

P.E.R.C. NO. 92-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT,

Respondent,

-and-

Docket No. CO-H-91-91

TEAMSTERS LOCAL UNION NO. 469,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission, dismisses a Complaint based on an unfair practice charge filed by Teamsters Local No. 469 against the Borough of Point Pleasant. The charge alleged that the Borough violated the New Jersey Employer- Employee Relations Act when, during successor contract negotiations, it refused to negotiate over health coverage or personal days for unit employees and when it refused to agree to binding arbitration over those issues. The Chairman concludes that the charging party did not prove that the employer breached any negotiations obligation.

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TEAMSTERS LOCAL UNION NO. 469,

Charging Party.

Appearances:

For the Respondent, Cita, Cita, Millard & Zabarsky,
attorneys (J. Mark Mutter, of counsel)

For the Charging Party, Hott & Margolis, attorneys
(Timothy R. Hott, of counsel)

DECISION AND ORDER

On October 23, 1990, Teamsters Local No. 469 filed an unfair practice charge against the Borough of Point Pleasant. The charging party alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} when, during successor contract negotiations, it refused to negotiate over health coverage or personal days for unit employees and when it refused to agree to binding arbitration over those issues.

^{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."

On December 14, 1990, a Complaint and Notice of Hearing issued. On January 30, 1991, the employer filed its Answer claiming, among other things, that it had engaged in hard bargaining and that the parties never reached agreement on the disputed issues.

On May 14 and May 15, 1991, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs by June 18, 1991.

On August 12, 1991, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 92-4, 17 NJPER ____ (¶ ____ 1991). He found that the employer negotiated in good faith and that there was no "meeting of the minds" on health benefits for unit employees.

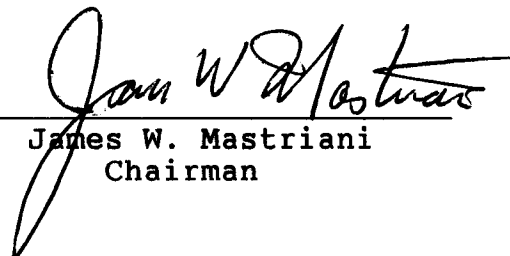
The Hearing Examiner served his decision on the parties and informed them that exceptions were due August 26, 1991. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. In the absence of exceptions, I incorporate the Hearing Examiner's findings of fact (H.E. at 3-12). Given those findings and pursuant to authority granted to me by the full Commission in the absence of exceptions, I dismiss the Complaint. The charging party has not proved that the employer breached any negotiations obligation.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: September 30, 1991
Trenton, New Jersey

H.E. NO. 92-4

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

In the Matter of

BOROUGH OF POINT PLEASANT,

Respondent,

-and-

Docket No. CO-H-91-91

TEAMSTERS LOCAL UNION NO. 469,

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Borough did not violate Sections 5.4(a)(1) or (5) of the New Jersey Employer-Employee Relations Act when its negotiators refused to include in a successor agreement the Union's demand for employer-paid health benefits coverage for its crossing guards. The Hearing Examiner found that there was no "meeting of the minds" between the parties on this issue, notwithstanding extensive negotiations. Further, the "totality of conduct" of the Borough's negotiators showed good faith "hard bargaining" on the issue consistent with a sincere desire to reach an agreement. See Mt. Olive Tp. Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15120 1983) and Hamilton Tp. Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737, 739 (¶17276 1986).

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.

H.E. NO. 92-4

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

In the Matter of

BOROUGH OF POINT PLEASANT,

Respondent,

-and-

Docket No. CO-H-91-91

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Appearances:

For the Respondent, Cita, Cita, Millard & Zabarsky,
Attorneys (J. Mark Mutter, of counsel)

For the Charging Party, Hott & Margolis, Attorneys
(Timothy R. Hott, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on October 23, 1990 by Teamsters Local No. 469 ("Charging Party" or "Union") alleging that the Borough of Point Pleasant ("Respondent" or "Borough") 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. ("Act"), in that since September 6, 1990, and continuously thereafter, the Borough has interfered with the rights of its employees represented by the Union by having failed to bargain with them in good faith, namely, in negotiations meetings on January 4, January 22, February 12, March 15 and March 19, 1990, the Union presented proposals providing for family health coverage and paid

personal days but from March 1990 through August 1990, the Borough's representatives offered to provide only single employee health coverage and paid personal days; further, during the period March 1990 through August 1990, the Union based its wage negotiations on the belief that at least single employee health coverage and paid personal days had been offered as part of a successor agreement, retroactive to January 1, 1990; but on September 6, 1990, the Borough advised the Union in writing that it would not negotiate over health coverage or personal days; finally, on September 13, 1990, the Union requested binding arbitration which was refused by the Borough on September 20, 1990; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.^{1/}

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 December 14, 1990. Pursuant to the Complaint and Notice of Hearing, and after several adjournments, hearings were held on May 14 and May 15, 1991, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence

^{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."

and argue orally. Oral argument was waived and the parties filed post-hearing briefs by June 18, 1991.

