

P.E.R.C. NO. 83-161

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANCHESTER TOWNSHIP,

Respondent,

-and-

Docket No. CO-82-316-50

MANCHESTER TOWNSHIP PBA
LOCAL 246,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that Manchester Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it failed to implement the salary, longevity, overtime, and prescription coverage benefits for the second year of a collective negotiations agreement promptly at the start of the second year. The Township also violated the Act when it delayed the payment of retroactive salary increases to PBA members because the PBA filed its unfair practice charge.

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Docket No. CO-82-316-50

MANCHESTER TOWNSHIP PBA
LOCAL 246,

Charging Party.

Appearances:

For the Respondent, Steinberg, Steele & Poane, Esqs.
(Seigfried W. Steele, of Counsel)

For the Charging Party, Rothbard, Harris & Oxfeld,
Esqs. (Mark J. Blunda, of Counsel)

DECISION AND ORDER

On June 30, 1982, the Manchester Township PBA, Local 246 ("PBA") filed an unfair practice charge against Manchester Township ("Township") with the Public Employment Relations Commission. The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (3), (5), and (7)^{1/} when on or shortly after January 1, 1982, the Township failed to implement the salary, longevity, overtime

^{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 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; and (7) Violating any of the rules and regulations established by the commission."

and prescription coverage benefits for the second year of the collective negotiations agreement effective from January 1, 1981 through December 31, 1982.

On July 2, 1982, the PBA amended its charge. It added allegations that the Township violated subsections 5.4 (a)(2), (4), and (6)^{2/} when by letter dated July 1, 1982, its Mayor advised the PBA that the Township would not pay retroactive salary increases to PBA members because the PBA had filed the original unfair practice charge. The amended charge also alleged that the Township did give retroactive pay increases to employees in the negotiations unit who were not PBA members and to superior officers outside the unit.

On July 2, 1982, the PBA applied for interim relief. On that same day, the Chairman of the Commission issued an Order to Show Cause returnable on July 14, 1982.

On July 13, 1982, the Township agreed to make retroactive payment to all PBA unit members of all contractual benefits which became effective on January 1, 1982. The PBA simultaneously withdrew its request for interim relief.

On December 3, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On December 10, 1982, the Township filed an Answer

^{2/} These subsections prohibit public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; and (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

in which it denied any wrongdoing.

On February 10, 1983, Hearing Examiner Alan R. Howe conducted a hearing. The parties entered stipulations of fact, submitted exhibits, and questioned the PBA's president briefly. The parties filed post-hearing briefs by March 10, 1983.

On March 16, 1983, the Hearing Examiner issued his report and recommendations, H. E. No. 83-29, 9 NJPER 204 (¶14094 1983) (copy attached). He found that the Township violated subsections 5.4(a)(1) and (5) when it did not make the contractually required payments for the second year of the collective negotiations agreement on or shortly after January 1, 1982. He further found that the Township knew of its additional funding obligation under the two year agreement and was obligated under N.J.S.A. 40A:4-1 et seq. (the Local Budget Law) to use all procedures available to meet timely its contractual obligations for the 1982 year, but had failed to act pursuant to N.J.S.A. 40A:4-19. He also found that the Township violated subsections 5.4(a)(1) and (4) when its Mayor sent a letter to the PBA's president advising him that because an unfair practice charge had been filed, the Township would not issue retroactive salary checks to the PBA members in the negotiations unit.

On April 7, 1983, after receiving an extension of time, the Township filed Exceptions. Specifically, the Township maintains that the Hearing Examiner erred in concluding that the Township had not followed the procedure under N.J.S.A. 40A:4-19 for funding a contract. It claims that such a resolution was in fact adopted, but the Township inadvertently omitted to introduce it

into the stipulated record. It now requests that the record be reopened to include it. The Township also maintains that the Hearing Examiner failed to consider the PBA president's testimony that from January 1 through July 15, 1982, all employees received salaries based upon the 1981 contractual scale and that as of July 15, 1982, all employees had received their full retroactive salary, overtime, longevity and medical expense payments based upon the 1982 contractual requirements.

