

H.E. NO. 2000-1

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

In the Matter of

CITY OF EGG HARBOR CITY,

Respondent,

-and-

Docket No. CO-H-98-286

MAINLAND PBA LOCAL #77,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the City of Egg Harbor City, acting through its Mayor, violated 5.4a(1), (2) and (5) of the New Jersey Employer-Employee Relations Act, respectively by: threatening to suspend and crackdown on unit employees of the City Police Department for exercising their right to union representation at mandatory departmental meetings convened by the Mayor where the employees' terms and conditions of employment were discussed by the Mayor; refusing to allow a designated employee majority representative to attend a mandatory meeting where the Mayor discussed the employees' terms and conditions of employment; and by attempting to negotiate terms and conditions of employment directly with unit members, thereby circumventing and failing to negotiate with the members' chosen negotiations representative.

The Hearing Examiner further recommends that the Commission dismiss allegations that the City violated a(3) and (7) of the Act. The Hearing Examiner found that no pleadings of fact were made to support the a(7) allegation, and, as to the a(3) allegations, no facts were pled or proven by the Charging Party which showed that any adverse or retaliatory action had been taken against any unit member as a result of their attempted exercise of rights under the Act.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,
Robert J. Pinizzotto, Attorney

For the Charging Party,
Schaffer, Plotkin & Waldman
(Myron Plotkin, Consultant)

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On February 2, 1998, PBA Local 77 (Local 77) filed an unfair practice charge^{1/} with the Public Employment Relations Commission (Commission) alleging that the City of Egg Harbor City (City) violated provisions 5.4a(1), (2), (3), (5) and (7)^{2/} of the

^{1/} References in this report to the transcript of the hearing are noted as "T" followed by page number. Commission exhibits are "C" followed by exhibit number. The full and correct name of PBA Local 77 is "Mainland PBA Local 77" (T5)

^{2/} These provisions 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

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

Specifically, Local 77 alleged that on or about January 14, 1998, the Mayor of the City, James McGreary (Mayor), conducted a mandatory meeting of all rank-and-file police officers at which he discussed the City's settlement offer of an arbitration award concerning the City's change in the employees health benefit plan, after having ordered PBA President Norman Meyers (Meyers) to leave the meeting. The charge also alleged that the Mayor threatened the officers who were at the meeting with suspension if any of them told the PBA about such a meeting in the future, and he further threatened to crack down on the police officers. Local 77 further alleged in its charge that at a second mandatory meeting held on January 22, 1998, the Mayor addressed all rank-and-file bargaining unit members in the absence of Local 77 negotiations representatives and that, during the meeting, he directly made collective negotiations proposals for an extension of the negotiations contract

2/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

to the officers. Finally, the charge alleged that the Mayor urged the officers to accept his proposals which had never been made to the Local 77 negotiations representative.

Procedural History

On November 12, 1998, the Director of Unfair Practices issued a Complaint and Notice of Hearing with respect to all allegations of the charge (C-1). There was no answer filed to the allegations set forth in the Complaint as is required by N.J.A.C. 19:14-3.1.3/

Pursuant to the Complaint and Notice of Hearing, a hearing was held on February 11, 1999. With the parties' approval at the hearing, and before the presentation of the case on the record, I attempted to settle this matter (T6). No settlement resulted.

3/ N.J.A.C. 19:14-3.1 requires that:

Within 10 days of service on it of the complaint, the respondent shall file an answer. The hearing examiner, upon proper cause shown, may extend the time for filing an answer. The answer shall specifically admit, deny or explain each of the allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a specific denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses. The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

Having found that no Answer had been filed, all allegations contained in the Complaint were deemed to be true N.J.A.C. 19:14-3.1 (T6, 11-17).^{4/}

After I had established that allegations in the complaint would be deemed admitted as true, Counsel for the City requested that I recuse myself from hearing and deciding the case (T7-T8). First, the City argued that because of my involvement in pre-hearing settlement efforts, my familiarity with the details of the case precluded me from hearing the matter fairly and impartially. Second, the City argued that because of my status as an "employee" I carry an inherent bias in matters involving issues where employees charge employers.

Local 77 had no objection to my hearing the case (T8-T9).

I denied Counsel's request for recusal based upon an application of N.J.A.C. 1:1-14.12(a) Disqualification of Judges, which speaks to withdrawal and/or disqualification of judges when the "...judge's ability to provide a fair and impartial hearing might reasonably be questioned..." Id. at 14.12(a).

