80).

14. At its October 17 Board meeting, the Board announced it had hired Jones as well as a full-time secretary. State IAFF Representative Iannetta attended the meeting. He complained to the

Board that negotiations were going "terribly,"^{6/} and he accused the Board of hiring a non-unit mechanic to bust the union.

Commissioner Miller denied that that was the Board's intent.

Iannetta asked Commissioner McCann to explain why the Board did not need to pass a formal resolution to fill Jones' position. McCann responded that Jones had been hired on a temporary basis to fill a part-time mechanic position which had existed in the 1970's and 1980's (T94). Commissioner Pantalone responded that the mechanic was hired because the equipment needed immediate repair, and that the part-time mechanic position would be filled for less than one year. The Board Solicitor announced that once Civil Service ruled, all employees would be covered by Civil Service jurisdiction (R-3).

15. The 1991 budget (R-4) was adopted by the Fire Board in November and was approved by the State Department of Community Affairs in December, 1990. Although the IAFF made several requests for this budget, it never received it (T56).

The 1991 budget shows that two full-time maintenance mechanic/ firefighter positions were budgeted for \$27,165 and

^{6/} I take administrative notice that the IAFF filed a Request for Interest Arbitration (IA-91-17) with this Commission on October 4, 1990. The dispute was assigned to an interest arbitrator, who heard the case and issued an award on May 22, 1991.

\$22,500 respectively (R-4). The first position is Kemery's; the second position is that vacated by French's resignation. The 1991 budget also includes \$9,984 for "part-time truck mechanic" (R-4). Jones occupies this position (T86).

16. When French resigned, the Board considered filling his vacant position. According to Commissioner McCann, the Board decided to wait until Civil Service determined whether to test for the position because "[W]e didn't want to hire someone and then be told three months later we hired him inappropriately...." The Board did not want to "draw a full-time person away from his full-time job and [make] them a full-time employee of our Board and then be told...[the] employee [was] not hired according to Civil Service standards." However, McCann believed that an employee could be grandfathered into a position without a test after one year of service (T77; T87; T96).

The full-time mechanic/firefighter position remained vacant at the time of the June, 1991 hearing (T57; T86).

ANALYSIS

IAFF alleges that the Board violated the Act when it replaced a full-time unit position with a part-time non-firefighting position to keep the new position out of the unit.

It is uncontroverted that any employee not performing fire fighting duties would not be included in the IAFF unit. Thus, the part-time mechanic, who is not assigned fire duties, cannot be a unit position.

Preservation of unit work is mandatorily negotiable. See Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part, App. Div. Dkt. No. A-3564-78 (6/19/80); Rutgers, The State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), mot. for recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd App. Div. Dkt. No. A-3651-78 (7/1/80). Section 5.3 defines an employer's duty to negotiate before changing working conditions:

Proposed new rules of modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

Thus, shifting work from unit employees to employees outside the unit, without first negotiating with the majority representative, violates subsections 5.4(a)(1) and (a)(5) of the Act. Toms River Bd. of Ed., P.E.R.C. No. 92-71, 18 NJPER ____ (¶ _____ 1991); Bergen Cty., P.E.R.C. No. 92-17, 17 NJPER 412 (¶22197 1991), app. pending App. Div. Dkt No. A-518-91T5. Here, the Board did not negotiate the loss of its unit work with the IAFF. Therefore, I find that the Board violated subsection 5.4(a)(5) and, derivatively, subsection (a)(1).

The IAFF argues that, by hiring a non-fire mechanic outside the unit, the Board sought to obtain what it could not through the unit clarification petition--an avoidance of its negotiations obligation by stripping employees of their fire duties.

Ordinarily, the employer's decision to create a new

position, to fashion a position description, and to assign employees' duties are managerial prerogatives. However, if the employer's decision to create the new position was motivated by a desire to keep the employee/position out of the negotiations unit, then it violates 5.4(a)(3) of the Act.

The appropriate standard to determine whether the Board's decision to hire the non-unit mechanic was illegally motivated is found in Bridgewater Tp., 95 N.J. 235 (1984). Under Bridgewater, the charging party must first establish a prima facie case that protected activity was a substantial or motivating factor in the employer's disputed personnel action. The prima facie case may be proven by direct evidence of anti-union motivation, or by circumstantial evidence showing that (a) employees were engaged in protected activity; (b) the employer knew of this activity; and (c) the employer was hostile toward the exercise of protected rights. Bridgewater at 246.

If a prima facie case is established, the employer must show that the same action would have taken place even in the absence of protected activity. Bridgewater at 244.

Although there is no direct evidence of illegal motive, ample circumstantial evidence exists to establish a prima facie case that the Board's replacement of the unit mechanic with a non-unit mechanic was illegally motivated. There was protected activity and the Board knew of the activity. The employees had recently chosen to be represented by the IAFF. The parties were in negotiations. Based upon the circumstances and the timing of the Board's action, I

infer hostility by the Board towards the firefighters protected activities.

French occupied a unit position until his resignation. The only substantive difference between French's position as apparatus mechanic and Jones' new position as part-time apparatus mechanic is the elimination of the fire-related duties--the very duties that make the employee unit eligible.

