P.E.R.C. NO. 77-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HASBROUCK HEIGHTS,

Respondent,

-and-

Docket No. CO-76-295-5

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

Charging Party.

SYNOPSIS

In a decision in an unfair practice proceeding, the Commission finds the exceptions filed by the Borough to the Hearing Examiner's findings of fact and conclusions of law relating to an offer made by the Borough during the course of negotiations to give consideration to the P.B.A.'s economic proposals provided the terms of ultimate agreement were not reduced to writing, and the suggestions that the employees could do better in negotiations without representation by an attorney, are without merit. However, the Commission finds that the P.B.A. had not met its burden of proof in establishing that a negotiated agreement resulted from the Borough's implementation of its last best offer for the 1975 calendar year, embodied in an ordinance, coupled with the P.B.A.'s later acceptance of the salary and fringe benefits referred to in the ordinance. The Commission concludes that the P.B.A. failed to establish that the Borough's offer extended to all terms and conditions of employment or that the P.B.A.'s statement that it would accept the actual 1975 benefits indicated a willingness to have an agreement limited to the terms and conditions in the ordinance.

The Commission orders the Borough to cease and desist from interfering with, restraining or coercing employees in the exercise of their statutory rights by promising improved benefits in terms and conditions of employment, provided that the employees represented by the P.B.A. refrain from representation in negotiations by their attorneys and provided that they refrain from insisting upon a written contract incorporating such terms and conditions of employment; to post at its Police Department Headquarters copies of appropriate notices, and to notify the Chairman, in writing, of the steps taken to comply with the Commission's order.

The Commission further orders that the particular sections of the Complaint that allege that the Borough engaged in conduct violative of the Act, by dominating or interfering with the formation, existence or administration of the P.B.A.; refusing to reduce a negotiated agreement to writing and to sign such agreement, and violating certain of the Commission's rules and regulations, be dismissed.

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In the Matter of

BOROUGH OF HASBROUCK HEIGHTS,

Respondent,

-and- Docket No. CO-76-295-5

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

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 May 5, 1976, the P.B.A. Local 102, Hasbrouck Heights Unit (the "P.B.A." or "Local 102") filed an unfair practice charge with the Public Employment Relations Commission (the "Commission") alleging that the Borough of Hasbrouck Heights (the "Borough") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"). The charge alleges that the Borough violated N.J.S.A. 34:13A-5.4(a)(1) and (2) [1/] by promising improved terms and conditions of employment if the employees in a negotiating unit represented by Local 102 would

1/ 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" and (2) "Dominating or interfering with the formation, existence or administration of any employee organization."

cease being represented by an attorney and demanding a written agreement. Also alleged is that the Borough violated N.J.S.A. 34:13A-5.4(a)(6) and (7)[2/] by refusing to reduce to writing a collectively negotiated agreement for the year 1975. It appearing to the Director of Unfair Practices that the allegations, if true, may constitute unfair practices within the Act, a Complaint and Notice of Hearing was issued on July 12, 1976.

A hearing was held before Hearing Examiner Robert T. Snyder on August 2 and August 6, 1976 in Newark, New Jersey. Both parties were given the opportunity to examine witnesses, present evidence and argue orally. Briefs were filed by both parties as of September 24, 1976 and the Hearing Examiner issued his Recommended Report and Decision on December 30, 1976.[3/] Exceptions were filed by the Respondent on February 7, 1977, after an extension of time was granted[4/] and the case is now before the Commission.[5/] No cross-exceptions have been filed.[6/] A copy of the Hearing Examiner's Recommended Report is annexed hereto and made a part hereof.

While the Respondent's exceptions are presented as a list of seven, some of these are points of argument in support

2/ These subsections prohibit public employers from (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."
3/ H.E. No. 77-11, 3 NJPER ____ (1976).
4/ N.J.A.C. 19:14-7.3(a).
5/ N.J.A.C. 19:14-7.1.
6/ N.J.A.C. 19:14-7.3(f).

of actual exceptions. As the Commission reads the Borough's papers, the presented exceptions are to 1) the factual finding of the Hearing Examiner that the P.B.A. maintained its original economic demands at all times until the meeting between the parties on April 29, 1976; 2) the finding that at the April 29, 1976 meeting there was agreement on terms between the parties; 3) the refusal of the Hearing Examiner to allow testimony as to what was said by the Commission mediator at the April 29, 1976 meeting;[7/] 4) the failure to rule that this unfair practice charge was time-barred; and 5) the conclusions of law that the Borough violated N.J.S.A. 34:13A-5.4(a)(1) and (6).

In addition to the above, the Hearing Examiner found that the P.B.A. had failed to meet its burden of proof as to violations of N.J.S.A. 34:13A-5.4(a)(2) and (7). Because our review of the record confirms these conclusions and noting the absence of exceptions thereto, they are adopted by the Commission substantially for the reasons set forth in the Hearing Examiner's Recommended Report.

The first exception concerns the positions of the P.B.A. during negotiations. Herman Seidel, a lieutenant in the Hasbourck Heights Police Department, was the only witness called to testify as to the factual history of negotiations between the parties.

7/ The Borough also states that it is aggrieved by the Commission's decision denying its motion for the production of documents prepared by the mediator. That request has already been adjudicated by the Commission. See P.E.R.C. No. 77-38, 3 NJPER ____ (1977) and the discussion infra.

Lieutenant Seidel testified that he had been Co-Chairman of the P.B.A. negotiating committee which presented demands to the Borough in January 1975, prior to certification of Local 102 by the Commission as the exclusive representative for collective negotiations for the Hasbrouck Heights Police. He went on to state that there was no variance from these demands by the P.B.A. until the meeting of April 29, 1976, at which time the P.B.A. agreed to accept the wages and other conditions that had existed de facto in 1975 and asked that these terms be put into a written agreement. The Borough does not dispute that the request to put these terms and conditions into a written contract was refused.

We fail to see the relevance of whether or not the P.B.A. made any changes in its demands prior to April 29, 1976. It is undisputed that on April 29 Local 102 offered to accept the actual conditions of employment from 1975 if they were put into writing, and the Borough declined to sign a written agreement. While prior negotiating positions might well be important in the context of an alleged violation of §(a)(5), they seem to have no bearing on the §(a)(6) charge in this case. As this factual determination is not germane to the ultimate conclusions of law herein, the exception need not be ruled upon.

