

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

N.J. EMPLOYEES LABOR UNION,
LOCAL NO. 1,

Respondent,

-and-

Docket No. CE-82-14-142

OFFICE OF THE BERGEN COUNTY
PROSECUTOR,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the N.J. Employees Labor Union, Local No. 1 violated subsection N.J.S.A. 34:13A-5.4(b)(4) of the New Jersey Employer-Employee Relations Act when it refused to execute an agreement which it had negotiated with the Office of the Bergen County Prosecutor. The Commission rejects the argument that Local No. 1 did not have to execute its agreement until the prosecutor's office had secured funding for the agreement.

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Appearances:

For the Respondent, Hogan & Palace, Esqs.
(Thomas A. Hogan, of Counsel)

For the Charging Party, Richard T. Carley, Esq.
Acting Prosecutor

DECISION AND ORDER

On February 9, 1982, the Office of the Bergen County Prosecutor ("Prosecutor") filed an unfair practice charge against the N.J. Employees Labor Union, Local No. 1 ("Local No. 1") with the Public Employment Relations Commission. The charge alleges that Local No. 1 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(b)(4), ^{1/} when it refused to execute an agreement which had been negotiated with the Prosecutor and ratified by the affected employees.

1/ This subsection prohibits employee organizations, their representatives or agents from: "(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

On June 23, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. Local No. 1 did not file an Answer within ten days of service of the Complaint.

N.J.A.C. 19:14-3.1.

On September 2, 1982, Commission Hearing Examiner Alan R. Howe conducted a hearing. At its outset, Local No. 1 filed as its Answer a letter submitted on March 5, 1982 to the Director of Unfair Practices. That letter asserted that the officers of Local No. 1 refused to execute the contract because it lacked provisions concerning seniority and binding arbitration found in other contracts covering County employees. The parties then entered stipulations of fact and submitted joint exhibits.^{2/}

Both parties filed post-hearing briefs. Local No. 1 raised two additional defenses not included in its Answer but referred to at the hearing: the unit employees never ratified J-6, and the Board of Chosen Freeholders had not funded the agreement.

On November 17, 1982, the Hearing Examiner issued his report and recommendations, H.E. No. 83-16, 8 NJPER ____ (¶ ____ 1982) (copy attached). He found that Local No. 1 violated subsection 5.4(b)(4) when it failed to execute the collective negotiations agreement (J-1), as amended on January 26, 1982 (J-6). He recommended an order requiring Local No. 1 to execute J-1, as amended by J-6.

The Hearing Examiner served a copy of his report on the parties and notified them that Exceptions, if any, were due on or

^{2/} Local No. 1 also offered two documents which the Hearing Examiner admitted over objection.

before November 30, 1982. Local No. 1 filed untimely Exceptions on December 10, 1982.

We have reviewed the record. The Hearing Examiner's findings of fact are supported by substantial evidence. We adopt and incorporate them here.

We also agree, substantially for the reasons set forth in his opinion, with the Hearing Examiner's conclusions of law. Accordingly, we hold that Local No. 1 violated subsection 5.4(b) (4) when it refused to execute the collective negotiations agreement.

Local No. 1 negotiated, and the employees whom Local No. 1 represents ratified, the basic agreement (J-1) now in dispute. Local No. 1 is not now free to dishonor this agreement solely because it does not include the seniority and binding arbitration provisions Local No. 1 would have preferred.

Local No. 1 also asserts it need not execute the basic contract since unit employees never ratified J-6. Local No. 1's attorney secured J-6, after unit employees had already ratified J-1, in order to amend the basic contract to include a disability plan. We agree with the Hearing Examiner that, under all these circumstances, it was not defensible to refuse to execute the basic contract absent ratification of J-6.

Finally, we reject Local No. 1's request that since the proposed agreement has not been funded, it is not binding and should not be executed. We agree with the Hearing Examiner that requiring the prosecutor to obtain funding before an agreement is executed is a circular and unacceptable proposition. Without an agreement, nothing can be presented to the Freeholders for funding.

