

H.E. NO. 96-8

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

In the Matter of
CITY OF MARGATE,

Respondent,

-and-

Docket No. CO-H-95-224

MARGATE CITY LIFEGUARD ASSOCIATION,
Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission dismiss a charge filed by the Margate City Lifeguard Association against the City of Margate alleging that the City violated the Act when it terminated Association Co-President Brady Middlesworth. While the Association met its burden under Tr. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), the City showed a business justification for its action, i.e. that it would have taken its action anyway.

The Hearing Examiner, however, recommends that the Commission find that the City violated the Act by refusing to negotiate in good faith.

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Appearances:

For the Respondent, Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly (Stephen D. Barse, of counsel)

For the Charging Party, Tomar, Simonoff, Adourian, O'Brien, Kaplan, Jacoby and Graziano (Mary L. Crangle, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On January 6, 1995, the Margate City Lifeguard Association filed an unfair practice charge (C-1)^{1/} with the Public Employment Relations Commission against the City of Margate. The Association alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections

^{1/} "C" refers to Commission exhibits received into evidence at the hearing in the instant matter. "CP" and "R" refer to Charging Party's exhibits and Respondent's exhibits, respectively, received into evidence at the hearing. Transcripts of the successive days of hearing are referred to as "1T"- and "2T".

5.3 and 5.4(a)(3), (4) and (5)^{2/} by dismissing Association Co-President Brady Middlesworth and by failing to respond to the Association's September 22, 1994 request for negotiations.

On March 29, 1995, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1). On April 17, 1995, the City filed an Answer (C-2) denying that it violated the Act. It claims that prior to the filing of the charge it verbally discussed the scheduling of bargaining sessions but no date was agreed upon, and that on January 11, 1995, it directed a letter to the Association to schedule a meeting. It also claims that a session was scheduled for March 8, 1993, but the Association failed to appear and that a meeting took place on April 6, 1995 but no agreement was reached.

The City further claims that Middlesworth was dismissed for the following reasons: 1.) Serious Breach of discipline; 2.) Commission of a criminal act; 3.) Willful damage to public property; 4.) Disobedience of a rule or regulation of the Margate City Beach

^{2/} These subsections prohibit public employers, their representatives or agents from: "(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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

Patrol; and, 5.) Conduct unbecoming a public employee. It claims the disciplinary action arose out of a criminal investigation by the Margate City Police Department which resulted in a complaint being issued by the State of New Jersey against Middlesworth alleging that he had in his possession a firearm, specifically a paint pellet gun with the purpose to unlawfully use it against City property.

Hearings were held on June 28 and 29, 1995. The parties filed post-hearing briefs by September 6, 1995, and the City filed a reply brief by September 23, 1995. Based upon the record in this case I make the following:

FINDINGS OF FACT

1. The Association is the majority representative of a unit of lifeguards and lifeguard lieutenants employed by the City (CP-1).

2. The City is a beach community. Lifeguards are assigned to the City's beach from Memorial Day Weekend until the weekend after Labor Day. The primary duty of a lifeguard is to ensure the safety of bathers in the ocean (1T12, 1T15-1T16, CP-2). During the peak season, three lifeguards are assigned to 12 stands - a head guard, a middle guard and a low man (1T12-1T13, 1T32). Every two stands share a lifeguard shack and those stands are called a stretch (1T13). The daily hours of lifeguards in the summer of 1994, were from 10 a.m. to 6 p.m. (1T15).

The lifeguards fall within the City's Department of Public Safety which is headed by Commissioner of Public Safety Sigmund Rimm. In the summer of 1994, the beach patrol chain of the command began with Chief Carl Smallwood who reports to Rimm; below Smallwood was Captain Charley Wagner; below Wagner were Lieutenants Michael Baylinson and Carl Smallwood, Jr. and below them were the lifeguards (1T14, 1T24, 1T196-1T197). Prior to the summer of 1994, Smallwood was co-captain with George King, and they were at the top of the beach patrol chain of command (2T6).

Sometime in the winter of 1993-1994, Smallwood met with Rimm and decided which lifeguards would be asked to return for the summer of 1994. For all summers prior to 1994, the City sent letters in March to individuals it wanted back; individuals that were not wanted back were not sent a termination letter, but were simply not sent an invitation back (1T17; 2T48-2T51, 2T55).

3. Brady Middlesworth was employed by the City as a lifeguard each summer from 1988 until the Fall of 1994 (1T12). On July 10, 1992, while employed as a lifeguard, Middlesworth was arrested for possession and distribution of a controlled dangerous substance (1T65). After an article about the incident appeared in a local newspaper in the beginning of August, 1992, Middlesworth was suspended for the remainder of that summer (2T11, 2T48).

Middlesworth underwent Pretrial Intervention and the charges were dismissed (1T73). Thereafter, Middlesworth contacted then Co-Captain King about returning to the beach patrol the

upcoming summer and King contacted Smallwood. In the meantime, Officer Teasenfitz, a City Police Officer who was involved in the arrest, approached Rimm in May or June 1993 and asked if the City would let Middlesworth back on the beach patrol. Subsequently, Rimm, King and Smallwood met and the three decided to bring Middlesworth back for the Summer of 1993 (1T219, 1T262, 2T13)

4. In the summer of 1993, Middlesworth and fellow lifeguard Kevin Grant revitalized the Association which had become dormant the past four years (1T19). The only two lifeguards who did not join the Association that year were Smallwood's two sons; in 1994, both joined the Association (2T33).

In late July 1993, Middlesworth and Grant had a conversation with then Co-Captains King and Smallwood about the Association (1T19-1T21). They drove up to Middlesworth's and Grant's beach and said they had heard that he and Grant were reforming the Association and were renegotiating a contract. King and Smallwood told them "we ought not to go into negotiations with a hard head, that they had known people in the past who had developed relationships with the City in negotiating contracts" (1T19-1T21).

