

P.E.R.C. NO. 82-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-81-12-33

MERCER COUNCIL NO. 4, LOCAL
1040, CWA, AFL-CIO,

Charging Party.

HOUSING AUTHORITY, CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-81-18-34

MERCER COUNCIL NO. 4, N.J. CIVIL
SERVICE ASSOCIATION, CWA, AFL-CIO,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission, noting the absence of exceptions, adopts the recommended report and decision of its Hearing Examiner, finding that the Authority violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively section (a)(1) by the unilateral salary increases granted in excess of the negotiated raises to five (5) supervisory unit employees. Additionally, the Commission dismissed the complaint in CO-81-12-33. The Union failed to prove by a preponderance of the evidence that the Authority had given false information to the Union on the finality of the H.U.D. budget proposals or the raises to the five supervisory employees.

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Docket No. CO-81-18-34

MERCER COUNCIL NO. 4, N.J. CIVIL
SERVICE ASSOCIATION, CWA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Kelsey, Kelsey, Radick, Apicelli
& Kline, Esqs. (Arthur S. Kelsey, of Counsel)

For the Charging Parties, Robert O. Yeager, Business
Agent, Mercer Council No. 4, NJCSA

DECISION AND ORDER

On July 9, 1980, the Maintenance and Craft unit of the Trenton Housing Authority Union, Mercer Council No. 4, N.J.C.S.A., Local 1040, CWA, AFL-CIO (the "Union") filed an unfair practice charge (Docket No. CO-81-12-33) with the Public Employment Relations Commission alleging that the Trenton Housing Authority (the "Authority") violated N.J.S.A. 34:13A-5.4 of the New Jersey Employer-Employee Relations Act (the "Act"). Specifically, the Union alleged that the Authority had violated the Act when it provided a copy of a proposed budget claiming it was the final budget sent to the Department of Housing and Urban Development

(H.U.D.) when in fact it was not. Further, the Union alleged that the Authority was acting in bad faith by claiming an inability to pay more than a 6.5% raise increase while at the same time granting supervisory employees raises in excess of 10%.

On July 17, 1980, the supervisory unit of the Trenton Housing Authority Union, Mercer Council No. 4, CWA, AFL-CIO filed a separate unfair labor practice charge (Docket No. CO-81-18-34) alleging that the Authority had unilaterally granted five (5) supervisory employees a salary increase ranging from 10.5% to 21%, far in excess of the negotiated wage increase of 7%. These raises, it was alleged, were granted without negotiation with the employee organization and in violation of section 5.4(a)(1) and (5) of the Act.

It appearing that the allegations of the unfair practice charges, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing, accompanied by an Order Consolidating the two cases, was issued October 15, 1980. A hearing was held before Hearing Examiner Edmund Gerber, on December 9 and 10, 1980, at the Commission's offices in Newark, New Jersey. The parties were given an opportunity to examine and cross-examine witnesses, present relevant evidence, argue orally and present briefs. The parties did not submit post-hearing briefs but each chose to make closing argument at the hearing.

The Hearing Examiner found that the Union had failed to prove by a preponderance of the evidence that the employer had given false information to the Union as to the finality of the H.U.D.

budget proposal or about the raises for five supervisory employees. He therefore dismissed the Complaint in its entirety as to the Authority's alleged violation of the Act pertaining to its actions during the period of contract negotiations for the Maintenance and Craft unit (CO-81-12-33). However, he found that the Authority had committed an unfair practice under section 5.4(a)(1) and (5) when it unilaterally granted to five supervisory employees salary increases in excess of the negotiated contract salary raise. The Union, he found, could not make a demand to negotiate the salary increases prior to the granting of the raises because the Authority's action was implemented before Union knowledge of that action. It was, therefore, not possible to make the demands for negotiation prior to implementation of the raises. The Hearing Examiner found that the Authority violated section 5.4(a)(5) and derivatively (a)(1) by its action and recommended that the Commission order the Authority to negotiate with the Union over the salary increases for the five supervisory employees.^{1/}

Neither the Union nor the Authority has filed exceptions to the Hearing Examiner's Recommended Report and Decision. The Union notified the Commission by letter on July 24, 1981, that it accepted the report of the Hearing Examiner. Pursuant to N.J.A.C. 19:14-7.1 et seq. the case is properly before the Commission for review. After a careful review of the entire record herein and in the absence of exceptions to the Hearing Examiner's Recommended

^{1/} The five employees who received raises would suffer financial hardship if the raises were rescinded retroactively; therefore, the Hearing Examiner did not recommend this remedial action.