I found that my involvement in pre-hearing settlement discussions was done with the full approval of the parties and I

^{4/} The purpose of this rule is to clarify the issues for hearing and to save time. Borough of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986). The City did not offer any reason why it could not have filed an answer. The rule authorizes the Commission to deem the allegations not answered to be true, regardless of whether or not the charging party has raised the absence of an answer. Glassboro, Id. n.2.

affirmed that the record alone would provide the basis for my recommendation to the Commission. As to my status as an employee and the alleged bias attached thereto, I noted that the Act itself establishes that hearing examiners in their role as employees have full authority to hear unfair practice cases. Moreover, pursuant to the City's theory of bias, no hearing examiner, judge, or for that matter Supreme Court Justice could ever function in the role of adjudicator in a labor case since are are all employees of a public employer.

I entered into the record all facts deemed to be true as contained in the Complaint, and thereafter, Local 77 rested. The City was then afforded the opportunity to present evidence and witnesses in defense of the facts in the Complaint, and Local 77 was afforded the opportunity to present rebuttal witnesses. Both parties were given the opportunity to present oral argument and post-hearing briefs. Local 77 waived oral argument and filed a post-hearing brief. The City argued orally and filed a post-hearing brief. The record was closed on March 30, 1999.

Based upon the entire record, I make the following:

Findings of Fact

The parties stipulated to the following (T5):

1. The City of Egg Harbor City is a public employer within the meaning of the Act and is subject to its provisions.

2. Mainland PBA Local 77 is a public employee labor organization and is the exclusive negotiations representative for the police officers employed by the City.

The following facts are taken verbatim from the Complaint and are deemed to be true (T11-T17):

3. The City and PBA have been parties to a series of negotiated agreements, the most recent being in full force and effect for the period January 1, 1996 through December 31, 1998.

4. On or about April 1, 1996, the City unilaterally charged [sic] its existing health insurance plan from a traditional indemnity plan to a HMO plan. The PBA filed a grievance shortly thereafter claiming the unilateral change of plans resulted in reduced benefits. As the parties were unable to resolve the matter, it was submitted to final and binding arbitration in accordance with the terms of the Agreement between the parties. Three (3) days of hearing were held.

5. On or about December 9, 1997, Arbitrator Ernest Weiss sustained the grievance and found that the City had violated the terms of the Agreement when it unilaterally changed the indemnity health plan to a HMO health plan. He ordered the City to attempt to reinstate the previous indemnity plan or if that was not possible to provide a health insurance plan that duplicated all of the benefits and coverages of the indemnity health insurance plan. The City was given forty-five days to comply.

6. Subsequent to the issuance of the Arbitrator's Award, the Mayor of Egg Harbor City, James McGreary, was quoted in the Press of Atlantic City as stating that the cost to the City to implement the Award would be more than \$69,000 and that his recommendation to Council would be not to comply with the Award.

7. In other newspaper articles, the estimated cost to implement the Award rose to \$100,000 and statements were made by City officials that if the PBA forced the implementation of the Award, police officers would be laid off.

8. The PBA through its labor consultant, attempted to arrive at an agreement on an insurance plan with the City that would be acceptable to both parties. Those attempts were unsuccessful and the threats of layoffs continued.

9. On January 12, 1998, Mayor McGreary issued a written memo to all full-time police officers requiring them to attend a "mandatory meeting" with the Mayor on Wednesday, January 14, 1998.

10. The President of the PBA, Norman Meyers, attended that meeting as President of the PBA as there had been mention that the Mayor was going to discuss contractual issues, the arbitration award as well as other issues including possible layoffs due to the

Award. President Meyers is not a member of Egg Harbor City Police Department.^{5/}

11. Upon seeing President Meyers at the meeting, Mayor McGreary became enraged and began to yell at Meyers telling him to get out of his meeting. Meyers attempted to state that if labor relations issues were not going to be discussed and only departmental issues were, he would leave. Mayor McGreary became visibly upset and continued yelling at Myers [sic] to "get out" and at one point included cursing at President Meyers and calling him a "son of a bitch". Meyers finally left the meeting rather than continue the confrontation.

12. After Myers [sic] left, the Mayor spent the next 10 minutes lecturing the officers that the PBA did not run the police department. He also told the officers that the next time a member of the department tells the PBA about a department meeting, the guilty party would be suspended for 30 days and that if nobody admitted to it, the entire department would be suspended.

