P.E.R.C. NO. 76-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LITTLE EGG HARBOR,
Respondent,

-and-

Docket No. CO-76-14

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 71,
Charging Party.

SYNOPSIS

In an unfair practice proceeding the Commission adopts the findings of fact and conclusions of law contained in the Hearing Examiner's Recommended Report and Decision, to which no exceptions were filed, and orders the Respondent to cease and desist from interfering with employee rights, to cease and desist from refusing to negotiate with the Charging Party concerning the subcontracting of unit work, to refrain from unilaterally altering or threatening to unilaterally alter terms and conditions of employment during the course of contract negotiations, and to refrain from taking any action with respect to subcontracting of unit work during the course of contract negotiations. The Commission finds, on the facts of this case, that subcontracting of unit work is a required subject for collective negotiations.

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AMERICAN FEDERATION OF STATE, COUNTY,
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Charging Party.

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on July 18, 1975 by the American Federation of State, County, and Municipal Employees, Council 71, alleging that the Township of Little Egg Harbor had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq., in that the Township was then in the process of soliciting bids for contracting out the sanitation work performed by members of the recently certified negotiating unit. It appearing to the Commission's Executive Director that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 24, 1975.

Pursuant to the Complaint and Notice of Hearing, a plenary hearing was held before Stephen B. Hunter, Hearing Examiner of the Public Employment Relations Commission, at which all parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Following the

receipt of briefs by both parties and an analysis of the record, the Hearing Examiner issued his Recommended Report and Decision on December 1, 1975, which Report included findings of facts and conclusions of law and a proposed order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.2.

Upon careful consideration of the entire record herein, the Commission adopts the findings of fact and conclusions of law, but not necessarily the dicta, rendered by the Hearing Examiner substantially for the reasons cited by him. Specifically, we find that, on the facts in this case, subcontracting is a required subject for collective negotiations and that the Township violated Section 5.4(a)(1) and (5) of the Act by interfering, restraining or coercing its employees in the exercise of the rights guaranteed them by the Act and by refusing to negotiate in good faith with the majority representative regarding subcontracting. The Township has not violated subsections (a)(2) or (a)(3) and accordingly those portions of the complaint alleging violations thereof are hereby dismissed.

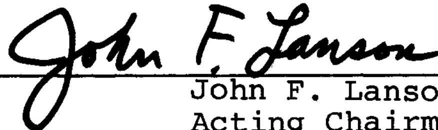
ORDER

IT IS HEREBY ORDERED that the Respondent, Township of Little Egg Harbor, shall cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and

IT IS FURTHER ORDERED that the Respondent shall cease and desist from refusing to negotiate in good faith, upon request, with the American Federation of State, County, and Municipal Employees, Council 71, concerning the subject of contracting out the sanitation work currently performed by certain members of the negotiating unit, and

IT IS FURTHER ORDERED that the Respondent shall refrain from unilaterally altering, or threatening to unilaterally alter, terms and conditions of employment of its employees, during the course of collective negotiations for an agreement with the American Federation of State, County, and Municipal Employees, Council 71. The Township of Little Egg Harbor, its agents and representatives, shall refrain from contracting out, or receiving bids for contracting out, or from taking any action with respect to contracting out, of any work normally performed by the employees in the certified negotiating unit during the course of collective negotiations.

BY ORDER OF THE COMMISSION



John F. Lanson
Acting Chairman

DATED: Trenton, New Jersey
January 23, 1976

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LITTLE EGG HARBOR,

Respondent,

-and-

Docket No. CO-76-14

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 71,

Charging Party.

Appearances:

For the Charging Party
Sterns and Greenberg, Esqs.
(Mr. Michael J. Herbert, of Counsel)

For the Respondent
Haines, Schuman and Butz, Esqs.
(Mr. Thomas P. Butz, of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the Commission) on July 18, 1975 by the American Federation of State, County and Municipal Employees, Council 71 (hereinafter AFSCME) alleging that the Township of Little Egg Harbor (hereinafter the Township) had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1, et seq. (hereinafter the Act) in that the Township was then in the process of unilaterally contracting out the sanitation work currently performed by certain members of its recently certified negotiating unit. 1/ It appearing that the allegations of the charge, if true, may

1/ More specifically, AFSCME asserted that the contemplated actions of the Township violated N.J.S.A. 34:13A-5.4(a)(1)(2)(3) and (5).

These subsections prohibit employers from "(1) Interfering with, restraining or coercing employees in the exercise of the rights
(continued on page 2)

constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 24, 1975.

An interlocutory decision dealing with AFSCME's request for interim relief pendente lite pursuant to N.J.A.C. 19:14-9.1, et seq. was issued on August 12, 1975.[2/] In this decision the Executive Director, acting on behalf of the Commission, denied AFSCME's request for interim relief to restrain and prevent the subcontracting of sanitation work in the Township pending final disposition of the case. The Executive Director determined that the unfair practices alleged by AFSCME, if ultimately supported on the law and the facts, could be fully remedied by the Commission in due course.

Pursuant to the Complaint and Notice of Hearing, a plenary hearing was held on September 11, 1975 in Trenton, New Jersey at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Upon the entire record in this instant proceeding, the Hearing Examiner finds:

1. The Township of Little Egg Harbor is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

1/ (continued)
guaranteed to them by this act...(2) Dominating or 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...(and) (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.

2/ See Township of Little Egg Harbor and American Federation of State, County and Municipal Employees (P.E.R.C. No. 94), 1 NJ PER 37 (1975).

2. American Federation of State, County and Municipal Employees, Council 71 is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

3. An Unfair Practice Charge having been filed with the Commission alleging that the Township of Little Egg Harbor has engaged or is engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, a question concerning alleged violations of the Act exists and this matter is appropriately before the Commission for determination.

BACKGROUND

As set forth in the Executive Director's Interlocutory Decision most of the material facts are undisputed. AFSCME was certified by the Commission on February 14, 1975 as the exclusive public employee representative for a unit of blue collar employees employed in the Township's Sanitation and Road Departments. Negotiating sessions were held between the parties on or about March 19, April 30, May 15, May 28, June 18, June 26 and July 11, 1975.