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 Borough of Point Pleasant is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Teamsters Local Union No. 469 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Union presently represents two units among the Borough's employees, namely, those in the Department of Public Works ("DPW") and those who are its School Crossing Guards (1 Tr 25, 26, 31 & 34; R-1, R-3). Only the unit of Crossing Guards is involved in

the instant proceeding. The Crossing Guards number 13 employees and three substitute employees (1 Tr 74).^{2/}

4. Following the certification of the unit for the Crossing Guards unit in 1984 or 1985, the parties negotiated an initial two-year collective negotiations agreement, expiring in December 1986 (1 Tr 26-29). The successor agreement was effective during the term January 1, 1987 through December 31, 1989 (J-1; 1 Tr 29, 30).

5. Negotiations for the successor agreement to J-1, supra, commenced on December 14, 1989. The Borough's negotiators were Jerome A. Cevetello, Jr. and William Santos, who had replaced the Borough's prior single negotiator, Paul Laracy. [1 Tr 27, 31, 32; 2 Tr 8-11]. The Union's negotiators were Frederick P. Potter, its President, and two Crossing Guards, Sharon Haugh and Betty Erm (1 Tr 23; 2 Tr 10).^{3/} This first negotiations meeting was devoted to preliminaries such as the scheduling of future negotiations meetings so that Haugh and Erm could be present during "free time"

^{2/} The Union refers to the 13 Crossing Guards as "full-time" employees while the Borough's Mayor and Council deem these 13 Crossing Guards as "part-time" employees, who collect unemployment compensation during the summer, at Thanksgiving and during the Christmas holidays (2 Tr 69, 70, 131, 160). This disagreement is at the heart of the instant unfair practice dispute.

^{3/} Commencing in the fall of 1989, Cevetello and Santos had successfully negotiated a collective negotiations agreement with Potter, covering the DPW unit, supra. This agreement was concluded in December 1989 and ratified in January of 1990. [1 Tr 37, 90; 2 Tr 8].

from their work schedules as crossing guards. No substantive matters of negotiations were discussed. [2 Tr 9-11].

6. The second negotiations session took place on December 28, 1989, with the same negotiators present. The parties exchanged their respective contract proposals. Among other demands, the Union sought health benefits paid by the Borough and three additional personal days. The Borough offered a three-year contract with an annual salary increase of 6%. [1 Tr 38-40; 2 Tr 11-13; 1 Tr 8, 9; J-2 & J-3].

7. According to Potter, Cevetello and Santos represented that they were negotiating for the Borough in the same "capacity" as they had in negotiating the DPW agreement. And in going through the proposals "...if there was an agreed to item that everything would still be subject to the package being accepted, that they had the authority of the Mayor and Council to negotiate an agreement..." (1 Tr 40, 41).^{4/} On cross-examination, Potter stated that in negotiating previously with Laracy, Laracy represented to Potter that he had guidelines within which to negotiate and that if those were exceeded then "...he would have to go through the Mayor and Council but ultimately the Mayor and Council would have to ratify the agreement, and that he had the full authority to negotiate the contract on behalf of the town..." (1 Tr 76). Potter then added

^{4/} The testimony of Cevetello and Santos, *infra*, established that their discussion with Potter regarding their negotiating authority occurred at the December 28th negotiations session.

that Laracy was a "conduit" between the Union negotiating committee and the Mayor and Council and that "...ultimately all the decisions were made by the governing body..." (1 Tr 77). In the 1989 DPW negotiations, Potter acknowledged that when a proposal had been rejected by Cevetello and Santos "...they did not have the authority to go beyond what was already proposed..." Additional authority had to be given by the Mayor and Council. [1 Tr 89, 90].