Report and Decision including the proposed Order and Notice, the Commission adopts the findings of fact and conclusions of law of the Hearing Examiner, substantially for the reasons cited by him.

Accordingly, we find that the Authority violated section 5.4(a)(5) and derivatively section (a)(1) by the unilateral salary increases of five supervisory unit employees. Additionally, we dismiss the Complaint in CO-81-12-33 in its entirety.

ORDER

Respondent Trenton Housing Authority shall:

A. Cease and desist from interfering with, restraining or coercing employees represented by the supervisory unit of Mercer Council No. 4, New Jersey Civil Service Association, CWA, AFL-CIO, by refusing to negotiate with Council No. 4 with respect to salary increases granted to employees represented by Council No. 4.

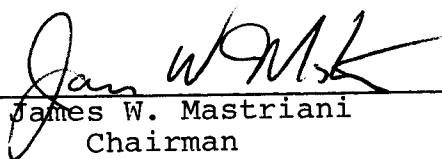
B. Negotiate on demand with Mercer Council No. 4, New Jersey Civil Service Association, affiliated with Local 1040, CWA, AFL-CIO, concerning the salaries of the following unit positions: Tenant Selection Supervisor, Maintenance Superintendent, Assistant Maintenance Superintendent and Community Service Worker.

C. Post at 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 the receipt thereof,

and, after being signed by the Respondent's authorized representative, shall be maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material.

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

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Hipp, Newbaker, Parcells and Newbaker voted in favor of this decision. Commissioner Graves was not present.

DATED: November 10, 1981
Trenton, New Jersey
ISSUED: November 12, 1981

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees represented by the supervisory unit of Mercer Council No. 4, New Jersey Civil Service Association, CWA, AFL-CIO, by refusing to negotiate with Council No. 4 with respect to salary increases granted to employees represented by Council No. 4.

WE WILL negotiate on demand with Mercer Council No. 4, New Jersey Civil Service Association, affiliated with Local 1040, CWA, AFL-CIO, concerning the salaries of the following unit positions: Tenant Selection Supervisor, Maintenance Superintendent, Assistant Maintenance Superintendent and Community Service Worker.

TRENTON HOUSING AUTHORITY

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H.E. NO. 82-6

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

In the Matter of

TRENTON HOUSING AUTHORITY,
Respondent,

-and-

Docket No. CO-81-12-33

MERCER COUNCIL NO. 4, LOCAL 1040,
CWA, AFL-CIO,

Charging Party.

HOUSING AUTHORITY, CITY OF TRENTON,
Respondent,

-and-

Docket No. CO-81-18-34

MERCER COUNCIL NO. 4, N.J. CIVIL
SERVICE ASSOCIATION, CWA, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner found that the Trenton Housing Authority committed an unfair practice when it failed to negotiate a salary upgrading of several unit personnel. It was found however, in a companion case that these salary increases did not constitute an unfair practice against another union that did not represent those same employees.

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
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON HOUSING AUTHORITY,
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-and-

MERCER COUNCIL NO. 4, LOCAL 1040,
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MERCER COUNCIL NO. 4, N.J. CIVIL
SERVICE ASSOCIATION, CWA, AFL-CIO,

Charging Party.

Docket No. CO-81-18-34

Appearances:

For the Respondent, Kelsey, Kelsey & Radick, Esqs.
(Arthur S. Kelsey, Esq.)

For the Charging Party
Ted J. Watkins, Administrative Assistant to the Vice
President, CWA; Robert Yaeger, Business Agent, Local
1040, CWA

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On July 9, 1980, the Maintenance and Craft unit of the Trenton Housing Authority Union, Mercer Council #4, N.J.C.S.A. Local 1040, CWA, AFL-CIO (Union) filed an unfair practice charge with the Public Employment Relations Commission alleging that the Trenton Housing Authority (Authority) violated N.J.S.A. 34:13A-5.3 et seq. when it provided the Maintenance and Craft Unit with a copy of

their budget claiming that said budget was the final budget sent to H.U.D. for approval, when in fact it was not.

It was further alleged that the Maintenance and Craft Unit was told the Authority was low in funds and could only afford 6.5 percent raises for all their employees. The Union ultimately accepted a seven percent offer. It later found out that some five employees, in the Supervisory Unit received wage increases that were in excess of seven percent. It was claimed that these actions constituted bad faith negotiations.