13. The Mayor also stated that Council told him he was too easy on the police department and that maybe it was time for him to

^{5/} Regardless of whether or not the Mayor disseminated an agenda for the meeting, given the timing of the meeting on the heels of the arbitration award, the Mayor's statement to the press that he would recommend non-compliance with the award, and the failed attempt by PBA Local 77 negotiators to settle the dispute, it was reasonable for PBA President Meyers to believe that labor issues including the arbitration award would be discussed by the Mayor on January 14.

"crackdown" on the police. The Mayor stated that he would be contacting President Meyers' chief the following morning.

14. The Mayor then continued to discuss with the rank and file members the reasons that the City did not accept the PBA's most recent offer of settlement of the insurance issue.

15. On or about January 22, 1998, the Mayor again required all rank and file bargaining unit members to attend a mandatory meeting. The Mayor called the meeting subsequent to the knowledge that the PBA was intending to file the unfair practice charge as specified in Charge I.

16. At the meeting, the Mayor proposed to the members that they accept a 3% salary increase and extend the current Agreement for one additional year. He also stated that other language modifications would be necessary to extend the contract.

17. The President of the PBA was not present at this meeting nor was he ever made aware of the proposals being made directly to the membership by the Mayor.

I also find the following facts:

18. Mayor McGreary is an elected official of the City and has held his position for more than nine years (T22).

19. Mayor McGreary is the head of the Police Department as provided by statute (T22-T23).

20. The Mayor is vested with the sole authority to hire, fire, discipline, to enforce all laws of the State of New Jersey, all ordinances, and to have sole and complete authority over all

policemen and all members of the City's Police Department (T23). The Mayor also has the statutory authority to supervise all police officers and to report derelections of duty to City Council.

21. As head of the police department, the Mayor calls a mandatory meeting of the police department approximately once a year. These annual meetings have been convened for approximately four years and the Mayor restricts attendance to members of the City's Police Department (T24). I credit the Mayor's testimony that he views these annual mandatory meetings as "departmental" and as an opportunity for rank-and-file members to address any gripes or grievances they may have without anyone else present to hear them. I further credit his testimony that he has in the past prevented the City Administrator and the Public Safety Director from attending these meetings and that his practice is not to discipline officers who voice complaints against city officials or fellow unit members during the annual meetings (T25-T28).

22. Notice of annual meetings is by posting in the police department, or by computer to which all police officers have access and have been instructed to check at the beginning of their shift (T24).

23. Notice for a January 14, 1998 mandatory meeting was given to unit members by the Mayor four to five days prior to the meeting date (T25).

24. I find that PBA President Meyers is an official of the unit's designated majority negotiations representative. I further

find that the Mayor did not inform Meyers of the January 14 meeting, nor did he indicate to anyone that he wished Meyers to attend (T29).

25. The primary reason for which the Mayor convened the January 14, 1998 meeting was to urge the members of the police department to do everything possible to work out the dispute Local 77 had with the City concerning the December 9, 1997 arbitration award against the City, an award with which the Mayor believed the City should not comply.^{6/}

26. I find that the Mayor did not want Local 77 negotiations representative Meyers or any other PBA negotiations

^{6/} I credit the Mayor's testimony that only he knew what he was going to do at the January 14 meeting and that no agenda had been disseminated among the unit members (T28-T30). He also credibly testified that it was his intention to urge the unit members to settle their dispute with the City by doing whatever they had to do (T31). Additionally, I base my findings here on previously admitted facts that the majority representatives had unsuccessfully attempted to settle the arbitration dispute with the City, that negotiations representative Meyers believed that the arbitration award and other contractual issues were going to be discussed at the January 14 meeting, that Meyers told the Mayor he would leave if this was not the case and that the Mayor's sole response was to become enraged, order Meyer's to get out, and refer to Meyers with offensive language (T13-T14). Moreover, after Meyers left the Mayor actually did discuss the City's refusal to accept the PBA settlement of the arbitration award and urged the unit members to settle with the City (T15, T39). The only other topics discussed at the January 14 meeting were raised not by the Mayor, but by two unit members and concerned a question about a parking problem and a homicide investigation (T39). Thus, based upon the foregoing it is reasonable to infer that the Mayor had as his primary purpose for the January 14 meeting an address to the rank-and-file urging them to settle the arbitration dispute.

representative present on January 14 when he addressed the parties' dispute.^{7/}

27. City Council has the statutory authority to raise and spend monies, to enter into contracts on behalf of the City, and to pass ordinances for these and other purposes (T33-T35).

