P.E.R.C. NO. 78-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS (CAMDEN COUNTY HOSPITALS),

Respondent,

-and-

Docket No. CO-77-269-125

COUNCIL 71 AND LOCAL 2307 AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

In a decision in an unfair practice proceeding, the Commission finds the exceptions filed by the County relating to the findings of fact and conclusions of law of the Hearing Examiner to be without merit. The Commission, in agreement with the Hearing Examiner, finds that the County had violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) by refusing to negotiate in good faith concerning the subcontracting of laundry services and ordered the Board to cease and desist from refusing to negotiate this subject and unilaterally altering or threatening to alter the terms and conditions of employment of its laundry employees. The Commission in part noted that the unilateral imposition of terms and conditions of employment, even when they constituted improved benefits and are acquiesed to by the employees, does not relieve the employer of his duty to negotiate; such unilateral implementation is the antithesis of collective negotiations.

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STATE OF NEW JERSEY
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In the Matter of

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS (CAMDEN COUNTY HOSPITALS),

Respondent,

Docket No. CO-77-269-125

-and-

COUNCIL 71 and LOCAL 2307 AFSCME, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Vincent J. Paglione, Esq.

For the Charging Party, Joseph Asbell, Esq.

DECISION AND ORDER

On March 14, 1977, an Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by Council 71 and Local 2307, AFSCME, AFL-CIO (the "Union"), alleging that the Camden County Board of Chosen Freeholders (the "Board") engaged in an unfair labor practice in violation of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq., (the "Act"). Specifically, the Union alleges that, while negotiations were being conducted for a successor agreement, the Board unilaterally determined to cease operating laundry services for Camden County Hospitals, subcontract this work to a private laundry service, and transfer approximately 30 employees of the County laundry to other positions,[1/] thereby violating N.J.S.A.

1/ The original charge filed by the Union only alleged that during negotiations the Board unilaterally determined to cease operating (Continued)

34:13A-5.4(a)(1), (3) and (5).[2/]

The Charge was processed pursuant to the Commission's Rules, and it appearing to the Director of Unfair Practices, acting as the named designee of the Commission, that the allegations of the Charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 20, 1977. In accordance with an Order Rescheduling Pre-hearing and Hearing, a hearing was held before Alan B. Howe, Hearing Examiner of the Commission, on June 30, 1977, at which both parties were represented and were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Subsequent to the close of the hearing the parties submitted memoranda of law, the final memoranda being received on July 29, 1977. On August 5, 1977, the Hearing Examiner issued his Recommended Report and Decision[3/] which included findings of fact,

1/ (Continued) the laundry service and subcontract this work. However, at the outset of the hearing, the Hearing Examiner, in overruling the objection of the Board's counsel, allowed counsel for the Union to amend the charge to include an allegation that the Board failed to negotiate concerning the effect of the decision to subcontract on the laundry employees' terms and conditions of employment.

2/ N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) provide that: "Employers, their representatives or agents are prohibited from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (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.

3/ H.E. No. 78-3, 3 NJPER ____ (1977).

conclusions of law, and a recommended order. The original of this Report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof.

The Hearing Examiner found that the Board had violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by refusing to negotiate in good faith concerning the subcontracting of laundry services and recommended that the Board be ordered to cease and desist from refusing to negotiate this subject and unilaterally altering or threatening to alter the terms and conditions of employment of its laundry employees.

The Hearing Examiner further recommended that the charged violation of N.J.S.A. 34:13A-5.4(a)(3) be dismissed.

Pursuant to the Commission's Rules, exceptions to the Hearing Examiner's Recommended Report and Decision were filed by the Board. With regard to findings of fact, the Board took exception to finding #5 which states:

> "There is not and never has been a provision in any of the collective negotiations agreements with respect to subcontracting of unit work. The County did in late 1975 or early 1976 consider subcontracting out the laundry. This was opposed by the Charging Party /Union/ and thereafter the decision to subcontract was abandoned by the County"

The Board contends that there is nothing in the record even suggestive of any decision by it to abandon subcontracting because of objections by the Union.