On July 17, 1980, the Supervisory Unit of the Trenton Housing Authority Union, Mercer Council No. 4, Local 1040, CWA, AFL-CIO filed a separate unfair practice charge alleging that their negotiators agreed upon a seven percent wage increase for unit employees but five unit members were given raises that were in excess of seven percent and the employer never discussed these raises with the union prior to their implementation, in violation of §5.4(a) (1) and (5) of the Act. ^{1/}

It appearing that the allegations of the unfair practice charges, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing, accompanied by an Order Consolidating the two cases, was issued on October 15, 1980. A hearing was held on December 9 and 10, 1980, at the Com-

^{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; (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."

mission's offices in Newark, New Jersey. The parties were given an opportunity to examine and cross-examine witnesses, present relevant evidence, argue orally and present briefs.

In June of 1980 the Trenton Housing Authority was engaged in separate negotiations with representatives of the Maintenance and Craft Unit and the Supervisory Employees Unit for a contract for the period January 1, 1980 to December 31, 1981. The Housing Authority qualified for federal funding through the Department of Housing and Urban Development (H.U.D.) During the negotiations the Housing Authority consistently took the position that any salary increases awarded must be consistent with the budget requirements established by H.U.D. During the negotiations the Housing Authority submitted a series of proposed budgets. The Maintenance and Craft Unit alleged that they were told in negotiations that one of the proposed budgets was the final budget submitted to H.U.D. and that the employer was compelled not to exceed the amount stated on that budget. The budget included one salary figure for all employees. The chief witness for the Union, Kramarz, testified that he asked if this figure could be increased and the response was "maybe it could be and maybe it couldn't." It later developed that the budget was only an interim budget and the Authority subsequently submitted other budgets with greater allocations for salaries to H.U.D.

The witnesses for the Authority testified that they never told the Maintenance and Craft negotiators that the budget was final and copies of subsequent proposed H.U.D. budgets were forwarded to the Union.

The Maintenance and Craft Unit's second allegation was that they had heard that some five supervisory employees had gotten raises as high as 20 percent. Kramarz testified that he brought this up at the negotiations table. Mr. Hillman of the Authority acknowledged that this was true and, after a caucus, the Authority responded that "We are negotiating all figures the same at this time." (This apparently was a reference to the Authority offering the same percentage salary increase to all units.) In spite of this assurance the five supervisory employees were granted increases ranging from 13 to 21 percent.

The Authority's witnesses stated they never denied that they were going to give raises to the five employees in question. At one session Hillman attempted to break down anticipated expenditures in the budget. The disputed salaries were included in the breakdown. However, in the midst of Hillman's presentation, the union negotiators stated "they weren't interested. They were only interested in the salaries for the Maintenance and Craft Unit."

The Authority also disputed the union's characterization of the conversation concerning the raise to five of the unit employees. The Authority's witnesses claimed that when asked General Amotto responded, "it was none of their goddamn business."

The testimony of the union representatives is not convincing as to these charges. The Charging Party has the burden of proving their allegations by a preponderance of the evidence. The Authority's witnesses here were no less credible than the union's witnesses. Even if the facts were found to be as the union's wit-

nesses testified, I am not convinced that the Authority committed an unfair practice.

As to the first allegation concerning the budget, a whole series of budgets composed by the Authority were introduced into evidence and as noted below Kramarz's own testimony was that the Authority equivocated as to whether those figures could be increased. Nor was there any allegation that the figures in the proposed budget were false.

Significantly, in the negotiations between the parties the union was demanding a 9.5 percent increase and the Authority offered 6.5 percent. The union asked the Authority if it would move off its proposal. The Authority then offered seven percent and the union accepted. This very act shows that the Authority did not bind itself to the proposed H.U.D. budget. ^{2/}

As to the second allegation, the Maintenance and Craft Unit had no authority to negotiate the salaries of the five supervisory employees. They were not in the Maintenance and Craft Unit and the union had no right to negotiate over those wages. Even if one accepts the union's version of the facts, the employer never gave assurances that these people would never get the rumored raises. The alleged remarks were limited to the current state of negotiations.

The union failed to prove by a preponderance of the evidence that the employer gave false information in negotiations either as to the status of the proposed H.U.D. budget or as to raises for the five supervisory employees.

^{2/} It follows that the union knew, or should have known, the Authority did not bind itself to the proposed H.U.D. budget.

Accordingly, it is hereby recommended that the Complaint in CO-81-12-33 be dismissed in its entirety.