8. Cevetello testified credibly that sometime in December 1989, prior to the commencement of the crossing guards negotiations, he was informed of the "parameters" of his negotiating authority with the Union by the Mayor, namely, that the terms of any agreement should be consistent with those negotiated previously with other units (2 Tr 82, 83, 86, 95). Santos testified that the Mayor had given him the same instructions (2 Tr 162). Exhibit J-2 contains the Borough's contract proposals for the Crossing Guards, which were presented to the Union by Cevetello and Santos at the second negotiations session on December 28th, supra.^{5/} The final say on all contract issues was with the governing body and any "agreements" or "offers" could only be made subject to the approval and/or ratification by the governing body [2 Tr 13-16, 82-84, 137-140, 151, 152].

^{5/} Page 2 of J-2 concludes: "Management reserves the right to add or delete from these proposals. This offer is to be considered as a package offer. All changes shall be made in the form of a counter offer (proposal) and subject to the agreement of an overall contract settlement."

* * * *

The Hearing Examiner finds as a fact that the Union's negotiators fully understood that Cevetello and Santos were without authority to bind the Borough to any contract proposal or to any tentative agreement reached during negotiations in the absence of prior ratification and/or approval by the Mayor and Council, *i.e.*, a prerequisite to concluding a successor agreement to Exhibit J-1.

9. The third negotiations session, January 22, 1990, was brief and, according to Cevetello, there was no discussion of one of the principal demands of the Union: health benefits coverage for all employees (2 Tr 17-19). Although Potter testified that these items were discussed at the January 22nd meeting, the dispute is not material since all parties agree that the Union's demands for health benefits coverage and additional personal days were discussed at the fourth negotiations session on March 15, 1990, *infra*, (2 Tr 20-39; 1 Tr 45-50, 101-105). When the subject of health benefit coverage for all crossing guards arose, the Borough's position was that the crossing guards were not entitled to health benefits of any kind since they were not "full-time" employees and no other Crossing Guard agreement provided health benefits (1 Tr 45; 2 Tr 25). Also, the Borough's position was that additional personal days could not be granted "...because of scheduling..." (1 Tr 46).

10. Potter testified that at the fourth negotiating session on March 15th, Cevetello and Santos made an offer of "single health coverage," but not family health benefits coverage (1 Tr 47,

48). This, they estimated, would cost \$145 per month for a single employee, representing an increase of 22% which would be deducted from the Borough's first-year proposed 6% wage increase (1 Tr 101-104; 2 Tr 29-31; J-2).^{6/} Cevetello and Santos credibly denied making any offer on health benefits since they were only "...talking about...very preliminary numbers..." (2 Tr 28, 29, 35). Family coverage, estimated to cost \$429 per month per employee, a 55% increase, was also discussed at this meeting (1 Tr 102, 103; 2 Tr 30). According to Cevetello, these "numbers" would not be received well by the governing body (2 Tr 27, 28). After initially having stated that an offer had been made by the Borough's representatives on March 15th with respect to "single health coverage," Potter acknowledged that Cevetello and Santos said that they were (1) "...going to wait back to hear from us...", (2) talk with the Chief regarding "sick leave policy" (personal days) and discuss whether the offer of single coverage was acceptable and (3) discuss what other monies were available for the second and third year to "...wind up the negotiations..." (1 Tr 109; 107, 108).

11. The parties' fifth negotiating session took place on April 19, 1990. This was a very brief meeting and the only matters discussed were a "...recap of the issues...discussed at the prior meeting..." [2 Tr 39-41].

^{6/} The parties' negotiators spoke of salary increases being reduced to 2%, 4% and 5% per year versus 6% per year as initially proposed by the Borough (J-2; 1 Tr 48, 103, 104, 107; 2 Tr 31, 36, 37).

12. The parties next met on May 16th, their sixth session, where a number of issues were discussed (2 Tr 41-47). The subject of personal days, health benefits coverage, uniforms, vacation carryover, the November payout and salary increases were covered in some detail during the course of this meeting (2 Tr 42-47, 105). Two issues were resolved, namely, uniforms and vacation carryover (2 Tr 46). No counteroffer was made by Cevetello with respect to health benefits (2 Tr 108).

13. A seventh negotiating session was held on July 25, 1990, with only Cevetello and Potter present (2 Tr 50). After discussing a specific employee grievance, Potter stated that the Union was seeking family health benefits coverage for the year 1992, together with various combinations of health coverage, beginning April 1, 1990, including a 5% salary increase in 1991, and a 6% salary increase in 1992 (2 Tr 47-49). Cevetello testified that while Potter appeared to be pressing for some commitment from the governing body on salaries, health benefit coverage and the clothing allowance, it appeared that Potter understood that no commitment had been made up to that point (2 Tr 49, 50).