The Commission finds that the transcript contains ample

testimony by Anderson E. Ways, Sr., President of Council 71, from which the Hearing Examiner, in finding of fact #5, properly concluded that, during negotiations in the latter part of 1975, or early part of 1976, the Board did discuss with the Union representative subcontracting of laundry work but abandoned this idea after the Union agreed to consolidation of the two County operated laundries into one laundry operation. Even assuming, arguendo, that the record did not substantiate this finding of fact, the Commission concludes that it is irrelevant to the present complaint, in that the Board's willingness to negotiate the issue of subcontracting in 1975 and/or 1976 has no bearing on the failure of the Board to negotiate concerning this issue in 1977.

With regard to conclusions of law, the Board took exception to conclusions #1 and #2 which state:

> "1. The Respondent did have an obligation to negotiate in good faith with the Charging Party concerning the issue of subcontracting out of the laundry, and its action in refusing to do so constitutes a violation of N.J.S.A. 34:13A-5.4(a)(5).
>
> 2. The Respondent's improper conduct, although not motivated by any specific anti-union animus, necessarily had a restraining influence and coercive effect upon the free exercise of the rights of the employees involved in this proceeding which are guaranteed by the Act and constitutes a derivative violation of N.J.S.A. 34:13A-5.4(a)(1)."

The Board, in its exceptions to these conclusions of law, contends that the Commission's decision in Township of Little Egg Harbor, P.E.R.C. No. 76-15, 2 NJPER 5 (1976), is not applicable to the present case because, unlike the facts in that case, all affected employees would be retained in County employment, at

essentially the same location, with the transfer of seniority rights, and at generally higher rates of pay. The Board further distinguishes the present case in that it did not engage in coercion, threats, or misrepresentations; approximately eight laundry employees have voluntarily signed a request to be transferred to the higher paying position of institutional attendant upon closing of the laundry.[4/]

The Board, in excepting to conclusion of law #2, asserts that no testimony was presented at the hearing from which the Hearing Examiner could reasonably conclude that the Board's unilateral conduct inherently had a coercive or restraining influence on the collective negotiations process and, consequently, the Union had to make an affirmative showing that the decision to subcontract was motivated by anti-union animus.

After careful consideration of the entire record, the Commission rejects the Board's exceptions and, with the following amplification, adopts the conclusions of law rendered by the Hearing Examiner.

The Commission has held that the decision to subcontract is mandatorily negotiable due to its potentially cataclysmic effect on wages, hours, and working conditions. Township of Little Egg

4/ The record reveals that, as of the date of the hearing, June 30, 1977, the subcontracting had not been implemented. Sometime in the latter part of March 1977, Keystone Laundries and Exclusive Linens of Asbury Park, in an effort to implement the contract, did make a single pickup at the hospital but never completed a day's work. In fact, the County is still operating the laundry facility with a reduced work force of approximately 18 employees, eight employees having already transferred to other positions.

Harbor, supra; see also, In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 54 (1975). A public employer must maintain the status quo of terms and conditions of employment while engaged in negotiations. In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975); appeal dismissed as moot, App. Div. Docket No. A-8-75 (1976), rehearing den., certif. den., ____ N.J. ____, Sept. term 1976 (9-28-76).

A public employer may not take unilateral action with regard to a required subject for collective negotiations, such as the decision to subcontract, absent extraordinary circumstances which the Commission, in agreement with the Hearing Examiner's Report, finds did not exist in this case. Township of Little Egg Harbor, supra. Consequently, the Board's unilateral decisions to subcontract laundry services and transfer 30 employees of the County laundry to other positions[5/] constituted a refusal to negotiate in good faith, in violation of N.J.S.A. 34:13A-5.4(a)(5).

The unilateral imposition of terms and conditions of employment, even where they constitute improved terms and are acquiesed to by the employees,[6/] does not relieve the employer of his duty to negotiate; such unilateral implementation is the antithesis of collective negotiations. In re Cliffside Park Board of Education,

5/ Although representatives of the Board did discuss with the Union representative the transfer of laundry personnel, it is clear that these discussions did not constitute either formal or informal negotiations; the Union's representative was merely informed of the various other positions to which laundry personnel could transfer.