On May 9, 1983, the PBA filed a response and Cross-Exceptions. The PBA argues that the record should not be reopened to introduce evidence in existence at the time of the hearing and which the Township overlooked. It further argues that the resolution, even if included in the record, would not change the result since the Township concedes that it did not implement the contractual benefits owing on January 1, 1982 until mid-July 1982. In its Cross-Exceptions it maintains that the Hearing Examiner erred in not finding that the Township violated subsection 5.4(a)(3) when it delayed retroactive payments to PBA members because the PBA had filed an unfair practice charge. It maintains as well that the Hearing Examiner erred in concluding, in footnote 5 of his report, that he need not consider N.J.S.A. 40A:4-20 since he found that the funding of the contract did not involve an emergency.

We have reviewed the record. The Hearing Examiner's findings of fact (pp 2-4) are supported by substantial evidence. We adopt and incorporate them here. We add that employees in the negotiations unit received salary payments under the 1981

salary scale from January through July 1, 1982. PBA members then continued to receive salary payments under the 1981 salary scale until July 15, 1982 while non-PBA members started receiving payments under the 1982 salary scale as of July 1, 1982.

Under all the circumstances of this case, we hold that the Township violated subsections 5.4(a)(1) and (5) when it delayed wages and benefits owed as of January 1, 1982 under the collective negotiations agreement for more than six months. We further hold that the Township violated subsections 5.4(a)(1) and (4) when it further delayed issuance of retroactive salary checks to PBA members solely because the PBA had filed its unfair practice charge. We also adopt the Hearing Examiner's recommended remedy with a slight modification of the amount of interest owed and a deletion of the notice requirement.

Under N.J.S.A. 40A:4-19, a municipality's governing body must make temporary appropriations to provide for any contractual commitments to be made before the adoption of a final budget. This section provides:

The governing body may and, if any contract, commitments or payments are to be made prior to the adoption of the budget, shall, by resolution adopted prior to January 31 of the fiscal year, make appropriations to provide for the period between the beginning of the fiscal year and the adoption of the budget.

The total of the appropriations so made shall not exceed 25% of the total of the appropriations made for all purposes in the budget for the preceding fiscal year excluding, in both instances, appropriations made for interest and debt redemption charges, capital improvement fund and public assistance....

Chapter VII, Section B of a study entitled the Municipal Budget Process (Bureau of Government Research/Rutgers College,

June, 1978) elaborates:

Inasmuch as the Official Budget for the fiscal (calendar) year is not adopted prior to the beginning of the year, it is necessary for a temporary budget to be adopted between January 1 and January 30. The total of the appropriations made by this resolution may not exceed one-quarter of the total of all budget appropriations of the preceding year, less appropriations for debt service, capital improvement fund and public assistance. It is sometimes erroneously believed that each line item appropriation is limited to 25%, but actually the limit applies to the full amount.

There is no reason why, if the governing body has established policy objectives, the temporary budget cannot contain substantially larger appropriations for individual line items in order to permit new programs to start right away. Governing bodies often want to delay making decisions until they have the entire budget before them for examination, but that is a matter for local determination....

Here, the Township knew it had a contractual commitment to make salary and benefit payments effective January 1, 1982 under the second year of the collective negotiations agreement. It could have secured the temporary appropriations necessary to make these salary payments under N.J.S.A. 40A:4-19 by increasing the line item appropriations for employee salaries and benefits above 25% of the previous year's line item appropriations for salaries and benefits. It did not do so. Instead, it continued to pay employees the salaries due them under the first year of the collective negotiations agreement for more than six months after the effective date of its second year obligations. That delay remains unexcused. Cf. City of Atlantic City v. Laezza, 80 N.J. 255 (1979) and PBA Local 29 v. Town of Irvington, 80 N.J. 271 (1979) (public employers must fund obligations due under

interest arbitration awards; Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq. is not an excuse for non-compliance.)

