

P.E.R.C. NO. 78-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PARSIPPANY-TROY HILLS,

Respondent,

-and-

Docket No. CO-77-146-138

UNITED STEELWORKERS OF AMERICA,
DISTRICT NO. 9,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law contained within the Hearing Examiner's Recommended Report and Decision in an unfair practice proceeding. The Hearing Examiner found, and the Commission affirms, that based upon the totality of conduct of the Township in the collective negotiations conducted by the parties, the Township did not engage in bad faith negotiations and therefore did not violate the provisions of N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) of the Act. The Commission therefore concludes that the Complaint must be dismissed.

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Appearances:

For the Respondent, Gerald L. Dorf, P.A.
(Mr. David A. Wallace, Esq.)

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.
(Ms. Nancy I. Oxfeld, Esq.)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on December 2, 1976 by the United Steelworkers of America, District No. 9 (hereinafter the "Charging Party" or the "Union"), alleging that the Township of Parsippany-Troy Hills (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 Township refused to negotiate at the times and places set by both parties for negotiations and in that the Township delayed unreasonably in starting negotiations after the certification of the Union. There was also an independent allegation that the Township posted a notice which pressured employees not to join the Union.^{1/} The foregoing were alleged to be violations of

^{1/} At the Hearing on July 28, 1977 this allegation was deleted from the Charge.

N.J.S.A. 34:13A-5.4(a)(1) and (5) 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 June 30, 1977.

Pursuant to the Complaint and Notice of Hearing, hearings were held before Alan R. Howe, Hearing Examiner of the Commission, on July 28, 1977 and August 9, 1977 at which time the parties were given the opportunity to examine witnesses, present evidence and argue orally.^{3/} Post-hearing briefs were submitted simultaneously by the parties on October 26, 1977. On November 9, 1977 the Hearing Examiner issued his Recommended Report and Decision, which Report included findings of facts and conclusions of law and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof. (H.E. No. 78-12, 3 NJPER ____ (1977)).

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.3.

^{2/} These subsections prohibit 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."

^{3/} Respondent's Motion to Dismiss, made at the conclusion of the Union's case, was denied.

Upon careful consideration of the entire record herein, the Commission adopts the findings of fact and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him. The Commission therefore finds and determines that based upon the totality of conduct of the Township in the collective negotiations conducted by the parties hereto, the Township did not engage in bad faith negotiations and therefore did not violate the provisions of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.

ORDER

For the reasons hereinbefore set forth, the Commission adopts the aforementioned Hearing Examiner's Recommended Order and hereby dismisses the Complaint in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

DATED: Trenton, New Jersey
December 20, 1977
ISSUED: December 21, 1977

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

In the Matter of
TOWNSHIP OF PARSIPPANY-TROY HILLS,

Respondent,

-and-

DOCKET NO. CO-77-146-138

UNITED STEELWORKERS OF AMERICA,
DISTRICT NO. 9,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the United Steelworkers of America, District No. 9 against the Township of Parsippany-Troy Hills, which charges alleged that the Township had failed to negotiate in good faith regarding the terms and conditions of a collective negotiations agreement and, further, that the Township unreasonably delayed the start of negotiations.

The Hearing Examiner found that the Township did not unreasonably delay the start of negotiations and that considering the overall totality of the conduct of the Township in negotiations the Township did not negotiate in bad faith. The Hearing Examiner noted that the Township in five negotiations sessions reached agreement with the union on all non-economic issues incorporated in the agreement and that it was the economic issues which the parties were unable to resolve mutually in a collective negotiations agreement.

The 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 conclusions of law.

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

In the Matter of
TOWNSHIP OF PARSIPPANY-TROY HILLS,
Respondent,

-and-

Docket No. CO-77-146-138

UNITED STEELWORKERS OF AMERICA
DISTRICT NO. 9,
Charging Party.

Appearances:

For the Township of Parsippany-Troy Hills
Gerald L. Dorf, P.A.
(David A. Wallace, Esq.)

For the United Steelworkers of America District No. 9
Rothbard, Harris & Oxfeld
(Nancy I. Oxfeld, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 2, 1976 by the United Steelworkers of America, District No. 9 (hereinafter the "Charging Party" or the "Union"), alleging that the Township of Parsippany-Troy Hills (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 Township refused to negotiate at the time and places set by both parties for negotiations and that the Township delayed unreasonably in starting negotiations after the certification of the Union. There was also an independent allegation that the Township posted a notice which pressured employees not to join the Union. ^{1/} The foregoing were alleged

1/ At the Hearing on July 28, 1977 this allegation was deleted from the Charge.

to be violations of N.J.S.A. 34:13A-5.4(a)(1) and (5) 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 June 30, 1977.