Grant claims that King and Smallwood expressed that he and Middlesworth should heed some caution in reforming the Association because they have heard of relationships that have deteriorated during negotiations (1T114). According to Grant, King and Smallwood further stated that if he and Middlesworth reformed the Association and got a contract things would have to be done by the book; they could not ignore being one or two minutes late anymore (1T114-115).

Smallwood said that he approached Middlesworth and Grant during his regular beach check and did not initiate the conversation about the Association. He commented to them that at one time there were bitter negotiations and that they should present their offers in a professional manner (2T8, 2T38-2T39).

Smallwood subsequently told Rimm that the Association was reforming. Rimm would talk to Smallwood about contract negotiations (2T40-2T42).

5. In August 1993, Middlesworth presented City Tax Collector Thomas Hiltner with signed dues deduction forms and requested that the City deduct dues from the lifeguards' pay. Hiltner refused, stating that the forms referred to the deductions being in accordance with the contract and since there was no contract between the City and the Association, he did not believe the City could deduct dues (1T23; 2T94). Hiltner also critically asked why he was reforming the Association and was he sure he wanted to do that (1T23). Hiltner did not refute this statement and thus I infer that it was said by him.

Hiltner said he would investigate the issue and get back to Middlesworth. The City's attorney thereafter wrote a letter dated September 13, 1993 to the Association's attorney stating that dues could not be deducted because a contract did not exist, but to advise if the lifeguards wished to have dues deducted irrespective of the non-existence of a contract (2T104-2T105, 2T112-2T113; R-4).

6. At the end of December 1993, Middlesworth and Grant, on behalf of the Association, sent Rimm a letter requesting a formal negotiations meeting and setting forth available dates (1T24-1T25). The City responded and a meeting was held in February 1994 at City Hall which was attended by Middlesworth, Grant, Rimm and Hiltner (1T25-1T26, 1T116).

Middlesworth and Grant presented three issues - 1. pay scale, 2. pension, and 3. uniforms. Rimm responded that uniforms were the City's prerogative and Hiltner responded the pension was a state matter. Rimm asked for their pay proposal and Middlesworth and Grant presented him with a proposed contract. When Rimm reviewed the pay section he remarked, in a hostile manner, that it was ridiculous, and that he was personally insulted that they would bring a contract like that to him. Rimm angrily remarked that if the lifeguards did not like their pay, they could be replaced (1T25, 1T27, 1T117-1T119). Grant then asked for the City's proposal to which Rimm responded that he did not know what was available and that he would have to talk to his lawyer (1T27-1T28, 1T118).

Rimm was flabbergasted and angry that the Association would request over a 40 percent increase in pay. He claims he probably told them their request disturbed him (1T200, 1T229-1T231). Rimm also said that their request far exceeded what the other City unions received and if they received it, the others would be looking for the same (1T202-1T203; 2T84, 2T100-2T101). Consequently, Rimm told them he would not be able to give any increases which would exceed

what the police and firemen received (1T202-1T203). Rimm then indicated since the request was so high, he would turn it over to his attorney (1T200, 1T202).

According to Hiltner, Rimm did not get upset or angry but in a normal tone of voice told Middlesworth and Grant that their request was excessive. (2T84, 2T99-2T100). Neither Rimm nor Hiltner denied that Rimm made the statement attributed to him by Grant and Middlesworth that if the lifeguards did not like their pay they could be replaced. Moreover, Rimm admitted that he was angry and disturbed by the Association's offer. Further, I do not find plausible Hiltner's testimony that Rimm simply used a normal tone of voice in calling the Association's proposal excessive. I thus find Grant's and Middlesworth's testimony regarding this statement plausible and credit it.

Rimm was out of the negotiations at that point. In late July 1994, the City's and Association's attorneys settled on a one (1) year contract, with the help of a mediator from the Commission. The agreement ran from January 1, 1994 through December 31, 1994 (CP-1, 1T28-1T30, 1T203).

7. In the summer of 1994, Middlesworth was first assigned to Vendome Avenue beach. After one day, Middlesworth requested a move because he confronted individuals involved in his 1992 drug incident there. Chief Smallwood accomodated him and reassigned him to Clermont Avenue beach where he was the middle guard (2T15-2T16). Argyle Avenue was the other part of the stretch and that was staffed

by Grant and other guards (1T30-1T32). When he received his uniform for the Summer of 1994, Middlesworth received a copy of the 1994 Margate City Beach Patrol Lifeguard Rules and Regulations (1T33-1T34; CP-2).

8. There is a telephone accessible to every lifeguard shack up on the bulkhead. Lifeguards are to call headquarters upon arriving at work and to wait for the call at day's end authorizing them to leave (1T35). If a lifeguard needs to leave the beach to use the bathroom while on duty, he or she must first call headquarters (1T36-1T37). Subparagraph C, Section 5 of the Lifeguard Rules and Regulations provide:

No lifeguard may leave his/her beach area without permission from Headquarters. Individuals not complying with this rule will be immediately suspended and possibly dismissed from the Beach Patrol. (Emphasis in Original) (CP-2)

Beginning the summer of 1994, the headquarters' phone system was changed so that incoming calls could not get a busy signal. The phone guards use to call in from their station has two lines in it so that if one line is busy, a lifeguard will get the ring of the second line, not a busy signal (2T17-2T18). According to Middlesworth, Grant and David Sincotta, another City lifeguard, there were no restrictions on phone use for personal reasons. Over the years, Middlesworth had regularly used the phone for personal reasons (1T36, 1T122, 1T164).

Sometime in June-July 1994, Middlesworth needed to use the bathroom on a rainy day at around 4:30 p.m. He went to the phone to

call headquarters, but the line was busy. He had to use the bathroom immediately, so he went without first talking to headquarters (1T37, 1T39-1T40).

While he was gone, Lieutenants Baylinson and Smallwood drove down to his beach and saw Middlesworth was not there. Middlesworth received a verbal reprimand from Lieutenant Baylinson for leaving his assigned area without permission from headquarters (1T40-1T41; 2T18, 2T58). Chief Smallwood was informed of the incident from Lieutenants Baylinson and Smallwood (2T58).