28. The Mayor has the statutory authority to veto ordinances passed by City Council subject to their over-ride (T33).

29. The Mayor has the authority to, and does make recommendations to City Council dealing with labor disputes and use of monies (T12-T13).

30. A second mandatory meeting was called by the Mayor on January 22, 1998. At this meeting, the mayor initially reminded the officers present that "no one from the outside" was permitted to attend his meeting (T37). I find that the Mayor's goal for the January 22 meeting was to present a 3% salary increase and a

^{7/} I credited the Mayor's testimony that he yelled at Meyers to get out and spoke to him with offensive language (T14, T47). Additionally, this finding is based upon the Mayor's statement made at the meeting admitted as true, wherein he told unit members that they would be suspended en masse, if necessary, if they told the PBA about these "department" meetings, that maybe it was time to crackdown on the police and that he would be calling Meyer's chief the following morning (T14-T15).

one-year contract extension proposal directly to the officers without the presence of the PBA's negotiations representative.^{8/}

31. The Mayor testified that he had never been a member of a negotiating committee for the City because he has no statutory authority to be part of such a committee (T35). While I credit that testimony, I find that it is not dispositive of the issue of whether the Mayor presented negotiations proposals directly to unit members at the January 22 meeting and urged that they accept those proposals.

32. The Mayor testified that he indicated to the officers at the January 22 meeting that he recognized that they had no authority to enter into negotiations with him (T3). I credit that testimony and find that the Mayor knew the employees had designated

^{8/} I credited the Mayor's testimony that for this meeting, as was the case for the January 14 meeting, no agenda had been disseminated, and only he knew what his intentions were for the meeting (T47). The unit members were again reminded that the meeting was restricted to police department members. The Mayor actually presented a 3% salary increase and a 1 year contract extension offer to the officers without the presence of the majority representative's negotiators (T16). Moreover, the Mayor was very clear in his testimony that he felt confident after the January 22 meeting that he had accomplished his goals (T37-T38). He was, however, unable to articulate any goals other than the presentation of the contract proposal and I find his testimony as to other topics discussed at the meeting to be vague and factually insignificant. Therefore, based on the foregoing and viewing the January 22 mandatory meeting in context with circumstances preceding both the January 14 and 22nd meeting, I infer that the Mayor's purpose in calling the second mandatory meeting was to present a negotiations proposal to the officers without a majority representative present.

negotiations representatives including PBA President Meyers, and that on January 22, 1998 he (the Mayor) made negotiations proposals directly to officers rather than to their designated representatives.

33. Local 77's rebuttal witness Sergeant John McColgan testified as to the demeanor of the Mayor and PBA representative Meyers at the January 14 meeting. He further testified that he was aware that normally no one outside the police department was permitted to attend these meetings and that he did not know who had invited PBA representative Meyers to the January 14 meeting. I find that even if true, McColgan's testimony is factually insignificant and I have not relied upon it in this report.

ANALYSIS

The 5.4a(1) and (2) Allegations

The standard to determine whether an employer has violated 5.4a(1) of the Act was stated in New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979):

It shall be an unfair practice for an employer to engage in activities which, regardless of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions lack a legitimate and substantial business justification [Id. at 551 n.1].

Moreover, an employer may express opinions about unions so long as the statements are not coercive. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-19, 7 NJPER 502 (¶12223 1981). The cases must balance the employer's right to free speech with the employees'

rights to be free from coercion, restraint or interference in the exercise of protected activities. County of Mercer and PBA Local #167, P.E.R.C. No. 86-33, 11 NJPER 589 (¶16207 1985). The Commission considers the "total context" of the situation and evaluates the issue from the standpoint of employees over whom the employer has a measure of economic power. Id. See also NLRB v. E.I. DuPont de Nemours, 926 F.2d 538, 118 LRRM 2014, 2016 (6th Cir. 1984).

In view of the Mayor's inappropriate display of anger and treatment of PBA Local 77 representative Meyers at the January 14 mandatory meeting, in the very presence of the employees who rely on Meyers as their chosen negotiations representative, I find that the City, violated subsection 5.4 a(1) of the Act. Moreover, the Mayor's statement to unit members at that meeting that City Council had told him he was too easy on the police department, his threats to start to "crackdown" on the police and suspend unit members the next time they told their PBA representatives about department meetings, and his threat to call PBA representative Meyer's chief, also violated 5.4a(1) of the Act.