* * * * *

The other charge was filed by the Supervisory Unit. The Supervisory Unit was negotiating, as was the Maintenance and Craft Unit, with the Authority for a successor to the contract which expired on December 31, 1979. The Supervisory Unit had reached a tentative agreement for a new contract with a seven percent salary increase.

On July 9, Geraldine Phillips, the President of the Supervisory Employees Unit, heard a rumor that five employees within her unit received raises ranging from 10.5 percent to 21 percent, all in excess of the tentative settlement. These employees held positions in four titles: Tenant Selection Supervisor, Maintenance Superintendent, Assistant Maintenance Superintendent and Senior Community Service Worker. Phillips asked Hillman about these raises. He acknowledged that the salaries of the titles of the five employees were upgraded thereby increasing their salaries. ^{3/} Phillips immediately filed the instant charge. She did not however make a demand to reopen negotiations and signed the proposed agreement on July 29.

Hillman testified that the employees in question were receiving salaries significantly below comparable salaries for the area and that these salaries therefore were upgraded to a salary range to more fairly compensate these positions. Hillman stated that these upgradings were made in accordance with Civil Service procedures.

^{3/} None of these employees were union members. The union here did not allege or otherwise introduce evidence to prove a violation of §5.4(a)(3).

Subsection 5.3 of the Act provides that "A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit."

The Authority here had an obligation to negotiate the salaries of all employees within the unit. ^{4/} See Long Branch, P.E.R.C. No. 78-6, 3 NJPER 314 (1977). There was some evidence that the salaries of other positions in the supervisory unit were upgraded without prior negotiations. In those instances however the union had actual notice of the upgrade. ^{5/}

The employer argues that since the union knew of the reclassification before its representative signed the contract, yet chose not to demand negotiations, it waived its right for a remedy in the instant case. It is maintained there was a duty on the union's part to demand negotiations. Phillips testified she did not want to reopen negotiations for the parties had been without a contract since the previous January and she felt it would create an undue burden on the other unit members to postpone the receipt of their raises in order to challenge the Authority's actions in negotiations.

Once an unfair practice occurs in negotiations that unfair practice is not rendered moot by the charging party's subsequent signing of a collective negotiations contract. See, Galloway Twp. Bd/Ed, 78 N.J. 1 (1978). The unfair practice here occurred when

^{4/} The salary upgradings did not change the duties of those employees or otherwise remove them from the unit.

^{5/} In one case the union requested the reclassification and in another case the union president herself was reclassified.

the five employees were unilaterally granted a salary increase, not when the increase was discovered by the union. Subsection 5.3 of the Act expressly provides that modifications of the terms and conditions of employment are to be negotiated before they are established. Since the unlawful raises were already granted before the union was aware of them, they could not possibly make a demand to negotiate before they were established.

The Authority had to at least notify the union of their intent to make the reclassification prior to their implementation so that the union could have time to make a demand to negotiate. ^{6/}

I therefore recommend that the Commission find the Authority violated §5.4(a)(5) and, derivatively, (a)(1) when it unilaterally increased the salaries of five employees in the Supervisory Unit without prior negotiations.

As to the question of remedy, the five employees involved have been receiving increased salaries since 1980 and it would undoubtedly cause a financial hardship to those employees if the Commission order said raises be rescinded. Further, the union never made a request that such action be part of any Commission remedy. Accordingly, although I will recommend that the Commission order that the Authority negotiate with the union over the salary of the five employees, I will not recommend that the Commission take any actions as to the raises received by the five employees.

Accordingly upon the entire record before me, I hereby recommend that the Commission issue the following:

^{6/} The Civil Service authorization is no substitute for negotiations. While such authorization may be a prerequisite to upgrading the salary ranges, the union must also have an opportunity to negotiate.

ORDER

Respondent Trenton Housing Authority shall:

A) Negotiate on demand with Mercer Council No. 4, New Jersey Civil Service Association, affiliated with Local 1040, CWA, AFL-CIO, concerning the salaries of the following unit positions: Tenant Selection Supervisor, Maintenance Superintendent, Assistant Maintenance Superintendent and Community Service Worker.

B) Post at 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 the receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material.

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



Edmund G. Gerber
Hearing Examiner

DATED: August 31, 1981
Trenton, New Jersey

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 negotiate on demand with Mercer Council No. 4, New Jersey Civil Service Association, affiliated with Local 1040, CWA, AFL-CIO, concerning the salaries of the following unit positions: Tenant Selection Supervisor, Maintenance Superintendent, Assistant Maintenance Superintendent and Community Service Worker.

Trenton Housing Authority

(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, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.