

H.E. NO. 98-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ISLAND HEIGHTS,

Respondent,

-and-

Docket No. CO-H-97-383

ISLAND HEIGHTS PBA LOCAL 352,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find the Borough of Island Heights committed an unfair practice when, without negotiations, it reduced the salary of patrolmen on its police force while contending it was reducing the grade or ranks of these officers pursuant to N.J.S.A. 40A:14-134. It was recommended that the Commission find the salary reduction was not a reduction pursuant to 40A:14-134. It was also recommended that the Commission find that the Borough committed an unfair practice when it failed to provide information to Local 352, the majority representative.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 98-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ISLAND HEIGHTS,

Respondent,

-and-

Docket No. CO-H-97-383

ISLAND HEIGHTS PBA LOCAL 352,

Charging Party.

Appearances:

For the Respondent,
Citta, Holzapfel, Millard, Zabarsky & Leahey, attorneys
(Matthew A. Leahey, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION
ON MOTION FOR SUMMARY JUDGMENT

On May 14, 1997, Island Heights PBA Local 352 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Island Heights committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7)^{1/} by refusing to supply information

^{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. (2) Dominating or interfering with the formation, existence or administration

requested by Local 352 which is relevant to collective negotiations and by unilaterally reducing compensation for bargaining unit members.^{2/}

Local 352 filed for interim relief and on June 13, 1997, as Commission Designee, I ordered the Borough to restore salaries to certain unit members pending negotiations and to provide information requested by Local 352 for negotiations. On June 17, 1997, a Complaint and Notice of Hearing was issued on the charge and I was designated hearing examiner.

On June 30, 1997, Local 352 filed a motion for summary judgment with the Commission seeking a determination on its submissions that, as a matter of law, the Borough committed unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5) by unilaterally reducing the salaries of the three Borough patrolmen

^{1/} Footnote Continued From Previous Page

of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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. (7) Violating any of the rules and regulations established by the commission."

^{2/} The original charge also alleged the Borough refused to negotiate with the employer and attempted to deal directly with unit members.

during negotiations and by failing to timely provide requested financial information relevant to collective negotiations.

On July 1, 1997, the PBA's motion for summary judgment and request for a stay of the hearing was referred to me as hearing examiner pursuant to N.J.A.C. 19:14-4.8.

In support of its motion, the charging party relies upon the certification of Kevin Arnold (which accompanied the unfair practice charge) and the transcript of the interim relief proceeding. On July 31, 1997, the Borough filed a letter memorandum opposing the motion. It argues that N.J.S.A. 40A:14-143 gives it the non-negotiable right to reduce the grade or rank of its police officers and accordingly, it had the right to move the patrol officers to a lower step on the salary guide.

The Borough also filed a certification executed by Matthew Leahey stating that the president of the PBA was notified that the requested information is available to the union president for pick-up at the Borough clerk's office. A letter dated June 24, 1997 to this effect accompanied the certification. Otherwise, the Borough did not dispute the facts contained in the transcript of the interim relief proceeding or in Arnold's certification.

Accordingly, I adopt the pertinent findings of fact contained in I.R. No. 97-23, as to the reduction of patrolmen's salaries and incorporate those findings here.

N.J.S.A. 40A:14-143 states:

Decrease of Force for Reasons of Economy

The governing body of any municipality, if they shall deem it necessary for reasons of economy, may decrease the number of members and officers of the police department or force or their grades or ranks...

The most recent contract between the parties expired on December 31, 1996. Article 17 of that agreement contains 2 salary guides, one for patrol officers and one for sergeants. Paragraph C states, "Movement to each successor step in the guide shall recur on the annual anniversary date of the officer's completion of his/her probationary period." All three patrolmen were on step 4 of the salary guide.