14. The parties next met on August 30th, their eighth negotiating session. Cevetello was present for the Borough and Potter and Haugh were present for the Union. The express purpose of this meeting was to afford Cevetello an opportunity to put down on paper exactly what the Union's demands were at that time for presentation to the governing body. [2 Tr 51, 63]. Cevetello

prepared a handwritten chart, detailing the respective positions of the Borough and the Union on the outstanding economic issues (R-2; 2 Tr 52-63). This chart indicates, among other things, that the parties had reached agreement on additional personal days, one and two for the second and third years (2 Tr 56, 57). However, the position of the Borough remained "no position" with respect to health benefits coverage during all three years of the proposed agreement (2 Tr 55-62). As to salary increases, the Union's position remained at 6% for each of the three years but the Borough's position at this point was "no position" (2 Tr 62, 63; R-2).

15. Over the course of the several months of negotiating, Cevetello had spoken regularly to the Mayor and several members of the Council regarding the status of the negotiations (2 Tr 64-68). On September 4, 1990, Cevetello met formally with the Mayor and Council in executive session where his chart (R-2) was used as a basis for discussion. The governing body was adamant that the costs involved in granting health benefits coverage could not be borne. The governing body also noted that the crossing guards were part-time employees who collected unemployment compensation during the summer and at Thanksgiving and during the Christmas holidays. One Council member, who had spoken to the Chief regarding the grant of additional personal days, stated that the Chief was adamantly opposed. [2 Tr 68-71, 116-119, 121, 122, 124]. Cevetello was instructed by the Mayor and Council to advise Potter of their

position and this was done by letter dated September 6, 1990 (2 Tr 71, 72; J-4). This letter came as a surprise to Potter, who called Cevetello to request a meeting with a member of the governing body present (1 Tr 55, 56).

16. The ninth negotiating session occurred on September 12, 1990, where both Cevetello and Santos were present along with Potter, Haugh and Erm (2 Tr 72). Potter was extremely upset and insisted that a member of the governing body attend negotiations since he felt that they were not getting "...the true picture..." (1 Tr 56; 2 Tr 72, 73). Cevetello recapped what he had presented to the governing body at the September 4th meeting. There was no substantive discussion regarding health benefits coverage or personal days. [2 Tr 72, 73].

17. Potter sent Cevetello a letter under date of September 13, 1990, in which he reiterated his request that a member of the governing body attend the next negotiating session and, if not, he requested that the Borough agree to binding arbitration. Cevetello met with the Mayor and Council on September 18th. They rejected both of Potter's requests. [J-5, 2 Tr 74-76].

18. Cevetello relayed the governing body's position to Potter in a letter dated September 20, 1990, which reaffirmed the authority of Cevetello and Santos to continue negotiating on behalf of the Borough, and they offered to meet again with the Union upon request (J-6; 2 Tr 76, 77).

19. The tenth and final negotiating session occurred on October 4, 1990, with Cevetello and Santos present for the Borough and Potter, Haugh and Erm present for the Union. Potter's tone was that if the Borough did not agree to the Union's demands that a member of the governing body be present or that the Borough submit to binding arbitration, then he intended to file an unfair practice charge. This the Union did on October 23, 1990. [2 Tr 77-79].

DISCUSSION

The Respondent Borough Did Not Violate Sections 5.4(a)(1) And (5) Of The Act By The Totality Of The Conduct Of Its Negotiators Between December 14, 1989 And October 4, 1990, Nor Was There A "Meeting Of The Minds" On The Issues Of Health Benefits Coverage And Personal Days.

This is yet another case where the public employee representative contends that the public employer agreed in collective negotiations to provide terms and conditions of employment in the absence, however, of a "meeting of the minds" on the issues, i.e., here the Union's contract demands for the inclusion of health benefits coverage for all crossing guards and additional personal days in the successor agreement to J-1. This Hearing Examiner has had four such cases: Mt. Olive Tp. Bd. of Ed., P.E.R.C. No. 78-25, 3 NJPER 382 (1977); Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983); Mt. Olive Tp. Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15120 1983); and North Caldwell Bd. of Ed., P.E.R.C. No. 90-92, 16 NJPER 261 (¶21110 1990).

This is also another "totality of conduct" case. Thus, Jersey City and the second Mt. Olive case were also cited by the

Commission in Ocean Cty. