P.E.R.C. NO. 84-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

Respondent,

-and- Docket No. CO-83-59-60

LOCAL 2168, AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge Local 2168, AFSCME, AFL-CIO filed against the Township of Hillsborough. The charge had alleged that the Township refused to negotiate with Local 2168 concerning three job titles it allegedly created after entering a collective negotiations agreement with Local 2168. The Commission holds that Local 2168 failed to prove this charge by a preponderance of the evidence.

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Appearances:
For the Respondent, Frank N. Yurasko, Esquire

For the Charging Party, Carlton Steger, Staff Representative

DECISION AND ORDER

On September 16, 1982, Local 2168, AFSCME, AFL-CIO ("Local 2168") filed an unfair practice charge against the Township of Hillsborough ("Township") with the Public Employment Relations Commission. The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5),[1/] when it refused to negotiate with Local 2168 concerning three job titles it allegedly created after entering a collective negotiations agreement with Local 2168.[2/]

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; and (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."

2/ Engineering Aides I & II and Clerk in the Public Works - Engineering Department.

On January 11, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The Township then filed an Answer denying any impropriety.

On March 2, 1983, Hearing Examiner Alan R. Howe conducted a hearing at which the parties examined witnesses and presented evidence. The parties filed post-hearing briefs.

On April 26, 1983, the Hearing Examiner issued his report and recommendations, H.E. No. 83-36, 9 NJPER 323 (¶14144 1983). He recommended dismissal of the Complaint because he found that Local 2168 had failed to prove by a preponderance of the evidence that the Township had created the three job titles after entering the collective negotiations agreement and had then refused to negotiate over those titles. He found instead that all three job titles were in existence long before the contract was executed, and that one title was expressly covered by that contract.

On May 20, 1983, Local 2168 filed Exceptions. Specifically, Local 2168 objects to the Hearing Examiner's finding that the three job titles were already in existence before the current contract was executed.

We have reviewed the record. Substantial evidence supports the Hearing Examiner's findings of fact. We adopt and incorporate them. We also adopt and incorporate, for the reasons stated in his opinion, his conclusions of law.

The record clearly supports the Hearing Examiner's finding that the titles of Engineering Aide I and II had been in

existence at least since 1980.[3/] The record also supports the Hearing Examiner's finding that the title Clerk in the Public Works-Engineering Department is covered by the collective negotiations agreement between the Township and Local 2168. Accordingly, we find that Local 2168 has failed to prove by a preponderance of the evidence that the Township unilaterally created three new job titles after the January 1, 1982 effective date of the parties' collective negotiations agreement.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Hartnett, Suskin, Butch and Newbaker voted for this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
September 15, 1983
ISSUED: September 16, 1983

3/ In the absence of a unit clarification petition, we have no occasion to consider whether either of these job titles should be included in the unit in the future.

H. E. No. 83-36

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

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Respondent,

-and- Docket No. CO-83-59-60

LOCAL 2168, AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act inasmuch as the Charging Party failed to prove by preponderance of the evidence that the Respondent unilaterally and without negotiations with the Charging Party created three new job titles on and after the effective date of the collective negotiations agreement, January 1, 1982. Two of the job titles, Engineering Aide I and II, existed as far back as 1975 and the Charging Party knew or should have known of their existence. The job title of Clerk in the Engineering and Public Works Department presently appears in the collective negotiations agreement and thus could not have been unilaterally created.

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 conclusion of law.

H. E. No. 83-36

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

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

Respondent,

-and-

Docket No. CO-83-59-60

LOCAL 2168, AFSCME, AFL-CIO,

Charging Party.

Appearances:

For the Respondent
Frank N. Yurasko, Esq.

For the Charging Party
Carlton Steger, Staff Rep.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 16, 1982 by Local 2168, AFSCME, AFL-CIO (hereinafter the "Charging Party" or the "Local") alleging that the Township of Hillsborough (hereinafter the "Respondent" or the "Township") 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 the Respondent has refused to negotiate in good faith with the Charging Party regarding the establishment of three new job titles, namely, Engineering Aide I, Engineering Aide II and Clerk in the Engineering and Public Works Department, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4 (a)(1) and (5) of the Act. 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."

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 January 11, 1983. Pursuant to the Complaint and Notice of Hearing, a hearing was held on March 2, 1983 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses and present relevant evidence. Oral argument was waived and the parties filed post-hearing briefs by April 20, 1983.

An Unfair Practice Charge 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 post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

FINDINGS OF FACT

1. The Township of Hillsborough is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Local 2168, AFSCME, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The most recent collective negotiations agreement between the parties is effective during the term January 1, 1982 through December 31, 1984 (J-1). Article 1, "Recognition," describes the unit as "...all blue and white collar employees..." in classifications listed in Appendix "A" and for such additional classifications as the parties may agree later to include.