7. Every year the Association compiles a lifeguard yearbook which contains each guard's picture with a quote, along with pictures of each stretch (1T41). One morning in the summer of 1994, Middlesworth and the other guards in the Clermont Avenue-Argyle Avenue stretch met by the water's edge during work hours to have their picture taken for the yearbook (1T42). The lifeguards pulled the boats and stands down and proceeded to change into suits (1T42).

Middlesworth asked one individual in the water to step out while the picture was being taken (1T42-1T43). While he and his fellow Clermont Avenue guards were walking down to the water's edge for the picture, Captain Wagner jogged by with his arms up as if to say "what are you guys doing in suits, what's going on?" (1T43). Wagner informed Smallwood of the incident, indicating that the Clermont Avenue stand was unattended while bathers were in the water (2T19, 2T60).

Later that day, Middlesworth and his fellow Clermont Avenue guards received a one day suspension from Wagner for being out of the stand during working hours with bathers in the water (1T44, 1T160; 2T19). The Argyle Avenue guards in the picture were not suspended because there was one lifeguard attending the stand when Wagner jogged by (2T20, 2T61). Moreover, Grant, who was one of the Argyle Avenue lifeguards, was off that day (2T19-2T20).

9. In the middle of summer 1994, Middlesworth asked Rimm if he could sell T-shirts at the lifeguard races that were to be held in the City. Middlesworth explained the sale would benefit the lifeguard ball (1T81-1T82). Rimm asked Middlesworth to present him with the diagram of the shirt and he would discuss it with his fellow commissioners. Because of underage drinking at the previous summer's ball that was held in the City, Rimm conditioned selling the shirts on holding the ball outside of the City. (1T81-1T82, 1T205-1T207). Middlesworth submitted the logo to him, Rimm and his fellow commissioners approved it, and Middlesworth sold the shirts (1T81-1T82, 1T207).

10. In the middle of August, 1994, while patrolling the Clermont Avenue beach around 2 p.m., Smallwood observed Middlesworth on the phone. Only two lifeguards were assigned to Clermont Avenue beach that day--Middlesworth and Pat Holton (2T21-2T22, 2T64). Because Middlesworth's absence left only one guard in the stand with fifteen bathers in the water, Smallwood climbed into the stand until Middlesworth's return. Smallwood looked at his watch and timed

Middlesworth as being on the phone for 23 minutes before returning to the stand (2T22). Upon returning, Smallwood asked Middlesworth where he was. Middlesworth responded he went to the bathroom to which Smallwood responded "don't lie, I saw you up on the phone." Middlesworth then explained he was on the phone with City Hall to set up the signing of the contract (1T45-1T46). Smallwood verbally reprimanded him, telling him he used poor judgment in engaging in a lengthy phone conversation while leaving the stand with only one other guard with bathers in the water (2T23).

11. Lifeguards engage in horseplay on a regular basis on "lousy" days without being disciplined. This includes football, baseball, shooting water balloons and "stand wars" where lifeguards in one stand tip another stand over or push another stand's boat into the water and wait for retaliation (1T38, 1T123, 1T162-1T163).

In this regard, Middlesworth had also brought his paint pellet gun, a twelve (12) inch gun which holds round half (1/2) inch balls filled with water soluble paint, to the beach the summers of 1991 and 1992, and shot it at other lifeguards in front of Lieutenant Baylinson without receiving discipline (1T49-1T50). Grant said that he had seen Middlesworth shoot a paint pellet gun on the beach prior to the summer of 1994 (1T152-1T153).

On September 8, 1994, the day after Labor Day, Middlesworth asked Lieutenant Smallwood the number of stands that were to be open the next day to see whether it would be worth it to bring his paint pellet gun to the beach to initiate horseplay. Lieutenant Smallwood

replied only three stands, but told Middlesworth to bring the gun because he wanted to see it. (1T48-1T49, 1T127)

The next day, Middlesworth brought the gun to the beach and that morning shot the shack 5-6 times on the side and twice in the front (1T51). At about 1:45 p.m., Lieutenant Smallwood drove down to Middlesworth's stand and squirted Middlesworth and Grant with a super soaker squirt gun. Middlesworth grabbed the paint pellet gun and chased Lieutenant Smallwood, pretending to fire at him. Middlesworth said he then went to the shack and put the gun away (1T52).

About 15 minutes later, he noticed City Police Officer Paul Vanaman walking down to the beach. Middlesworth testified Vanaman looked nervous so he asked him what was up (1T52-1T53). Vanaman responded that he had a report of a man on the beach with a gun. Middlesworth responded that he had not seen anyone with a gun but that he had been playing with his paint pellet gun. Vanaman asked to see it; Middlesworth complied. Vanaman looked at the gun, gave it back to Middlesworth, and told him to put it away (1T53).

According to Vanaman, while on route by ambulance back to Margate at about 2 p.m., an EMT in the ambulance informed him he saw a man with a gun by the beach (1T173-1T174). Vanaman called for back-up and was dropped off at the site where he saw the alleged gunman. Vanaman drew his weapon and observed a male with red shorts, white shirt on the street about 50-60 yards away walking up the beach block towards the beach ramp with a weapon in his hand

(1T174). Middlesworth denied that he was off the beach with the gun (1T105). However, I credit Vanaman's testimony that the man he saw was off the beach. Vanaman had a clear recollection of the incident and had nothing to gain by misrepresenting the facts.

The man Vanaman saw went over the ramp to the beach. Vanaman's back-up arrived and he started walking towards the man but lost sight of him. With his weapon drawn, Vanaman arrived at the lifeguard shack and observed it covered with red paint. He concluded the suspect had a paint pellet gun. He then reholstered his weapon (1T175-1T177).

Vanaman went to the shack, saw Grant and stated he was looking for a man with a gun. Middlesworth, in red shorts and white shirt, emerged from the shack and stated he had a paint pellet gun. Vanaman then realized Middlesworth was the suspect (1T178-1T180).

Vanaman walked away, concluding no crime was committed, but his superior, Sergeant Francis, arrived and informed him that Middlesworth was in possession of a hand gun. Vanaman told Middlesworth to grab the gun since Francis wanted to see him. Middlesworth was arrested and charged with possession of a hand gun and possession of a firearm for unlawful purposes (1T53-1T54, 1T180-1T181).

After getting out of jail, Middlesworth went to speak to Chief Smallwood at headquarters to explain what happened (1T54). Chief Smallwood had learned of the incident from Captain Wagner, who told him Middlesworth was observed by a City police officer off the

beach securing the gun from his automobile and that he had not called headquarters before leaving the beach (2T24-2T25). According to Middlesworth, Chief Smallwood told him he could not work the last two days of the season but that the situation would be worked out and "we will be back for next summer." Smallwood acknowledges he simply told Middlesworth he would not be able to work the last two days of the season (1T55, 2T26, 2T67).

The next day, Middlesworth called Rimm to apologize and explain what happened. According to Middlesworth, Rimm told him that "I am very disappointed with you within the last couple years with your activities with the Association and now this handgun." Upon Middlesworth explaining that it was not a handgun, but a paint ball gun, Rimm replied that was a police matter, and that Middlesworth would have to work it out with the police (1T70-1T71). Rimm also told him he expected more of him as a senior guard. On cross examination, Middlesworth said he did not believe Rimm "said anything about a union representative as being the reason for Rimm's disapproval of my actions" (1T108).

Rimm acknowledges this conversation took place but claims he stated "I was disappointed, he had a leadership position, I think he was president, and he was older than the other guards, ...I told him I was totally disappointed that he was setting a bad example to young people and a bad influence to young people by conducting himself in that fashion." (1T208)

I credit Rimm's version of this conversation, since on cross examination Middlesworth admitted that Rimm did not mention his status as a union representative as being the reason for Rimm's disapproval of Middlesworth's actions.

12. Pursuant to the 90 day notice provision in their agreement, Middlesworth and Grant sent Rimm a letter dated September 22, 1995 informing him the Association wished to negotiate a contract for 1995. The letter did not propose any dates to meet. (1T55-1T56; CP-3).

13. On October 6, 1994, Middlesworth was sent a Notice of Disciplinary Action from Chief Smallwood dismissing him (1T57; CP-4). It listed 5 causes for dismissal: 1. Serious Breach of Discipline; 2. Commission of a Criminal Act; 3. Willful damage to public property; 4. Disobedience of a rule or regulation of the Margate City Beach Patrol and 5. Conduct unbecoming of a public employee.

Chief Smallwood made the decision to terminate Middlesworth without consulting first with Rimm. He told Rimm of his decision after it was made but before he terminated Middlesworth (2T27). After he made the decision, he consulted with the City's lawyer to draw up CP-4 for his signature (2T27-2T28). Chief Smallwood did not terminate Middlesworth right away because September was a hectic month, as he had to close the beaches and get back into his high school counseling job and attend to some personal business (2T26).

Two days later, Chief Smallwood sent Matt Bolson, a lifeguard who was found to be in possession of marijuana, a termination notice similar to CP-4. As in Middlesworth's case, Chief Smallwood alone made the decision to terminate Bolson (1T224, 2T69-2T70).

Chief Smallwood knew from general conversation that the Association was intent on negotiating a new contract for 1995 (2T74). However, when he decided to terminate Middlesworth, he was not specifically aware that the Association had sent the September 22, 1994 letter requesting negotiations (2T28).

The fact that there was an Association or that Middlesworth was involved in it did not influence Chief Smallwood's decision to terminate Middlesworth (2T28). Middlesworth's termination was based on a culmination of factors--the 1992 drug incident and his irresponsible conduct in 1994 (2T28-2T29, 2T71). In reaching his decision, Chief Smallwood reviewed the disciplinary files of the other lifeguards and compared them to Middlesworth's and concluded that Middlesworth's judgment was worse than the others (2T71).

Pursuant to CP-4, Middlesworth requested a hearing which was held on October 24, 1994 (1T57-1T58, CP-5). At the hearing, the City relied on the four disciplinary actions that occurred that summer in support of the five causes listed on CP-4. Specifically, Chief Smallwood relied upon Middlesworth's verbal reprimand for using the phone; the verbal reprimand for leaving the beach to use the bathroom without permission; the one-day suspension for being

out of the stand for the stretch picture; and the paint pellet gun incident (1T58-1T60). Middlesworth requested that his hearing be continued until after his criminal charges had been disposed of, but the City refused.^{3/} The decision to terminate Middlesworth was upheld by Rimm the same day as the hearing (1T60-1T61; CP-5).

A culmination of factors led to Rimm's decision to uphold Middlesworth's termination, including the 1992 drug incident and the discipline he had received the summer of 1994. He found the paint pellet gun incident to be the final straw based on the police department's description that Vanaman saw Middlesworth off the beach with the gun, was scared and drew his weapon. He also felt Middlesworth's defacing of public property was a crime in itself (1T221-1T223). He never considered Middlesworth's union status in making his decision because they had just finished an amicable conclusion to the 1994 contract and he did not know what their 1995 negotiations proposals would be (1T224-1T225).

14. The City never responded in writing to the Association's September 22, 1994 letter requesting negotiations. (1T129) In mid-December 1994, Rimm, while shopping in the store where Grant now works, told him not to worry, that Rimm would get to him. Grant asked Rimm to call him after the weekend; Rimm said okay, but never called him (1T129-1T130).

^{3/} One of the criminal charges was dismissed administratively and the other was dismissed in court on November 15, 1994 (1T61-1T62).

According to Rimm, he spoke to Grant while shopping in his store at least 3 or 4 times between September and January 1, 1995. Prior to Thanksgiving, he indicated to Grant that he would get together with the Association after the first of the year (1T209-1T210). He claims that Grant said okay and that he never called or sent a letter requesting that negotiations move faster (1T210). Rimm did not make an effort to negotiate before January 1995 because the lifeguards do not resume employment until May (1T227).

On January 4, 1995, the Association filed its unfair practice charge (C-1). By a January 11, 1995 letter to Middlesworth and Grant, Rimm offered to meet January 19, 1995 at 10:00 a.m. in his office to begin negotiations for the 1995 agreement (R-1; 1T130-1T131).

15. A meeting was held January 19 which was attended by Middlesworth, Grant, Rimm and Hiltner (1T131-1T132). The Association requested a 10% increase in pay and bonuses and Rimm was upset and angry and called the proposal ridiculous. Rimm proposed only a four percent increase (1T132). Rimm claims the Association asked for a 20 to 25 percent increase in pay. He had nothing to counter with and the meeting ended there. (1T213)

The January 1995 meeting was similar to the initial one for the 1994 contract. The Association proposed more than Rimm wanted to grant and Rimm concluded by telling the that the City's attorney would be in touch (2T87).

After the meeting, Middlesworth claims Hiltner, while on the elevator with him and Grant, told them they had "ruffled the Commissioner's feathers"; that the Commissioner "took negotiations personally, that's why he did not negotiate police and fire contracts for the past couple of years, and that he was just starting to negotiate again" (1T109-1T110). Grant said that Hiltner told them "don't worry, it's all right, Commissioner Rimm has been known to take things personally." (1T134)

Hiltner denies making these statements (2T89, 2T105). He claims that while in the elevator with Middlesworth and Grant, he said to them "it's a starting point, it's the first meeting, don't get frustrated, these things get emotional but keep going." (2T88). But he testified that the session had not gotten emotional (2T105). I credit Middlesworth's and Grant's version of the meeting on the elevator. On the one hand, Hiltner testified that he said "these things get emotional" but on the other hand testified the session had not gotten emotional. That discrepancy makes it impracticable for me to rely on this part of Hiltner's testimony.

16. According to Rimm, another negotiations meeting was scheduled for February 22 at 3:30 p.m. or 4 p.m. in Rimm's office at City Hall. Rimm went to his office that day and waited one hour. The Association never arrived. The next day Rimm's secretary informed him that Grant had called and said that Middlesworth's car had broken down (1T211-2T212).

Middlesworth and Grant did not dispute that they missed the meeting. Middlesworth claims that the meeting was scheduled for March 8 and that he missed it because he had boat engine trouble while coaching crew and could not get to a phone to call City Hall. When he got to a phone, he called Grant and spoke to his girlfriend. She then contacted Grant who, in turn, contacted the City around 4:15 p.m.-4:30 p.m. (1T67-1T68, 1T141).

Grant told Rimm's secretary that Middlesworth had engine trouble and that the Association would not be able to make the meeting. She asked if Grant could come in to which he responded "it's getting late, it's after four and by the time we get in there it is going to be time to go." Grant apologized (1T141-1T142).

While he knew a meeting was scheduled that day, Grant did not know the specific time it was scheduled to begin. He was planning on working at his store until Middlesworth called and then he would make plans to leave (1T143-1T144). If he had known when the meeting was and that Middlesworth would be unavailable, he would have attended himself (1T155).

After the missed meeting, the Association sent a letter of apology to Rimm and asked Rimm to set a new meeting date (1T68). The next day Rimm sent a letter to Middlesworth asking them to contact him (1T213-1T214).

17. Thereafter, by letter of March 9, 1995 to Grant, Rimm set a negotiations meeting for April 6, 1995 at 10:00 a.m. in his office (1T213-1T214, R-3). R-3 requested Grant call Rimm's

secretary, DeeDee Hiltner, and confirm the meeting date. Although he does not recall when, Middlesworth claims the Association called to confirm the meeting (1T90). Rimm denies the meeting was confirmed because D. Hiltner never so informed him, and he sees her three to four times a week. I credit Rimm's testimony. Middlesworth could not recall when he made the call and previously when Grant called D. Hiltner, she had told Rimm of the call (1T90, 1T212).

At 9:00 a.m. on April 6, Rimm was at home. He called his secretary and told her because of the current attitude and because the Association did not appear for the first meeting, he believed Grant and Middlesworth were suddenly going to appear at 10:00 a.m. He told her to call him if they did appear, and that he would try to make it his business, if he was not too tied up with what he was doing, to come over (1T214-1T215).

If the Association had confirmed the meeting, Rimm would have been there in business attire to meet with them. Middlesworth and Grant did appear for the 10 a.m. meeting; Rimm then, without getting dressed in his normal attire for City Hall, met with them (1T215).

Rimm yelled at Middlesworth and Grant for 10 minutes about missing the last meeting. Middlesworth claims he called them "fresh young boys" and he (Middlesworth) called Rimm a "mean old man." Grant said Rimm called them disrespectful young boys. Rimm told them they were getting 4%, take it or leave it and they were dismissed (1T69-1T70, 1T135).

Rimm did not refute their version of this meeting. He was not happy with them and thought they were disrespectful for missing the prior meeting without calling. He also thought they were disrespectful for not confirming the April 6 meeting. (1T215-1T216, 1T257). He spent the entire meeting berating Middlesworth and Grant for missing the February 22 meeting and for failing to confirm the April 6 meeting (1T257). He then laid the 4% proposed increase on the table and said that if it was not acceptable, they should get their lawyers (1T216, 1T257-1T258).

18. A couple of weeks later in his store, Rimm asked Grant if he could get together for a meeting without Middlesworth. Grant responded that he would have to talk to Middlesworth (1T137-1T138).

Rimm acknowledges that this conversation took place. He wanted to deal exclusively with Grant, because he thought Middlesworth was arrogant towards him since he upheld his termination (1T217, 1T258). He viewed Middlesworth as arrogant and disrespectful because he did not appear for the February 22 meeting and had not called to confirm the April 6 meeting. Even though his letter asking for confirmation was only sent to Grant, Rimm held Middlesworth more responsible for failing to confirm the April 6 meeting, because Middlesworth did most of the talking at the negotiations sessions (1T259-1T260).

Grant claims that a couple days later in his store, Hiltner came in and told Grant to contact him, instead of Rimm, and that it would be a good time to get a raise because the police and fire

contracts were up. Grant asserts that when he called Hiltner back, Hiltner brought up the unfair practice charges and told him that he didn't know what he could do legally. Grant further claims that Hiltner told him to talk to Middlesworth and his lawyer and see if the charges and the lawyer could be dropped, and then the two of them could get together and negotiate. Grant told Hiltner he would have to talk to Middlesworth. Hiltner approached Grant a few times thereafter about the situation (1T138-1T139).

After the April 6 meeting, Hiltner approached Grant in his store and ask about negotiations and if a contract could be worked out (2T90). In response to an inquiry by Grant about negotiations, Hiltner responded that there's an unfair practice charge and he didn't know its effect on negotiations and whether they could continue. Hiltner denies saying the Association should fire their lawyer or drop their charges, and denies telling Grant to contact him instead of Rimm (2T90-2T91, 2T109-2T111).

I credit Hiltner's testimony with respect to his conversation with Grant. Grant's claim that Hiltner told him it would be a "good time to get a raise because the police and fire contracts are up" is not plausible. Hiltner keeps all the signed agreements in his office, thus he was aware that the police and fire contracts had been signed prior to December 31, 1994 (2T94-95). Moreover, Grant's claim that Hiltner told him to see if the charges and the lawyer's could be dropped and then the two of them could then get together to negotiate is also not plausible. Hiltner has

never been authorized to negotiate on his own with the Association (2T110).

Neither party has made any further attempts to continue negotiations (1T98, 1T153; 2T92).

ANALYSIS

The City Did Not Violate §5.4(a)(3) Of The Act By Terminating Middlesworth

In Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), the New Jersey Supreme Court set forth the standard for determining whether an employer's action violates subsection 5.4(a)(3) of the Act. Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If an illegal motive has been proved and if the employer has not presented any evidence of a motive not illegal under our Act, or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have

violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for us to resolve.

In this case there is insufficient direct evidence of anti-union motivation with respect to Middlesworth's discharge. Consequently, the Association must rely on circumstantial evidence to prove its case. Timing is an important factor in assessing motivation. Borough of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986); Dennis Tp. Bd. of Ed., P.E.R.C. No. 86-69, 12 NJPER 16 (¶17005 1985).

Here, I find that the Association has met its burden under Bridgewater. As Association President, Middlesworth clearly engaged in protected activity and the City knew of this activity. Moreover, I find that hostility towards Middlesworth's protected activities was a substantial or motivating factor in the City's decision to discharge him.

The Initial Negotiations Session

I find evidence of hostility at the February 1994 negotiations session between Rimm, Hiltner, Middlesworth and Grant.

In response to the Association's economic proposal, that if the lifeguards did not like their pay, they can be replaced, is threatening and shows anti-union animus. Township of Mine Hill, P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). Rimm oversees the lifeguards and at that point he was involved in the lifeguard rehiring decisions (2T49, 2T51, 2T55). Thus, he had the authority to carry out this threat.

The September 22, 1994 Request to Negotiate and Middlesworth's Termination

I also find that the timing of Middlesworth's discharge is suspect and evidence of hostility. Borough of Glassboro. Although the paint pellet gun incident occurred on September 9, 1994, Middlesworth was not terminated until October 6, 1994 - shortly after the Association sent its September 22, 1994 request to negotiate. While Chief Smallwood claims he did not know the September 22 request had been sent, he did know that the Association planned to negotiate a new agreement. Further, Chief Smallwood called Rimm, who was sent the request, before issuing the termination notice to Middlesworth. While Chief Smallwood claims he had made the decision to terminate Middlesworth in his mind before talking to Rimm, Rimm was still consulted before he issued the Notice (2T27). The timing of the City's action--so close to the Association's negotiations request and so far after the incident--warrants a finding that it was motivated by anti-union animus. Borough of Glassboro.

Other Alleged Incidents Of Hostility

However, I do not find evidence of hostility with respect to any of the remaining alleged incidents.

First, I do not find the June 1993 conversation between Middlesworth, Grant and then co-captains King and Smallwood to be evidence of hostility. I do not find the statement that the Association should "heed some caution in reforming the Association" because they "have heard of relationships that have deteriorated during negotiations" is evidence of hostility. Nor do I find the statement that "things would be done by the book if the Association got a contract," to be hostile. Such statements are not threatening or coercive, but rather are advisory in nature. The City is within its right to comment about its view of what the employment relationship will be like with the Association. Black Horse Pike, P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981).

Further, I do not find the City's refusal to process the dues deduction forms Middlesworth presented to Hiltner in July 1993 to be evidence of hostility. Hiltner was aware that an agreement did not exist between the Association and the City and thus, upon reading the language on the forms referring to an agreement simply informed Middlesworth he did not believe he could deduct dues. He then turned the matter over to the City's attorney who by letter responded to Middlesworth's request.

As for Hiltner asking Middlesworth why he was reforming the Association and was he sure he wanted to do that, I do not find this

statement to be evidence of hostility towards the Association. The statement was not threatening or coercive, particularly in light of the fact that Hiltner was not a superior of Middlesworth who had authority to take action against him. Borough of Glassboro; Black Horse Pike.

Moreover, I do not find the 1994 agreement to be evidence of hostility. The Association voluntarily entered into that Agreement (1T79-1T80).

Finally, I do not find Middlesworth's conversation with Rimm the day after the paint ball incident to be evidence of hostility. I credited Rimm's version of what was said and I do not find this to show anti-union animus. The statement was not threatening or coercive. Black Horse Pike. Rather, Rimm merely expressed his opinion about Middlesworth's actions.

The City Showed By A Preponderance
Of The Evidence That It Had A
Business Justification For The Action.

Since the Association met its burden under Bridgewater, the burden shifts to the City to show by a preponderance of the evidence that it had a business justification for the action--i.e., it would have taken the same action, even absent the protected activity. Bridgewater, supra at 244. I find that the City has met this burden.

According to his termination notice, Middlesworth was terminated for 5 reasons: 1. Serious breach of Discipline; 2. Commission of a Criminal Act; 3. Willful Damage to Public Property;

4. Disobedience of a rule or regulation of the Margate City Beach Patrol; and 5. Conduct unbecoming of a public employee. At the termination hearing, Chief Smallwood relied on four disciplinary actions that Middlesworth incurred during the Summer of 1994--the verbal reprimand for using the phone; the verbal reprimand for leaving the beach to use the bathroom without permission; the one day suspension regarding the stretch picture; and the paint pellet gun incident.

As for the incident where Middlesworth left the beach without permission to use the bathroom, Subparagraph C, Section 5 of the Lifeguard Rules and Regulations provides that a lifeguard may be immediately suspended and possibly dismissed for leaving the beach without permission.

Further, with respect to the discipline for leaving the stand for the stretch picture, it is undisputed Middlesworth and his fellow guards left the stand vacant during work hours. While the Association claims an inference of disparate treatment can be drawn from the fact that the Argyle Avenue guards were not disciplined despite their participation in the photo, Captain Wagner observed one guard in the stand when he passed by. Moreover, Grant, one of the Argyle Avenue guards in the picture, was off duty that day.

(1T125) Further, Middlesworth was not singled out, his fellow Clermont Avenue guards were also disciplined. Thus, I do not find any unequal treatment of Middlesworth with respect to his photo incident.

Moreover, as to the incident regarding Middlesworth's use of the phone, Chief Smallwood concluded that Middlesworth was on the phone at least 23 minutes during work hours. While the record shows that lifeguards are permitted to use the phone for personal reasons, the length of his conversation is what Chief Smallwood found to exhibit poor judgment in light of the fact the stand was left with only one other guard with several bathers in the water. In addition, Middlesworth admits lying to Chief Smallwood when asked of his whereabouts (1T45-1T46). Even if Middlesworth was on the phone to set up the signing of the 1994 agreement as he claims, this does not excuse his poor judgment and his untruthful response.^{4/}

Finally, the incident involving the paint pellet gun was the final straw for the City in its decision to terminate Middlesworth. Middlesworth admits defacing City property-the lifeguard shack-several times, but claims this is excusable because the paint was water soluble. However, this conduct is clearly unbecoming of a public employee engaged in a public safety role and is embarrassing to the City. In fact, Subparagraph C, Section 6 of the Lifeguard Rules and Regulations provides:

Conduct embarrassing to Margate City and/or the Margate City Beach Patrol will be grounds for disciplinary action and/or dismissal.
(Emphasis in Original)

^{4/} As the City points out, Middlesworth could have called City Hall to set up the signing of the agreement before his shift began at 10:00 a.m., since he knew City Hall opened between 8:30 a.m. and 9:30 a.m. (1T101).

Moreover, Middlesworth neglected his public safety responsibility in violation of the Lifeguard Rules and Regulations by being off the beach with the gun and shooting the gun on the beach, as Subparagraph C, Section 8 provides:

Any lifeguard neglecting his/her public safety responsibility will be disciplined and/or dismissed immediately. (Emphasis in Original)

Further, what is most disturbing about the paint pellet gun incident is that City police officer Vanaman drew his weapon at Middlesworth upon the belief that Middlesworth was carrying a real gun. Vanaman said he would have used deadly force if Middlesworth had pointed the gun at him (1T183). Although Vanaman eventually learned Middlesworth had a paint pellet gun when he saw paint "all over the place," this does not excuse the fact that a City police officer was forced to draw his weapon because of a City lifeguard whose job is to protect the public.

The fact that Lieutenant Smallwood sanctioned Middlesworth's bringing the gun to the beach the day before does not equate to the City sanctioning Middlesworth's being off the beach with the gun and shooting the shack several times. Moreover, while the Association claims Middlesworth's actions were consistent with a pattern of horseplay engaged in by lifeguards without discipline, the Association failed to present any evidence of any other lifeguard possessing or shooting a paint pellet gun on the beach, not to mention any incident where a City police officer drew his weapon and arrested a lifeguard during work hours.

I further reject the Association's position that the arrest of Middlesworth proves that the City's justification for its action was pretextual. His arrest was based on the fact that City Police Sergeant Francis believed Middlesworth committed a crime (1T180-1T181). There is no evidence that Francis knew of Middlesworth's protected activities or that his arrest was in any way related to them.

I further reject the Association's assertion that Middlesworth was disparately treated than other lifeguards in terms of the discipline he received for his misconduct. There was no evidence that any other lifeguard engaged in similar misconduct, let alone evidence that one who did was treated more favorably. In fact, Matt Bolson, the only other lifeguard terminated that summer, was terminated for only one incident of misconduct while Middlesworth was terminated for four.^{5/}

Moreover, I reject the Association's assertion that an inference of hostility can be drawn from the fact that Chief Smallwood's sons were the only lifeguards who did not join the Association when it reformed in 1993. They joined the Association

^{5/} I also reject the Association's claim that the fact Chief Smallwood interceded on behalf of lifeguard David Sincotta, but not on behalf of Middlesworth is evidence of pretext. It pointed to an incident where Sincotta negligently failed to extinguish a cigar on the beach, while he was off duty, which caused the fire department to be summoned (1T67-1T69). However, Middlesworth's situation is distinguishable. He intentionally fired his paint pellet gun at the shack while on duty and was arrested.

the next summer, the summer in which Middlesworth was terminated. Further, I dismiss the Association's claim that hostility can be inferred from the fact that Chief Smallwood was not a member of the Association. As Chief, he was not eligible to be covered by the Association's agreement (CP-1).^{6/}

I also do not find evidence of hostility by the Commission's determination in City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987). The unlawful actions by the City in that case took place several years ago. Chief Smallwood was not even the head of the lifeguards at that time. In any event, the Association has not shown any reason why that case is evidence of hostility here.