At the first negotiating session on March 19, AFSCME presented its entire proposal and reviewed generally with the Township representatives the basic provisions of each of their proposed articles. One of its proposals was entitled "Article 17 - Contracting and Subcontracting of Public Work" and this contract clause was designed to prevent the contracting out of unit work during the term of the agreement. Although there is still some dispute concerning the exact amount of time spent by the parties on the issue of subcontracting it is apparent that discussions did take place concerning this basic issue on March 19, April 30, and July 11, 1975. It is also

uncontroverted that the Township at all times maintained that the decision to subcontract was solely within its discretion.

At the June 26, 1975 negotiating session the Township proposed a 10% across the board increase for the blue collar hourly employees in the Road and Sanitation Departments. Later that day the membership of AFSCME's unit voted to reject that proposal, but through their chief spokesman and negotiator, William M. Sweeney, they advised the Township the following day that they would be willing to accept the Township's salary offer.

On July 3 and July 10, 1975 the Township advertised for public bids, pursuant to the Local Public Contracts Law (N.J.S.A. 40A:11-15), to provide the garbage collection services currently performed by its Sanitation Department. Bids were to be received by July 21, and the Township would then have thirty (30) days, i.e. until on or about August 20, within which to either reject all bids or accept the lowest responsible bidder. The Township asserted that it had advertised for bids in order to properly evaluate the cost of a collective negotiations agreement with AFSCME as opposed to the cost of a private garbage collection contract.

For the July 11 negotiating session the attorney for the Township prepared a complete contract proposal incorporating therein all of the clauses previously agreed to by the parties along with the Township's position on the particular articles that had not yet been resolved, including the Township's proposal concerning the subcontracting issue. Article 16, Section 2(e) of the Township's proposal set forth that nothing contained in the agreement shall "prevent or prohibit the Employer from contracting out or subcontracting any public work which may affect employees in the bargaining unit."

The Township was advised on this date by Mr. Sweeney that he would not recommend to the membership that they accept this complete contract proposal because of the practical effect of Article 16, Section 2(e).

The Unfair Practice Charge was thereafter filed by AFSCME and was docketed by the Commission on July 18, 1975.

As set forth earlier the interlocutory decision dealing with AFSCME's request for interim relief pendente lite was issued on August 12, 1975. Shortly thereafter the three bids that had been received by the Township in response to its advertisements were returned to the participants and were rejected.

MAIN ISSUES

1. Whether the issue of contracting out the sanitation work presently performed by members of the collective negotiating unit is within the scope of collective negotiations, and if so, whether this issue is a required or permissive subject for collective negotiations?

2. Whether there is an attendant obligation on the part of the Township to negotiate with the majority representative of these employees present under the facts of this case? 3/

3. Whether the conduct of the Township in this instant matter is violative of N.J.S.A. 34:13A-5.4(a)(1)(2)(3) and (5)?

3/ The statutory obligation to which the undersigned refers in this decision is stated as follows in N.J.S.A. 34:13A-5.3, where pertinent:

"Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and esignated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

POSITION OF AFSCME CONCERNING THE NEGOTIABILITY OF THE SUBCONTRACTING ISSUE

AFSCME contends that there can be no question that the issue of subcontracting unit work is a mandatory subject for collective negotiations in light of particularly apposite judicial and administrative decisions emanating from the private and public labor sectors. AFSCME asserts that to rule otherwise and hold that the concept of "contracting out" is not a mandatory subject for collective negotiations would not only be contrary to substantial legal authority but would make a mockery of the very concept of good faith negotiations in that many hours of seemingly productive negotiations could be swept away completely if a public employer decided unilaterally that it would be less expensive to subcontract unit work. AFSCME argues that the phrase "terms and conditions of employment" clearly encompasses the issue of subcontracting that in all probability may lead to the termination of an individual's employment.

AFSCME points out that N.J.S.A. 34:13A-2 clearly enunciates the public policy that "the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace, and the health, welfare, comfort, and safety of the people of the State." AFSCME maintains, therefore, that the decision to subcontract out unit work must be deemed to be mandatorily negotiable since the legitimizing of unilateral subcontracting would subvert the purpose of the New Jersey Employer-Employee Relations Act, as amended, to foster the collective negotiations process [including the utilization of the mediation and fact-finding processes].

In addition, AFSCME proffers the argument that since employees in the public sector are legally prohibited from striking or withholding their services from their employers public employers are likewise proscribed from withholding specific services from their employees by unilaterally contracting out unit work.

AFSCME also contends that the actions of the Township itself up until the time of the filing of the unfair practice charge indicated that it acknowledged that the question of subcontracting was a mandatory subject for negotiations as evidenced by the Township's insistence on including within an agreement a clause reserving its right to contract out any public unit work.

POSITION OF THE TOWNSHIP CONCERNING THE NEGOTIABILITY OF THE SUBCONTRACTING ISSUE

The Township contends that it is under no duty to negotiate the issue of subcontracting with AFSCME inasmuch as the right to subcontract is a management prerogative and thus beyond the scope of mandatory collective negotiations under the Act.

The Township argues that the sole purpose of soliciting bids concerning the issue of providing for an "outside" sanitary collection service was to determine from an economic standpoint whether it was in the public interest to continue to maintain a public Sanitation Department. The Public Employer maintains that while there may be a duty to negotiate with respect to contracting out in a limited number of situations, in accordance with judicial precedent, it is equally clear that where the decision to subcontract is based upon economic considerations, an employer need not forego or negotiate away his right to contract out. The Township asserts that the clearly

evident need for a substantially increased outlay for capital improvement that would be required in the near future should it continue to operate its own Sanitation Department buttresses its contention that it need not negotiate with AFSCME concerning the decision to subcontract.