In the course of cross-examining Lieutenant Seidel, the Borough Attorney asked what had been said at the April 29 meeting by the Commission's mediator. The Hearing Examiner would not allow this line of questioning and the Borough excepts to that ruling.

N.J.A.C. 19:12-3.4 provides that all documents prepared by a mediator shall be classified as confidential and he shall

not produce any such documents or testify in regard to a mediation. Specific reference is made to unfair practice proceedings. The rationale behind this rule has already been discussed by the Commission in its decision denying the Borough's motion for production of mediator's records,[8/] but in view of the continuing attack on §19:12-3.4, the Commission desires to re-emphasize its necessity. What must be protected is the efficacy of the whole mediation process, the ability of a mediator to get parties to speak freely to him knowing that nothing can later be used against them in any way. Quite apart from whether any particular statement in fact needs to be kept confidential is the overriding concern for contributing to labor relations harmony. As long as there is a possibility of things said to or by a mediator being used in a later proceeding, no matter how strict the standard for allowing their use, labor negotiators will be reluctant to say anything to a mediator. This would be contrary to the need to encourage free and open communications between a party and a mediator so that impasses may be resolved.

Although the testimony disallowed by the Hearing Examiner was by a representative of a party, that representative was being asked what the mediator had said. If that testimony were to be challenged, it could only adequately be done by having the mediator himself testify as to what he said, an event barred by the aforesaid Rule 19:12-3.4. Therefore, the Commission

8/ P.E.R.C. No. 77-38, 3 NJPER ____ (1977).

believes that the Hearing Examiner acted properly and the Borough's exception is dismissed.[9/]

The Borough further attacks the Commission's Rule on the basis that it goes against N.J.S.A. 2A:84a-27 which allows a judge to preclude revelation of state information. However, nothing is put forward to show that said statute is meant to exclude other limitations in proceedings outside of the courts. Additionally, hearings under the Commission's jurisdiction are not held pursuant to courtroom rules of evidence. N.J.S.A. 52:14B-10(a) and N.J.A.C. 19:14-6.6.

Next among the Borough's exceptions is the failure to dismiss the charge on the grounds that it was time-barred under N.J.S.A. 34:13A-5.4(c) which provides:

> "...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge..."

The Complaint alleged a violation of subsection (a)(6) which requires an employer to reduce a negotiated agreement to writing. April 29, 1976 was alleged by the P.B.A. to be the date on which agreement was reached as to terms and as the Borough contends that agreement was never reached, no earlier date can be considered. It is clear that the six month time period for filing a charge as to the alleged violation of §(a)(6) runs from

9/ It should also be noted that the Borough Attorney made an offer of proof that the testimony he sought would establish that the mediator was going to recommend factfinding. T: 74. In light of the fact that a letter of May 4, 1976 from the Commission's then Executive Director (now Chairman) Jeffrey B. Tener as to selection of a factfinder was allowed into evidence, the Borough's case has not been prejudiced by the Hearing Examiner's ruling on this point.

April 29, 1976. The charge was filed on May 5, 1976 and was therefore timely.

Much is made in the Borough's papers of the fact that in September 1975, more than six momths before May 5, 1976, the P.B.A. was aware of the fact that the Borough took the position that it would not enter into a written agreement. Reference is made to an earlier unfair practice charge filed by the P.B.A. in this matter on September 11, 1975,[10/] alleging a violation of N.J.S.A. 34:13A-5.4(a)(5)[11/] but not of (a)(6), and it is claimed that the earlier charge waived the P.B.A.'s right to file the instant charge under the theory of not allowing multiplicity of litigation on the same point.

What the Borough's exception fails to take into account is the distinctness of what was charged in the earlier case from what is herein at issue. An (a)(5) claim is that the employer is refusing to negotiate in good faith so that an agreement as to terms and conditions of employment may be reached. Whether the P.B.A. knew at the time that the Borough would not enter into a written agreement is not a consideration because, since there had been no agreement, there was no duty on the part of the Borough to sign a writing at that time. The parties believed that a duty to have a written agreement would exist once they had agreed on

10/ Docket No. CO-76-70.
11/ This subsection prohibits employers, their agents or representatives from "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..."

terms, as is evidenced by the document signed on November 17, 1975 at an exploratory conference on Docket No. CO-76-70 in which they agreed that a negotiated agreement would be reduced to writing and signed by the parties.[12/] On the basis of that, the P.B.A. also stipulated to withdraw Docket No. CO-76-70 without prejudice. Having let the P.B.A. believe it would sign a written agreement at the proper time, the Borough should not now be heard to complain about a multiplicity of suits.

Considered together are the exceptions dealing with the factual finding that there was an actual collective negotiations agreement reached on April 29, 1976 and the conclusion of law that the Borough violated N.J.S.A. 34:13A-5.4(a)(6) by refusing to reduce the agreement to writing. The record establishes that a memorandum was read by the Borough Attorney at a meeting between the parties on November 12, 1975, in which the Mayor, on behalf of the Borough, refused to make any offer going beyond the benefits provided in Ordinance 1046 passed on May 13, 1975 to set salaries, longevity pay, holiday pay, overtime pay and other benefits for all police officers other than the Chief. At no time was this Ordinance repealed or any other attempt made to disavow its provisions. The Hearing Examiner therefore found that at least as to the terms and conditions of employment covered by the Ordinance, when the P.B.A. agreed to accept the benefits as had been paid in 1975, there was a meeting of the minds.

12/ Exhibit CP-3 in evidence.

A close analysis of the transcript of the hearing reveals that the P.B.A.'s agreement to accept all of the benefits as they existed in 1975 went beyond the Mayor's statement of the Borough's offer, which was limited to the specific provisions of Ordinance 1046. The Hearing Examiner was correct to the extent of concluding that passage of the Ordinance together with the Mayor's statement constituted an offer by the Borough as to the terms and conditions of employment within the ambit of the Ordinance. However, the P.B.A. on April 29, 1976 requested that all terms and conditions of employment as existing in 1975 be put into a written agreement. The following testimony during cross-examination of Lieutenant Seidel shows the gap between what the Hearing Examiner found to have been offered by the Borough and what the P.B.A. asked for:

> Q. (Mr. Chandless): "...that date your lawyers demanded that we sign a contract with you establishing what you had gotten in the form of the salary increase given to everybody as a negotiated contract, isn't that what he demanded, sir?
>
> A. (Lt. Seidel): "Once again, he demanded -- he requested, as I recall, that the terms and conditions as they existed in 1975 be reduced to writing, which you refused to do." T:54-55.