Whether the Mayor has the authority to convene a department meeting and prevent those outside the department from attending is not at issue here. Such a meeting would indeed be appropriate when limited to topics needed to deliver governmental or department services. However, the issues, topics and proposals presented by the Mayor at both "departmental" meetings went far beyond a

discussion of legitimate departmental matters. The Mayor was not merely exercising his authority as head of the police department to discuss departmental matters at these meetings. He was acting as an agent of the City/employer and he went beyond legitimate departmental matters with his threats to unit members and his treatment of their selected negotiations representative.

Moreover, while the Mayor denied that he intended to restrain or coerce employees with respect to their exercise of rights provided in section 5.4a(1) of the Act (T48), motive or intent is not a factor in finding an a(1) violation nor is actual interference with an employee's statutory rights. See Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983); State of New Jersey (Trenton State College), P.E.R.C. No. 88-19, 13 NJPER 720 (¶8269 1987); UMDNJ, Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶1859 1987).

I further find a violation of subsection 5.4a(2) of the Act. N.J.S.A. 34:13A-5.4a(2) prohibits public employers from dominating or interfering with the formation, existence or administration of any employee organization. This provision is designed to protect bonafide employee organizations representing groups of public employees from improper employer activity which threatens the formation, existence or administration of the organization. Borough of Shrewsbury, D.U.P. No. 79-12, 5 NJPER 13 (¶10007 1978) aff'd. P.E.R.C. No. 79-42, 5 NJPER 45 (¶10030 1979),

aff'd 174 N.J. Super. 25 (App. Div. 1980), certif. den. 85 N.J. 129 (1980).

N.J.S.A. 34;13A-3(e) states in pertinent part that the term employee representative "...shall include any organization, agency or person authorized or designated by a public employee, group of public employees, or public employee association to act on its behalf and represent it or them" (emphasis added). Collective activity is necessary for sustenance of an employee organization. Shrewsbury.

Commission cases dealing with 5.4a(2) claims generally involve organizational rights or the actions of an employee with a conflict of interest caused by his membership in the union and his or her position as an agent of an employer.^{9/} However, while the instant case might not fit into the general pattern of 5.4a(2) violations, the Mayor's actions and statements interfered with the PBA's right as a chosen majority representative to designate members of the PBA to act on behalf of unit members and to do so without fear of reprisal either to unit members, or to designated PBA

^{9/} See Union County Regional Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976) (exclusivity clause is not per se violative of section 5.4(a)(2) but must give way to organizational rights once timely representation petition's filed, or during open period); County of Middlesex (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981) (employer may not negotiate with incumbent if real question of representation is pending); In re County of Camden, P.E.R.C. No. 83-113, 9 NJPER 156 (¶14074 1983) (County violates 5.4(a)(1) and (2) by permitting its personnel assistant, who was also a union officer, to represent the County in handling of employee's grievance).

officers. Thus, the Mayor's refusal to allow Meyers, a PBA President and designated representative to attend the meetings where labor issues were to be discussed, along with his threat to unit members that he was going to call Meyer's chief the next morning because Meyer's had attended the meeting, sent a message to the City's police officers and to the PBA. That message was that not only did the Mayor have the sole authority to run the police department, but that when it came to dealing with his officers on issues involving grievances and labor negotiations, he would control which designated PBA representatives fulfilled their representational duties and how, when and where they did so. Thus, viewing the Mayor's statements and actions as a whole, I find that the Mayor's conduct on January 14, 1998, toward PBA representative Meyers and his threat that no PBA representatives could attend police department meetings actually interfered with the administration and existence of PBA Local 77. This determination is buttressed by the fact that subsequently no PBA designated representative attended the Mayor's January 22 meeting with unit employees.^{10/}

^{10/} There must be a showing that the acts complained of actually interfered with (or dominated) the formation, existence or administration of the employee organization. See Morris, The Developing Labor Law, at 279 (2d Ed. 1983) citing Garment Workers (Bernard Altman Texas Corp. v. NLRB), 366 U.S. 731 (1961).