Pursuant to the Complaint and Notice of Hearing, hearings were held in Newark, New Jersey on July 28, 1977 and August 9, 1977 at which time the parties were given the opportunity to examine witnesses, present relevant evidence and argue orally. ^{3/} Post-hearing briefs were submitted simultaneously by the parties on October 26, 1977.

An Unfair Practice Charge having been filed with the Commission, a question concerning the alleged violations of the Act, as amended, exists and, after hearing and after the filing and consideration of briefs from 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 Township of Parsippany-Troy Hills is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The United Steelworkers of America, District No. 9, is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The Union was certified as the negotiating representative for a blue collar unit on April 20, 1976.
4. On May 28, 1976, the Union sent a letter to the Township Administrator requesting that negotiations commence on or about June 16, 1976.
5. On June 4, 1976, Labor Counsel for the Township sent a letter

^{2/} These subsections prohibit 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."

^{3/} Respondent's Motion to Dismiss, made at the conclusion of the Union's case is denied.

to the Union requesting a copy of negotiating proposals be submitted prior to the first negotiations meeting.

6. On June 16, 1976, Labor Counsel for the Township acknowledged receipt of the Union's negotiations proposals and requested that the Union make contact to setup a mutually convenient date for the first negotiations meeting.

7. Within one week thereafter the Union contacted Labor Counsel for the Township and a first meeting for negotiations was fixed for July 20, 1976.

8. At the first negotiations session on July 20, 1976, the spokesman for the Township was Gerald L. Dorf, Labor Counsel. At this first meeting the Union's contract proposals were reviewed seriatim with Dorf asking for clarification in many instances. Dorf specifically questioned Mirailh regarding the legality of a proposal by the Union for the inclusion in the agreement of a union shop. There was also related discussion involving Township job classifications and job descriptions.

9. The second negotiations session was held on August 11, 1976, at which time Dorf on behalf of the Township submitted written counter-proposals. These counter-proposals were reviewed in detail with Dorf providing clarification upon request.

10. Negotiations sessions were held thereafter on August 26, 1976 and September 13, 1976.

11. By the end of the fourth negotiations session on September 13, 1976, the parties had reached agreement on the inclusion of the following provisions in a collective negotiations agreement: Preamble, recognition, dues check-off, management rights, no strike -- no lockout, union visitation, grievance procedure, safety committee, seniority, jury duty, non-discrimination, maintenance of operations, medical and life insurance benefits, fully bargained or zipper clause and a separability and savings clause. There had been no discussion of economic issues other than medical and life insurance.

12. The parties were aware that negotiations on economics would be affected by the "budget cap" statute, which became effective August 18, 1976 (Chapter 68, N.J.S.A. 40A:4-45.1 to 45.6).

13. A fifth negotiations session was scheduled for October 7, 1976, by which time the Township expected to have "budget cap" data from state officials in Trenton, New Jersey. This meeting was cancelled peremptorily by Dorf since the "budget cap" data had not been received by that date.

14. It was agreed by the negotiating representatives of the parties that the scheduling of a further negotiations session be deferred until the Township received the necessary "budget cap" data.

15. As noted previously, the Unfair Practice Charge was filed December 2, 1976.

16. On December 10, 1976, the Township received the "budget cap" data from Trenton and on December 23, 1976, Dorf wrote to the Public Employment Relations Commission mediator, assigned in the interim, suggesting the resumption of negotiations.

17. January 18, 1977, Dorf wrote to Mirailh requesting a telephone call for the scheduling of the next negotiations session, as a result of which a fifth negotiations session was scheduled for February 3, 1977.

18. At the negotiations session on February 3, 1977, economics were discussed and Dorf gave to Mirailh the Township's economic offer, which was based upon and limited by the "budget cap" data received from Trenton. The Union agreed to present the economic proposal of the Township to its negotiating unit members.

19. As of the conclusion of the February 3, 1977 session all non-economic contract proposals had been agreed upon.

20. After February 3, 1977, the Union never communicated to the Township the results of the submission of the Township's economic proposal to the members of the negotiating unit, nor did the Union ever request another date for collective negotiations.

21. The negotiating unit members voted to reject the Township's economic proposal.

THE ISSUE

Did the Township violate the Act, specifically its obligation to negotiate with the Union in good faith, based upon the totality of conduct

of the Township between the date of the Union's certification, April 20, 1976, and the date of the last negotiations session, February 3, 1977?