While the Borough stood by the Ordinance as to salary and other items covered therein, it maintained, and the Hearing Examiner so found, that as to all other conditions existing in

1975, no offer was made.[13/] Therefore, the Commission finds that the P.B.A. has not met its burden of proof that either the Borough's offer extended to all terms and conditions of employment or that the P.B.A.'s statement that it would accept the actual 1975 benefits indicated a willingness to have an agreement limited to the terms and conditions in Ordinance 1046. As a result, the Hearing Examiner's conclusion that the Borough violated §(a)(6) cannot be sustained.[14/]

The Hearing Examiner's finding of a violation of §5.4(a)(1) was based on undisputed testimony by Lieutenant Seidel that Commissioner Pagliei, at a meeting before the entire Police Department between November 1975, and April 29, 1976, said that if the P.B.A. dispensed with attorneys and its demand for a written contract, its negotiations proposals would get consideration. Because the Commissioner's remarks did not constitute a formal action of the town council, the Borough claims that it cannot be found guilty of an unfair practice.

As was made clear in the Bergenfield decision,[15/] the

13/ The Borough claims that there was no offer even as to the Ordinance because the Borough refused to set anything in writing. However, once terms are agreed upon, the Act mandates that a written agreement be signed, and the refusal to do so is not part of the determination as to whether there was an agreement.

14/ The Borough also argued that because the Commission initiated fact-finding procedures in a letter of May 4, 1976 by the Executive Director, a finding of an agreement between the parties is precluded. This contention is rejected in view of the Borough's refusal to sign any written agreement, which could have lead to fact-finding, even if the parties had no disputes as to any terms and conditions of employment.

15/ In re Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 45 (1975).

Act is structured on the assumption that the parties to negotiations typically will act through agents or representatives and not principals. The P.B.A., under the theory of apparent authority, was entitled to believe that the Commissioner was acting with the approval of the Borough, and the contention that he was merely discussing their claims suggests an abnormal level of naivete on the part of both the P.B.A. and this Commission.

Promising benefits to employees in return for their not being covered by a written contract between the union and the employer has been found to violate §8(a)(1) of the National Labor Relations Act after which §5.4(a)(1) of the New Jersey Act is patterned. Daisy's Originals, Inc. v. NLRB, 468 F.2d 493, 81 LRRM 2383 (5th Cir.-1972). Furthermore, in the context of state public employment relations, promises or threats aimed at interfering with employee rights have been found to constitute an (a)(1) violation under a statute similar to New Jersey's. WERC v. City of Evansville, 80 LRRM 3201 (Wisc. Circuit Ct.-1972).

Part of the Borough's position is that it has no duty to sign a written agreement covering terms and conditions of employment because of an alleged conflict with N.J.S.A. 40A:9-165 which requires a municipality to pass an ordinance setting the "salaries, wages or compensation" to be paid to its employees. As that statute has not been repealed, it is urged that it precludes the Employer-Employee Relations Act provisions on negotiation of terms and conditions of employment from applying

to employees covered by §40A:9-165.

The Commission does not accept the interpretation of the relationship between the two statutes pressed upon it by the Borough. It is the Commission's considered opinion that a more reasonable reading of the Legislature's intention exists. In Bergenfield, supra, the Commission dealt with a similar problem in regard to a board of education. Title 18A of the New Jersey Statutes required a board of education to perform its official function "through the vehicle of adopting resolutions by formal vote at public meetings."[16/] The fact that no such resolution had been passed was held not to make a collective negotiations agreement non-binding on the Board. Passage of a resolution was held to be the formal memorializing of an agreement reached by a negotiating representative, just as a corporate board of directors must do in the private sector.

The same logic applies herein. While it may be that the Borough must pass an ordinance before it can effectuate any collective negotiations agreement, such passage is no more than the formalizing of an agreement reached in the collective negotiations that are required by the Act. The intent to include police within the purview of the Act is manifested by the reference to police in N.J.S.A. 34:13A-5.3. §40A:9-165 was re-enacted in 1975[17/] with no reference to the Act. Although it is the Borough's contention that this shows the Act to be subordinate

16/ P.E.R.C. No. 90 at p. 11.
17/ Chapter 215, Public Laws 1975.

the subsequent legislative action provides conclusive evidence of the exact opposite. The 1975 amendments had the effect of exempting from public referendum provisions of the Statute all salary or wage ordinances except those for elected officials,[18] who are barred from the right to collective negotiations under the Act.[19]

In 1976, the statute was further amended by the Legislature with the passage of Chapter 96, Public Laws 1976. The accompanying committee statement flatly proclaimed:

> "...this bill narrows the definition of officers and employees so as to conform with the definition of employees in the New Jersey Employer-Employee Relations Act. This redefinition is consistent with the principal objective of P.L. 1976, (sic) c. 215 which was to amend the popular referendum and initiative laws so as to eliminate any inconsistencies between the provision of those laws and the New Jersey Employer-Employee Relations Act."

Pursuant to the above statement of legislative intent, the Commission concludes that the rights to select negotiations representatives and to have a written contractual agreement provided by N.J.S.A. 34:13A-5.3 are not diluted by N.J.S.A. 40A:9-165. The promise of benefits in exchange for waiver of these rights is therefore a violation of §5.4(a)(1) of the Act, and the exception to that conclusion is dismissed.

ORDER

For the aforestated reasons, the Commission adopts the

18/ Committee statement for Chapter 215, Public Laws 1975.
19/ N.J.S.A. 34:13A-5.3.

findings of fact and conclusions of law of the Hearing Examiner as they relate to N.J.S.A. 34:13A-5.4(a)(1), and IT IS HEREBY ORDERED that Respondent, its officers, agents, successors or assigns shall:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of their statutory rights by promising improved benefits in terms and conditions of employment provided that the employees represented by P.B.A. Local 102 (Hasbrouck Heights Unit) refrain from representation in negotiations by their attorneys and from their insistence upon a written contract incorporating such terms and conditions of employment.

B. Take the following affirmative action:

1. Post at its Police Department Headquarters in Hasbrouck Heights, New Jersey, copies of the attached notice marked "Appendix A". Copies of said notice on forms to be provided by the Chairman of the Public Employment Relations Commission shall, after being duly signed by Respondent's representative, be posted by said Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by said Respondent to ensure that such notices are not altered, defaced or covered by any other material.

2. Notify the Chairman, in writing, within

twenty (20 days of receipt of this order of the steps the said Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the particular sections of the Complaint that allege that the Borough of Hasbrouck Heights engaged in violations arising under N.J.S.A. 34:13A-5.4 (a)(2), (6), and (7) be dismissed.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hipp, Hurwitz, Hartnett and Parcells voted for this decision.

DATED: Trenton, New Jersey
April 19, 1977

ISSUED: April 20, 1977

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their statutory rights by promising improved terms and conditions of employment if the employees in the negotiating unit represented by P.B.A. Local No. 102 (Hasbrouck Heights Unit) would cease being represented by an attorney and demanding a written contract incorporating such terms and conditions of employment.

BOROUGH OF HASBROUCK HEIGHTS
(Public Employer)

Dated _____ By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

H.E. No. 77-11

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

In the Matter of

BOROUGH OF HASBROUCK HEIGHTS,

Respondent,

-and-

Docket No. CO-76-292-5

PBA LOCAL NO. 102 (HASBROUCK
HEIGHTS UNIT),

Charging Party.

SYNOPSIS

A Commission Hearing Examiner issues his Recommended Report and Decision in an unfair practice proceeding. The complaint alleges that the Borough refused to reduce to writing and to sign a negotiated agreement for 1975 and unlawfully promised improvements in terms and conditions of employment on the condition that the PBA cease representation in negotiations by a firm of attorneys it had retained and its insistence on a written agreement. The Hearing Examiner concludes that a negotiated agreement resulted from the Borough's implementation of its last best offer embodied in an ordinance coupled with the PBA's later acceptance of the salary and fringe benefits comprising the offer. He also finds that the employee organization has not sustained its burden of proof that the Borough agreed to negotiate or to conclude a written agreement embodying other economic and non-economic benefits granted to the unit employees by Borough practice during 1975. The Hearing Examiner further concludes that the Borough, by one of its Commissioners, during the course of negotiations in 1975 did offer to give consideration to the employee organization's economic proposals provided the terms of ultimate agreement were not reduced to writing, and also suggested that the employees could do better in negotiations without representation by attorney.

Upon the foregoing conduct, the Hearing Examiner concluded that the Borough did violate the Act by refusing to reduce a negotiated agreement to writing and to sign such agreement and by promising benefits on the condition that employees forego rights guaranteed to them by the Act. Complaint allegations charging the same conduct as violative of other sections of the Act forbidding domination or interference with the formation, existence or administration of any employee organization and the violation of any of the rules and regulations established by the Commission are dismissed for lack of proof. As a remedy for the violations found the Hearing Examiner orders the Borough, on demand by the employee organization, to reduce the negotiated agreement to writing and to execute the agreement, to cease and desist from the prohibited conduct and to post an appropriate notice to its employees advising them of

the remedial steps it will undertake as a result of the proceeding.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. No. 77-11

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

In the Matter of

BOROUGH OF HASBROUCK HEIGHTS,

Respondent,

-and-

Docket No. CO-76-292-5

PBA LOCAL NO. 102 (HASBROUCK HEIGHTS UNIT)

Charging Party.

For the Respondent, Chandless, Weller & Kramer, Esqs.
(Ralph W. Chandless, Esq. Of Counsel)

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

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice charge having been filed on May 5, 1976 by PBA Local No. 102 (Hasbrouck Heights Unit)("PBA" or "Local No. 102") and it appearing to the Director, Unfair Practice Proceedings, Carl Kurtzman, that the allegations thereof, if true, may constitute unfair practices on the part of the Borough of Hasbrouck Heights ("Borough"), a Complaint and Notice of Hearing issued on July 12, 1976. The Complaint alleges that the Borough violated N.J.S.A. 34:13A-5.4(a)(1) and (2)[1/] by promising improved terms and conditions of employment on the condition that the employees in a negotiating unit represented by the PBA cease their representation in collective negotiations by an attorney and their demand for a written agreement. The Complaint further alleges that the Borough violated N.J.S.A. 34:13A-5.4(6) and (7)[2/] by refusing to reduce to writing and

1/ These subsections prohibit public employers from (1) "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by /the Act/" and (2) "Dominating or interfering with the formation, existence or administration of any employee organization."

2/ These subsections prohibit public employers from (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."

to execute a collectively negotiated agreement with the PBA for the calendar year 1975.

In its Answer filed in this proceeding the Borough denied that it is engaging in the unfair practices alleged.[3/] Hearing was held before the undersigned August 2 and 6, 1976 in Newark, New Jersey, at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Thereafter, briefs were filed by the Borough on September 13, 1976 and by the PBA on September 24, 1976. Upon the entire record in this case I make the following:

FINDINGS OF FACT

I

The Unfair Practices

Background Events Antedating the Alleged Unfair Practices

For some years prior to 1975, the police officers employed by the Borough had sought and were granted meetings with Borough officials at the beginning of each year to request specific improvements in the terms and conditions of their employment. The Borough took these requests under advisement and then adopted ordinances fixing salaries and other terms and conditions of employment for its police officers for the calendar year.

In January 1975, as in prior years, the police officers in a group submitted a written list of eleven pay raise proposals for 1975 to the Borough. However, unlike past years, by mid-February[4/] the police officers had formed a formal employee organization and had retained a law firm to represent them in collective negotiations with the Borough.

3/ Inasmuch as the Borough's answer failed to specifically admit, deny or explain each of the facts alleged in the Complaint, in accordance with the requirement of Section 19:14-3.1 of the Commission's Rules, an opportunity was provided, without objection, to the Borough's attorney at the outset of the hearing to answer orally on the record each of the factual allegations contained in the Complaint. Thus, the Borough's written Answer was supplemented by oral responses which appear early in the transcript of the first day's hearing.

4/ On January 20, 1975, Chapter 123 of the Laws of 1974 became effective, amending and supplementing the New Jersey Employer-Employee Relations Act, P.L. 1968, Chapter 303. Among other amendments adopted was one providing the Commission with grant of authority to prevent specified unfair practices by both public employers and employee organizations, including, inter alia, a refusal on the part of an employer to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of their employment (C. 34:13A-5.4(a)(5)) and such other unfair practices as the PBA has alleged in the instant complaint (see footnotes 1 and 2, supra).

By letter dated February 14, 1975 attorney Alfred G. Osterweil of the law firm of Osterweil and LeBeau advised the Mayor and Council of the Borough that they had recently been retained to represent PBA Local No. 102 (Hasbrouck Heights Unit) with regard to collective negotiations pursuant to the Public Employment Relations Act and sought an opportunity to discuss the issues and ultimately incorporate their resolutions in an agreement. Mr. Osterweil noted that the PBA had already submitted a list of certain economic proposals and the PBA would have at the meeting a list of non-economic proposals it would want incorporated into the collective bargaining agreement. There is no evidence in the record that the Borough replied to this letter. The PBA then petitioned for Certification of Representative in Docket No. RO-995 on March 7, 1975. After a consent election held on May 7, 1975, won by the PBA by a vote of 22 in favor with one against, with 23 eligible voters, the Commission by its Executive Director, Jeffrey Tener, on May 15, 1975 issued a Certification of Representative to PBA Local No. 102 (Hasbrouck Heights Unit) certifying the PBA as exclusive representative of all employees in a unit of all members of the Hasbrouck Heights Police Department including patrolmen, detectives, sergeants, lieutenants and captains, excluding chief and acting chief and supervisors within the meaning of the Act for the purposes of collective negotiations with respect to terms and conditions of employment.[5/]

Just prior to the certification, on May 13, 1975, the Borough approved an Ordinance #1046 fixing the salary and compensation of all policemen. The Ordinance fixed salaries for policemen by rank from chief to patrolman incorporating a 6% increase, and longevity pay, holiday pay, overtime pay and other benefits for all officers other than the chief. Subsequent to the PBA certification, June 18, 1975 was scheduled for commencement of negotiations. On that occasion the PBA appeared by its committee and counsel, Messrs. Osterweil and Richard Loccke, and the Borough by two councilmen. The PBA presented a form agreement containing its non-economic proposals for the year 1975. The agreement contained blank spaces for economic terms and the PBA representatives advised that they sought the same economic demands which had previously been submitted

5/ There is no question, and neither party disputes, that the PBA is an employee organization within the meaning of N.J.S.A. 34:13A-3(e) and the Borough is a public employer within the meaning of N.J.S.A. 34:13A-3(c).

to the Borough by the police officers in January 1975 prior to the certification. At each subsequent meeting held between the parties until April 1976 the PBA maintained its original economic demands.

No negotiation agreement had been achieved when on September 11, 1975 the PBA filed an Unfair Practice Charge against the Borough in Docket No. CO-76-70 alleging violation of N.J.S.A. 34:13A-5.4(a) (1) and (5) 6/ by failing to meet at reasonable times to negotiate, and by submitting for public referendum whether members of the police department shall receive salary and other benefits above those granted by the 1975 Salary Ordinance, and by failing, since mid June 1975, to be represented by a representative authorized to negotiate.

At a subsequent negotiation meeting held between the parties on November 12, 1975 the Respondent's attorney Ralph W. Chandless, read a memorandum from Mayor William H. Imken to the PBA's negotiating committee and representatives. The Statement included the following remarks: "Following the adoption of the budget the police selected their PBA Local as their bargaining agent and thereby applied for negotiation of their original requests which they had previously informally made. Those negotiations have been adjourned from time to time and are now down for final action by the Mayor and Council at tonight's meeting...We acknowledge the statutory right of all employees of the Borough, whether police or others, to seek additional salary or other benefits but we question the wisdom of the strict application of the Public Employment Relations Act in a town such as Hasbrouck Heights where every member of the governing body is personally acquainted with every one of its employees...the present proceedings brought against the Borough under the present Public Employment Relations Act causes us to think that our Police do not have confidence in our willingness to give them full justice by ordinance adopted each year after a public hearing of the taxpayers affected and that they are insecure in respect to their rights unless they have a written contract negotiated, signed, sealed and delivered." The Mayor then noted that under the present financial crisis and budget laws it could not provide any additional salary increases or other fringe benefits, and, therefore, "there is nothing for us to negotiate." 7/

6/ Subsection (1) has already been described in footnote 1. Subsection (5) prohibits, in pertinent part, public employers from "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..."

7/ The Mayors' statement also included a rejection of the PBA's demand for binding arbitration.

On November 17, 1975 the parties met again in an exploratory conference on the charge in Docket No. CO-76-70 with a Commission staff member assigned. On that occasion the parties executed the following agreement:

"1. The parties agree to meet not less than four times between this date and December 15, 1975 for the purpose of negotiating terms and conditions of employment.

2. If the parties do not reach agreement by December 12, 1975, they agree to meet with Mr. Ben Manney of the Public Employment Relations Commission who shall act as mediator.

3. The parties agree that upon agreement on all items, that negotiated agreement shall be reduced to writing and signed by the parties.

4. P.B.A. Local #102 (Hasbrouck Heights Unit) agrees to withdraw case docketed as CO-76-70 without prejudice."

Pursuant to the agreement the PBA immediately filed withdrawal request which was approved without prejudice the same date, November 17, 1975, by the Commission's named designee, Executive Director, Jeffrey Tener. A subsequent meeting between the parties was held on December 12, 1975 attended by Chandless for the Borough and Loccke, Herman Seidel, Police Lieutenant and Co-Chairmain of the police negotiating committee, and committee members for the PBA. No settlement was achieved at this meeting and as a result of a subsequent request a mediator was assigned to the dispute by the Commission.

The Alleged Refusal to Reduce to Writing and to Sign a Negotiated Agreement

On April 29, 1976 the parties met with Mr. Leo Rose, Commission Staff Mediator. On this occasion, for the first time, the PBA proposed to withdraw all its pending proposals for calendar year 1975 and agreed to accept the terms and conditions of employment including wages that they received as employees in 1975. As testified by Mr. Seidel, the PBA requested "that all items, terms and conditions of employment be set forth in a written agreement for the parties to sign." Further, according to Mr. Seidel's unrebutted testimony, the Borough refused to incorporate these terms in a written agreement or to sign such an agreement. Mr. Seidel restated his position during cross-examination in the following testimony:

Q. (Mr. Chandless) "Didn't this all come about April 29th, 1976?

A. (Mr. Seidel) On April 29th, 1976, we agreed out of frustration to take what we had gotten in 1975, if you would only write it down. That is what we agreed to, and you would not do it.

Q. (Mr. Chandless) And didn't I say that -- I characterized it as ridiculous and never been negotiated, haven't I? The six percent was given to you by the Mayor and Council and never negotiated, was it? At no time was there any negotiation, was there?

A. (Mr. Seidel) There were meetings, we were there to negotiate in good faith. Apparently, there were no negotiations there.

Q. (Mr. Chandless) Didn't you tell us that up until that date, there had been no negotiated agreement?

A. (Mr. Seidel) No agreement, sir, that's what I said.

Q. (Mr. Chandless) No agreement, well, I mean been negotiated, no agreement had been negotiated up until that date and that date your lawyers demanded that we sign a contract with you establishing what you had gotten in the form of the salary increase given to everybody as a negotiated contract. Isn't that what he demanded, sir?

A. (Mr. Seidel) Once again, he demanded -- he requested, as I recall, that the terms and conditions as they existed in 1975 be reduced to writing, which you refused to do.

Q. (Mr. Chandless) And substantially I told them that it was ridiculous because it had never been agreed upon up to that very moment, is that right? Isn't that what I told them?

A. (Mr. Seidel) I don't recall that particular phrase, but certainly --

Q. (Mr. Chandless) It was substantially that, wasn't it?

A. (Mr. Seidel) You said something to that effect." (Tr. 54-55).

During further direct testimony Mr. Seidel noted that Mr. Chandless made several statements indicating that the Borough would not write anything down and stated "It's not going to happen, it's not going to be written down." Mr. Seidel further testified that Mr. Chandless said it was not in the best interest of the people and it was not right to tie over a governing body which may be elected in the future to a contract that was agreed to at this point or that point. Mr. Seidel added that Mr. Chandless also indicated that he did not agree with the "PERC statutes" (sic) that the PBA was entitled to a written agreement.

The Terms of the Alleged Negotiated Agreement

During the course of the hearing, the PBA adduced evidence and the parties entered stipulations placing in the record the major and representative terms and conditions of employment under which the unit employees were employed during 1975. In many cases, counsel for the parties were able to agree that certain terms and conditions of employment provided employees during 1975 were part of the practice of the Borough which existed for some years past and were continued in 1975.

In other instances where the parties could not agree to the practice at issue, an employee in the unit, Robert Carscadden, a patrolman employed by the Borough for the last five years, testified, without contradiction, 8/ to the fact that the unit employees enjoyed the benefits during 1975.

One exhibit, in particular, received in evidence as Charging Party's Exhibit No. 5 ("C.P. 5"), itemizes those major representative benefits enjoyed by the unit employees during 1975. The PBA asserts that these benefits comprise representative substantive terms and conditions of employment affecting the subject employees for the period in question which it accepted on April 29, 1976 for inclusion in a collective negotiation agreement for 1975. They cover the subject matters of work schedule; work day; paid holiday; medical insurance; personal days off without loss of regular pay; clothing allowance; paid vacation days; days off without loss of regular pay for death in the immediate family; sick leave; longevity pay; overtime pay; advance notice of change of shift or normal tour; insurance for lawsuits arising out of the police officer's employment; compensatory time off for in-service training scheduled on an employee's own time; pick up and delivery at home by police car prior to start and after completion of day tour; payment for on and off-duty weapons and any mandatory change in equipment or uniforms; pay scale (including a 6% increase in salary effective January 1, 1975); time off without loss of regular pay for attendance at and reasonable travel time to and from PBA or Fraternal Order of Police conventions; right to work part-time jobs of their own choosing; and a grievance

8/ No testimony was offered by the Borough in support of its defenses, to be discussed, infra, reliance being placed, instead, upon responses elicited during cross-examination from the PBA's witnesses, Messrs. Seidel and Carscadden, and exhibits it introduced into evidence.

procedure (excluding disciplinary proceedings against an employee) culminating in a final review and determination by the Mayor and Council of the Borough, with right by the aggrieved employee to pursue the grievance by a plenary action before a court of competent jurisdiction.

With respect to certain benefits included in the exhibit, testimony and stipulations served to modify the precise nature of the benefits provided by the Borough in 1975. As to sick leave, the parties stipulated that an employee seeking to utilize sick leave in 1975 was subject to appropriate discipline for misrepresentation of his need for such leave. Concerning insurance for suits for violation of civil rights arising out of the police officer's employment, counsel for the PBA agreed to modify the description of the benefit in the exhibit (C.P. 5) to accord with the Borough counsel's description of the Borough's defense and indemnification 9/ of police officers (without insurance policy coverage) charged with a civil rights violation in a court suit not resolved until 1975. PBA counsel also withdrew the item of right to work part-time jobs of their own choosing from the exhibit (C.P. 5) when testimony disclosed that the benefit was contingent on the consent of the Borough.

As to certain of the benefits provided during 1975, including work hours and tours, health insurance and indemnification in civil rights suits, Respondent counsel noted that the Borough reserved to itself the right to make changes in them. As to certain other benefits, including salary and certain fringe benefits, Borough counsel noted that with respect to the precise nature of the benefit, the Borough relied exclusively upon the Ordinance #1046.

The Alleged Coercive Conduct in Promising Improved Benefits on the Condition that the Employees Forego Representation by Counsel and a Written Agreement

Mr. Seidel testified that during the course of negotiations for a 1975 agreement suggestions were made that perhaps the employees could do better without representation by attorneys. Mr. Seidel further testified that "offers were made whereby if we accepted them without the contract...we would be given consideration along the lines of the proposals that we had made." Mr. Seidel

9/ The Borough counsel stated that the Respondent provided insurance coverage "for everything except violation of civil rights."

added that this last statement had been made by Borough Commissioner Pagliei at a meeting before the entire Police Department prior to April 29, 1976 negotiation meeting but after the November 17, 1975 exploratory conference between the parties. Mr. Seidel stated that Commissioner Pagliei brought out a chart indicating that we were low in all of the areas that we had made proposals, and then he indicated to us that these areas would be given consideration, but that they would not be put down in the form of a written contract. 10/

Discussion and Analysis

The Alleged Refusal to Reduce a Negotiated Agreement to Writing

As earlier noted, public employers (as well as employee organizations) may not refuse to reduce a negotiated agreement to writing and to sign such agreement (See N.J.S.A. 34:13A-5.4(a) (6) for employer's obligation). This precise concern is also expressed in N.J.S.A. 34:13A-5.3 as follows:

> "When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and majority representative."

The initial question posed is whether, and to what extent, the Borough negotiated an agreement or reached an agreement on terms and conditions of employment. The PBA in its brief derives an agreement from the PBA's acceptance on April 29, 1976 of certain offered benefit increases and the maintenance of the status quo in other areas encompassed by the general category of terms and conditions of employment. This is said to constitute a meeting of the minds and forms a contract. (See pages 10 and 11 of the PBA brief).

In order for the PBA's acceptance of certain increased benefits and status quo in other areas to have ripened into a meeting of the minds, it must have been preceded by proposals made by the Borough during the course of negotiations for inclusion in an agreement. The facts in the instant record do not support the conclusion that the Borough during negotiations offered to conclude an agreement containing many of the substantive benefits included in C.P. 5.

10/ As earlier noted, the Respondent called no witnesses and it offered no refutation to Mr. Seidel's testimony.

Certain of the benefits which had been incorporated in Ordinance #1046 fixing the salary and compensation of police officers had been the subject of negotiations at the negotiating table in November 1975. At a negotiation meeting during that month, the Borough counsel read a statement of the Mayor declining to give the police any salary increases or other fringe benefits in addition to those already adopted by ordinance. Thus, with respect to such items as salary and certain other fringes, the Borough, in effect, was relying upon its prior grant of a 6% salary increase and other benefits incorporated in its May 13, 1975 Ordinance as its best and final offer. 11/ When on April 29, 1976, the PBA withdrew its salary and other demands and agreed to accept the benefits which the Borough had previously provided by Ordinance, among others, a true meeting of the minds took place at least with respect to those benefits covered by the Ordinance. The Borough's last offer in this regard was accepted by the PBA.

With respect to all other benefits incorporated in C.P. 5 and itemized at pages 7 and 8 of this report, supra, the PBA failed to sustain its burden of proof that the Borough at any time had offered that these other benefits granted by it in 1975 were subjects for negotiation with the PBA or for inclusion in a collective agreement. 12/ On the contrary, particularly with respect to a number of them, at the hearing the Borough's counsel indicated that its practices of granting certain benefits during 1975 were subject to the Borough's discretion and reservation of right to modify, withdraw or revoke them. Such statement of position conflicts with the PBA's claim that by its offers of acceptance of the status quo on April 29, 1976, a meeting of the minds resulted by the terms of which the Borough agreed that its practices in all areas covered by C.P. 5 be incorporated in a writing requiring it to sustain them uniformly without change during 1975.

11/ While the Mayor's statement did not offer to include the terms of the Ordinance in a written agreement, in fact questioned the PBA's request for a written contract, since it was made during the course of negotiations undertaken pursuant to the Amended Act, the Borough must be deemed to have made its offer in contemplation that if any agreement resulted it would be reduced to writing. Indeed, within a week following the reading of the Mayor's statement, the Borough executed a document recognizing its responsibility to reduce a negotiated agreement to writing.

12/ While the Borough may have engaged in conduct in this respect and others raising question as to its compliance with the negotiation obligation in accordance with N.J.S.A. 34:13A-5.4(a) (5), there is no allegation before the undersigned charging the Borough with a violation thereunder.

The preceding factual recital also makes clear that the Borough rejected the PBA's acceptance of its final offer and grant of salary and certain other fringe benefits for inclusion in an agreement.

Accordingly, and based upon the foregoing, I conclude that the Borough has failed and refused to embody in a writing and to execute an agreement incorporating those terms and conditions of employment, [13] including salary, longevity pay, holiday pay, [14] overtime pay, and clothing allowance which were the subject of negotiations and which constituted the final offer of the Borough made on November 12, 1975 and accepted by the PBA on April 29, 1976. I further conclude that the Borough's failure and refusal to reduce to writing and to execute an agreement incorporating the salary and fringe benefits enumerated constitutes a violation of N.J.S.A. 34:13A-5.4(a) (6), [15] but not of (a) (7). [16]

Counsel for the Borough in his brief argues that there is no duty imposed on a municipality to negotiate written policies in respect to grievances under N.J.S.A. 34:13A-5.3. While I have not found that the Borough offered to include its 1975 grievance practices in a writing, and so have recommended dismissal of that portion of the PBA's (a) (6) allegation, I deem it important to comment on the Borough's contentions. Said counsel relies in support of his

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13/ (Terms and Conditions)

All of these subjects involving compensation are "matters directly and intimately affecting /the employees'/ working terms and conditions", Burlington County College Faculty Assn. v. Board of Trustees, 64 N.J. 10, 14 (1973) and are "...terms and conditions of employment within the contemplation of the Employer-Employee Relations Act." The Board of Education of the City of Englewood v. Englewood Teachers Assn., 64 N.J. 1, 6-7 (1973).

14/ While the Ordinance is silent as to the ten paid holidays, the Borough's counsel agreed that the ten holidays comprise New Year's Day, Washington's Birthday, Lincoln's Birthday, Easter, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day and Christmas. The parties' agreement should accordingly incorporate these ten days as the paid holidays.

15/ See In re Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975) and In re East Brunswick Board of Education, P.E.R.C. No. 77-6 (1976).

16/ The Borough's conduct has been found herein to violate subdivision (a) (6) in haec verba. The PBA has failed to show what precise rule of the Commission has been violated by the Borough's conduct in this regard and its counsel stated that the (a) (7) allegation merged with the (a) (6) allegation. In the absence of any supporting evidence or applicable rule, and as the conduct is fully proscribed by subsection (a) (6) of the Amended Act I will recommend dismissal of the allegation alleging violation of (a) (7).

argument upon the fact that by virtue of N.J.S.A. 40A:9-165, only those matters contained in a municipal ordinance may be the subject of a negotiated agreement concerning terms and conditions of employment. Title 40A, adopted in 1971, is silent as to employee or employee organization rights appearing in the Public Employment Relations Act of 1968, (P.L. 1968, C. 303). The argument runs that since Title 40A was enacted after Chapter 303,does not expressly reserve employee rights under C. 303, a repeal of its powers and authority thereunder may not be implied and, accordingly, the Borough's authority under Title 40A is supreme. This argument fails to accept the existence of P.L. 1974, Chapter 123 which modified and amended the original 1968 statute some years after the municipality was granted specific authority, by ordinance, to fix terms, salary, wages or compensation to be paid its employees. 17/ It is a well settled rule of statutory construction that the Legislature is charged with knowledge of its prior enactments, Brewer v. Porch, 53 N.J. 167 (1969). In addition where there is a conflict the more recent statute will govern. State v. Roberts, 21 N.J. 552, 555 (1956). Furthermore, and contrary to the Borough counsel, Dunellen Board of Education v. Dunellen Education Assn., 64 N.J. (1973) did recognize the statutory responsibility of public employers--in the case before it, local boards of education--to negotiate in good faith with representatives of their employees "with respect to those matters which intimately and directly affect the work and welfare of their employees." Id. at 25. See also Lullo v. I.A.F.F., 55 N.J. 409 (1970). Surely, grievance procedures, to which the Legislature expressly addressed itself in both C. 303 and C. 123, 18/ is such a matter.