We need not reopen the record to include the resolution which the Township alleges is proof that it did invoke the procedure under N.J.S.A. 40A:4-19 for funding agreements on or before January 31, 1982. Assuming the Township used this procedure and thus secured the monies necessary to continue paying salaries at the 1981 salary rates, the pivotal fact in this case is that the Township failed to use N.J.S.A. 40A:4-19 to secure the higher salary and benefit payments owed under the terms of the agreement effective January 1, 1982 and thus failed to meet its 1982 contractual obligations for more than six months.

We also reject the Township's Exception that the Hearing Examiner did not consider the PBA president's testimony concerning payments under the 1981 salary scale and the retroactive payments received in mid-July 1982. The Township concludes that the only damage resulting to the unit members was a loss of interest on the funds left unpaid over and above the 1981 salary scale between January 1, 1982 and July 15, 1982. We are satisfied that the Hearing Examiner reviewed all relevant evidence in reaching his decision. He specifically noted the issuance of retroactive checks in mid-July 1982. Further, the omission of any mention that unit employees received salary payments according to the 1981 salary scale during the first six months of 1982 is immaterial to our finding of an unfair practice based on the Township's failure to implement the 1982 contractual benefits promptly at the beginning of 1982. The fact that such salary

payments were received is, however, material to the appropriate remedy and was in fact fully taken into account by the recommended remedy that the affected employees only be awarded interest on the gross amount of the retroactive salary checks issued on or about July 15, 1982.

We now address the PBA's Cross-Exceptions. Given our findings of violations of subsections 5.4(a)(1), (4), and (5), which fully cover this situation, and because it appears to us that the Township acted pursuant to a good faith misinterpretation of its power to secure the necessary temporary appropriations, we decline to find a violation of subsection 5.4(a)(3) of the Act.^{3/} We, however, will disregard the dictum in footnote five of the Hearing Examiner's report to the effect that no emergency under N.J.S.A. 40A:4-20^{4/} existed; given our findings and discussion above, we need not and do not consider the applicability of N.J.S.A. 40A:4-20 to this case. Finally, we accept the Hearing Examiner's recommendation that we dismiss the portions of the Complaint alleging violations of subsections 5.4(a)(2), (6), and (7).

^{3/} Because we believe the Township merely misinterpreted the law in good faith, the posting of a notice is not necessary.

^{4/} N.J.S.A. 40A:4-20 states, in part:

In addition to temporary appropriations necessary for the period prior to the adoption of the budget and regular appropriations, the governing body may, by resolution...make emergency temporary appropriations for any purposes for which appropriations may lawfully be made for the period between the beginning of the current fiscal year and the date of the adoption of the budget for the said year.... The New Jersey Supreme Court has interpreted a similar statute, N.J.S.A. 40A:4-46, to authorize emergency appropriations, after a budget has been adopted, for retroactive salary increases. In re: Salaries For Probation Officers of Bergen County, 58 N.J. 422 (1971).

ORDER

IT IS HEREBY ORDERED that:

A. Respondent Manchester Township 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 withholding the issuance of retroactive salary checks to PBA unit members on and after July 1, 1982 because of the filing of an unfair practice charge by the PBA on June 30, 1982.

2. Discriminating against employees because of the signing or filing of an affidavit, petition or complaint under the Act, particularly by refusing to make payment of retroactive salary checks to members of the PBA unit on and after July 1, 1982 because of the filing of an unfair practice charge by the PBA on June 30, 1982.

3. Refusing to negotiate in good faith with the PBA concerning the terms and conditions of employment of PBA unit members, particularly by failing to appropriate the funds necessary to make the payments due under the PBA's collective negotiations agreement on and after January 1, 1982.

B. The Respondent Manchester Township take the following affirmative action:

1. Within 10 days, make payment to each affected PBA unit member of interest at the rate of 12% per annum on the differential between the amount of salary the unit member should have received and the amount he did receive in each paycheck

between January 1, 1982 and the time he received his or her retroactive salary check. The interest starts accruing on each paycheck at the time it was issued.

