

P.E.R.C. NO. 86-38

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY P.B.A.  
LOCAL NO. 134,

Respondent,

-and-

Docket No. CI-85-68-87

JIHAD SALEEM,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Bergen County PBA Local No. 134 violated the New Jersey Employer-Employee Relations Act when it rejected Jihad Saleem's application for membership in the PBA. The Commission, in agreement with the Hearing Examiner, holds that the PBA did not establish sufficient reason to warrant rejecting Saleem's application.

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BERGEN COUNTY P.B.A.  
LOCAL NO. 134,

Respondent,

-and-

Docket No. CI-85-68-87

JIHAD SALEEM,

Charging Party.

Appearances:

For the Respondent, Thomas M. Maher, Esq.  
(Dennis M. Maher, Esq.)

For the Charging Party, Jihad Saleem, pro se

DECISION AND ORDER

On October 9, 1984 and December 20, 1984, Jihad Saleem ("Saleem") filed an unfair practice charge and amended charge against the Bergen County P.B.A. Local No. 134 ("PBA") with the Public Employment Relations Commission. The charge, as amended, alleges that the PBA violated subsection 5.4(b)(1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it rejected Saleem's application for membership in the PBA and did not return his application fee for membership.

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<sup>1/</sup> This subsection prohibits public employee representatives or their agents from: "1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

On January 29, 1985, a Complaint and Notice of Hearing was issued. On February 9, 1985, the PBA filed its Answer. It admitted denying Saleem's application for membership but said it did so because of his "poor character." It further stated that it acted pursuant to its by-laws and that it attempted to return the application fee but that Saleem refused to accept it.

On March 5 and April 11, 1985, Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses, introduced evidence and argued orally. The Respondent filed a post-hearing brief by April 25, 1985.

On May 3, 1985, the Hearing Examiner issued his recommended decision, H.E. No. 85-42, 11 NJPER \_\_\_\_ (¶ \_\_\_\_ 1985) (copy attached). He concluded that the PBA violated subsection 5.4(b)(1) of the Act when it rejected Saleem's application for membership. He found that the PBA's rejection of Saleem's application was arbitrary since it was based solely on a report concerning a dispute between Saleem and a PBA member over a lost ring and that the dispute had been settled at least four months before.

On June 25, 1985, after having received an extension of time, the PBA filed its exceptions. It contends that the Hearing Examiner erred in: (1) finding that a meeting between Officers Saleem and Longobardi and Captains Conway and Brower took place several days after Saleem found the ring, rather than at least six weeks after the ring was initially lost; (2) not finding that Saleem was advised that his rejection would be reconsidered if he submitted

a letter stating that the dispute was resolved and, (3) not finding that the PBA's investigation of the dispute was reasonable under the circumstances.

We have reviewed the record. The Hearing Examiner's findings of fact (3-7) are accurate with one minor exception.<sup>2/</sup> We adopt and incorporate the remaining findings of fact. In doing so, we reject the PBA's exception concerning the statements made by Officer Ravenda that Saleem could reapply in six months. Although he did say this, such a comment is clearly irrelevant.

The issue in this case is whether the PBA's rejection of Saleem's application for membership in its union violated our Act. Although an employee organization is not required to admit every applicant, it does violate N.J.S.A.

34:13A-5.4(b)(a) when it arbitrarily, capriciously or invidiously rejects an application. Rasheed Abdul-Haqg (Bradford Reed),

P.E.R.C. No. 81-14, 6 NJPER 304 (¶11198 1980). See also FMBA Local 35, P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983); In re West Orange PBA Local No. 25, P.E.R.C. No. 83-6, 8 NJPER 433 (¶13202 1982), enforcement granted App. Div. Docket No. A-1684-82T3

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<sup>2/</sup> We do agree that the meeting between Officers Saleem and Longobardi and Captains Conway and Brower to mediate the dispute occurred later than "several days after Saleem found the ring in question." Since the uncontradicted testimony was that Saleem and Longobardi attempted to resolve the dispute by themselves, it is more reasonable to conclude that the meeting occurred approximately one month after the ring was lost. This finding of fact, however, is of little significance.