The Township, in addition, cites the Local Public Contracts Law (N.J.S.A. 40A:11-15) as conferring unequivical authority upon the governing bodies of municipalities to contract for private garbage disposal services in an effort to obtain the highest possible quality of work for the lowest possible cost. The Township maintains, therefore, that a municipal body need not demand that they be "given" the managerial prerogative to subcontract unit work since they already have legislatively been given that authority subject to the requirement that they must act honestly.

DISUCSSION OF THE NEGOTIABILITY OF A DECISION TO SUBCONTRACT

Under the New Jersey Employer-Employee Relations Act, as amended, a public employer is required to "negotiate in good faith with respect to grievances and terms and conditions of employment." The decisive threshold question before the undersigned, then, is whether the subject of the subcontracting of sanitary collection services presently performed by members of the negotiating unit is covered by the phrase "terms and conditions of employment" within the meaning of the Act.

Nowhere in the Act has the Legislature defined the phrase "terms and conditions" nor has it specified what subjects are negotiable and what issues are outside the sphere of negotiations. The New Jersey Supreme Court in a series of decisions often referred to as "the Dunellen trilogy" /_Dunellen Board of Education v. Dunellen Education Assn., 64 N.J. 17 (1973); Englewood Board of Education v. Englewood Teachers' Association, 64 N.J. 1 (1973); and Burlington County College Faculty Assn. v. Board of Trustees, 64 N.J. 10 (1973)_/

elucidated the general policy that given the then blanket statement in Section 10 of the Act that no provision in the Act shall "annul or modify any statute or statutes of this State" [N.J.S.A. 34:13A-8.1] a public employer need not abdicate its statutorily delineated authorities and responsibilities in its dealings with the majority representatives of its employees. The Supreme Court emphasized that if particular determinations of a public employer were predominantly matters of educational policy which had no effect, or at the most only remote and incidental effects on the terms and conditions of their employees' employment, these determinations were not proper subjects for mandatory negotiations. The Supreme Court noted that it was cognizant of the administrative and judicial burdens that would most probably result from case by case determinations of the negotiability of particular issues; However, Justice Jacobs wrote in the Englewood Board of Education decision [4/] that the Court "pending further definitive legislation... must continue the conscientious effort of giving effect to the provisions in our Education Law (Title 18A) without, however, frustrating the goals or terms of the Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq.)."

With the enactment of Ch. 123, P.L. 1974, effective as of January 20, 1975, the Legislature, inter alia, amended and supplemented our Act, in part, to enable the Commission to serve as a quasi-judicial administrative forum for the determination of scope of negotiations questions. [5/] The

4/ Englewood Board of Education, supra, at page 9

5/ In Section 1(d) of Ch. 123 [N.J.S.A. 34:13A-5.4(d)] the Legislature provided as follows:

> The Commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The Commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the Commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

Legislature also amended Section 10 of P.L. 1968, C. 303 /‾N.J.S.A. 34:13A-8.1_7 to read as follows: "Nothing in this act shall be construed to annul or modify, or to preclude the continuation of any agreement during its current term heretofore entered into between any public employer and any employee organization nor shall any provision hereof annul or modify any pension statute or statutes of this State." (emphasis added)

Since the enactment of Ch. 123, P.L. 1974 the Commission has rendered several determinations as to whether specific disputed matters are required, permissive or illegal subjects for collective negotiations.

In one decision /‾In re Fair Lawn Board of Education (Fair Lawn Administrative and Supervisory Association), P.E.R.C. No. 76-7, 1 NJ PER 47 (1975)_7 the Commission determined that a Board of Education's decision to reduce the work year of seven elementary school principals from twelve to ten months was not a required subject for collective negotiations, but that the impact of this decision on the terms and conditions of the principals' employment must be negotiated with the majority representative upon demand. The Commission found that the decision to reduce the work year of these principals had been made for managerial and educational reasons and held that "matters of inherent management authority and/or educational policy are outside the scope of collective negotiations".

In a later decision /‾In re City of Trenton (Trenton Patrolmen's Benevolent Association, Local No. 11), P.E.R.C. No. 76-10, 1 NJ PER 58 (1975)_7 the Commission held that a public employer's decision to create an internal investigation unit within its police department was a permissive, but not a required, subject for collective negotiations. The Commission did

find that the impact of this decision was a required subject for collective negotiations. The Commission determined that the decision of a public employer to utilize a particular method for maintaining an awareness of the alleged misconduct of its employees did not constitute a term or condition of employment of its police department employees.

In its most recent "Scope of Negotiations" decision /In re Hillside Board of Education (Hillside Education Association), P.E.R.C. No. 76-11, 1 NJ PER 55 (1975)/ the Commission determined that sick leave, compensation and scheduled hours of employment were required subjects of negotiations citing the Englewood Board of Education and Burlington County College judicial decisions referred to hereinbefore. The Commission stated that the matters of working hours, sick leave and compensation were clearly terms and conditions of employment and thus were mandatorily negotiable. The Commission did emphasize that its statement that the issues in dispute in Hillside were controlled by the Englewood case meant only that the Commission was referring to the narrow holding in that case that hours and compensation were terms and conditions of employment. The Commission has not yet commented on whether it has adopted as its own basic standard for determining the negotiability of particular matters the Dunellen rationale that major educational or governmental policies which indirectly affect working conditions of employees remain exclusively with the public employer and are not mandatorily negotiable; whereas issues which are not predominantly educational or governmental policies and directly affect the financial and personal welfare of public employees do not remain exclusively with the public employer and are mandatorily negotiable.

Although the Commission has not yet had the opportunity to determine whether the issue of subcontracting is a required, permissive or illegal subject for collective negotiations the Commission's named designee, Jeffrey B. Tener, Executive Director of the Commission, determined in a recent decision concerning a request for interim relief pendente lite, pursuant to Section 19:14-9.1 of the Commission's Rules /̲N.J.A.C. 19:14-9.1 _7, that "there can be little doubt that the impact of the decision to contract out as it affects terms and conditions of employment - if not the decision itself - is within the scope of negotiations." 6/ (emphasis added)

In the absence of any definitive Commission or state judicial decisions concerning the negotiability of the decision to subcontract the undersigned has carefully examined apposite judicial and administrative decisions from other states and the federal private sector dealing with this issue. The Courts of our State have specifically recognized that the New Jersey Employer-Employee Relations Act was patterned after the National Labor Relations Act, as amended, and that experience and adjudications under the latter may be utilized as a guide in resolving disputes arising under out Act. 7/

The undersigned concurs with the litigants in this matter that the United States Supreme Court decision in Fibreboard Paper Products v. National Labor Relations Board, 379 U.S. 203 (1964) is the place to begin in analyzing whether the subject of the subcontracting of sanitary collection services

6/ See Township of Stafford (Communication Workers of America, AFL-CIO), E.D. No. 76-9, 1 NJ PER 54 (1975).

7/ See Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970)

is covered by the phrase "terms and conditions of employment" within the meaning of the New Jersey Employer-Employee Relations Act.

Fibreboard arose out of a dispute between the Fibreboard Paper Products Company and the Union that had been the exclusive bargaining representative for a unit of the company's maintenance employees since 1937. The latest contract between the parties contained a provision for automatic renewal unless one of the parties gave sixty days notice of a desire to modify or terminate the contract which was to expire on July 31, 1959. On May 26, 1959 the Union gave timely notice of its desire to modify the existing contract and attempted to arrange a bargaining session with the company's representatives.

The company delayed meeting with the Union until July 27, 1959, at which time the Union was informed that the Fibreboard Company had decided to subcontract the maintenance work performed at one of its plants, work which had been done by Union members. The company announced that a substantial cost savings could be effected by contracting out the maintenance work to a private service. By July 30th a contractor had been hired on the basis of the costs of the operation plus a fixed fee of $2250 per month. The union was then told that since there would no longer be any employees within the Union's bargaining unit further negotiations concerning a successor agreement would be futile. The Union shortly thereafter charged Fibreboard with violations under Section 8(a)(1), 8(a)(5) [8/] of the National Labor Relations Act.

8/ The subsections provide, in part, as follows:

Section 8(a) It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 [of the Act]; (2) by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organizations...(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a) [of the Act]...

In finding that Fibreboard was guilty of an 8(a)(5) violation the United States Supreme Court determined that the decision to subcontract the maintenance work concerned "terms and conditions of employment" and was therefore a mandatory subject for collective bargaining. The Supreme Court enunciated several reasons for its decision. The undersigned concludes that a careful reading of the decision of the Court in Fibreboard concerning the rationale behind its decision and an examination of specific additional factors perhaps unique to New Jersey public sector labor relations mandates the conclusion that the contracting out of sanitation work in this instant matter is a required subject for collective negotiations.

The Court in Fibreboard first determined that "the subject matter of the dispute is well within the literal meaning of the phrase "terms and conditions of employment" /Fibreboard, supra at 210/. The undersigned concurs. The contracting out of the sanitary collection service in the Township would certainly involve a departure from previously established operating practices, and would result in a significant impairment of job tenure, employment security, or anticipated work opportunities for all those members of the negotiating unit represented by AFSCME who presently perform the garbage collection services within the Township. A decision to subcontract by the Township would effectively terminate the employment relationship vis-a-vis certain employees in the unit without which there would be no wages, hours or conditions of employment. The Pennsylvania Labor Relations Board in a recent decision /In re Mc Keesport Area School District, Case No. PERA-C-6242-W, 6 PPER 153 (1975)/ held that "probably no decision (with reference to the decision to subcontract) can have a more cataclysmic effect on wages, hours and working conditions..."

The second delineated justification for the Fibreboard decision was that it effectuated one of the primary purposes of the NLRA, "to promote

the peaceful settlement of industrial disputes by subjecting labor-management controversies to the mediatory influence of negotiations. /Fibreboard, supra, at page 211/ The Court added that to hold "that contracting out is a mandatory subject of collective bargaining would promote the fundamental purpose of the Act /NLRA/ by bringing a problem of vital concern to labor management within the framework established by Congress as most conducive to industrial peace." /Fibreboard, supra, at page 211/

It is readily apparent that the New Jersey Employer-Employee Relations Act also acknowledges that refusals to negotiate have often led to industrial or governmental strife in both the private and public labor sectors. In its policy declaration the Act sets forth the following:

> It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination. 9/

9/ N.J.S.A. 34:13A-2

The undersigned concludes that the purposes of our Act would be served by requiring the Township to negotiate concerning the question of subcontracting unit work. It is well established in both the private and public sectors that the duty to negotiate in good faith is not inconsistent with a firm position that may be taken during negotiations on a particular subject such as subcontracting. 10/ It may well be the case in this instant matter that after negotiations between the Township and AFSCME are satisfactorily concluded the result may be that the Union will have agreed - perhaps in return for additional considerations - to a clause recognizing the Township's right to subcontract under certain circumstances. The key consideration is that AFSCME be afforded an opportunity to respond to the Township's position that the maintenance of the Township's Sanitation Department in the future will be far too costly as compared to the subcontracting alternative. The Commission's mediation and fact-finding services would be made available to the parties upon request if bilateral negotiations between the Township and AFSCME failed to lead to an agreement.

A third reason referred to by the Supreme Court in Fibreboard in support of its decision was the fact that subcontracting "in one form or another has been brought widely and successfully within the collective bargaining framework since.../p/rovisions relating to contracting out exist in numerous collective bargaining agreements and contracting out work is the basis of many grievances..." /Fibreboard, supra, at page 211/ Although subcontracting clauses are not as common in the public sector - in large part because the specialized functions and responsibilities of public employees such as teachers, law enforcement officers, and firefighters

10/ See State of New Jersey (Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO), E.D. No. 79, 1 NJ PER 39 (1975); Request for review denied by Commission, P.E.R.C. No. 76-8

make subcontracting unlikely - management rights clauses, fair dismissal procedure articles, grievance procedures, reduction in force provisions, and terminal benefits clauses, to name a few, are commonly included within public sector agreements and like subcontracting provisions deal with questions concerning the termination of an individual's employment.

A fourth factor enunciated by the Court in the Fibreboard decision referred to the fact that the Company's decision to contract out maintenance work did not alter the Company's basic operation inasmuch as the "maintenance work still had to be performed at the plant." [Fibreboard, supra at page 213] Judicial decisions decided after the Fibreboard case have held, for example, that a decision to convert a company owned retail outlet into an independently owned and operated franchise dealership, a decision to close part of a business operation, and a decision to change a distribution method by using independent contractors rather than employees were not bargainable matters since they involved a fundamental alteration of the basic operations of the companies involved and did not involve simply the replacement of existing employees with those of an independent contractor to do the same work under similar conditions of employment.[11/] In the instant matter it is uncontroverted that the Township would remain primarily responsible for garbage collection and disposal if the sanitary collection work was contracted out. It is also undisputed that the subcontracting operation contemplated by the Township would involve the replacement of present employees with those of a private contractor who would do the same work under similar conditions of employment.

11/ See Intl. Union United Automobile Workers, Local 864 v. N.L.R.B. 476 F. 2d 422 (1972); N.L.R.B. v. Drapery Mfg. Co., 425 F. 2d 1026 (1970); and N.L.R.B. v. Adams Dairy Inc. 350 F. 2d 108 (1965), cert. denied 382 U.S. 1011 (1966)

It is apparent to the undersigned that the Township remains integrally involved in the business of providing basic sanitary collection services to its taxpayers unless it decides, assuming it is legally permissible, to cease providing these essential services to its residents. 12/ Until then the Township's "basic operation" remains unchanged.

A fifth reason, albeit not a controlling one, for the Supreme Court's determination that the decision to subcontract was a subject for mandatory bargaining was that there was no capital investment or recoupment contemplated by the Company. In the instant matter before this Hearing Examiner the Township emphasized that costly capital expenditures would be necessary in the near future in order for the Township to operate their sanitation department efficiently. Evidence was proffered in the record that the Township would most probably have to replace at least one and more likely two of its garbage collection vehicles and would also have to purchase or lease another sanitary landfill area in the coming year if it continued its public collection services. The Township argued that the holding in the Fibreboard case would have been differenct concerning the negotiability of a decision to subcontract if capital investment considerations had been contemplated by the Company in that case.

The undersigned does not find that the Township's desire to effect a cost savings by subcontracting out negotiating unit work and avoiding additional expenditures for the purchase of garbage trucks and a new sanitary landfill site is in any way controlling. It is clear that the

12/ The undersigned does not decide whether a decision to go out of the sanitary collection business entirely, by perhaps arranging for a neighboring municipality or the Ocean County Board of Freeholders to take over complete responsibility for providing these services, would be a required subject for negotiations.

Fibreboard case and other administrative and judicial decisions handed down thereafter, although perhaps limited to the facts in each particular case, recognize that contracting out work, albeit for economic reasons, is a mandatory subject for collective negotiations. Admittedly the concept of "capital investment or recoupment" referred to by the Township has been cited by the courts in differentiating particular cases from Fibreboard.[13/] However, this concept has been utilized in the private sector in situations where employers have liquidated parts of their businesses and ceased to provide particular services and being responsible for same leading to dramatic changes in their capital structures which in turn led to a recoupment of capital investment. This principle has not been applied to cases where an employer continued to be responsible for the maintenance of particular services and sought to subcontract certain unit work only to avoid the additional expenditures involved in the purchasing of new machinery or materials.

A final factor referred to in the Fibreboard decision in determining whether a subcontracting decision is a subject of mandatory negotiations is whether an employer's right to manage would be unduly restricted if bargaining was required. The undersigned concludes that the Township's "right to manage" will not be unduly restricted if it is compelled to negotiate in good faith with AFSCME concerning the issue of subcontracting.

As stated above, a long line of labor law decisions in both the public and private sectors has enunciated the policy that the imposition of a duty to negotiate or bargain does not mandate that either party agree on a

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13/ The undersigned believes that, in general, decisions concerning the commitment of investment capital are not in themselves about conditions of employment, although the effect of these decisions may be to terminate employment.

particular proposal or require the making of concessions. A firm position taken by a party on a particular issue such as subcontracting is not necessarily indicative of a failure to negotiate in good faith. It is certainly possible, therefore, that the Township may be able to accomplish its economic objectives concerning the holding down of costs involving sanitary collection services at the conclusion of the negotiations process.

It is hoped that the commencement of negotiations on the subject of subcontracting will at least enable AFSCME to respond to the Township's complaints that the continued maintenance of a public garbage collection and disposal service would be too costly. AFSCME's input may reveal aspects of the problem that were previously ignored or inadequately considered by the Township. Solutions involving perhaps increased productivity and/or shorter work weeks may be proposed by AFSCME that would protect the interests of both the Township and its taxpayers as well as the interests of the Sanitation Department employees. It is important to note at this juncture that the then Mayor of the Township, Robert Leitz, testified that he felt along with the rest of the community that the bids received concerning the garbage collection service should be rejected before the August 20, 1975 deadline because he thought that the Township "would go back to the negotiation here and try to solve our problem."[14/]

The undersigned believes that in any event the phrase "terms and conditions of employment" must be interpreted even more expansively in the public labor law sector than in the private sector under the NLRA. This Hearing Examiner concurs with the commentators and jurists who have asserted

14/ See transcript, page 107

that only be requiring mandatory negotiations on a wide range of issues are public employees' rights adequately protected since public employees in most states, including New Jersey, are prohibited from engaging in strikes.[15/]

In addition, as referred to hereinbefore, the New Jersey Supreme Court in the Dunellen decision referred to Section 10 of the Act as then written when the Court stated that with regard to the question of what were "terms and conditions of employment" within the meaning of the Act the Legislature had "clearly precluded any expansive approach...by directing unequivocally that provisions in existing statutes such as [the] educational laws shall not be deemed annulled or modified." [Dunellen, supra at page 31] (emphasis added) As noted heretofore the Legislature has amended Section 10 of the Act to read in part that no provision of Ch. 123, P.L. 1974 shall "annul or modify any pension statute or statutes of this State." (emphasis added) The Legislature failed to approve two different proposed statutory management rights clauses which, it is arguable, would have also precluded any expansive approach being taken concerning the concept of "terms and conditions of employment" within the intendment of the Act.[16/]

15/ See, for example, Edwards, "The Emerging Duty to Bargain in the Public Sector," 71 MICH L. Rev. 885 (1973) and Van Buren Public School District v. Wayne County Circuit Judge (Michigan Court of Appeals, Division 1, 90 LRRM 2615 (1975)

16/ These proposals were as follows:

1. Nothing in this act shall be construed to annul the duty, responsibility or authority vested by statute in any public employer or public body except that the impact on terms and conditions of employment of a public employer's or a public body's decisions in the exercise of that duty, responsibility or authority shall be within the scope of collective negotiations.

2. It is the right of any public employer to determine the standards of services to be offered; determine school and college curricula; determine the standards of selection for employment; direct its employees; take disciplinary action; maintain the efficiency of operations; determine the methods, means and personnel by which operations are to (continued on next page)

The undersigned believes that the Legislature has, therefore, now embraced the philosophy of construing "terms and conditions of employment" more expansively than before. It may thus be concluded that the particular considerations referred to herein as being unique to the public sector in New Jersey do much to buttress this Hearing Examiner's determination that the decision to subcontract in this instance is mandatorily negotiable.

In response to one of the arguments advanced by the Township it is important to emphasize at this point that nothing in this report and decision is intended to dispute the fact that the Township is granted unequivocal authority to contract out for private garbage disposal services in an effort to obtain the highest quality of work for the lowest possible cost. The thrust of this report concerning the mandatory negotiability of the decision to subcontract is that the Township will be required to negotiate with a majority representative in good faith before making and implementing any decision to subcontract.[17/]

In summary, the undersigned has concluded that the issue of contracting out the sanitation work presently performed by members of AFSCME's negotiating unit is a required subject for collective negotiations and

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16/ (continued)

2. be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of any public employer on the aforesaid matters are not within the scope of collective negotiations; provided, however, that questions concerning the practical impact that decisions on said matters have on employees, such as questions of workload or manning, are within the scope of collective negotiations.

17/ The undersigned finds that the decision to subcontract is indistinguishable from the impact of this decision in that it is inextricably tied in with the terms and conditions of employment of unit employees.

that, therefore, there exists an attendant obligation on the part of the Township to negotiate in good faith with AFSCME under the facts of this case.[18/]

POSITION OF AFSCME ON WHETHER THE TOWNSHIP'S CONDUCT IN THIS MATTER IS VIOLATIVE OF THE ACT

AFSCME maintained originally in its unfair practice charge that the Township's conduct in this instant case was violative of N.J.S.A. 34:13A-5.4(a)(1)(2)(3) and (5). AFSCME argued that the decision to solicit bids for the sanitary collection service in July of 1975 was an attempt to coerce and restrain the employees of the unit from resisting the demands of the Township through good faith negotiations in violation of Section a(1) of the unfair practice section of the Act, as amended.

AFSCME also contended that the Township violated Section a(2) since its position on subcontracting would lead to the termination of certain unit employees and would, therefore, undermine the cohesion of the negotiating unit.

Furthermore, AFSCME asserted that the Township's actions violated Section a(3) of the unfair practice section of the Act since the question of subcontracting was raised only after Council 71 had become certified as the majority representative of the unit and after negotiations had commenced.

Finally, AFSCME maintained that the Township's behavior contravened Section a(5) since the imminent subcontracting of unit work without extensive, bilateral negotiations constituted a refusal to negotiate in good faith. AFSCME added that if the actions of the Township did not constitute a "per se" refusal to negotiate then the Township was still guilty of bad faith

18/ The undersigned will address the question of the duration of the duty to negotiate shortly.

negotiations because of its actions in letting out the sanitation collective service to bid after failing to gain a bilateral agreement concerning the subcontracting issue.

At the evidentiary hearing that was held on September 11, 1975 and in its post-hearing brief AFSCME emphasized that the refusal to negotiate charge under Section a(5) concerned the "fundamental thrust" of its argument and AFSCME did not concentrate in further developing its contentions that other sections of the Act were violated. AFSCME did contend that facts supportive of its other contentions could be drawn from the evidence developed at the hearing itself.

POSITION OF THE TOWNSHIP OF WHETHER ITS CONDUCT WAS VIOLATIVE OF THE ACT

The Township specifically denied at all times that it was involved in the commission of any unfair practices in violation of N.J.S.A. 34:13A-5.4 a(1)(2)(3) or (5).

With specific reference to section a(2) the Township stated that there was nothing introduced into the record to suggest that the Township Committee in any way dominated or interfered with the formation, existence or administration of the negotiating unit represented by AFSCME.

As for the alleged violationsof sections (1), (3) and (5) the Township argued that it acted in good faith at all times in its dealings with AFSCME as evidenced by the negotiating history between the parties. Furthermore, the Township proffered that there was no evidence elicited that could support a finding that their positions on subcontracting were motivated by anti-union animus and not by economic considerations.

The Township appeared to emphasize that although it had no legal duty to negotiate the matter of subcontracting with AFSCME since this issue involved a managerial prerogative that was not a mandatory subject for collective negotiations it had in any event, at several negotiating sessions, discussed its positions and proposal on this subcontracting issue and remained ready, willing and able to negotiate, execute and implement a collective negotiating agreement with AFSCME.

The Township concluded by submitting that it has never been an unfair practice for an employer to maintain an adamant but valid position during the course of negotiations.

DISUCSSION OF THE ISSUE OF WHETHER THE TOWNSHIP'S CONDUCT IN THIS MATTER IS VIOLATIVE OF THE ACT

Once an issue is determined to be a required subject for collective negotiations, the next issue is: Assuming he has negotiated at all, when may an employer refuse to negotiate further and choose to take unilateral action instead? The undersigned must examine the totality of the Township's conduct during the course of negotiations to determine whether the Township has fulfilled its obligation to negotiate in good faith with AFSCME concerning the issue of subcontracting and has reached the point when unilateral action may be contemplated with regard to this subject.

An examination of the entire record does establish that the Township and AFSCME did engage in discussions concerning the issue of subcontracting on at least three separate occasions. At the first negotiations session on March 19, 1975 AFSCME presented its proposals, containing approximately twenty two separate articles, to the representatives of the Township. One of the proposed articles [Article 17] presented at that time set forth

that "/d/uring the term of this agreement, the employer shall not contract-out or subcontract any public work which affects employees in the bargaining unit." 19/ During this two hour session each of the proposed articles was reviewed generally by the parties. At this session the Township indicated that Article 17 was not acceptable. The parties discussed this subcontracting article for no longer than a few minutes at the March 19, 1975 meeting. The then Mayor of the Township, Robert Leitz, testified that he thought that on March 19, 1975 he had remarked to William Sweeney, a Field Representative for AFSCME and chief negotiator and spokesman for the unit, that the Township would probably put the garbage contract out to bid. 20/

At a lengthy second negotiations session held on April 30, 1975 there was an extensive review, article by article, of AFSCME's proposals. There were initial agreements reached on certain issues and there was an extended exchange of positions on the outstanding issues including the subject of subcontracting. The Township at this meeting again refused to agree to AFSCME's proposal on subcontracting. The Township indicated the economic advantages for subcontracting the sanitary collective services compared with the continued maintenance of a municipal collection system. AFSCME countered by explaining the rationale behind its proposal and emphasized the need for insuring job security. The parties engaged in perhaps a half an hour discussion at this time concerning the respective positions taken on subcontracting. Mayor Leitz testified that it was his recollection that the Township had taken the position at either the first or second meeting that it was going to "advertise for the contract" and was

19/ Exhibit R-1

20/ Transcript, pages 19, 20, 37, 38, 43, 65, 95 and 96

about to subcontract the work out. At the end of the April 30, 1975 session no accord was reached on the subcontracting issue and AFSCME requested that the issue "be put on hold" until a later date. 21/

The record indicates that at negotiating sessions held on or about May 15, May 28, June 18 and June 26, 1975 the parties reached tentative agreements on the subject matter of many of the articles proposed by AFSCME originally. Apparently the only issues that were unresolved - after AFSCME had advised the Township on June 27, 1975 that it would accept the Township's salary offer - were matters concerning a dues check off provision, the wording of a particular portion of an arbitration clause, a discipline and discharge article, and a management rights clause.

As stated hereinbefore the Township then advertised for public bids on July 3 and July 10, 1975, pursuant to the Local Public Contracts Law, to supply the garbage collection services currently performed by its Sanitation employees. Although Mayor Leitz testified that he had announced to representatives of AFSCME on more than one occasion that the Township was about to advertise for bids he was unable to remember any of the specifics of these conversations. The witnesses called by AFSCME asserted that they found out about the Township's decision to advertise for bids for the garbage collection services for the first time when they read the advertisements in the newspaper on or about July 3, 1975. 22/

At the last negotiating session between the parties held on July 11, 1975 the attorney for the Township prepared a complete contract proposal

21/ Transcript, see pages 21, 41-44, 65, 111-113 and 122

22/ Transcript, pages 22, 84, 111-113

incorporating therein all of the clauses previously agreed to by the parties along with the Township's position on the articles that had not yet been resolved, including a specific proposal on the subcontracting issue. Article 16, Section 2(e) of the Township's proposal set forth that nothing in the agreement shall "prevent or prohibit the Employer from contracting out or subcontracting any public work which may affect employees in the bargaining unit." At this point AFSCME rejected the Township's proposal and shortly thereafter chose to file its unfair practice charge.

As set forth earlier the Township announced on or about August 20, 1975 that it had returned the three bids that had been received by the Township and had rejected them. It is uncontroverted, however, that the Township still maintains the position that it will not remove Article 16, Section 2(e) from the proposed contract and states that it is the Township's intention to subcontract the garbage collection services in the event that it proves to be economically advantageous.

It is likewise undisputed that on August 20, 1975 William Sweeney sent a letter to Mayor Leitz requesting another meeting between the parties at which time an "all out" effort could be made to resolve the difference between the parties. [23/] There was no response from the Township received concerning this letter.

The undersigned, after due consideration of the foregoing and the record as a whole, finds that the Township has engaged in an unfair practice by failing to negotiate in good faith with AFSCME about the issue of subcontracting. The decision to advertise for bids to provide the services

23/ See Exhibit CH-1

currently performed by the employees of the Sanitation Department during the middle of negotiations for a first contract could only have had a "chilling effect" on the entire negotiations process. This unilateral action certainly effected changes in the "status quo" with reference to the terms and conditions of employment of a Sanitation Department employee, specifically with regard to an individual's job security and expectation of continuing employment. The record establishes that a municipal sanitary collection service has been maintained for approximately the past nine years. The very act of setting in motion the process of subcontracting unit work, in a drastic departure from existing and past practices, is tantamount to the sending of termination notices to employees negotiating a first contract with only the precise date of termination left blank.

Although the bids received by the Township in response to the advertisements were rejected it is unlikely that the effects of the Township's decision to advertise can be attenuated in the near future especially if the employees in the unit believe that their employment could be terminated at any time, even before the invocation of the Commission's impasse resolution procedures, if new bids were advertised and an offer was accepted. It would be naive to assume that the effects on the Sanitation Department employees of the decision to advertise for bids were appreciably less prejudicial to the entire negotiations process solely because the bids were rejected for the time being.

In addition, the record does support a finding that the Township was not negotiating in good faith as it proceeded to go through the motions of negotiating a comprehensive contract with AFSCME concerning the terms and

conditions of employment of approximately 16 employees while it knew that very shortly the jobs of 12 of these employees would most probably no longer exist and yet chose not to discuss any substantive alternatives to subcontracting with AFSCME.

If the Township had merely insisted on the inclusion of its provision on subcontracting within an agreement this firm position by itself would not have been indicative of a refusal to negotiate especially in light of the substantial progress that had been made by the parties in resolving many of the other contract items at issue. It is the undersigned's determination that the practical effects of the decision to advertise for bids, in light of the facts in this case, mandates a finding that the Township was guilty of negotiating in bad faith in violation of the Act. 24/

A question now remains concerning what the Township can do to purge itself of its earlier conduct. It is also important, in this regard, to discuss the often debated topic of the "duration of the duty to negotiate" in order to inform the parties when unilateral action on the part of the Township, assuming the absence of an agreement, may no longer be violative of the Act.

The undersigned believes that in the context of negotiations for a collective bargaining agreement in the State of New Jersey no public employer may be permitted to take unilateral action with regard to a required subject for collective negotiations such as the decision to subcontract, absent

24/ It is evident to the undersigned that reliable information could have been obtained conerning the costs of subcontracting without advertising for bids.

extraordinary circumstances, until after all impasse resolution procedures [including mediation and fact-finding] have been exhausted.[25/] Public employees who comply with laws prohibiting strikes should be protected from unilateral actions taken by public employers concerning required, mandatory subjects for collective negotiations during the period leading up to the execution of a first agreement after recognition or certification as well as during the hiatus between the expiration date of an old agreement and the signing of a new contract.

The earlier reference to the qualifying phrase "absent extraordinary circumstances" is in recognition of those circumstances wherein it is clear that a particular public employer has negotiated in good faith with the designated majority representative concerning a mandatory subject for negotiations that included a thorough investigation of all conceivable alternatives to a contemplated change in the "status quo". In these delimited circumstances it may not be necessary that a public employer exhaust all administrative impasse procedures.[26/]

In this regard it is instructive to note that the record in the matter before this Hearing Examiner does not show that the Township and AFSCME did anything more than discuss in generalities the rationale behind their respective proposals concerning the issue of subcontracting. These discussions took place at no more than three negotiating sessions and lasted a total of perhaps one hour. The Township consistently took the position that

25/ See Piscataway Township Board of Education (Piscataway Township Education Association), P.E.R.C. No. 91, 1 NJ PER 49 (1975)

26/ See In re Borough of Wilkinsburg (Decision of the Pennsylvania Labor Relations Board) 2 PPER 154 (1972), Compare with In re McKeesport Area School District, supra.

the issue of subcontracting was a managerial prerogative and not within the required scope of negotiations. There was little, if any, discussion concerning projected costs of maintaining a municipal Sanitation Department as compared to the costs of subcontracting unit work. There were also no negotiations concerning possible alternatives to subcontracting that may include, among many others, agreements on shortened work weeks coupled with increased productivity, partial wage freezes, or an agreement to hire a full time mechanic responsible for the upkeep of all Township vehicles and machinery. The Township failed to provide evidence to AFSCME regarding the costs of various alternatives so AFSCME was not in a position to prepare its own proposals or to attempt to meet the Township's contentions regarding comparative costs.

It is thus determined that absent these "extraordinary circumstances" the Township must maintain the "status quo" concerning present terms and conditions of employment at least until the Commission's impasse procedures, set forth in N.J.A.C. 19:12-1.1, et seq., have been exhausted.

In conclusion, the undersigned finds that the Township did have an obligation to negotiate with AFSCME in good faith concerning the issue of contracting out sanitation work presently performed by unit members. Its actions referred to hereinbefore in refusing to do so constituted a violation of N.J.S.A. 34:13A-5.4(a)(5). The undersigned further concludes that the Township's improper conduct, although not apparently motivated by any specific anti-union animus, necessarily had a restraining influence and concomitant coercive effect upon the free exercise of the rights of the

employees involved in this proceeding guaranteed to them by the Act. Accordingly, this Hearing Examiner concludes that the Township's conduct also violated N.J.S.A. 34:13A-5.4(a)(1). 27/

After careful consideration of the foregoing and the record as a whole, the undersigned does not find that the Township's conduct violated N.J.S.A. 34:13A-5.4(a)(2) and (a)(3).

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Respondent, Township of Little Egg Harbor, shall cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act.

IT IS FURTHER ORDERED that the Respondent shall cease and desist from refusing to negotiate in good faith, upon request, with the American Federation of State, County and Municipal Employees, Council 71, concerning the subject of contracting out the sanitation work currently performed by certain members of the negotiating unit.

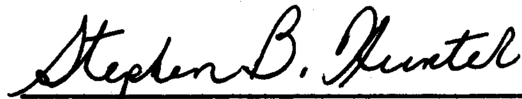
IT IS FURTHER ORDERED that the Respondent shall refrain from unilaterally altering, or threatening to unilaterally alter terms and conditions of employment of its employees, during the course of collective negotiations for an agreement with the American Federation of State, County and Municipal Employees, Council 71. The Township of Little Egg Harbor, its agents and representatives, shall refrain from contracting out, or receiving

27/ The undersigned does not, however, necessarily adopt the policy of the N.L.R.B. that would mandate that a violation by an employer of any of the six applicable subdivisions of the Act, other than an a(1) violation, would also be a violation of a(1) as a matter of course.

bids for contracting out, or from taking any action with respect to contracting out, of any work normally performed by the employees in the certified negotiating unit during the course of collective negotiations.

IT IS FURTHER ORDERED that those sections of the instant Unfair Practice Charge dealing with alleged violations of N.J.S.A. 34:13A-5.4(a)(2) and a(3) be dismissed.

RESPECTFULLY SUBMITTED



Stephen B. Hunter
Hearing Examiner

DATED: December 1, 1975
Trenton, New Jersey