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

C. The subsection 5.4(a)(2), (3), (6), and (7) allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp, Graves, Newbaker and Suskin voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 24, 1983
ISSUED: June 27, 1983

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

In the Matter of

MANCHESTER TOWNSHIP,

Respondent,

-and-

Docket No. CO-82-316-50

MANCHESTER TOWNSHIP PBA, LOCAL 246,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it failed to adopt a resolution by January 1, 1982, providing funding for the wages and fringe benefits due PBA unit employees on January 1, 1982 pursuant to the provisions of a 1981-82 collective negotiations agreement. The Township had statutory authority to adopt such a resolution under N.J.S.A. 40A:4-19, which covers the discharge of contractual obligations between the beginning of the fiscal year and the date of adoption of the municipal budget. The Hearing Examiner relied upon Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25 (1978) as authority for his holding herein.

Further, the Hearing Examiner recommended that the Commission find that the Township violated Subsections 5.4(a)(1) and (4) of the Act when its Mayor on July 1, 1982 advised the President of the PBA that the Township would not issue retroactive salary checks to members of the PBA unit because the PBA had on June 30, 1982 filed an unfair practice charge.

By way of remedy, the Hearing Examiner recommends that the Township be ordered to pay affected PBA unit members interest at the rate of 12% per annum on the gross amount of their retroactive salary checks from January 1, 1982 to July 15, 1982, the date on which the checks were issued.

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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Appearances:

For Manchester Township
Steinberg, Steele & Poane, Esqs.
(Seigfried W. Steele, Esq.)

For Manchester Township PBA, Local 246
Rothbard, Harris & Oxfeld, Esqs.
(Mark J. Blunda, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 30, 1982, and amended on July 2, 1982, by the Manchester Township PBA, Local 246 (hereinafter the "Charging Party" or the "PBA") alleging that Manchester Township (hereinafter the "Respondent" or the "Township") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent unilaterally and without negotiations with the PBA altered the terms and conditions of employment set forth in the parties' collective negotiations agreement by failing and refusing to implement the salary, longevity and prescription coverage for the year 1982 and, further, on July 1, 1982, after the filing of the original Unfair Practice Charge on June 30, 1982, refused to pay retroactive salary increases to members of the PBA collective negotiations unit because of the filing of the original Unfair Practice Charge, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4

(a)(1), (2), (3), (4), (5), (6) and (7) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 3, 1982. Pursuant to the Complaint and Notice of Hearing a hearing was held on February 10, 1983, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The record was stipulated by counsel for the parties in all material respects. Oral argument was waived and the parties filed post-hearing briefs by March 10, 1983.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Manchester Township is public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Manchester Township PBA, Local 246 is public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

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, petition or complaint or given any information or testimony under 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.

"(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

"(7) Violating any of the rules and regulations established by the commission."

3. The parties' collective negotiations history dates back at least six years. Within that time period there have been several one-year collective negotiations agreements immediately preceding the most recent collective negotiations agreement, which was effective January 1, 1981 through December 31, 1982 (J-1).

4. Article XIII, Section 3 of J-1 provides that a prescription plan for the employee and his family was to become effective January 1, 1982.

5. Article XXII, Section 1 of J-1 provides for designated salary increases as of January 1, 1982.

6. Neither the benefits under the prescription plan nor the salary increases were paid by the Respondent as of January 1, 1982.

7. On June 30, 1982 the Charging Party filed an Unfair Practice Charge citing the Respondent's failure to make payments under the prescription plan and to pay the scheduled salary increases, together with payments of longevity and overtime since January 1, 1982 as mandated by the collective negotiations agreement (J-1).^{2/}

8. Under date of July 1, 1982 the Township's Mayor wrote to the President of PBA, advising him that because of the filing of the original Unfair Practice Charge the Township solicitor had advised the Township not to issue retroactive salary checks to members of the PBA unit (J-7).^{3/}

9. On or about July 1, 1982 the Township issued retroactive salary checks to superior officers of the Township's Police Department and two non-PBA members in the collective negotiations unit but, as noted above, withheld retroactive checks for members of the PBA unit.