DISCUSSION AND ANALYSIS

The Positions of the Parties

The position of the Union is that the Township engaged in bad faith negotiations, first by delaying the start of negotiations to July 20, 1976, and thereafter by negotiating with the objective of making no meaningful concessions in order to avoid reaching an agreement.

The Township argues that it responded with due diligence to the Union's request for a first negotiations session, and that thereafter it negotiated in good faith in an honest effort to reach a complete agreement. It is further contended that the Union has abandoned negotiations by not requesting a further meeting after a rejection by its members of the economic proposal of the Township.

Controlling Authorities and Decision

Considering the negotiating conduct of the Township, in its totality, in the light of the applicable authorities, the Hearing Examiner is of the opinion that the Township fulfilled its collective negotiations obligation to the Union and did not negotiate in bad faith.

In leading cases in this area are State of New Jersey and Council of New Jersey State College, etc., E.D. No. 79, 1 NJPER 39, aff'd., State of New Jersey v. Council of New Jersey State College Locals, etc., 141 N.J. Super 470 (App. Div. 1976) and Township of Hillside, P.E.R.C. No. 77-47, 3 NJPER 98 (1977).

In State of New Jersey, supra, the Executive Director of the Commission refused to issue a Complaint upon a charge alleging that the State's failure to acquiesce during negotiations on salaries and fringe benefits constituted "bad faith bargaining". The Executive Director, drawing upon established principles of labor law in both the private and public sectors, found

that: "It is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred...The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement." (Emphasis supplied). [1 NJPER 40].

The Executive Director then went on to note as follows:

"It is well established that the duty to negotiate in good faith is not inconsistent with a firm position on a given subject. 'Hard bargaining' is not necessarily inconsistent with a sincere desire to reach an agreement. An adamant position that limits wage proposals to existing levels is not necessarily a failure to negotiate in good faith. Were the State to have been inflexible on the salary issue, which it appears not to have been, a refusal to negotiate in good faith would not be found without an evaluation of its conduct throughout the negotiations on all issues." (Emphasis supplied). [1 NJPER 40].

The Executive Director concluded in State of New Jersey, supra, that while the State had been adamant on the issue of salaries it had given reasons for its position, and no indication of a desire or intention not to reach an agreement could be found, which might constitute a refusal to negotiate in good faith.

So, too, did the Commission conclude in Township of Hillside, supra, that "...the totality of the Township's bargaining conduct reveals no violation of the duty to bargain in good faith..." (Emphasis supplied).

The facts in the instant case indicate clearly, based upon the totality of the Township's conduct in the negotiations, that there was no element of bad faith manifested.

The Hearing Examiner specifically finds and concludes that there was no untoward delay attributable to the Township in the setting of the first negotiations meeting for July 20, 1976, exactly three months to the day after the certification of the Union. The Union waited more than one month after certification before directing a communications to the Township requesting that the negotiations begin on June 16, 1976. The Hearing Examiner cannot find that a

delay of one month from the Union's proposed date of negotiations constitutes evidence of bad faith on the part of the Township.

Viewing the total conduct of the Township in the five negotiations sessions held by the parties, the Hearing Examiner finds and concludes that the Township did not evince a posture of bad faith in negotiations. As found above, there were specific agreements reached on the series of articles or clauses in the second through fourth negotiations sessions. By the conclusion of the fifth negotiations session on February 3, 1977, agreement had been reached by the parties on all non-economic provisions.

Within the limitations of the "budget cap", the Township at the session on February 3, 1977, made its economic proposal. This proposal was rejected by the negotiating unit members, which was their right, and thereafter the Union did not seek further negotiations with the Township.

The history of the instant negotiations shows clearly that the Township did not merely go through the motions of negotiations, seeking to avoid rather than reach an agreement, but rather sincerely negotiated with the Union in an effort to reach an agreement. The Union's dissatisfaction with the Township's economic proposal in and of itself is not evidence of bad faith on the part of the Township.

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

CONCLUSIONS OF LAW

1. Based upon the totality of conduct of the Respondent Township in the collective negotiations conducted by the parties hereto, the Respondent Township did not engage in bad faith negotiations.
2. The Respondent Township did not violate the provisions of N.J.S.A. 34:13A-5.4(a)(5) of the Act.
3. The Respondent Township did not violate N.J.S.A. 34:13A-5.4(a) (1) of the Act.

RECOMMENDED ORDER

The Respondent, Township of Parsippany-Troy Hills, did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5), and it is **HEREBY ORDERED** that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

DATED: November 9, 1977
Trenton, New Jersey