P.E.R.C. NO. 85-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF MANAGERS OF PREAKNESS HOSPITAL - BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondent,

-and-

Docket No. CO-84-178-142

AFSCME COUNCIL 52, LOCAL 2273,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Board of Managers of Preakness Hospital - Board of Chosen Freeholders of Passaic County violated the New Jersey Employer-Employee Relations Act when it refused to negotiate in good faith by neither implementing an adverse directive at step three of the grievance procedure nor appealing that directive to binding arbitration.

P.E.R.C. NO. 85-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF MANAGERS OF PREAKNESS
HOSPITAL - BOARD OF CHOSEN
FREEHOLDERS OF PASSAIC COUNTY,

Respondent,

-and- Docket No. CO-84-178-142

AFSCME COUNCIL 52, LOCAL 2273,

Charging Party.

Appearances:
For the Respondent, Aron & Salsberg, Esqs.
(Louis C. Rosen, of Counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

On January 11, 1984, AFSCME Council 52, Local 2273 ("Local 2273") filed an unfair practice charge against the Board of Managers of Preakness Hospital, Board of Chosen Freeholders of Passaic County ("Hospital") with the Public Employment Relations Commission. The charge alleged that the Hospital violated subsections 5.4(a)(1),(5) and (7)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it refused

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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; and (7) Violating any of the rules and regulations established by the commission."

to implement a November 3, 1983 third step grievance decision in favor of Local 2273. That decision held that Hospital employees represented by Local 2273 were entitled to receive credit for 15 days sick leave at the beginning of each calendar year, rather than having sick leave accrue at the rate of 1 1/4 days per month.

On May 9, 1984, the Administrator of Unfair Practice Proceedings issued a Complaint and Notice of Hearing. The Hospital then filed an Answer in which it admitted failing to implement the third step grievance decision, but asserted that this decision was wrong and would have been an "economic disaster."

On July 10 and 20, 1984, Hearing Examiner Mark A. Rosenbaum conducted a hearing. At the outset, the Hearing Examiner permitted the Hospital to amend its Answer to assert that a November 29, 1983 communication was really the third step decision; that communication stated that the County had directed its Special Counsel (the same person who rendered the November 3 decision) to prepare a resolution which, when adopted, would change the personnel policy respecting sick leave so that sick leave would accrue at the rate of 1 1/4 days per month. The parties then examined witnesses, introduced exhibits and argued orally. At the end of the first day of hearing, the Hearing Examiner granted the Hospital's request for a continuance so it could produce the Special Counsel to testify; the parties, however, subsequently agreed to submit stipulations at the second day of hearing. The parties filed post-hearing briefs by August 6, 1984.

On August 31, 1984, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-9, 10 NJPER 532 (¶15245 1984) (copy attached). He found that the Hospital violated subsections 5.4(a)(1) and (5) when it refused either to implement or appeal to binding arbitration the November 3, 1984 step three grievance decision. He recommended dismissal of that portion of the Complaint alleging a violation of subsection 5.4(a) (7).

On October 12, 1984, after receiving an extension of time, the Hospital filed exceptions. It asserts that this dispute merely involves a construction of the parties' contractual grievance procedures and that the Hospital's alleged refusal to implement the November 3, 1984 third step decision does not rise to the level of a refusal to negotiate in good faith. It relies upon State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) ("Human Services"). It further asserts that the Hearing Examiner erred in stating that the Commission is the only appropriate forum for enforcement of a third step grievance decision.

On October 31, 1984, Local 2273 filed a response asserting that Human Services was inapplicable to a case where the parties had submitted a contractual dispute to their negotiated grievance procedures; the employee representative had won at step three of those procedures; and the employer had refused to implement or appeal the step three decision. Local 2273 further incorporated its post-hearing brief as a response to the Hospital's exceptions.

On November 1, 1984, the Hospital filed a letter replying to Local 2273's response. The Hospital reasserted its reliance on Human Services and further questioned the Hearing Examiner's belief that only the Hospital could have appealed the third step grievance resolution to binding arbitration.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 24) are accurate with one clarification and two additions.[2/] We adopt and incorporate these findings of fact, as modified and clarified.