In order to avoid this problem, a ratified agreement must be negotiated,^{3/} executed, and then presented to the Board of Chosen Freeholders for funding. If the necessary funding is denied, the prosecutor must then proceed pursuant to N.J.S.A. 2A:158-7 to obtain the funding by judicial order.^{4/}

ORDER

IT IS ORDERED that the N.J. Employees Labor Union,
Local No. 1:

A. Cease and desist from

1. Refusing to execute the collective negotiations agreement (J-1), as amended on January 26, 1982 (J-6).

B. Take the following affirmative action:

1. Authorize and direct its designated officers to execute this collective negotiations agreement.

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, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced or covered by other materials.

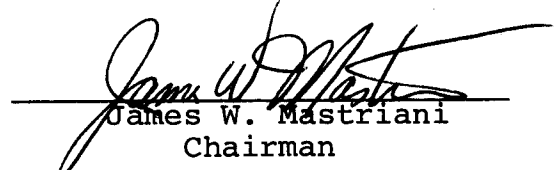
3. Notify the Chairman of the Commission within

^{3/} In re Sullivan, 184 N.J. Super. 463 (Law Div. 1982), recognizes that a prosecutor can negotiate contracts, although funding problems may later arise.

^{4/} We need not determine how a failure to obtain funding might affect the validity of the parties' underlying contract. That question can be considered if and when the parties have negotiated a contract, but have been unable to secure the anticipated funding.

twenty (20) days of receipt what steps the Respondent Union has taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hartnett, Newbaker and Suskin voted in favor of this decision. None opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
December 15, 1982
ISSUED: December 16, 1982

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 all employees who are represented by
the N.J. Employees Labor Union, Local No. 1
that:

The N.J. Employees Labor Union, Local No. 1, will cease and desist
from refusing to execute the collective negotiations agreement (J-1),
as amended on January 26, 1982 (J-6).

The N.J. Employees Labor Union, Local No. 1, will authorize and
direct its designated officers to execute this collective negotiations
agreement.

N.J. EMPLOYEES LABOR UNION, LOCAL NO. 1
(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.

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

In the Matter of

N.J. EMPLOYEES LABOR UNION,
LOCAL NO. 1,

Respondent,

-and-

Docket No. CE-82-14-142

OFFICE OF THE BERGEN COUNTY
PROSECUTOR

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Union violated Subsection 5.4(b)(4) of the New Jersey Employer-Employee Relations Act when its officers refused to execute a collective negotiations agreement, which had been executed by the prosecutor and ratified by the white collar employees in the office of the Bergen County Prosecutor. The Hearing Examiner found that the Respondent's reasons for refusing to execute the agreement were frivolous and without foundation. Specifically, he rejected the Respondent's argument that it could not execute the agreement because the agreement had not yet been funded by the Board of Chosen Freeholders of Bergen County. The Hearing Examiner was persuaded that an agreement must first be executed by both parties before being submitted for funding. To suggest otherwise is to create a circular situation where no agreement was consummated, which could thereafter be submitted for funding.

By way of remedy, the Hearing Examiner ordered that the Respondent Union to authorize and designate officers to execute the agreement.

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.

execute the formal contract, which was forwarded to counsel for the Respondent, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(b)(4) of the Act. ^{2/}

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 June 23, 1982. Pursuant to the Complaint and Notice of Hearing, a hearing was held on September 2, 1982 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. By agreement, the parties stipulated a complete record consisting of documentary exhibits and stipulations of fact with the Respondent placing in evidence two exhibits over the objection of the Charging Party. The parties did not waive a Hearing Examiner's Recommended Report and Decision, but did waive oral argument. The parties filed post-hearing briefs by October 18, 1982.

An Unfair Practice Charge having been filed with the Commission, a question concerning an alleged violation 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 Office of the Bergen County Prosecutor is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The N.J. Employees Labor Union, Local No. 1 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. In June 1980 negotiations commenced between the Prosecutor and the Union for a collective negotiations agreement covering the white collar employees

^{2/} This Subsection prohibits public employee representatives, their representatives or agents from:

"(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

in the office of the Prosecutor.

4. On September 21, 1981 the white collar employees in the Office of the Prosecutor voted to ratify a collective negotiations agreement.

5. Thereafter, following amendments to the said agreement, the white collar employees of the Office of the Prosecutor voted on December 16, 1981 to ratify a collective negotiations agreement, effective during the term January 1, 1980 to December 31, 1982, (J-1). The meeting of December 16, 1981 was a duly constituted meeting of the Union and was presided over by officers of the Union.

6. In correspondence subsequent to December 16, 1981 between Roger W. Breslin, Jr., the then Prosecutor, and Thomas A. Hogan, counsel for the Union, it was agreed to amend Exhibit J-1 (Article 8, Section 4) to include a disability plan, which had been approved by the Bergen County Board of Chosen Freeholders (see J-2, J-4, J-5, J-6 and J-7). On January 29, 1982 Breslin wrote to Hogan, advising that he had approved Hogan's amendment of Article 8, Section 4 (see J-6 and J-7).

7. Subsequent to January 29, 1982 the Prosecutor was notified that the Union officers would not sign Exhibit J-1, as amended by Exhibit J-6.

8. Immediately thereafter the Prosecutor filed the instant Unfair Practice Charge, which was docketed on February 9, 1982.

9. On July 23, 1981 the County Administrator advised the Prosecutor (R-1) that the Board of Chosen Freeholders would not approve the funding of three benefits that the Prosecutor wanted to grant to his employees: (1) tuition payment; (2) medical examinations; & (3) time and one-half for hours worked over 32.5 (R-2).

10. The County-wide white collar collective negotiations agreement, effective January 1, 1980 to December 31, 1982, does not contain a provision for benefits referred to in Exhibits R-1 and R-2; supra.

11. The collective negotiations agreement (J-1), as amended (J-6), contains provisions covering the three benefits referred to in Exhibits R-1 and R-2, supra.

DISCUSSION AND ANALYSIS

The issue presented in the instant case strikes the Hearing Examiner as somewhat bizarre. The Respondent's Answer, a Statement of Position dated March 5, 1982 (C-2), gives two reasons that the officers of the Respondent would not execute the agreement, first, the lack of a seniority clause and second, the restrictive language in the provision on binding arbitration. Both at the hearing, and in its post-hearing brief, the Respondent raises two different objections to executing the agreement, namely: (1) the agreement, in its amended form, was never presented to the employees of the Office of Prosecutor for ratification; and (2) the proposed agreement has not been funded by the Board of Chosen Freeholders and, therefore, "cannot be binding."

The Respondent Union Has Violated
Subsection(b)(4) Of The Act By Its
Unexcused Failure To Execute The
Agreement (J-1), As Amended (J-6)

In finding and concluding that the Respondent Union has violated Subsection(b)(4) of the Act, the Hearing Examiner rejects as specious all of the reasons advanced by it for refusing to execute the agreement, as amended.

First, there is a serious question as to whether the Hearing Examiner should consider any reasons other than those set forth in the Respondent's Answer, i.e. the absence of a seniority provision and the restrictive language on binding arbitration. The Answer was filed belatedly at the hearing on September 2, 1982. The Respondent had ample opportunity prior to the hearing to file a full-dress Answer, including any and all defenses that it wished to make by way of explaining its refusal to execute the agreement.

When the agreement (J-1) was submitted for ratification on December 16, 1981 the officers of the Respondent were present at a duly convened meeting of the Union

where the white collar employees in the Office of the Prosecutor voted to accept the contract. Surely, under the circumstances, the Respondent Union cannot complain that it should not be required to execute the agreement where its officers were present at a duly convened ratification meeting with the results indicated above. Thus, the defense that the agreement lacks a seniority provision or contains a restrictive arbitration provision is rejected out of hand.

Even assuming that the Hearing Examiner considers the additional defenses raised by the Respondent Union to the execution of the agreement, these too are totally lacking in merit. First, there is no reason for the agreement to be resubmitted for ratification since the amendment to Article 8, Section 4 is either pro forma or contains additional positive benefits, which no employee group could be expected to reject. Thus, requiring the Union to resubmit the agreement for ratification would introduce needless further delay productive of nothing. Secondly, the objection that the agreement has not been funded and, therefore, is not binding, is totally without merit. The Sullivan cases^{3/} strike the Hearing Examiner as totally inapplicable to the facts in the case at bar.

The Hearing Examiner is impressed by the argument of the Charging Party that in Sullivan the Burlington County Prosecutor chose a strategy which was unsuccessful and, as would be expected, the litigation undertaken did not produce the desired result. Also, as noted by counsel for the Charging Party, Sullivan has nothing to do with whether or not the Prosecutor can engage in collective negotiations, even if the resulting agreement will cost more in funding than the funding agency may be willing to spend. Counsel then pertinently quotes from the first Sullivan decision where it is stated that:

^{3/} Sullivan v. Burlington County Freeholder Bd., 179 N.J. Super. 228 (App. Div. 1981) and In re Sullivan, 184 N.J. Super. 463 (Law Div. 1981).

"Thus, it was entirely proper for Sullivan to negotiate contracts with the Association though he recognized that there could be difficulties in funding them." (179 N.J. Super. at 231).

Counsel for the Charging Party next refers to the decision of the New Jersey Supreme Court in Bigley's Application, 55 N.J. 53 (1969), which counsel suggests was the appropriate strategy for the Prosecutor to have followed in Sullivan.

Finally, the Hearing Examiner agrees with counsel for the Charging Party that the Respondent presents a circular proposition in contending that the Prosecutor must first attain funding before an agreement need be executed. It appears to the Hearing Examiner that the logical procedure, aside from the history of the Sullivan litigation in Burlington County, is for an agreement to be negotiated and executed and thereafter submitted to the funding authority. If it is not funded, then it is up to the Prosecutor to proceed under N.J.S.A. 2A:158-7 to obtain the necessary funding by judicial order.

* * * *

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

CONCLUSION OF LAW

The Respondent Union violated N.J.S.A. 34:13A-5.4(b)(4) by the conduct of its officers in refusing to execute the negotiated collective negotiations agreement (J-1), as amended (J-6).

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Union cease and desist from:

1. Refusing to execute the collective negotiations agreement, which was ratified by the employees of the Office of the Bergen County Prosecutor on December 16, 1981 (J-1), as amended on January 26, 1982 with respect to Article 8, Section 4 (J-6).

B. That the Respondent Union take the following affirmative action:

1. Forthwith authorize and direct its designated officers to execute the collective negotiations agreement, which was ratified by the employees of the Office of Bergen County Prosecutor on December 16, 1981 (J-1), as amended on January 26, 1982 with respect to Article 8, Section 4 (J-6).

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, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Union to insure 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 Union has taken to comply herewith.



Alan R. Howe
Hearing Examiner

Dated: November 17, 1982
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 members that:

WE WILL NOT refuse to execute the collective negotiations agreement, which was ratified by the employees of the Office of the Bergen County Prosecutor on December 16, 1981 (J-1), as amended on January 26, 1982 with respect to Article 8, Section 4 (J-6).

WE WILL forthwith authorize and direct our designated officers to execute the collective negotiations agreement, which was ratified by the employees of the Office of the Bergen County Prosecutor on December 16, 1981 (J-1), as amended on January 26, 1982 with respect to Article 8, Section 4 (J-6).

N.J. EMPLOYEES LABOR UNION, LOCAL NO. 1

(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
Chairman, Public Employment Relations Commission,
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780