(decided, March 30, 1983); Council No. 5, New Jersey Civil Service Ass'n, P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982). We hold, in agreement with the Hearing Examiner, that the PBA arbitrarily rejected Saleem's application. Its purported and only reason for doing so was that there was an unresolved complaint which had been lodged against Saleem by another PBA member. This purported justification, however, had no basis in fact. The dispute had been amicably resolved at least four months earlier and a simple investigation by the PBA would have so revealed. Moreover, the subject of the dispute does not reflect any misconduct by Saleem or furnish any reasonable basis to justify the denial. There is no evidence that Saleem stole his fellow officer's ring; rather, the record establishes that he found a ring, took it home and quickly reported it to his superiors. Although he may have been negligent in losing the ring, he paid Longobardi for it and it appears that Longobardi was satisfied with this settlement. Compare NJCSA Council 5, supra (employee organization does not act arbitrarily when it rejects the membership application of an individual who has persistently threatened co-employees and Association members with physical violence). Given all these circumstances, we conclude that the PBA's rejection of Saleem's application violated our Act.

ORDER

Bergen County P.B.A. Local No. 134 is ordered 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 by refusing to admit Jihad Saleem to full membership on the same basis as other members.

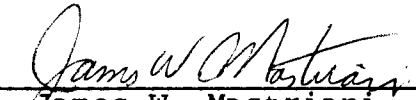
B. Take the following affirmative action:

1. Admit Jihad Saleem immediately to membership in the Bergen County P.B.A. Local No. 134 upon payment of all necessary initiation fees and membership dues in accordance with the procedure in effect to collect or deduct fees and dues for employees in the unit for membership.

2. Post in all places the attached notice marked as Appendix "A" in all places where Respondent normally posts notices to employees represented by it. Copies of said notice, on forms to be provided by the Commission, shall, after being signed by the Respondent's representative, immediately upon receipt thereof, be posted and maintained by it for a period of sixty (60) days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other materials.

3. Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this Order what steps have been taken to comply herewith.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves abstained.

DATED: Trenton, New Jersey  
August 27, 1985  
ISSUED: August 28, 1985

# 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 cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by refusing to admit Jihad Saleem to full membership on the same basis as other members.

WE WILL admit Jihad Saleem immediately to membership in the Bergen County P.B.A. Local No. 134 upon payment of all necessary initiation fees and membership dues in accordance with the procedure in effect to collect or deduct fees and dues for employees in the unit for membership.

BERGEN COUNTY P.B.A. LOCAL NO. 134

(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. 85-42

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

In the Matter of

BERGEN COUNTY P.B.A. LOCAL NO. 134,

Respondent,

-and-

Docket No. CI-85-68-87

JIHAD SALEEM,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated Subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act when on August 22, 1984 it unanimously rejected the membership application of the Charging Party where the only basis was the presentation to the membership of a report concerning a lost ring, which was attributable to the conduct of the Charging Party. However, the Hearing Examiner concluded that the Respondent's action in rejecting the membership application was arbitrary, capricious and invidious because the matter in dispute had been amicably settled between the Charging Party and the owner of the lost ring at least four months prior to the consideration and rejection of the membership application on August 22nd. The Hearing Examiner found the submission of the matter as still unresolved highly prejudicial to the Charging Party.

By way of remedy, the Hearing Examiner ordered the Respondent to admit the Charging Party immediately to membership upon tender of the necessary fees and payment of the necessary membership dues.

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.

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

In the Matter of

BERGEN COUNTY P.B.A. LOCAL NO. 134,

Respondent,

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Docket No. CI-85-68-87

JIHAD SALEEM,

Charging Party.

Appearances:

For the Respondent  
Thomas M. Maher, Esq.  
(Dennis M. Maher, Esq.)

For the Charging Party  
Jihad Saleem, pro se

HEARING EXAMINER'S  
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on October 9, 1984, and amended on December 20, 1984, by Jihad Saleem (hereinafter the "Charging Party" or "Saleem") alleging that the Bergen County PBA Local No. 134 (hereinafter the "Respondent" or the "PBA") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq., (hereinafter the "Act"), in that during the middle of April 1984, Saleem submitted an application for membership in the PBA, enclosing two checks for the necessary fees, and thereafter Saleem's application was rejected but without a statement of reasons

and without the return of his application and fees, which Saleem alleges interferes with his ability to influence negotiations and vote for union officers; all of which is alleged to a violation of N.J.S.A. 34:13A-5.4(b)(1) of the Act.<sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 29, 1985. Pursuant to the Complaint and Notice of Hearing, hearings were held on March 5 and April 11, 1985 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and the Respondent filed a post-hearing brief by April 25, 1985.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the oral argument of the parties and the post-hearing brief of the Respondent, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

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<sup>1/</sup> This Subsection prohibits public employee representatives or their agents from:  
"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

FINDINGS OF FACT

1. The Bergen County PBA Local No. 134 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

2. Jihad Saleem is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

3. Saleem was hired as a Corrections Officer in the Bergen County Sheriff Department in September 1983.

4. On March 18, 1984 Saleem completed and submitted an application for membership in the PBA, enclosing two separate checks to cover the initiation fee and car shield in total sum of \$61 together with a checkoff authorization (CP-4).

5. Stephen Bojekian, a PBA State Delegate and a member of the PBA's Investigating Committee, testified that Saleem's application was received in April 1984. When Saleem's application was submitted to the Investigating Committee an investigation was undertaken, which included a check of the residence of the applicant and notification to members in good standing in the PBA, who may raise questions regarding the applicant. Bojekian testified that "numerous parties" said that Saleem was of "questionable character," referring to an incident wherein Michael Longobardi, a Corrections Officer, made a written complaint against Saleem on December 20, 1983 about the loss of his wedding ring (R-1). In this written report, submitted to Undersheriff Anthony V. Scolpino, Longobardi claimed that Saleem had found his wedding ring, and acknowledged

finding it, but had never returned it for the reason that Saleem had taken it home and misplaced it. Longobardi had pursued the matter of the return of the ring between October 8 and November 1, 1983 to no avail. Longobardi then said to Saleem that he either wanted the ring back or the money to replace it. Longobardi did not testify as a witness and the foregoing is based on excerpts from his report to Scolpino (R-1, supra).

6. Saleem testified that he had found the ring and had misplaced it at home. Several days after Saleem had found the ring two captains in the Sheriff's office, Norman Conway and Alfred L. Brower, arranged a meeting between Saleem and Longobardi where an agreement was reached on a cash settlement for the ring and ultimately Saleem paid Longobardi \$325 by checks in several installments, two of which checks were received in evidence and totalled \$100 (CP-1). Saleem wrote "last payment" on a check for \$25 dated April 20, 1984 (CP-1). Page 2 of Exhibit R-1 contains a written notation at the bottom: "Final outcome. Paid 1/2 value of ring; \$650 price of ring; \$325 what he gave me." The PBA offered R-1 as its exhibit and the Hearing Examiner finds that the notation on the bottom of page 2 is that of Longobardi, notwithstanding that the identity of the author was not elicited at the hearing. In so finding, the Hearing Examiner notes that the statement "\$325 what he gave me" corroborates the testimony of Saleem that that was the figure arrived at by agreement.

7. Sometime between May 1984 and June 1984 the Investigating Committee received a copy of R-1 from Longobardi.

This had come about by virtue of Longobardi having contacted Bojekian in April 1984 and at Bojekian's request Longobardi provided the Investigating Committee with a copy of R-1. After R-1 was received it was added to the report submitted by the Investigating Committee.

8. The application of Saleem was submitted to a membership meeting of the PBA on August 22, 1984. According to Bojekian there was no written material submitted to the members other than R-1, which was read aloud. There were some verbal comments by some of the members present on the Saleem application. A vote was taken and Saleem's application was unanimously rejected. According to Bojekian, the action of the membership was in accordance with Article IV, Membership, of the By-laws governing the PBA (R-2). At the time of the August 1984 meeting there were approximately 200 members in the PBA. The number of members present at the meeting was not elicited.

9. Saleem received no formal notification of the rejection of his application which, according to Bojekian and Anthony Ravenda, the PBA Vice President and a member of the Investigating Committee, is in accordance with PBA policy as reflected in the By-laws. However, sometime within two weeks after the meeting, Ravenda met Saleem and told him that he was rejected because of an active complaint filed by a member of the Department, and that the true basis of the rejection was not the complaint itself but the fact that it was unresolved. He told Saleem that he

could reapply in six months.<sup>2/</sup> Ravenda also testified that even if the complaint (R-1) had been resolved it would still have been read at the membership meeting and considered by the membership.

10. After receipt of notification by the PBA that Saleem had filed the instant Unfair Practice Charge in October 1984 the PBA attempted to return Saleem's application and the checks covering fees by mailing same to him on November 5, 1984 by certified mail (R-3). Saleem acknowledged the correctness of the address but claimed that he never received the letter, notwithstanding that the post office shows notations of efforts to deliver on four occasions between November 6 and November 26, 1984 (R-3). The envelope was returned to the PBA unclaimed and was produced at the hearing, at which time the contents of the envelope were returned to Saleem.

11. Ravenda testified that to his knowledge no applicant had ever been rejected since he became active in the PBA in 1982, adding that there had been a number of applicants due to an upsurge in the number of employees in the Department.

12. Saleem produced a letter from Captain Alfred L. Brower of the Bergen County Sheriff's Department, dated February 27, 1985, which states that Saleem since the date of his employment has never been charged with any infractions of departmental rules (CP-3).

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<sup>2/</sup> Saleem denied that Ravenda gave him the reasons enumerated by Ravenda, supra. However, the Hearing Examiner found Ravenda to be a credible witness and, therefore, credits his testimony since Saleem did not deny the encounter and did not offer any contrary version of the conversation which ensued.

13. Saleem testified that because of the denial of his application for membership in the PBA he cannot voice opinions at membership meetings regarding negotiating policies, which might impact on his employment, nor can he vote in elections of officers who might better represent his interests in negotiations.

14. Saleem has been required to pay to the PBA the 85% agency "service fee" pursuant to N.J.S.A. 34:13A-5.5 et seq. (1 Tr. 20).

#### DISCUSSION AND ANALYSIS

The PBA Violated Subsection (b)(1)  
Of The Act When It Rejected The  
Application For Membership Of  
Saleem On August 22, 1984.

This is not a case of first impression under our Act, the Commission having issued two decisions, one of which found a violation<sup>3/</sup> and the other of which found no violation.<sup>4/</sup>

In Rasheed, unlike the instant case, the PBA gave no reason whatsoever in rejecting the applicant on two separate occasions. Although Rasheed suspected that his prior criminal record was the reason that he had not been accepted, the record did not establish that this was the reason for the rejection. The Commission relied on New

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<sup>3/</sup> See PBA Local #199 (Rasheed etc.), P.E.R.C. No. 81-14, 6 NJPER 384 (1980).

<sup>4/</sup> See N.J.C.S.A. Council #5 (Labriola), P.E.R.C. No. 82-75, 8 NJPER 123 (1982).



Jersey judicial precedent and the language of our Act in concluding that the PBA had acted arbitrarily in rejecting Rasheed's application for membership (6 NJPER at 386). The Commission construed Section 5.3 of our Act together with Sections 5.5 et seq. in enunciating the rule that it would be anomalous to hold that a public employee representative could on the one hand close its doors to an eligible applicant for membership and on the other hand allow it to collect a "service fee" from the same individual. In short, an organization "...cannot extract fees from those they would exclude..." (6 NJPER at 386). The Commission ordered the PBA in Rasheed to admit the charging party to full membership.

In Labriola. supra, the union was found to have not acted arbitrarily, capriciously or invidiously when it rejected the membership application of an individual who had persistently threatened co-employees and union members with physical violence. The record fully supported the conclusion that the applicant, Labriola, had an extensive history of abuse of co-employees and the president of the union (see 8 NJPER at 64). Thus, Labriola stands for the proposition that if there is a sound basis in fact for the rejection of an applicant for membership the Commission in a subsequent unfair practice proceeding will find that the public employee representative acted with justification under the Act.

While the facts in the instant case appear to fall somewhere between Rasheed and Labriola, the Hearing Examiner finds and concludes that they are closer to and governed by Rasheed. The

result would be different in this case if the matter of the lost ring of Longobardi had not been resolved prior to the consideration of Saleem's application at the membership meeting on August 22, 1984. Finding of Fact No. 6, supra, indicates clearly that Saleem and Longobardi settled the matter of the ring by Longobardi agreeing to accept \$325 in payment. Given the notation on page 2 of R-1, and the testimony of Saleem, there is no doubt but what the matter was settled and according to Saleem's check to Longobardi, dated April 20, 1984, it appears that the last payment of \$25 was made as of that date. Hence, the matter was settled at least four months in advance of the membership meeting, allowing adequate time for the Investigating Committee to learn the real facts of the matter having been resolved amicably.

Given the foregoing, it was highly prejudicial to Saleem's application to submit and have read aloud to the membership Exhibit R-1. Since there was no other written matter submitted at the meeting of August 22nd, the Hearing Examiner finds and concludes that the Respondent acted arbitrarily, capriciously and invidiously in denying membership to Saleem. Saleem was under no obligation to apply again in six months, notwithstanding this provision in the by-laws as it would have been a futile act. Just like Rasheed, supra, Saleem has been required to pay the "service fee" during the period since the rejection of his application for membership in the face of the Commission's directive that a public employee representative cannot extract fees from those whom it would exclude.

Accordingly, the Hearing Examiner concludes that the Respondent herein violated Subsection (b)(1) of the Act by its rejection of Saleem's application for membership on August 22, 1984.

\* \* \* \*

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent violated N.J.S.A. 34:13A-5.4(b)(1) when on August 22, 1984 it rejected the membership application of Jihad Saleem.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Respondent:

A. Cease and desist from interfering with, restraining or coercing our employee-members in the exercise of the rights guaranteed to them by this Act by refusing to admit Jihad Saleem to full membership on the same basis as all other members in good standing.


B. Take the following affirmative action deemed necessary to effectuate the purposes of the Act:

1. Effective immediately, admit the Charging Party, Jihad Saleem, to full membership in the Bergen County PBA Local No. 134 on the same basis as for all other members in good standing.

The Charging Party shall tender the necessary application fees and membership dues in accordance with the procedure in effect to collect or deduct fees and dues for employees in the unit for membership in the Respondent.

2. Post the following notice marked as Appendix "A" in all locations where the Respondent normally posts notices to employees represented by it. Copies of said notice, on forms to be provided by the Commission, shall, after being signed by the Respondent's representative, immediately upon receipt thereof, be posted and maintained by it for a period of sixty (60) days thereafter in conspicuous places at the aforementioned locations. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other materials.

3. Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this order what steps have been taken to comply herewith.

  
\_\_\_\_\_  
Alan R. Howe  
Hearing Examiner

Dated: May 3, 1985  
Trenton, New Jersey

# 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 employee-members in the exercise of the rights guaranteed to them by this Act by refusing to admit Jihad Saleem to full membership on the same basis as all other members in good standing.

WE WILL, effective immediately, admit the Charging Party, Jihad Saleem, to full membership in the Bergen County PBA Local No. 134 on the same basis as for all other members in good standing. Jihad Saleem shall tender the necessary application fees and membership dues in accordance with the procedure in effect to collect or deduct fees and dues of employees in the unit for membership in the Respondent.

BERGEN COUNTY P.B.A. LOCAL NO. 134  
(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, 495 W. State State Street, Trenton, New Jersey 08618 Telephone (609) 292-9830.