^{2/} Under date of June 17, 1982 counsel for the PBA advised the Township of his representation and protested the failure of the Township to "implement" the collective negotiations agreement (J-3). Thereafter, correspondence ensued between the parties up to the date of the filing of the original Unfair Practice Charge on June 30, 1982 (J-3 through J-6).

^{3/} The Township had on July 1, 1982 adopted Ordinance No. 82-205, which was introduced on June 17, 1982, and which provided for the annual salaries of Township employees, including members of the PBA, for the year 1982 (J-11).

10. On July 2, 1982 the Charging Party filed its amended Unfair Practice Charge, which was accompanied by a request for interim relief. On the same date the Chairman of the Commission issued an Order To Show Cause, which was returnable July 14, 1982.

11. On July 13, 1982 the Township agreed to make the payment to all PBA unit members of the contractual benefits, which became effective on January 1, 1982, supra. This was confirmed in a letter from counsel for the Charging Party to counsel for the Respondent (J-8). Immediately thereafter, the Township issued retroactive salary checks to PBA unit members and made adjustments for longevity and overtime and implemented the prescription plan, which included reimbursement for out-of-pocket prescription expenses incurred by PBA unit members since January 1, 1982.

12. Preliminary action on the 1982 Township budget was taken by the Township Committee at a special meeting on March 31, 1982 as set forth in the minutes of the special meeting on that date (J-9).

13. At a special meeting of the Township Committee on May 24, 1982 a resolution was adopted, which adopted the 1982 municipal budget that was approved by the Division of Local Government Services of the State of New Jersey (J-10).

THE ISSUES

1. Did the Respondent violate Subsections(a)(1) and (5) of the Act when it failed to make payment of contractual salary increases to members of the PBA collective negotiations unit on or shortly after January 1, 1982, and further, failed to provide for the contractual prescription plan together with increased payments for longevity and overtime since that date as mandated by the collective negotiations agreement between the parties?

2. Did the Respondent violate Subsections(a)(1) and (4) of the Act ^{4/} when on July 1, 1982 the Mayor advised the President of the PBA that because of the filing by the PBA of an Unfair Practice Charge on June 30, 1982 the Respondent would not issue retroactive salary checks to members of the PBA unit?

4/ The stipulated record does not, in the opinion of the Hearing Examiner, (cont'd. p. 5)

DISCUSSION AND ANALYSIS

The Respondent Violated Subsections(a)(1)
 And (5) Of The Act When It Failed To Make
 Payment On Or Shortly After January 1, 1982
 Of The Wages And Benefits Provided For In
 The Collective Negotiations Agreement Between
 The Parties

It is well settled that a public employer may not make a unilateral change in the terms and conditions of employment of public employees during the term of a collective negotiations agreement: Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25, 48 (1978), citing NLRB v. Katz, 369 U.S. 736-47 (1962). Plainly, the wages and benefits herein involved constitute terms and conditions of employment, as to which any change would involve mandatory negotiations: Englewood Board Education v. Englewood Teachers Association, 64 N.J. 1, 6 (1973).

The Supreme Court of New Jersey has previously spoken on the obligation of a municipal employer to fund the obligations incurred as a result of statutory interest arbitration awards: City of Atlantic City v. Laezza, 80 N.J. 255, 267 -270 (1979) and PBA Local 29 v. Town of Irvington, 80 N.J. 271, 296 (1979). It follows, in the opinion of the Hearing Examiner, that those obligations incurred by a municipality as a result of voluntary contract negotiations require the municipality to fund the agreement reached under the same constraints as if the agreement had been imposed by an interest arbitrator.

The instant collective negotiations agreement (J-1) is a two-year agreement effective January 1, 1981 through December 31, 1982. There was apparently no

4/ (cont'd.) support the allegations in the Unfair Practice Charge, as amended, that the Respondent violated Subsections(a)(2), (3), (6) and (7) of the Act. In particular, with respect to Subsection(a)(3), there is not involved herein the exercise by any employee in the unit of protected activity, as to which the Township was motivated to withhold contractual benefits: Compare East Orange Public Library v. Taliaferro, 180 N.J. Super. 155 (App. Div. 1981) and Commercial Township Board of Education, P.E.R.C. 83-25, 8 NJPER 550 (1982), appeal pending App. Div. Docket No. A-1642-82T2. Accordingly, the Hearing Examiner will recommend dismissal of the foregoing allegations in the Unfair Practice Charge, as amended.

problem in the implementation of J-1 for the year 1981. The Respondent was clearly on notice that it had an additional funding obligation under the agreement as of January 1, 1982. The Hearing Examiner finds and concludes that the Respondent was obligated to utilize all procedures available under N.J.S.A. 40A:4-1 et seq. in order to meet the contractual obligations mandated for the second year of the agreement, i.e., the fiscal and calendar year of 1982.

The Charging Party correctly points out that under N.J.S.A. 40A:4-19 the Respondent had available to it a statutory procedure for funding the collective negotiations agreement on or shortly after January 1, 1982. This Subsection of Title 40A provides, in pertinent part, as follows:

"The governing body may and, if any contracts, commitments or payments are to be made prior to the adoption of the budget, shall, by resolution adopted prior to January 31 of the fiscal year, make appropriations to provide for the period between the beginning of the fiscal year and the adoption of the budget..." 5/

It appears clear to the Hearing Examiner that, since the Respondent had a contractual commitment as of January 1, 1982 to make payment of an additional salary increase to the members of the unit represented by the PBA together with the initiation of a prescription plan, N.J.S.A. 40A:4-19 should have been invoked. Thus, a resolution could have been adopted prior to January 31, 1982 appropriating such money as necessary to provide for the period from January 1, 1982 until the adoption of the 1982 municipal budget.

It is true that prior agreements with the PBA had been of only one year duration. Nevertheless, as the Charging Party points out, multi-year contracts are commonplace in the municipal context. See Fereday & Meyer Co., Inc. v. Elizabeth Board of Public Works, 27 N.J. 218, 226 (1958).

5/ The Hearing Examiner need not consider the provision of N.J.S.A. 40A:4-20, which provide the mechanism for emergency appropriations, since plainly the funding of the agreement for the year 1982 did not involve an "emergency."

Thus, it was within the power and authority of the Respondent to fund the second year of J-1 in January 1982. The Local Budget Law, supra, provides that it can be done by resolution prior to January 31st. Accordingly, the Hearing Examiner finds and concludes that the Township violated Subsections(a)(1) and (5) of the Act by unilaterally changing terms and conditions of employment by not funding the second year of J-1 on or before January 31, 1982.^{6/}

The Respondent Violated Subsections(a)(1) And (4) Of The Act When On July 1, 1982 The Mayor Advised The President Of The PBA That Because Of The Filing By The PBA Of An Unfair Practice Charge On June 30, 1982 The Township Would Not Issue Retroactive Salary Checks To Members Of The PBA Unit

The Commission has issued only one decision involving an alleged violation of Subsection(a)(4) of the Act, namely, Randolph Township Board of Education, P.E.R.C. No. 82-119, 8 NJPER 365 (1982); appeal pending, App. Div. Docket No. A-5077-81T2 where a violation was found. The Commission in that case drew heavily on NLRB precedent (See 8 NJPER at 367).

It is plain as a pikestaff to the instant Hearing Examiner that the Respondent violated Subsection(a)(4) of the Act when its Mayor on July 1, 1982 sent a letter to the PBA President advising him that because of the filing by the PBA of an Unfair Practice Charge the Township solicitor had advised the Township not to issue retroactive salary checks to members of the PBA unit (J-7). Not only did the Mayor make this statement in writing, but on the same day, July 1, 1982, the Township issued retroactive salary checks to superior officers of the Township's Police Department and to two non-PBA members in the collective negotiations unit.