The Borough sent letters to bargaining unit members on April 22, 1997, stating that a special council meeting will take place on May 1, 1997 and "...your employment with the Borough and the term and conditions of that employment will be discussed." Unit members did not attend the meeting. The Borough passed a resolution at the meeting which, quoting N.J.S.A. 40A:14-143, reduced the Chief of Police in rank to sergeant, reduced the one sergeant on the force to patrol officer, [he was at step four of the sergeant's salary guide; the Borough moved him to step four of the patrol officer's guide] and reduced the three patrol officers on the force from step four on the salary guide to step three.

Neither the duties nor assignments of the patrolmen changed after they were moved on the salary guide. The three officers continue to hold the rank of patrol officer and nothing in the record establishes that placement of a patrolman on the salary guide

is based upon assignment or duties. The officers were not reduced in rank and the police department does not even have grades. Accordingly, the Borough's reduction of patrol officer salaries was not pursuant to 40A:14-143.

Salary is a mandatorily negotiable term and condition of employment. Englewood Bd. of Ed. v. Englewood Teachers, 64 N.J. 1, 6-7 (1973). Similarly, movement on a salary guide is mandatorily negotiable. Galloway Tp. Bd. of Ed. v. Galloway Township Education Association, 78 N.J. 25 (1978); Evesham Township, I.R. No. 95-10, 21 NJPER 3 (¶26001 1994); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).

The employer simply reduced the salaries of its employees without negotiations. A unilateral alteration without negotiation creates an impermissible chilling effect on negotiations. Galloway; Evesham; State of New Jersey.

By letter of April 8, 1997, the PBA requested copies of certain public documents from the Borough. None of this information was provided. The Borough never denied that prior to June 15, it failed to provide the requested information. Nor does it maintain that the PBA was not entitled to this information. The Borough however, through Leahey's affidavit, asserts it supplied the requested information after the issuance of the interim relief order.

An employer must provide requested information to the majority representative, provided it is potentially relevant. State of N.J. (OER) and CWA, P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284

1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp.2d 198 (¶177 App. Div. 1988) [App. Div. Dkt. No. A-2047-87T7 (12/27/88)]; Shrewsbury Board of Education and Shrewsbury Borough Teachers Association, P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981); c.f. Lakewood Bd. of Ed. and Lakewood Ed. Ass'n, I.R. No. 95-22, lv to app. den. App. Div. Dkt. No. AM-1115-94T1 (7/10/95)] [I.R. No. 95-22 enforced, Law Div. Dkt. No. OCN-L-1436-95; app. withdrawn App. Div. Dkt. No. A-5590-95T1 (7/21/95)]; c.f. State of New Jersey (Dept. of Treasury), P.E.R.C. No. 97-32, 22 NJPER 372 (¶27196 1996).

Accordingly, I will recommend the Commission find the Borough violated N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act when it failed to supply information to the charging party.

I further recommend the Commission find the Borough violated N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act when on May 1, 1997 it unilaterally and without negotiations reduced the salaries of its three patrolmen.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Borough of Island Heights cease and desist from:

1. Refusing to supply information relevant to collective negotiations to Island Heights PBA Local 352.
2. Reducing the salary of its employees during negotiations for a new contract.


B. That the Borough take this action:

1. Restore the three patrolmen in its police department to step four of the most recent collective negotiations agreement. Such restoration is to be retroactive to May 1, 1997. Further, the Borough shall pay interest pursuant to R. 4:42-11 on all retroactive salary.

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 of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

C. That the 5.4(a)(2), (3), (4) and (7) allegations be dismissed.



Edmund G. Gerber
Hearing Examiner

DATED: August 14, 1997
Trenton, New Jersey



RECOMMENDED



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 supply information relevant to collective negotiations to Island Heights PBA Local 352.

WE WILL NOT reduce the salary of our employees during negotiations for a new contract.

WE WILL restore the three patrolmen in our police department to step four of the most recent collective negotiations agreement. Such restoration is to be retroactive to May 1, 1997. Further, the Borough shall pay interest pursuant to R. 4:42-11 on all retroactive salary.

Docket No. CO-H-97-383

Borough of Island Heights
(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"