Under all the circumstances of this case, we agree with the Hearing Examiner that the Hospital violated its obligation to negotiate in good faith when it refused either to implement or appeal the adverse third step grievance decision. The parties specifically agreed, in an addendum to their collective negotiations agreement, that an unappealed third step decision would stand. The November 3, 1983 decision of Special Counsel Verp found that the Hospital breached its sick leave obligations and directed the

2/ The Hearing Examiner stated (p. 3) that the parties' contract provided that either party dissatisfied with the grievance resolution at Step 3 may request binding arbitration. The Hospital asserts that the word dissatisfied is misleading since, it asserts, a party need not be dissatisfied by a third step decision in order to invoke binding arbitration. While we do not believe this perceived distinction to be significant, we note that Step 4 of the negotiated grievance procedure permits "either party" to request arbitration if the grievance is still "unresolved." We add that the Hospital's assistant administrator in charge of personnel testified that he, like Local 2273's representative, interpreted the November 3 ruling of the Special Counsel to be against the Hospital. We also add that there appears to be no dispute that sick leave for first year employees is credited on the basis of one day per month.

Hospital to credit its employees (following the initial year of employment) with 15 days sick leave at the commencement of the calendar year; that direction was to be implemented until such time as Passaic County changed its personnel policy with respect to sick leave or redelegated such power to the Hospital. Local 2273 and the Hospital, as indicated by its Answer and the testimony of its assistant administrator, both understood that Special Counsel Verp had ruled against the Hospital.[3/] Nevertheless, the Hospital failed to appeal the step three decision within ten days, and that decision thus became binding. The Hospital completely ignored that binding decision and continued its previous practice of accruing sick leave credits which the Special Counsel had found to be illegal. Under all these circumstances, we are persuaded that the Hospital's course of action constituted a refusal to negotiate in good faith and, in particular, an unjustifiable refusal to honor the grievance procedures it negotiated for the resolution of contractual disputes.[4/]

3/ While the Answer asserts that implementation of this ruling would have been an "economic disaster," there is no record evidence supporting such an assertion.

4/ We agree with the Hearing Examiner that the Special Counsel's November 29, 1983 communication cannot be considered the actual third step decision. The Hospital's reliance on that letter appears to be an afterthought and, in any event, a wrong thought since it does not modify the finding of a violation or the direction of a remedy in the November 3, 1983 ruling. We further note that although the November 3 ruling was effective until the County changed its personnel policy on sick leave or redelegated such power to the Hospital, there is no evidence that such a change or redelegation occurred. The November 29 letter merely suggested that a change might or would occur. We thus need not decide whether such a change would have independently violated the Act.

We further reject the Hospital's reliance on Human Services. There, we held that a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings. We instead directed parties with mere contract claims to use their own negotiated grievance procedures. We cautioned, however, that if a contract claim was sufficiently related to specific allegations of a refusal to negotiate in good faith, we would certainly exercise our authority under subsection 5.4(a)(5) to remedy that violation. We then listed several, non-exhaustive examples: a repudiation of an established term and condition of employment; a refusal to honor a clause or submit a dispute through negotiated grievance procedures because the clause was allegedly outside the scope of negotiations; specific indicia of bad faith; and a threat to the policies of our Act. Our subsequent case law has developed these examples. See South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984); Liberty Township, P.E.R.C. No. 85-37, 10 NJPER 572 (¶15267 1984); Maywood Bd. of Ed., P.E.R.C. No. 85-47, 10 NJPER 636 (¶15305 1984).

In the instant case, we have no hesitancy in concluding that the Hospital's conduct constituted a refusal to negotiate in good faith rather than a mere breach of contract. If Local 2273 had attempted to submit the underlying contractual dispute on sick leave to us, rather than its negotiated grievance procedures, we might feel differently. But here Local 2273 did precisely what Human Services encouraged it to do: it pursued the negotiated grievance procedures. It won a binding ruling through those

grievance procedures and the Hospital then failed to comply with that ruling and the parties' negotiated procedures for appealing that ruling. We will not convert Human Services from a precedent encouraging parties to use their own grievance procedures for contract disputes into a precedent immunizing a party flouting those procedures and resulting binding decisions from an unfair practice charge.5/

We now consider the appropriate remedy. No exceptions have been filed to the Hearing Examiner's remedial recommendations. We will, however, clarify that the November 3, 1983 step three decision does not apply to first year employees.

ORDER

The Public Employment Relations Commission orders the Board of Managers of Preakness Hospital to:

A. Cease and desist from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, and

(2) 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, specifically by failing either to appeal or implement a step three grievance decision adopting the position of AFSCME Council 52 Local 2273 on the crediting of sick leave.

5/ We need not decide whether another forum might have had jurisdiction to remedy the Hospital's wrongful conduct. We need only decide that the Hospital's conduct, under all the circumstances of this case, constituted a clear refusal to comport with its negotiations obligation.

B. Take the following affirmative action:

(1) Implement the step three grievance decision issued by Special Counsel Martin Verp, Esq., on November 3, 1983 and credit all employees (except first year employees) with 15 days of sick leave at the beginning of each calendar year.

(2) Make whole all employees adversely affected by its failure to implement that decision, including subsequent grievants whose grievances have been held in abeyance pending this decision. Affected employees shall accrue the proper number of sick days in accordance with the step three decision, and shall be reimbursed for any monetary loss in their paychecks directly attributable to Preakness Hospital's prior mode of computation of sick leave accrual, together with twelve (12) percent simple interest per annum pursuant to R. 4:42-11.

(3) Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Preakness Hospital's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Preakness Hospital to insure that such notices are not altered, defaced or covered by other materials.

(4) Notify the Chairman of the Commission within twenty (20) days of receipt what steps it has taken to comply herewith.

C. The allegation of a violation of N.J.S.A. 34:13A-5.4 (a)(7) is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
February 25, 1985
ISSUED: February 26, 1985

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act.

WE WILL NOT refuse 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 refuse to process grievances presented by the majority representative, specifically by failing either to appeal or implement a step three grievance decision adopting the position of AFSCME Council 52 Local 2273 on the crediting of sick leave.

WE WILL implement the step three grievance decision issued by Special Counsel Martin Verp, Esq., on November 3, 1983 and credit all employees (except first year employees) with 15 days of sick leave at the beginning of each calendar year.

WE WILL make whole all employees adversely affected by our failure to implement that decision, including subsequent grievants whose grievances have been held in abeyance pending this decision. Affected employees shall accrue the proper number of sick days in accordance with the step three decision, and shall be reimbursed for any monetary loss in their paychecks directly attributable to Preakness Hospital's prior mode of computation of sick leave accrual, together with twelve (12) percent simple interest per annum pursuant to R. 4:42-11.

BOARD OF MANAGERS OF PREAKNESS HOSPITAL - BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY

_____
(Public Employer)

Dated _____ By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 85-9

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

In the Matter of

BOARD OF MANAGERS OF PREAKNESS
HOSPITAL - BOARD OF CHOSEN
FREEHOLDERS OF PASSAIC COUNTY,

Respondent,

-and-

Docket No. CO-84-178-142

AFSCME COUNCIL 52, LOCAL 2273,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner recommends finding that Preakness Hospital - Passaic County violated N.J.S.A. 34:13A-5.4 (a)(5) and, derivatively, subsection (a)(1), when it neither implemented nor appealed a Step 3 grievance decision issued by the Respondent's hearing officer. The Hearing Examiner rejects the Respondent's claim that a subsequent communique from the same County official was actually the Step 3 decision. The Hearing Examiner also recommends the dismissal of an alleged violation of N.J.S.A. 34:13A-5.4(a)(7), since the Charging Party did not cite a Commission rule or regulation which may have been violated.

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

H. E. No. 85-9

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

In the Matter of

BOARD OF MANAGERS OF PREAKNESS
HOSPITAL - BOARD OF CHOSEN
FREEHOLDERS OF PASSAIC COUNTY,

Respondent,

-and-

Docket No. CO-84-178-142

AFSCME COUNCIL 52, LOCAL 2273,

Charging Party.

Appearances:

For the Respondent, Peter T. Bongiorno, Esq.

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, Of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On January 11, 1984, AFSCME Council 52, Local 2273 ("Charging Party" or "Local 2273") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Board of Managers of Preakness Hospital, Board of Chosen Freeholders of Passaic County ("Respondent" or "Preakness") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by refusing to implement a third step grievance decision, thus repudiating the negotiated grievance procedure between the parties, in violation of N.J.S.A. 34:13A-5.4(a)(1), (5) and (7). 1/

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the commission."

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 9, 1984, and hearings were held on July 10 and 20, 1984 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The parties filed post-hearing letter briefs by August 6, 1984.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission's designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Preakness Hospital--County of Passaic is a public employer within the meaning of the Act and is subject to its provisions.

2. AFSCME Council 52, Local 2273 is a public employee representative within the meaning of the Act and is subject to its provisions.

3. Preakness and Local 2273 are parties to a collective negotiations agreement covering the period January 1, 1983 to December 31, 1984 (Exhibit J-1).

4. The charge concerns the evolution of a grievance relating to the accrual of sick leave benefits filed by Local 2273 in the late summer of 1983. Local 2273 sought crediting of sick leave

to employees at the beginning of each calendar year, while Preakness credited sick leave to unit employees at the rate of one and one-quarter days per month. The grievance advanced to Step 3 of the contractual grievance procedure, which provides for a meeting between Local 2273 and the Director of Labor Relations of Passaic County or his designee, and a written decision by the County designee within seven days of that meeting (J-1, p. 31-32). The contract further provides that either party dissatisfied with the grievance resolution at Step 3 may request binding arbitration (Step 4) within ten days of receipt of the Step 3 decision. By separate memorandumm, Preakness and Local 2273 agreed that "[a]n appeal to Step 4 of the [contractual grievance] procedure which is not filed within the prescribed time limit, will be deemed to be untimely and the third step decision will stand without appeal."

5. The County designee at the Step 3 hearing concerning the sick leave grievance was Martin Verp, Esq., Special Counsel (T-I at p. 20), [2/] who thereafter issued a letter to Thomas Lauricella, Assistant Hospital Administrator, and Elizabeth Baker, AFSCME Staff Representative. Verp summarized the documents and arguments presented by the parties, and concluded:

> ...while the Hospital must be construed as a semi-autonomous body, with the power to govern itself and its employees, those rights were abrogated by virtue of an executed agreement by and between the Hospital and the County, which accord emanated from a law suit. The Stipulation of Settlement arising from said litigation indicated that the Hospital would adhere to the personnel policies of the County. Accordingly, it is the opinion of the undersigned that until such time as the County redelegates this power to the Hospital

2/ T-1 refers to Transcript of July 10, 1984. T-II refers to transcript of July 20, 1984.

> or changes its personnel policy with respect to sick leave, Hospital employees should receive fifteen (15) days sick leave at the commencement of each calendar year (following the initial year of employment). This decision is not inconsistent with the contractual provisions by and between the bargaining unit and the Hospital.
>
> This problem will be presented to the appropriate County officials at the earliest opportunity [J-2, p. 3].

6. Neither Preakness nor Local 2273 filed for arbitration within ten calendar or business days after Verp's November 3 letter (T-1 at p. 24). Baker testified that she considered Verp's letter as a decision in favor of Local 2273 and therefore she saw no need to proceed to arbitration (T-I at p. 21).

7. On November 29, 1983, Verp sent a letter to Baker and Lauricella, stating:

> The Freeholders of Passaic County at a workshop session on November 23, 1983, directed the undersigned to prepare a resolution changing the personnel policy with respect to sick leave, which would have the effect of sick leave accumulating at the rate of 1-1/4 days per month (following the initial year of employment) as distinguished from being credited with 15 sick days at the commencement of each calendar year.
>
> This resolution will be prepared prior to the next regular meeting of the Board of Chosen Freeholders of Passaic County.

8. Grievances filed subsequent to Verp's letters of November 3 and 29 have been held in abeyance pending the conclusion of unfair practice proceedings before PERC (T-I at pp. 50-52). In the interim, the Hospital continues to credit unit employees with one and one-quarter days of sick leave per month (T-2 at p. 22).

ANALYSIS

The Charging Party raises a limited issue: Did Preakness refuse to negotiate in good faith with Local 2273 by failing to ad-

here to the contractual grievance procedure? Local 2273 does not seek review of the merits of its grievance; instead, Local 2273 asserts that a Step 3 grievance decision issued on November 3, 1983 in its favor must be implemented in the absence of a timely appeal of the Step 3 decision by Preakness. Preakness asserts that Special Counsel Verp's November 3 letter was not a Step 3 decision; instead, Preakness maintains that Verp's letter of November 29, 1983 is the final Step 3 decision (T-II at pp. 5-6). Accordingly, Respondent argues, Preakness won the Step 3 decision, and that decision should stand in the absence of a timely arbitration filing by Local 2273.

When reviewed in the context of the contractual grievance procedure and the related memorandum of agreement between the parties (J-3), the letters of November 3 and November 29 do not support Preakness' position. The grievance procedure simply does not provide for a two-part Step 3 decision. Instead, the contract provides for a written decision within seven days of a Step 3 meeting between representatives of Local 2273 and Preakness. In his letter of November 3, 1984, Verp referred to his action as a "decision" (J-2 at p. 3), and issued a determination consistent with the position taken by Local 2273. On its face, Verp's November 3 letter appears to be a Step 3 decision consonant with the contractual grievance procedure.

Preakness argues that the final paragraph of the November 3 letter, where Verp pledged to present "[t]his problem...to the appropriate County officials at the earliest opportunity...," served notice on Local 2273 that the letter was not actually a final Step 3 decision. However, in the context of the grievance, the "problem"

referred to by Verp appears to be a problem between the County and its semi-autonomous hospital, Preakness: the sick leave policy adopted by Preakness was not consistent with the County's policy and thus contravened a stipulation of settlement between the County and Preakness "...which accord emanated from a law suit." (J-2 at p. 3). In view of this background, and in the absence of an express warning by Verp to Local 2273 that his "decision" was not really a decision, the undersigned concludes that Verp's letter of November 3, 1983 was clearly the Step 3 decision on the sick leave grievance, and that Local 2273 could not reasonably have been expected to draw any other conclusion.

In rebuttal of Local 2273's reliance on the November 3 letter, Preakness offered Verp's letter of November 29, 1983 as the actual Step 3 decision. Again, a careful review of the record does not support Preakness' argument. The November 29 letter does not reference either the underlying grievance, Step 3 of the grievance procedure, or even Verp's letter of November 3. Moreover, the letter only refers to the request of the County Freeholders to have Verp "...prepare a resolution changing the personnel policy with respect to sick leave..." to effectively impose the position taken by Preakness at the Step 3 hearing. Assuming arguendo that such an action would render moot Local 2273's grievance, [3/] the undersigned notes that the November 29 letter does not prove that such an action

3/ Given that, within statutory bounds, the accumulation of sick leave is a mandatorily negotiable subject (see e.g. Twp. of Edison, P.E.R.C. No. 84-89, 10 NJPER 121, 123 (¶15063 1984)), the undersigned believes that a public employer who unilaterally alters a negotiated accumulated sick leave clause, by ordinance or other vehicle, violates its duty to negotiate in good faith. See, e.g. In re Paterson, P.E.R.C. No. 80-68, 5 NJPER 543 (¶10280 1979), affm'd App. Div. No. A-1318-79 (2/10/81), and, generally, State v. State Supervisory Employees Assn., 78 N.J. 54 (1978).

by the County Freeholders ever took place. Indeed, Preakness did not introduce such a resolution into evidence, and its only witness, Assistant Hospital Administrator Lauricella, testified that he was not aware whether or not such a resolution was ever passed by the Freeholders. Accordingly, the undersigned finds that Preakness has not rebutted the propriety of Local 2273's reliance on the Step 3 grievance decision, nor otherwise introduced evidence [4/] to negate its good faith reponsibility to either implement the Step 3 decision or file for arbitration under the grievance procedure. Accordingly, the undersigned concludes that Preakness violated N.J.S.A. 34:13A-5.4(a)(5) and, derivatively, [5/] subsection (a)(1).

In so ruling, the undersigned notes that the unfair practice finding is predicated on a factual pattern not previously reviewed by the Commission. The Commission has held that a public employer does not violate N.J.S.A. 34:13A-5.4(a)(5) by refusing to implement an arbitration award; however, this finding was based on the existence, by statute (N.J.S.A. 2A:24-7), of an alternate forum for enforcement of an arbitration award. Matawan Regional Bd. of Ed., P.E.R.C. No. 77-61, 3 NJPER 163 (1977), mot. for recon. den. P.E.R.C. No. 78-8, 3 NJPER 318 (1977); see also Jersey City Bd. of Ed., D.U.P. No. 82-27, 8 NJPER 236 (¶13100 1982). The undersigned believes that the Commission is the appropriate and only forum for enforcement of a binding

4/ Preakness cites N.J.S.A. 30:9-12.5, which charges a county hospital board of managers with "...the general superintendence, management and control of the hospital, its personnel and...all matters relating to its government, discipline, contracts and fiscal concerns...." While this statute endues Preakness with certain authority and discretion, the statute is not so specific as to preclude a responsibility to negotiate in the context presented. See State v. State Supervisory Employees Assn, supra, and Twp. of West Orange, P.E.R.C. No. 84-141, 10 NJPER 358 (¶15166 1984).

5/ The Charging Party did not litigate an independent (a)(1) violation. It also did not introduce any rule or regulation of the Commission which was violated by Preakness and thus could not prove the alleged violation of subsection (a)(7).

grievance procedure issued outside of arbitration.

The factual pattern in this matter should also be distinguished from Commission caselaw dismissing subsection (a)(5) allegations of a public employer's failure to process grievances. In such cases, the Commission and its agents have held that where a grievance procedure is self-executing, an employee organization should press a grievance to the subsequent step rather than file unfair practice charges. See, e.g. City of Northfield, P.E.R.C. No. 82-95, 8 NJPER 277 (¶13123 1982); Twp. of Millburn, D.U.P. No. 81-24, 7 NJPER 370 (¶12168 1981); and In re Englewood Bd. of Ed., E.D. No. 76-34, 2 NJPER 175 (1976). In the instant matter, the parties had a self-executing grievance procedure (J-1, p. 30), but in view of its victory at Step 3, the Charging Party could not and should not have proceeded to Step 4. While Preakness could have proceeded to Step 4 by the terms of the collective agreement, its failure to do so and concomitant failure to implement the Step 3 decision was a violation of N.J.S.A. 34:13A-5.4(a)(5).

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that:

A. The Preakness Hospital cease and desist from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, and

(2) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employment of employees in that unit,

or refusing to process grievances presented by the majority representative, specifically by failing to either appeal or implement a Step 3 grievance decision adopting the position of AFSCME Council 52, Local 2273.

B. Preakness Hospital take the following affirmative action:

(1) Implement the Step 3 grievance decision issued by Special Counsel Martin Verp, Esq., on November 3, 1983.

(2) Make whole all employees adversely affected by its failure to previously implement that decision, including subsequent grievants whose grievances have been held in abeyance pending a PERC decision. Effected employees shall accrue the proper number of sick days in accordance with the Step 3 decision, and shall be reimbursed for any monetary loss in their paychecks directly attributable to Preakness Hospital's prior mode of computation of sick leave accrual, together with twelve (12) per cent interest per annum.

(3) Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Preakness Hospital's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Preakness Hospital to insure that such notices are not altered, defaced or covered by other materials.

(4) Notify the Chairman of the Commission within twenty (20) days of receipt of what steps the Preakness Hospital has taken to comply herewith.

C. The allegation of a violation of N.J.S.A. 34:13A-5.4 (a)(7) should be dismissed.

Mark A. Rosenbaum
Hearing Examiner

Dated: August 31, 1984
Trenton, New Jersey

Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, and

WE WILL NOT refuse to or fail to negotiate in good faith with the AFSCME Council 52, Local 2273 concerning terms and conditions of employment of its unit members, particularly by failing to either appeal or implement Step 3 grievance decisions in Local 2273's favor.

WE WILL forthwith implement the Step 3 grievance decision issued on November 3, 1983 by Special Counsel Martin Verp, Esq.

WE WILL make whole all employees all employees adversely affected by our failure to previously implement that decision, including subsequent grievants whose grievances have been held in abeyance pending a PERC decision. Effected employees shall accrue the proper number of sick days in accordance with the Step 3 decision, and shall be reimbursed for any monetary loss in their paychecks directly attributable to our prior mode of computation of sick leave accrual, together with twelve (12) per cent interest per annum.

BOARD OF MANAGERS OF PREAKNESS HOSPITAL - BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY

(Public Employer)

Dated _____ By _____

(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State Street, Trenton, N. J. 08608 (609) 292-6780.