Just days after the employees voted for IAFF representation, Miller issued a memorandum stating that the Board was "forced" by the employees' vote to prohibit employees from voluntarily responding to fire calls. At the same time negotiations would have begun, the Board decided not to fill French's vacant position, but to rotate the volunteers instead. In May, within three months of the certification, the Board sought to effectively eliminate the bargaining unit by requesting the Commission find that the mechanics were not engaged in fire fighting. Negotiations were proceeding with difficulty and the parties were in interest arbitration. The IAFF informally grieved the hiring of the volunteers as part-time employees and warned of FLSA violations, causing the suspension of the program. I find these circumstances to be evidence of the Board's hostility.

The timing of the employer's personnel decision can also be critical to the assessment of whether employer hostility exists. See Bridgewater; Glassboro Housing Auth., P.E.R.C. No. 90-16, 15 NJPER 524 (¶20216 1989; Matawan Reg. Bd. of Ed., P.E.R.C. No. 87-1, 12 NJPER 574 (¶17216 1986), aff'g H.E. No. 86-61, 15 NJPER 458 (¶17174 1986); Dennis Tp. Bd. of Ed., P.E.R.C. NO. 86-69, 12 NJPER 16 (¶17005 1985); Univ. of Medicine and Dentistry, P.E.R.C. No.

86-5, 11 NJPER 447 (¶16156 1985); Brookdale Community College, P.E.R.C. No. 78-80, 4 NJPER 243 (¶4123 1978), aff'd App. Div. Dkt. No. A-4824-77 (1/9/80). The timing of events here is suspect. The Board filed its Clarification petition in May, just in the beginning of negotiations with the IAFF. In August, the Commission rejected the CU petition, finding that the bargaining unit was properly structured. In October, just days after the IAFF filed a request for interest arbitration, the Board announced it had decided to recreate the part-time non-mechanic position instead of filling the full-time mechanic slot, even though it had a need for an additional mechanic/firefighter and the position was funded in its budget. Based upon the foregoing I find that there is evidence to show a prima facie case that the Board's decision to replace the full-time unit mechanic with a part-time non-unit mechanic was illegally motivated.

The Board's defense is that it did not hire a firefighter because it did not know if a civil service test was necessary. I reject this as pretextual. First, there is no evidence demonstrating when and how the Board made any serious inquiry of Civil Service concerning their testing requirements. Second, the Board's concern about potentially losing a newly appointed employee if Civil Service were to test is incredible in the face of its concurrent appointment of the part-time mechanic and the secretary, both of whom may also be subject to civil service testing. The position could have been filled with a provisional employee which

McCann acknowledged could have been grandfathered into the position in any event. The Board's claim that it retained the existing full-time mechanic/firefighter position in the budget and would fill it as soon as it heard from civil service is inconsistent with its failure to do so in the 16 months that passed between French's resignation and the hearing. At the time of the hearing, the full-time apparatus mechanic position remained unfilled, despite the fact that there was money in the budget specifically designated for the position.

I find that the Board's hiring of the part-time mechanic together with its refusal to fill the funded full-time firefighting mechanic position violated subsection 5.4 (a)(3) of the Act.

The IAFF also contends that the Board's actions violated subsection 5.4 (a)(2) of the Act. The record does not support such a finding.

CONCLUSIONS OF LAW

1. The Board violated N.J.S.A. 34:13A-5.4 (a)(5) and, derivatively, (a)(1) by shifting apparatus mechanic work from the firefighters unit to an employee outside the unit without first negotiating that change with the IAFF.

2. The Board violated N.J.S.A. 34:13A-5.4(a)(3) and, derivatively, (a)(1) by replacing a unit employee with a non-unit employee to avoid its negotiations obligation with the IAFF.

3. The Board did not violate N.J.S.A. 34:13A-5.4(a)(2).

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Township cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by shifting work from employees represented by IAFF to outside the IAFF negotiations unit without first negotiating that change with the IAFF.

2. Replacing members of the IAFF unit with non-unit employees for the purpose of avoiding its negotiations obligations with the IAFF.

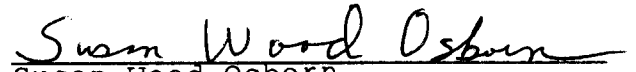
B. That the Board take the following action:

1. If it has not already done so, fill the vacant fire apparatus mechanic/firefighter position which is included in the IAFF unit.

2. Restore the apparatus mechanic work to the employees in IAFF unit.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and 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.

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


Susan Wood Osborn
Susan Wood Osborn
Hearing Examiner

Dated: January 13, 1992
Trenton, New Jersey

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by shifting work from employees represented by IAFF to outside the IAFF negotiations unit without first negotiating that change with the IAFF.

WE WILL cease and desist from replacing members of the IAFF unit with non-unit employees for the purpose of avoiding our negotiations obligations with the IAFF.

WE WILL fill the vacant fire apparatus mechanic/firefighter position which is included in the IAFF unit.

WE WILL restore the apparatus mechanic work to the employees in IAFF unit.