4. The negotiations, which resulted in the adoption of J-1, occurred in December 1981 and January 1982. The Local had submitted written contract demands in October of November 1981, which had been prepared by its then President, Ronald R. Black (CP-1). Neither the written demands nor any demands made by the Local in negotiations pertained to the creation of any new job titles. Likewise, the Township did not propose the creation of any new job titles. However, the parties discussed in negotiations Appendix "A" to J-1 and agreed that the job title of "Fire Inspector" had been omitted and this was added (see J-1, p. 49).

5. Eric P. Fox, the Vice President of the Local and a member of its negotiations committee, testified without contradiction that at the end of Feburary or the beginning of March 1982 he learned that three individuals had been hired into job titles, which were not included in J-1,i.e., Engineering Aide I, Engineering Aide II and Clerk in Engineering and Public Works. Fox wrote to the Township thereafter and a meeting was convened with three union representatives present and a Township Committeeman, Michael Merdinger. Nothing was resolved at the meeting and thereafter grievances were filed by and on behalf of the three individual employees involved, which were processed to the final step under J-1, the Township Committee, which denied the grievances.

6. Exhibit J-1 contains, in addition to the job titles listed in Appendix "A," a list of job titles in Article 34, Wages, particularly in the clerical area (see J-1, pp. 43, 44). However, an examination of both Article 34 and Appendix "A" discloses that there is no job title for Engineering Aide I or Engineering Aide II. There is, however, in Article 34, under Class IV, a job title Public Works Department Clerk with a wage schedule (J-1,p. 44).

7. In May and June 1981 the Township advertised in a local newspaper known as the Princeton Packet the position of "Engineering Aide" (CP-2). Carla M. Lebbing, who is presently an Engineering Aide I, was hired through this advertisement and commenced employment on June 8, 1981 at the rate of $4.00 per hour for ninety days with an increase promised thereafter. No increase was ever granted and, as a result, Lebbing went to the Local in February 1982 and filed a grievance which, after being processed through the Township Committee, was denied.

8. Roger N. McClung, who was employed by the Township from April 1981 through February 1983, was hired in response to an advertisement for "Draftsperson" (CP-3). In his intial interview it was determined that he was overqualified for Draftsperson and, as a result, was hired as an Engineering Aide II at a salary of $14,500 per year. In February 1982 he went to the Local and complained that his job title had never been negotiated. He, too, filed a grievance, which was processed to the Township

Committee and denied. McClung testified that when he was hired in April 1981 there was at that time an employee, Peggy Kugler, whose job title was Engineering Aide without reference to a "I" or a "II."[2/] When McClung left his employment with the Township in February 1983 he was earning $16,500 per year.

9. Dorothy D. Ruck, whose present job title is Clerk in Engineering and Public Works, commenced working for the Township as a part-time employee in the Engineer's office in December 1980. The Township posted a job vacancy for the title of "Public Works Secretary" (CP-4). Ruck was interviewed by Shannon, who discussed combining Engineering and Public Works.

10. Under date of January 8, 1982 Shannon wrote a confidential memorandum to the Township's personnel subcommittee, in which he formally sought approval for the job title of "Public Works Secretary" (CP-7). This would have conformed to the job title as set forth in the notice of vacancy (CP-4, supra). The Township did not act favorably on Shannon's request.

11. On March 10, 1982 the Township adopted a resolution, which awarded the job title of "Clerk in the Public Works-Engineering Department" to Ruck, effective March 22, 1982 at $9396.00 per year (CP-6). On March 12, 1982 Shannon wrote to Ruck offering her the position of "Public Works Secretary" (CP-5).

2/ Thomas B. Shannon, the Director of the Engineering and Public Works since April 1981, testified without contradiction that the job titles of Engineering Aide I and II existed as of April 1981 and he was certain that the job titles existed as far back as 1975. He testified that Peggy Kugler's title was Engineering Aide I. McClung was hired as an Engineering Aide II because of his superior qualifications. Shannon testified that the job title of Engineering Aide I vs. Engineering Aide II is a matter of the competency of the employee and is not an automatic step to be achieved with the lapse of one year such as is the case in other job titles, e.g., Public Works Worker (see J-1, p. 43). The Hearing Examiner credits Shannon on the question of whether or not Peggy Kugler's job title was merely an Engineering Aide or, as Shannon testified, an Engineering Aide I. He was her supervisor and was obviously in a much better position than McClung to know definitively what her actual job title was.

12. In February 1982 Ruck had spoken to Bruce Vatter of the Local, expressing her dissatisfaction with the job title. Thereafter, she filed a grievance, which was processed through the grievance procedure and denied by the Township Committee. Ruck testified that her grievance was based solely upon her not being designated as "Secretary" in the job title, there being no dissatisfaction with the salary as provided for in the March 10, 1982 Township resolution (CP-6, supra).

