

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HASBROUCK HEIGHTS,  
Respondent,

Docket No. CO-76-292-5

-and-

P.B.A. LOCAL NO. 102 (HASBROUCK  
HEIGHTS UNIT),  
Charging Party.

SYNOPSIS

In a decision and order on motion the Commission denies the Borough's motion that in part called for the production of all documents prepared by representatives of the Commission with reference to an exploratory conference conducted with reference to a related unfair practice charge filed by the P.B.A. The Commission notes that this aspect of the Borough's motion is moot inasmuch as the only document prepared by an agent of the Commission relating to the conference in question had already been placed in evidence before the Hearing Examiner.

The Commission further denies those aspects of the Borough's motion that requested the production of any documents prepared by a Commission-appointed mediator with reference to a mediation session that represented a focal point of the instant unfair practice charge. The Commission stated that the requested documents represented confidential materials, within the purview of Section 19:12-3.1 of the Commission's Rules, that could not be divulged voluntarily or by compulsion in an unfair practice action or any other proceeding as set forth in the Commission's Rules. The Commission noted that its internal procedures mandated that Commission Hearing Examiners not be supplied with any documents categorized as confidential information by the aforementioned Commission rule and that nothing in the Hearing Examiner's Report in the instant matter indicated that he had access to or considered any such documents.

The Commission furthermore denied the Borough's request for oral argument on this matter, but granted the Borough's request for additional time in which to file exceptions to the Hearing Examiner's Report.

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Charging Party.

Appearances:

For the Respondent, Chandless, Weller & Kramer, Esqs.  
(Mr. Ralph W. Chandless, of Counsel)

For the Charging Party, Osterweil & LeBeau, Esqs.  
(Mr. Richard D. Loccke, of Counsel)

DECISION AND ORDER ON MOTION

This matter comes before the Commission on a motion made by the Respondent, Borough of Hasbrouck Heights (the "Borough"). The motion was made following the issuance of the Hearing Examiner's Recommended Report and Decision, H.E. No. 77-11, its service upon the parties and the transfer of the case to the Commission. (See N.J.A.C. 19:14-4.1 and N.J.A.C. 19:14-7.1). In this Decision and Order on Motion, the Commission is in no way acting upon the findings of fact or conclusions of law made by the Hearing Examiner in his Recommended Report and Decision but is concerning itself only with the issues presented by the motion. The Borough has also sought an extension of time within which to file exceptions to the Hearing Examiner's Report pending the Commission's ruling

on this motion. That request is dealt with later in this decision.<sup>1/</sup>

Hearing Examiner Robert T. Snyder issued his Recommended Report and Decision in this matter on December 30, 1976. He found the Borough to have violated N.J.S.A. 34:13A-5.4A (1) and (6) but not to have violated subsections (2) and (7).<sup>2/</sup> More specifically, he found that the Borough had refused to reduce an agreement to writing, and had promised benefits in exchange for the Charging Party, P.B.A. Local No. 102 (Hasbrouck Heights Unit), (the "P.B.A.") ceasing representation by attorneys and agreeing not to have a written agreement.

The motion made by the Borough seeks the production of all "reports, findings, determination, records or minutes made by or to the Director of Unfair Practice Proceedings or any representative or agent of said Director in respect to the certain Exploratory Conference held...in the above-entitled matter" and all "reports, findings, determination, records of minutes made and filed with the Public Employment Relations Commission as to a mediation meeting held by Leo M. Rose, a Mediator of said Public Employment Relations Commission...and further a copy of any records

<sup>1/</sup> Counsel for the Charging Party failed to submit any papers in opposition to the motion within the time provided in the Commission's Rules. N.J.A.C. 19:14-4.3.