The 5.4a(3) Allegations

Local 77 asserts that the Mayor's treatment of Meyers at the January 14 meeting, and his threatened actions against unit members who inform the PBA about the Mayor's meetings, also violated subsection 5.4a(3) of the Act.

Subsection a(3) provides that employers cannot "discriminate 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." N.J.S.A. 34:13A-5.4a(3). Essential to finding a violation of this section is a determination that the acting party was motivated by animus toward the employees' exercise of protected activity.

This claim of anti-union discrimination is governed by the standards set out in In re Tp. of Bridgewater, 95 N.J. 235 (1984). "No violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity,

10/ Footnote Continued From Previous Page

The Mayor further testified that he had no intent to dominate or interfere with the formation, existence or administration of Local 77/PBA, as set forth in section 5.4a(2) of the Act (T48). Intent or motive is not a factor in finding a violation of this provision of the Act. Thus, I make no finding as to the Mayor's intent or motive with regard to this violation.

the employer knew of this activity and the employer was hostile toward the exercise of the protected rights." Id. at 246.

In the instant case, the employees engaged in protected activity by attempting to have their majority representative present for discussion of pending labor disputes including an arbitration award and contract proposals. The Mayor knew of the employees' protected activity when Meyer's arrived at the January 14 meeting.

Prior to the January 14 meeting, the Mayor had threatened layoffs and had recommended to the City that it not comply with the earlier arbitration award favorable to the PBA. At the January 14 meeting, he ordered Meyers to leave and threatened to suspend employees and call Meyer's chief because the employees had attempted to exercise their right to PBA representation. I find that the Mayor's statements and conduct prior to and during the meetings, while acting as an agent of the City, constitute sufficient evidence of union animus. However, there are no facts pled or proven which show that any adverse or retaliatory action was taken against any unit member. Threats alone do not establish a violation of subsection a(3). Some discriminatory, adverse action must actually be taken against an employee by the employer in order to find such a violation. Therefore, I cannot find that the Mayor's threats alone violated 5.4a(3) of the Act. See Township of Mine Hill, P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986).

The 5.4a(5) Allegations

The Commission has held that an employer's offer of wage increases and other benefits involving terms and conditions of employment directly to unit employees without first negotiating with the majority representatives violates 5.4a(5) of the Act. In effect, this "direct dealing" with employees disregards their chosen negotiations representative. Township of Bridgewater, P.E.R.C. No. 82-36, 7 NJPER 600 (¶12267 1981).

In the instant case, on January 22, 1998 the Mayor called a mandatory meeting for all unit employees. Initially at the meeting, he reminded the employees "no one from the outside" was permitted to attend his meeting (T37). This reminder came approximately one week after the Mayor had ordered the employees' PBA negotiation representative to leave a similar meeting and had threatened these same employees with suspension if they informed their PBA representatives of any further meetings. The Mayor then immediately proceeded to make a very explicit 3% wage increase and one year contract extension offer to the assembled employees. He then proposed that they accept this offer (T16).

The Mayor asserts that he has the authority to convene a departmental meeting. I agree. However, regardless of whether the meeting was called for a legitimate purpose, when the Mayor used the meeting to make negotiations proposals directly to unit members without having negotiated these proposals with the majority representative, he went far afield of a legitimate departmental purpose. His legitimate authority to call a departmental meeting

cannot protect his attempt during that meeting to negotiate directly with the rank-and-file unit members with regard to any terms and conditions of employment. In the instant case, the a(5) violation is not based upon whether the Mayor convened a legitimate departmental meeting. It is based upon his actions taken at that meeting in the absence of the employees' chosen PBA representatives. See Bridgewater, 7 NJPER at 601. The Mayor testified that he had no authority to be on a City negotiations team and inferred therefore, that his actions at the January 22 meeting did not violate 5.4a(5). In light of the Mayor's evident willingness to inform the public and the unit members via the press that he would recommend that the City not comply with an arbitration award; his asserted control over the police department with regard to numerous terms effecting the unit members employment (discharge, discipline, mandatory meetings); and the explicit nature of the negotiations proposal he actually presented to the unit on January 22, I find that the Mayor has held himself out to the unit members, the PBA, and the public, as having the authority to make contract proposals for this unit. He also has the apparent authority and the ability to effect the City Council/negotiators decision and actions regarding those proposals and other labor issues, including

compliance or non-compliance with arbitration awards.^{11/} Thus, while he may not have had actual authority to negotiate, presenting proposals to a captive audience of employees without their negotiations representative created an atmosphere of apparent authority, especially in light of the Mayor's prior statement to unit members and the public concerning the arbitration award and layoffs.

As to the January 22 wage and contract extension offer, the Mayor admittedly knew that the rank-and-file had no authority to negotiate with him. Nonetheless, with apparent authority, he presented his proposal and pursued its acceptance in clear circumvention of the employees' chosen negotiations representative again violating 5.4a(5) of the Act. This conduct strikes directly at the majority representative's ability to carry out its negotiations responsibilities.

However, I do not find that the January 14 discussion of the arbitration award is a violation of 5.4a(5) of the Act. In this regard, the Mayor's discussion at the January 14 meeting of the City's position concerning the arbitration award fell within the City's right to make its position known to employees on this

^{11/} Commercial Tp. Bd. of Ed. and Commercial Tp. Support Staff Ass'n and Collingwood, supra. 8 NJPER at 552; R. Gorman, Basic Text on Labor Law (1976) employer responsible for actions of supervisors which are impliedly authorized or within apparent authority of factor, whether specific acts were actually authorized or subsequently ratified is not controlling (pp 134-137).

matter. Likewise, urging unit members to do whatever they had to do to settle the dispute did not rise to the level of an offer to unit members in circumvention of their majority representative.

The 5.4a(7) Allegation

Local 77 has made no pleading of fact upon which I can find that the City violated section 5.4a(7) of the Act. Thus, I recommend that allegation be dismissed.

CONCLUSIONS OF LAW

1. The City of Egg Harbor City, acting through Mayor James McCreary, violated 5.4a(1) of the Act when on January 14, 1998, he interfered with, restrained and coerced City Police Department employees in the exercise of their right to union representation particularly by threatening the employees with suspension for informing their PBA representatives of department meetings and by threatening to crackdown on the employees for exercising their right to union representation.

2. The City violated 5.4a(2) of the Act when it interfered with the administration of the PBA by refusing to allow a PBA designated representative to attend a mandatory meeting held on January 14, 1998.

3. The City violated 5.4a(5) of the Act on or about January 22, 1998, when it attempted to negotiate terms and conditions of employment directly with unit members, thereby

circumventing the members' chosen negotiations representative and failing to negotiate in good faith with that majority representative.

4. The City's actions did not violate 5.4a(3) and (7) of the Act.

RECOMMENDED ORDER

I recommend that the Commission order that:

A. The Respondent City cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by threatening to crackdown on and suspend unit members for exercising their right to representation by PBA Local 77, with regard to negotiation of wages, hours and other terms and conditions of employment.

2. Interfering with the administration of PBA Local 77, particularly by refusing to allow PBA designated negotiations representatives to attend department meetings at which unit members' terms and conditions of employment will be or are discussed.

3. Failing to negotiate in good faith with PBA Local 77 as the majority representative of the City's Police Department unit employees concerning terms and conditions of employees in that unit, particularly by attempting to negotiate terms and conditions of employment directly with unit members in circumvention of PBA Local 77.

B. The Respondent take the following affirmative action:

1. Afford Local 77's negotiations representatives the opportunity to attend all departmental meetings where terms and conditions of employment for unit members will be or are discussed.

2. Present contract proposals dealing with terms and conditions of employment for police department unit members directly to the designated PBA negotiations representatives and negotiate directly with the designated PBA representatives regarding those proposals.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice 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 to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.


Susan L. Stahl
Hearing Examiner

Dated: October 4, 1999
Trenton, New Jersey



RECOMMENDED



NOTICE TO 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 threatening to crackdown on and suspend unit members for exercising their right to representation by PBA Local 77, with regard to negotiation of wages, hours and other terms and conditions of employment.

WE WILL NOT interfere with the administration of PBA Local 77, particularly by refusing to allow PBA designated negotiations representatives to attend department meetings at which unit members' terms and conditions of employment will be or are discussed.

WE WILL NOT fail to negotiate in good faith with PBA Local 77.

WE WILL forthwith afford Local 77's negotiations representatives the opportunity to attend all departmental meetings where terms and conditions of employment for unit members will be or are discussed..

WE WILL present contract proposals dealing with terms and conditions of employment for police department unit members directly to the designated PBA negotiations representatives and negotiate directly with the designated PBA representatives regarding those proposals.

Docket No. _____ (Public Employer)

Date: _____ By: _____

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, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372