6/ Even assuming that the requests for transfer were truely voluntary, it appears from the transcript of the hearing that these requests were motivated primarily out of confusion and fear that the Board would eliminate the positions at the laundry.

P.E.R.C. No. 77-2, 2 NJPER 252 (1976). The record reveals that the Board later decided to abandon the subcontracting and transfer of laundry personnel because of Keystone's failure to fulfill its contract. However, that does not negate the fact that these decisions were initially made unilaterally, contrary to the Board's obligation to collectively negotiate all changes in terms and conditions of employment.

Concerning the Board's exception to the Hearing Examiner's finding that specific anti-union bias did not motivate the decisions to subcontract, it is well established that a unilateral change in conditions of employment during negotiations constitutes per se refusal to bargain, thereby eliminating the requirement of finding over-all subjective bad faith. N.L.R.B. v. Katz, 369 U.S. 736, 82 Sct 1107, 8 LED 2230, 50 LRRM 2177; In re Piscataway Township Board of Education, supra.

The following excerpt from the Commission's decision in In re Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976), motion for reconsideration on other grounds granted, P.E.R.C. No. 77-8, 2 NJPER 284, decision on reconsideration, P.E.R.C. No. 77-18, 2 NJPER 295 (1976), reversed on other grounds, 149 N.J. Super. 352, motion for rehearing denied May 5, 1977, pet. for cert. granted July 20, 1977 ___ N.J. ___ (appeal pending), is dispositive of the Board's exception to the Hearing Examiner's finding of a derivative (a)(1) violation:

> "The Hearing Examiner's finding of a violation of N.J.S.A. 34:13A-5.4(a)(1) as a derivative of the (a)(5) violation, is

> in accord with well established National Labor Relations Board precedent to the effect that any unfair labor practice committed by an employer gives rise to a co-existent (a)(1) violation. The Supreme Court has recognized that the New Jersey Act is patterned after the National Labor Relations Act and has sanctioned resort to the body of law and precedent surrounding that Act for guidance in deciding cases brought under the auspices of the New Jersey Act. We hold that an unfair practice under subsections (a)(2) through (7) necessarily interferes with employees in the exercise of their rights and thus derivately violates subsection (a)(1) as well." (footnotes omitted)

The Commission accepts the Hearing Examiner's recommended dismissal of the charged violation of N.J.S.A. 34:13A-5.4(a)(3). The transcript reveals that the Board did not decide to alter the working conditions of laundry employees by transfers for the purpose of discouraging these employees from exercising the rights guaranteed to them by the Act. Similarly, this unilateral decision did not so adversely affect the employees' free exercise of their rights as to constitute a per se violation of N.J.S.A. 34:13A-5.4(a)(3).

ORDER

Accordingly, for the reasons set forth above, it is HEREBY ORDERED, that the Board shall:

A. Cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed by the Act by:

1. Refusing to negotiate in good faith, upon request, with the Charging Party, Council 71, concerning the subject of subcontracting of the laundry work currently performed by members

of the negotiations unit at the Lakeland Institution of the Respondent.

2. Unilaterally altering, or threatening to alter, the terms and conditions of employment of its laundry employees during the course of negotiations for a collective negotiations agreement with the Charging Party, Council 71.

3. Subcontracting out to Keystone Laundries and Exclusive Linens of Asbury Park, or from taking any other action with respect to subcontracting of the laundry work normally performed by employees in the negotiating unit during the course of collective negotiations with the Charging Party, Council 71.

B. Take the following affirmative action:

1. Upon request, negotiate in good faith with the Charging Party, Council 71, with respect to the decision to subcontract and the impact upon employees with respect to subcontracting of the laundry at the Lakeland Institution of the Respondent.

2. Post in the Lakeland Institution laundry, and any other locations where notices are given to employees, copies of the attached notice marked "Appendix A". Copies of said notice, on forms provided by the Commission, shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

3. Notify the Chairman of the Commission, in writing, within twenty (20) days from the date of receipt of this Decision and Order what steps have been taken to comply herewith.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hurwitz, Hipp, Forst and Parcells voted for this decision. None opposed.