Further, I do not find that the issuance of the Notice of Disciplinary Action (CP-4) evidences hostility and retaliation. Although in previous years the City had simply not sent a letter to those lifeguards it did not want back, the summer of 1994 was different in that the Association had an agreement in place. Moreover, the other lifeguard the City did not want back, Matt Bolson, was issued a Notice of Disciplinary Action, like Middlesworth's, within two days of when Middlesworth was issued his. In any event, this deviation from prior practice was favorable to Middlesworth, as it specifically informed him of the reasons for his termination.

^{6/} It is noteworthy that Chief Smallwood is a dues paying member of the NEA, the NJEA, and the Atlantic City Education Association in his capacity as a high school counselor (2T5, 2T75).

In light of the above, I find that the City has not violated subsection 5.4(a)(3) of the Act. It has shown a business justification for Middlesworth's discharge, i.e., that it would have taken the same action even absent the protected activity, based on the disciplinary action incurred by Middlesworth during the Summer of 1994, particularly the paint pellet gun incident, and taken in the context of Middlesworth's 1992 arrest for drug possession and distribution.

Finally, although the Association alleged in its charge that the City also violated §5.3 of the Act, it did not prove how this subsection was violated. Therefore, I recommend that allegation be dismissed.

The City Violated Subsection 5.4(a)(5)
Of The Act By Refusing To Negotiate
In Good Faith

The standard for determining when a refusal to negotiate in good faith has occurred was set forth in State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J.Super. 470 (App. Div. 1976):

...A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and/or attitude of the party charged. The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a predetermined intention to go through the motions, seeking to avoid, rather than reach, an agreement. [Id. at 40] [Footnotes omitted] [Emphasis supplied].

Here, I find that based on an analysis of the overall conduct and attitude of the City, the City has refused to negotiate

in good faith. The City acknowledges it never responded in writing to the Association's September 22, 1994 request and only first responded orally when Rimm, at a chance meeting while shopping in the store Grant worked, spoke to Grant about negotiations. No date was ever set for a negotiations session and Rimm never scheduled a meeting until after the Association filed its unfair practice charge over three months later.^{7/} Finally, a short session was held January 19, 1995 wherein Rimm got angry and upset upon hearing the Association's proposal and did not present a counter-offer.

Thereafter, a meeting was scheduled for February 22, but Middlesworth could not make the meeting. The Association apologized for missing the meeting and a meeting was then scheduled by Rimm for April 6. Because the Association missed the February meeting and failed to confirm the April 6 meeting, Rimm decided to stay home rather than appear for the April 6 meeting he had scheduled. He told his secretary that if Middlesworth and Grant appeared for the meeting, to call him and then told her "I will try to make it my business, if I am not, you know, too tied up with what I am doing, I will come over." Finally when informed by his secretary that Middlesworth and Grant appeared at his office for the scheduled meeting, he came to meet with them without getting changed into his

^{7/} There is a dispute about how many times Rimm spoke to Grant in the store and exactly when Rimm said he would get back to Grant (1T129-1T130, 1T209-1T210). However, this is not important, as the fact is that Rimm never definitively responded to the Association until months later when its charge was filed.

business attire. Rather than negotiate, Rimm spent the entire meeting berating Middlesworth and Grant for missing the prior meeting and for failing to confirm the April meeting. He then simply laid the 4% increase on the table in a take it or leave it manner.

I find that this conduct does not show an open mind or a sincere desire to reach an agreement. State of New Jersey. The fact that the Association had missed the prior meeting and failed to confirm the April 6 one does not excuse Rimm's conduct. The Association apologized for the missed meeting and never indicated that they would not be there on April 6.^{8/}

As of the time of the hearing, no other negotiations sessions were scheduled or took place. Although the Association could have been more diligent about negotiations, based on an analysis of the overall conduct and attitude of the City, I find the City has refused to negotiate in good faith. State of New Jersey.

Although the Association also alleged a violation of 5.4(a)(4) of the Act with respect to the negotiations for a 1995 agreement, it has not presented any evidence in support of this claim and therefore I recommend this allegation be dismissed.

^{8/} Thereafter, later in April, Rimm attempted to bypass co-president Middlesworth and asked Grant if he alone would negotiate with him. Although not alleged, this could be considered unlawful, since the Association has the right to choose its negotiations representatives. See e.g. Bogota B/E, P.E.R.C. No. 91-105, 17 NJPER 304 (¶22134 1991); Jackson Tp., D.U.P. No. 90-11, 16 NJPER 255 (¶21105 1990)

CONCLUSIONS OF LAW

1. The City did not violate subsections 5.3 and 5.4(a)(3) of the Act with respect to Middlesworth's termination.

2. The City violated subsection 5.4(a)(5), and derivatively (a)(1) of the Act by refusing to negotiate in good faith with the Association with regard to the 1995 agreement.

3. The City did not violate subsection 5.4(a)(4) of the Act.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the City cease and desist from:

Refusing to negotiate in good faith with the Association concerning terms and conditions of employment.

B. That the City take the following action:

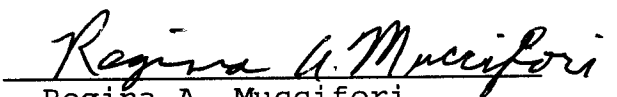
1.) Negotiate in good faith with the Association for a 1995 agreement, assuming that one has not yet been reached.

2.) Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix A. Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by other materials.

3.) Notify the Chairman within twenty (20) days of receipt what steps the Respondent has taken to comply with this ORDER.

C. That the §5.3, and 5.4(a)(3) and (4) allegations be dismissed.


Regina A. Muccifori
Hearing Examiner

DATED: November 6, 1995
Trenton, NJ



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL NOT refuse to negotiate in good faith with the Association concerning terms and conditions of employment.

WE WILL negotiate in good faith with the Association for a 1995 agreement, assuming that one has not yet been reached.

Docket No. CO-H-95-224

City of Margate
(Public Employer)

Date: _____

By: _____

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"