<sup>2/</sup> These subsections prohibit public employers from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement and (7) Violating any of the rules and regulations established by the commission."

at said last mentioned meeting in respect to a fact-finding in the Borough of Hasbrouck Heights." Also sought, as stated above, is an extension of time to file exceptions to the Hearing Examiner's Report.<sup>3/</sup>

While the Commission is not reviewing the Hearing Examiner's Report in this decision, a brief recitation of the facts involved herein is in order. On September 11, 1975, the P.B.A. filed an Unfair Practice Charge against the Borough, Docket No. CO-76-70, alleging failure to negotiate in good faith. On November 17, 1975, at an exploratory conference in Docket No. CO-76-70, the parties, with a PERC staff member present, executed an agreement to meet to negotiate, to have the Commission mediate if negotiations did not result in agreement, to reduce an agreement on all terms to writing, and to have the P.B.A. withdraw the unfair practice charge. Said withdrawal request was filed and granted. No agreement was reached by the parties on their own, and the parties then met with Commission Mediator Leo Rose on April 29, 1976. The Charge herein alleges failure to reduce to writing an agreement reached at the April 29th meeting.

Insofar as the motion requests documents from the exploratory conference, it is moot. The only such document in existence is the aforementioned agreement executed by the parties, which agreement was placed in evidence before the Hearing Examiner.

<sup>3/</sup> The Borough made this same motion prior to the issuance of the Hearing Examiner's Report, but subsequently determined to withdraw pending issuance of the Report, reserving its right to renew the motion at this time.

As to the documents requested from the mediation meeting, §19:12-3.4 of the Commission's Rules is dispositive.

It provides:

Information disclosed by a party to a mediator in the performance of his mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him, on behalf of any party to any cause pending in any type of proceeding, including but not limited to unfair practice proceedings under Chapter 14 of these rules.

Everything requested from the April 29th mediation meeting falls within the purview of §19:12-3.4. Movant cannot have access to confidential materials prepared by a mediator and consequently the Commission is constrained to deny this portion of the motion.

Readily apparent is the Borough's concern that the Hearing Examiner's Decision was based to some extent on a perusal of the documents sought herein to which the Borough had no opportunity to respond. If such were the case, then Mazza v. Cavicchio, 15 N.J. 498 (1954), on which Respondent relies, might well make the Hearing Examiner's decision unsustainable due to a violation of due process.

To allay such fears both in the instant matter and for the future, the Commission wishes to set forth its internal procedures in situations of this type. N.J.S.A. 34:13A-6 calls for the Commission to aid in impasse resolution through mediation. N.J.S.A. 34:13A-5.4 gives the Commission the additional function

of sitting as an administrative tribunal to determine whether a party has engaged in unfair practices by means of a hearing as was held herein.

These disparate activities are segregated to the fullest extent possible in order to avoid just the abuses to which the Mazza decision refers. The file presented to a Hearing Examiner contains only the Charge, the Complaint and the Answer. No other documents prepared by any Commission employee are supplied. A Hearing Examiner's decision is based solely on the evidence presented at the hearing and the legal arguments which may be briefed. Consequently, Mazza is of no force or effect in regard to the within decision. It may be further reiterated that the aforementioned Commission Rule specifically forbids the production or use of any of a mediator's confidential information in an unfair practice proceeding, and nothing in the Hearing Examiner's Report indicates that he considered any such documents.

In the letter accompanying the motion, the Borough has made a request for oral argument on this matter. The Commission's Rules do not envision oral argument or hearings on motions made to the Commission; rather, such motions are normally accompanied by affidavits and briefs, as was the motion herein. (See N.J.A.C. 19:14-4.1 through 19:14-4.6.) While the Commission has no prohibition against oral argument in these matters, it does not believe that any purpose would be served by having such argument in this case. To the contrary, the scheduling of oral argument would of necessity have delayed a decision by at least one meeting.

Therefore, the request for oral argument is denied.

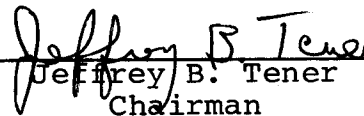
If either party desires oral argument before the Commission when the Commission considers the merits of the Hearing Examiner's Recommended Report and Decision, such request should be made in accordance with N.J.A.C. 19:14-8.2.

Additional time in which to file exceptions to the Hearing Examiner's Report is granted. Respondent may have until the close of business on February 7, 1977, to file exceptions.

ORDER

For the foregoing reasons, the motion is granted to the extent of allowing additional time to file exceptions to the Hearing Examiner's Report, and is denied in all other respects.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hipp, Hurwitz and Parcels  
voted for this decision.  
Commissioner Hartnett was not present.

DATED: Trenton, New Jersey  
January 26, 1977  
ISSUED: January 28, 1977