The municipality's authority under N.J.S.A. 40A:9-165 to enact a Salary Ordinance may be viewed as a valid act necessary for the proper exercise by a municipality of its authority but an act which will normally follow negotiation of those terms and conditions of employment including salary, wages and

17/ N.J.S.A. 34:13A-8.1 now provides, in pertinent part, "...nor shall any provision hereof annul or modify any pension statute or statutes of this State. /Emphasis added/

18/ N.J.S.A. 34:13A-5.3 provides, in pertinent part:

> "Public Employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization."

other fringe benefits negotiated to agreement between a municipality and the majority representative of its employees. In this regard the failure of a municipality to take such action by ordinance cannot be asserted as a defense to its failure to enter a negotiated agreement. As stated by the Commission in the analogous context of a Board of Education's authority under Title 18A in Bergenfield Board of Education, P.E.R.C. No. 90 at page 11 of its Decision and Order:

> "The Respondent also argues that since a board of education performs its official functions through the vehicle of adopting resolutions by formal vote at public meetings pursuant to Title 18A, and no such action has taken place herein, no binding collective agreement has yet been reached by the parties. This contention completely lacks merit. The failure of the Respondent to take such official action is precisely why the instant proceeding was commenced and is precisely that which we are hereby remedying."

See also, In re Cliffside Park Board of Education, P.E.R.C. No. 77-2 (1976) where the Commission rejected an employer contention that provisions for personal leave, vacations, sick leave, holidays and the like in its policy manuel satisfies the obligation, if any to negotiate such items. The authority of the municipality is thus not inconsistent with its negotiating duty under the Act and the Borough counsel's contrary conclusion is improper.

Borough counsel also contends that the unfair practice charge is time-barred because filed more than six months after the alleged unfair practice occurred. 19/ Counsel's reliance is misplaced. The unfair practice alleged relates to the Borough's failure to reduce a negotiated agreement to writing in violation of (a) (6). The evidence which the PBA adduced shows that that conduct did not take place until April 29, 1976. Prior thereto the parties had held a series of meetings pursuant to the November 17, 1975 agreement that they would meet and upon agreement reduce their negotiated agreement to writing. The PBA makes no claim and the evidence fails to show any negotiated agreement prior to April 29, 1976. Inasmuch as the PBA's charge of May 5, 1976, followed on the heels of the April 29 meeting there is no basis for the claim of statutory

19/ See N.J.S.A. 34:13A-5.4(c).

bar. In the same vein, Borough counsel also asserts that the allegation of the Borough's misconduct from the inception constitutes a single claim of wrongdoing. Under a well recognized principle of law, counsel urges that the PBA was thus obliged to seek its entire relief in the initial charge and could not fragment the litigation by withdrawing one charge and filing another. Counsel's statement of the law as applied to the instant transaction is incorrect. The allegations employed by the PBA in each of the two charges - the initial charge which was withdrawn without prejudice as a result of the November 17, 1975 agreement and the subsequent charge upon which the instant complaint issued-constitute separate allegations of wrongdoing. The initial claim encompassed a general refusal to negotiate under (a)(5) by various acts and conduct including failures to meet, submissions of subjects to public referendum and failure to negotiate through an authorized representative. The PBA voluntarily withdrew that charge on the basis of an understanding regarding further meetings and an agreement to incorporate any agreement arrived at in a written document. It was only some five months later that the PBA alleged a separate and distinct allegation under (a) (6) of failure and refusal to embody a negotiated agreement in writing based upon conduct alleged to have occurred subsequent to withdrawal of the initial charge. Each of these two subsections are concerned with different conduct and to remedy their violations, different and distinct forms of relief are normally provided. Counsel's argument is thus without merit.

The Borough's Promise of Benefit

The record discloses that during the course of negotiations suggestions were made by Borough representatives that the police officers could do better without representation by attorneys and, in particular, by Commissioner Pagliei that their proposals would be treated in a more favorable light if the PBA ceased its insistence on a written contract. Borough counsel failed to cross-examine as to this testimony and the Borough failed to offer any evidence to contradict it. Accordingly, I credit the testimony of Police Lieutenant Seidel in this regard.

Traditionally, in the private sector, attempts by one party to the negotiation process to interfere with the selection of a bargaining representative have been viewed as interference and coercion with the rights of the other

B. Take the following affirmative action:

1. Upon demand by PBA Local 102 (Hasbrouck Heights Unit), reduce to writing forthwith and sign the collective negotiation agreement described above, effective May 15, 1975 to December 31, 1975.

2. Upon the execution of the aforesaid agreement, give retroactive effect to the provisions thereof to January 1, 1975.

3. Post at its Police Department Headquarters in Hasbrouck Heights, New Jersey, copies of the attached notice marked "Appendix A". Copies of said notice on forms to be proved by the Chairman of the Public Employment Relations Commission, shall, after being duly signed by Respondent's representative, be posted by said Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by said Respondent to ensure that such notices are not altered, defaced or covered by any other material.

4. Notify the Commission, in writing, within twenty (20) days of receipt of this order of the steps the said Respondent has taken to comply herewith.

Robert T. Snyder

Robert T. Snyder
Hearing Examiner

DATED: Trenton, New Jersey
December 30, 1976

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT

we hereby notify our employees that:

WE WILL reduce to writing and sign a collective negotiations agreement for 1975 with PBA Local 102 (Hasbrouck Heights Unit) incorporating the terms agreed to orally on April 29, 1976 with the said Association.

WE WILL give retroactive effect to the terms and conditions of said agreement to January 1, 1975.

WE WILL NOT interfere with, restrain or coerce our employees by making promises of increased benefits in terms and conditions of employment contingent upon their refraining from employing an attorney as PBA Local 102 negotiating representative or withdrawing their insistence upon reducing a negotiated agreement to writing.

BOROUGH OF HASBROUCK HEIGHTS
(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 Chairman of the Public Employment Relations Commission, Labor & Industry Bldg., P.O. Box 2209, Trenton, N.J. 08625 Telephone (609) 292-6780