

L.D. NO. 88-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONTVILLE,

Respondent,

-and-

Docket No. CO-87-232
LAP-87-11

MONTVILLE PBA AND SOA,

Charging Party.

Appearances:

For the Respondent
Pachman & Glickman, Esqs.
(Steven S. Glickman, of counsel)

For the Charging Party
Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

DECISION

The Township of Montville ("Township") and Policemen's Benevolent Association, Local #140, N.J.S.P.B.A. ("PBA") and the Superior Officers' Association ("SOA") have advised the Public Employment Relations Commission ("Commission") that they agreed to submit the instant dispute to the Commission's Litigation Alternative Program ("LAP"). In this procedure, the parties describe and document their dispute to a Commission designee, who recommends a decision to the parties.

On June 29, 1987, I conducted an informal session at which the parties were represented by their respective counsels. Both

parties presented witnesses and engaged in informal questioning of them. The parties submitted brief position statements following the session by September 4, 1987.

The issue in this matter concerns the negotiations of a "Mutual Cooperation Article" and an "Enlistment Agreement" as part of the parties' collective negotiations agreement. Both parties employed professional negotiators to represent them at the negotiations table. The parties exchanged proposals, which included economic and non-economic items. Union negotiator Patrolman Kenneth Saxer said the PBA and SOA believed that negotiations would be expedited if their negotiator could negotiate non-economic items without the rest of their negotiating team. Similarly, the Township authorized its negotiator to negotiate and resolve all non-economic items with the Unions' professional negotiator outside of the "normal" realm of negotiations, i.e., across the bargaining table.

While the parties continued to negotiate across-the-table with respect to the economic items, the professional negotiators, in separate discussions, met to resolve the non-economic items. After they seemingly resolved the non-economic items, they submitted the proposals to their respective principals. The Union deemed unacceptable certain agreed-upon provisions. The professional negotiators, however, were able to resolve most differences. The two items which the parties could not resolve concerned a provision in an Article entitled "Mutual Cooperation Pledge" and an entire Article called "Enlistment Agreement." The Township's negotiator

and Business Administrator agreed to discuss these issues with the Township's governing body in an attempt to resolve them. Representatives of the Union and the Township's Business Administrator had additional discussions to which the professional negotiators were not privy. It is my opinion that these communications created the dispute which I have been called upon to resolve. Both Harold Marine, the Township's Business Administrator, and Patrolman Kenneth Saxer, negotiating chairperson for the Union, testified that Marine was to approach the Township's governing body with the Union's position with respect to the two unresolved items. However, prior to the next meeting of the Township's governing body, the Union raised an additional issue regarding a provision of the Article entitled "Injury Leave." This issue involved a limitation on the duration of injury leave. However, neither party was aware that this limitation on duration of injury leave was governed by statute. The Union contacted its professional negotiator and was informed that this issue was governed by statute. This conversation occurred prior to Marine's presentation to the Township's governing body but was not communicated to the Administrator so that it would not be raised as a third issue. When this issue was raised to the Township's governing body along with the two above mentioned unresolved items, the governing body concluded that the Union was attempting to change an already agreed upon contract. Therefore, the Township's governing body rejected any further changes in the "negotiated Agreement."

After the Township's governing body reached its decision, Marine communicated the rejection to Saxer, and forwarded to him a draft of the Collective Negotiations Agreement as proposed by the Township. In the interim, the Township's professional negotiator, at the request of the Township's Business Administrator and the Union's professional negotiator, had forwarded a draft of the Agreement to the Union's professional negotiator which included the Union's requested changes absent the injury leave issue. When Saxer contacted the Union's professional negotiator regarding this assessment of the Collective Negotiations Agreement, the professional negotiator informed Patrolman Saxer that the negotiator's copy of the Collective Negotiations Agreement was acceptable and should be signed by the Union representatives. Neither the Township's nor the Union's professional negotiator was aware of the problems that had arisen based upon the communications between the Township's Business Administrator and the Union representatives.

Approximately two weeks after Marine had forwarded his draft of the Collective Negotiations Agreement to Patrolman Saxer, Union representatives met with Marine to execute the Agreement. Both parties initialed the back of each page of the Agreement and signed the last page of the Agreement. While Marine was aware that this draft did not contain the changes desired by the Union, the Union, according to the testimony of Patrolman Saxer, was unaware that the Agreement did not contain these desired changes.

Additionally, in the "Educational Benefit" Article, both parties were unaware of a typographical error which changed an agreed upon educational benefit of \$1,005. to read \$1,500. At the hearing, Patrolman Saxer admitted that this provision in the Collective Bargaining Agreement was, in fact, a typographical error.

ANALYSIS

I find that the "Educational Benefit" Article should be revised as alleged by the Township. As admitted by Patrolman Saxer, the disputed dollar figure in this provision was a typographical error. The Memorandum of Understanding executed by the parties reflects the figure as alleged by the Township of \$1,005. Therefore, I find that the provision as negotiated by the parties reflected a figure of \$1,005. and the Collective Negotiations Agreement between the parties should be revised to so reflect.

The issue regarding the Article entitled "Mutual Cooperation Pledge" and "Enlistment Agreement" is not as clear but requires a similar result. The Memorandum of Understanding between the parties does not refer to these provisions. While the Union cannot point to any documentation indicating that the above-mentioned contractual provisions were agreed to in any other form, the Township cannot point to any documentation, other than the contract itself, indicating that these provisions were agreed to as provided for in the Collective Bargaining Agreement. While the fact that the parties executed the Collective Bargaining Agreement including this contractual language lends strong support to a

determination in favor of the Township, I do not find the Collective Negotiations Agreement, in this instance, dispositive, just as I did not find it dispositive with respect to the "Educational Benefit" Article. The testimony presented by both the Township and the Union at the hearing indicated a "unique" and "unorthodox" negotiating procedure. For both parties to leave the negotiating of the contract's language provisions to the professional negotiators was inappropriate, considering that the parties did not accept in total what had been arguably agreed to between the negotiators. This initial error in judgment by the Township and Union officials was compounded by the peripheral communications between the Township and Union officials regarding the outstanding unresolved items. If these discussions had not taken place, it is my belief that these outstanding issues would have been resolved to the satisfaction of both parties. These errors were compounded by the fact that the Union officials did not review the final draft of the Collective Bargaining Agreement submitted to them by Marine, which did not contain the contractual changes desired by the Union but also, did not communicate this fact.

I find that the "Mutual Cooperation Pledge" Article should be revised in accordance with the position of the Union, and the "Enlistment Agreement" Article should be deleted as alleged by the Union. While I find that the reason for the dispute was precipitated by the actions of both the Township and the Union, it would be inequitable for the Collective Negotiations Agreement to

reflect language which was not in actuality agreed upon between the parties. The equities in these circumstances would not harm the Township in any way by the deletion of this language.



Jonathon Roth, Commission Designee

DATED: December 31, 1987
Trenton, New Jersey