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsections (a)(1) And (5) Of The Act By Its Conduct Herein

It is first noted that N.J.A.C. 19:14-6.8 provides that the Charging Party "...shall prosecute the case and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The question to be resolved by the Hearing Exajiner is whether or not the Charging Party has met this burden. Based on the record the Hearing Examiner finds and concludes that the Charging Party has not met the burden of proving by a preponderance of the evidence that the Respondent violated Subsections(a)(1) and (5) of the Act by allegedly having failed to negotiate with the Charging Party regarding the establishment of the job titles of Engineering Aide I, Engineering Aide II and Clerk in the Engineering and Public Works Department.

It is first noted that the recognition clause, Article 1 of J-1, describes the negotiations unit as all blue collar and white collar employees in the classifications listed in Appendix "A" and for such additional classifications as the parties may agree later to include. The parties in their negotiations for the 1982-84 agreement (J-1) agreed that the job title of "Fire Inspector" had been omitted and this was added to Appendix "A" (see J-1, p. 49). Neither the written demands of the Charging Party nor those of Respondent proposed the creation of any new job titles to be incorporated into Appendix "A."

The agreement in Article 34, "Wages," lists a number of job titles, not

all of which are included in Appendix "A." In particular, neither Article 34 nor Appendix "A" lists the job title of Engineering Aide I or Engineering Aide II. However, in April and June 1981, several months before the negotiations for J-1 commenced in December 1981, two employees were hired into the positions of Engineering Aide I and Engineering Aide II, namely, Carla M. Lebbing and Roger N. McClung. Quite aside from whether or not these two job titles and the employees occupying them should have been included in the collective negotiations unit, the fact is, as testified to by Thomas B. Shannon, the Director of Engineering and Public Works since April 1981, that the job titles of Engineering Aide I and II existed as of April 1981 and as far back as 1975. This was not contradicted. At the time that McClung was hired there was a prior occupant in the job title of Engineering Aide I, Peggy Kugler, which substantiates the position of the Respondent that the job title of Engineering Aide I or II antedates April 1981.

Thus, the Hearing Examiner finds and concludes that the Charging Party has failed to prove by preponderance of the evidence that the job titles of Engineering Aide I and II were created by the Respondent on and after the effective date of the current collective negotiations agreement, January 1, 1982. These two job titles existed prior thereto, notwithstanding that the Charging Party claims that it did not learn about these two job titles until February 1982 when grievances were filed by the occupants of the Engineering Aide I and II job titles, Lebbing and McClung. The only conclusion to be drawn is that the Respondent did not create the two job titles of Engineering Aide I and II since the effective date of J-1, supra, and, thus, the Respondent cannot be held to have violated the Act as alleged. What happened prior to January 1, 1982 is not germane to an alleged violation of the Act since it would be time-barred under the six-month limitation of Section 5.4(c) of the Act inasmuch as the instant Unfair Practice Charge was filed on September 16, 1982.

Turning now to the final aspect of the Unfair Practice Charge, the alleged

creation of the job title of Clerk in the Engineering and Public Works Department, the facts are clear the the Respondent did not violate the Act in any way whatsoever. Dorothy D. Ruck, whose present job title is Clerk in the Public Works-Engineering Department, made a bid for the job title of "Public Works Secretary," following the posting of the vacancy on December 7, 1981 (CP-4). Ruck was interviewed by Shannon and, under date of January 8, 1982, Shannon wrote a confidential memorandum to the Township's personnel committee, in which he formally sought approval for the job title of "Public Works Secretary" (CP-7). This would have conformed to the job title posted as set forth in the posted notice of vacancy, supra. However, the Township did not act favorably on Shannon's request. Instead, the Township on March 10, 1982 adopted a resolution which awarded the job title of "Clerk in the Public Works-Engineering Department" to Ruck, effective March 22, 1982 (CP-6). Ruck accepted this position but, however, filed a grievance expressing her dissatisfaction with the job title. She had no dissatisfaction with her salary as provided in the Township resolution. Her complaint was solely about not being designated as "Secretary" in the job title.

There exists in Article 34, under Class IV, a job title "Public Works Department Clerk" with a wage schedule (J-1, p. 44). Clearly, the Respondent, in offering Ruck the position of "Clerk" rather than "Secretary" in the Public Works Department was not acting inconsistent with the provisions of J-1, supra. The Hearing Examiner can attach no significance to the fact that the posted vacancy said "Secretary" rather than "Clerk." The collective negotiations agreement in Article 34 would clearly appear to govern. Thus, the Charging Party has failed to prove by preponderance of the evidence that the Respondent unilaterally created a new job title of "Clerk in the Engineering and Public Works Department" on and after the effective date of J-1, January 1, 1982.

* * * *

Based on all of the foregoing, and upon the entire record in this case, the

Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

Dated: April 26, 1983
Trenton, New Jersey