DATED: Trenton, New Jersey
October 18, 1977
ISSUED: October 20, 1977

"APPENDIX A"

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 Lakeland Institution laundry in the exercise of the rights guaranteed them by the Act by:

1. Refusing to negotiate in good faith, upon request, with the Charging Party, Council 71, concerning the subject of subcontracting of the laundry work currently performed by members of the negotiations unit at the Lakeland Institution of the Respondent.
2. Unilaterally altering, or threatening to alter, the terms and conditions of employment of its laundry employees during the course of negotiations for a collective negotiations agreement with the Charging Party, Council 71.
3. Subcontracting out to Keystone Laundries and Exclusive Linens of Asbury Park, or from taking any other action with respect to subcontracting of the laundry work normally performed by employees in the negotiating unit during the course of collective negotiations with the Charging Party, Council 71.

WE WILL, upon request, negotiate collectively in good faith with Council 71, as the majority representative of the laundry employees in the Lakeland Institution, concerning the decision and impact upon employees with respect to the subcontracting of the laundry to any subcontractor.

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS
(CAMDEN COUNTY HOSPITALS)
(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

H.E. No. 78-3

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

In the Matter of

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS
(CAMDEN COUNTY HOSPITALS),

Respondent,

-and-

Docket No. CO-77-269-125

COUNCIL 71 AND LOCAL 2307, AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner issues his Recommended Report and Decision in an unfair practice proceeding. The amended complaint alleges that the Camden County Board of Chosen Freeholders (Camden County Hospitals) at its Lakeland Institution laundry subcontracted its laundry operations to a third party without having notified or negotiated in good faith with the Charging Party, Council 71, in violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5).

The Hearing Examiner concludes that the Charging Party has sustained its burden by proving by a preponderance of the evidence that the Respondent, the County, unlawfully refused to negotiate in good faith with the Charging Party, Council 71, with respect to the subcontract of its laundry operation to a third party without notification or negotiation with Charging Party. The Hearing Examiner finds a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) by the Respondent County. The Hearing Examiner finds no violation of N.J.S.A. 34:13A-5.4(a)(3) and recommends dismissal as to this subsection of the Act.

As for the violations found, the Hearing Examiner recommends a cease and desist order and affirmatively orders the Respondent to negotiate upon request by the Charging Party, with respect to the decision to subcontract the laundry and its impact upon affected employees. The Respondent is also directed to post appropriate notice to advise its employees of its undertaking required by the order.

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. 78-3

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

In the Matter of

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS
(CAMDEN COUNTY HOSPITALS),

Respondent,

-and-

Docket No. CO-77-269-125

COUNCIL 71 AND LOCAL 2307, AFSCME, AFL-CIO,

Charging Party.

Appearances:

For the Camden County Board of Chosen Freeholders
(Camden County Hospitals)
Vincent J. Paglione, Esq.

For the Council 71 and Local 2307, AFSCME, AFL-CIO
Joseph Asbell, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 14, 1977 by Council 71 and Local 2307, AFSCME, AFL-CIO (hereinafter the "Charging Party" or the "Council"), alleging that the Camden County Board of Chosen Freeholders (Camden County Hospitals), 1/ (hereinafter the "Respondent" or the "County") 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 County unilaterally, without prior negotiations with the Council and during a period of negotiations for a successor agreement, subcontracted out the laundry of the Lakeland Institution, operated by the County, which was alleged to be a violation of N.J.S.A. 34:13A-5.4

1/ At the hearing, the name of the Respondent was amended from Lakeland Institution to the Camden County Board of Chosen Freeholders (Camden County Hospitals).

(a)(1) of the Act. 2/

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 20, 1977.

Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 30, 1977 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing briefs were submitted by the Charging Party and the Respondent respectively, July 15 and July 29, 1977.

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 the filing and consideration of briefs by 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. The Camden County Board of Chosen Freeholders (Camden County Hospitals) is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Council 71 and Local 2307, AFSCME, AFL-CIO are public employee representatives within the meaning of the Act, as amended, and is subject to its provisions.

2/ At the hearing, the Charging Party was permitted to amend its charge to add additional violations of N.J.S.A. 34:13A-5.4(a)(3) and (5) of the Act. These three subsections prohibit employers, representatives or their 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 employees in that unit, or refusing to process grievances presented by the majority representative."

3. The Charging Party and the Respondent have been parties to a series of collective negotiations agreements, the current agreement being for a period of one year from January 1, 1977 through and including December 31, 1977 (J-2). The unit covered by the agreement includes, among others, employees in the laundry working under the titles of Laundry Worker and Senior Laundry Worker (Appendix to J-2). Typically, there have been approximately thirty (30) employees working in these two laundry classifications.

4. Negotiations between the parties for a successor agreement to the prior collective negotiations agreement (J-1) commenced in October 1976. Following several negotiations meetings for a successor agreement, a final agreement was consumated in May 1977, which was approved by the County by resolution of May 3, 1977 and ratified by the Council. It was signed sometime in or about mid-May 1977 by both parties.

5. There is not and never has been a provision in any of the collective negotiations agreements with respect to subcontracting of unit work. The County did in late 1975 or early 1976 consider subcontracting out the laundry. This was opposed by the Charging Party and thereafter the decision to subcontract was abandoned by the County.

6. During the recent negotiations for a successor agreement (J-2), which commenced in October 1976, there was never any mention made by the County of a disposition or decision to subcontract the laundry. Nevertheless, by resolution dated March 15, 1977 (J-3), prior to the conclusions of negotiations for a successor agreement, the County awarded a subcontract of the laundry to Keystone Laundries and Exclusive Linens of Asbury Park, effective for one year, April 15, 1977 to April 15, 1978. This was done without notice to the Charging Party.

7. The Charging Party's first knowledge of the County's decision to contract the laundry came from a newspaper article in the Camden Courier Post. The President of the Council, Anderson E. Ways, upon obtaining this information from the newspaper contacted the Director of the Lakeland Institution, Dr. Urban, who confirmed the accuracy of the report in the newspaper. Mr. Ways next communicated with Mr. Simon, a Freeholder of the County, and advised Mr. Simon that he, Mr. Ways, intended to file a charge of unfair practices with the Commission. Mr. Simon indicated that this was agreeable

to him and that the matter should be resolved by the Commission or by the courts. Mr. Ways immediately filed the instant charge with the Commission.

8. As of the date of the hearing, June 30, 1977, the County had not implemented the subcontract to Keystone Laundries. Also, as of the date of the hearing, the County had offered to absorb by transfer to other positions at the Institution all of the affected employees in the laundry with no reduction in wages and without loss of seniority. Further, as of the date of the hearing, approximately eight (8) employees had voluntarily transferred from the laundry to other positions in the Institution.

THE ISSUE

Did the County commit an unfair practice within the meaning of the Act when it unilaterally, without notice to the Council, entered into a subcontract for the laundry during negotiations for a successor agreement and, if so, what should the appropriate remedy be?

DISCUSSION AND ANALYSIS

The Position of the Parties

It is the position of the Charging Party, Council 71, that the Respondent has committed a per se violation of §(a)(1) and (5) of the Act by subcontracting the laundry during the period of negotiations for a successor agreement without collective negotiations or even notice to the Charging Party. The Charging Party cites, inter alia, NLRB v. Katz, 369 U.S. 736 (1962), Township of Stafford, P.E.R.C. No. 76-9 and Township of Little Egg Harbor, P.E.R.C. No. 76-15.

It is the position of the Respondent that it has not violated the Act, as alleged, for the reason that subcontracting was never used as a threat during collective negotiations and, further, no employee will suffer job loss through a reduction in salary or seniority since each employee is or has been offered a position elsewhere in the Lakeland Institution complex.

The Controlling Authorities and Decision

It is the opinion of the Hearing Examiner that the Respondent has violated §(a)(1) and (5) of the Act under the authority of Township of Little Egg Harbor and Township of Stafford, supra.

As stated in Township of Stafford, supra, there can be no doubt that: "...the impact of the decision to contract out as it affects terms and conditions of employment -- if not the decision -- is within the scope of negotiations..." (Emphasis supplied)

The instant case is more clearly analagous to Township of Stafford than Township of Little Egg Harbor, supra, in that the Respondent here did not even negotiate with the Charging Party over the decision to subcontract or its impact prior to the award of the subcontract. Not only did Respondent not negotiate, it did not even give notice to the Charging Party of its decision to subcontract. The Charging Party was left to find out through other means that the laundry subcontract had been awarded.

As was stated in Township of Little Egg Harbor, supra:

> "...no public employer may be permitted to take unilateral action with regard to a required subject for collective negotiations such as the decision to subcontract, absent extraordinary circumstances, until after all impasse resolution procedures (including mediation and fact-finding) have been exhausted. Public employees who comply with laws prohibiting strikes should be protected from unilateral actions taken by public employers concerning required, mandatory subjects for collective negotiations during the period leading up to the execution of a first agreement...as well as during the hiatus between the expiration date of an old agreement and the signing of a new contract." (Emphasis in original)

The Hearing Examiner finds no "extraordinary circumstances" which would warrant a departure in the instant case from the general rule above-stated.

The Hearing Examiner further finds that the unilateral decision to subcontract the laundry in the instant case had a "chilling effect" upon

affected employees in the negotiating unit, notwithstanding that the employees affected were to be offered other jobs in the Institution complex without loss of seniority and without reduction in wages. The decision of the Respondent to make alternative employment available goes to the remedy which would otherwise be recommended in this case had the decision to subcontract been implemented and no alternative employment offered by way of mitigation.

The Hearing Examiner specifically rejects the twofold defense of the Respondent that it never used subcontracting as a threat during collective negotiations, and that no affected employee is to suffer loss of employment or seniority, or a reduction in wages.

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

CONCLUSIONS OF LAW

1. The Respondent did have an obligation to negotiate in good faith with the Charging Party concerning the issue of subcontracting out of the laundry, and its action in refusing to do so constitutes a violation of N.J.S.A. 34:13A-5.4(a)(5).

2. The Respondent's improper conduct, although not motivated by any specific anti-union animus, necessarily had a restraining influence and coercive effect upon the free exercise of the rights of the employees involved in this proceeding which are guaranteed by the Act and constitutes a derivative violation of N.J.S.A. 34:13A-5.4(a)(1).

3. The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(3) and that portion of the complaint and charge is dismissed.

RECOMMENDED ORDER

Respondent, Camden County Board of Chosen Freeholders (Camden County Hospitals) is HEREBY ORDERED:

A. To cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed by the Act.

2. Refusing to negotiate in good faith, upon request, with the Charging Party, Council 71, concerning the subject of subcontracting of the laundry work currently performed by members of the negotiating unit at the Lakeland Institution of the Respondent.

3. Unilaterally altering, or threatening to alter, the terms and conditions of employment of its laundry employees during the course of negotiations for a collective negotiating agreement with the Charging Party, Council 71.

4. Subcontracting out to Keystone Laundries and Exclusive Linens of Asbury Park, or from taking any other action with respect to subcontracting of the laundry work normally performed by employees in the negotiating unit during the course of collective negotiations with the Charging Party, Council 71.

B. Take the following affirmative action:

1. Upon request, negotiate in good faith with the Charging Party, Council 71, with respect to the decision to subcontract and the impact upon employees with respect to subcontracting of the laundry at the Lakeland Institution of the Respondent.

2. Post in the Lakeland Institution laundry, and any other locations where notices are given to employees, copies of the attached notice marked "Appendix A". Copies of said notice, on forms provided by the Commission, shall, after being signed by Respondent's representative be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

3. Notify the Chairman of the Commission, in writing, within twenty (20) days from the date of receipt of this Recommended Report and Decision what steps have been taken to comply herewith.

It is hereby recommended that the Commission order dismissal of that portion of the complaint which alleges that the Respondent violated N.J.S.A. 34:13A-5.4(a)(3).

Alan R. Howe
Hearing Examiner

DATED: August 5, 1977
Trenton, New Jersey

"APPENDIX A"

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 Lakeland Institution laundry in the exercise of the rights guaranteed them by the Act.

WE WILL, upon request, negotiate collectively in good faith with Council 71, as the majority representative of the laundry employees in the Lakeland Institution, concerning the decision and impact upon employees with respect to the subcontracting of the laundry to any subcontractor.

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS
(CAMDEN COUNTY HOSPITALS)

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