Thus, the Township's conduct was unmistakably illegal, in that it discriminated against PBA unit members for filing a "petition or complaint" under the Act.

^{6/} The Hearing Examiner will recommend the payment of interest on the gross amount of the retroactive salary checks issued to PBA members for the period January 1, 1982 through July 15, 1982, the latter date being the date on which the checks were issued.

The Hearing Examiner therefore concludes that the Township violated Subsections(a) (1) and (4) of the Act by the foregoing conduct on July 1, 1982.

* * * *

Upon the entire in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Township violated N.J.S.A. 34:13A-5.4(a)(5), and derivatively 5.4(a)(1), when it failed in January 1982 to appropriate the necessary funds to make the payments due under the 1981-82 collective negotiations agreement.

2. The Respondent Township violated N.J.S.A. 34:13A-5.4(a)(4), and derivatively 5.4(a)(1), when its Mayor on July 1, 1982 advised the President of the PBA that because of the filing of an Unfair Practice Charge on June 30, 1982 the Township would not issue retroactive salary checks to members of the PBA unit.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent 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 failing to appropriate the funds necessary to make the payments due under the PBA's collective negotiations agreement on and after January 1, 1982 or by withholding the issuance of retroactive salary checks to PBA unit members on and after July 1, 1982 because of the filing of an Unfair Practice Charge by the PBA on June 30, 1982.

2. Discriminating against employees because of the signing or filing of an affidavit, petition or complaint under the Act, particularly, by refusing to make payment of retroactive salary checks to members of the PBA unit on and after July 1, 1982 because of the filing of an Unfair Practice Charge by the PBA on June 30, 1982.

3. Refusing to negotiate in good faith with the PBA concerning the terms and conditions of employment of PBA unit members, particularly, by failing to

appropriate the funds necessary to make the payments due under the PBA's collective negotiations agreement on and after January 1, 1982.

B. That the Respondent take the following affirmative action:

1. Forthwith make payment to all affected PBA unit members of interest from January 1, 1982 to July 15, 1982 at the rate of 12% per annum on the gross amount of the retroactive salary checks issued on or about July 15, 1982.^{7/}

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 by the Respondent to insure 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.

C. That the Subsection(a)(2), (3), (6) and (7) allegations in the Complaint be dismissed in their entirety.



Alan R. Howe
Hearing Examiner

Dated: March 16, 1983
Trenton, New Jersey

^{7/} See Salem County Board for Vocational Education v. McGonigle, P.E.R.C. 79-99, 5 NJPER 239 (1979), aff'd. in part and remanded App. Div. A-3417-78 (1980) and Bd. of Ed. of Borough of Oakland, P.E.R.C. No. 82-125, 8 NJPER 378 (1982), appeal pending App. Div. Docket No. A-4975-81T3.

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 failing to appropriate the funds necessary to make the payments due under the PBA's collective negotiations agreement on and after January 1, 1982 or by withholding the issuance of retroactive salary checks to PBA unit members on and after July 1, 1982 because of the filing of an Unfair Practice Charge by the PBA on June 30, 1982.

WE WILL NOT discriminate against our employees because of the signing or filing of an affidavit, petition or complaint under the Act, particularly, by refusing to make payment of retroactive salary checks to members of the PBA unit on and after July 1, 1982 because of the filing of an Unfair Practice Charge by the PBA on June 30, 1982.

WE WILL NOT refuse to negotiate in good faith with the PBA concerning the terms and conditions of employment of PBA unit members, particularly, by failing to appropriate the funds necessary to make the payments due under the PBA's collective negotiations agreement on and after January 1, 1982.

WE WILL forthwith make payment to all affected PBA unit members of interest from January 1, 1982 to July 15, 1982 at the rate of 12% per annum on the gross amount of the retroactive salary checks issued on or about July 15, 1982.

MANCHESTER 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
Chairman, Public Employment Relations Commission,
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780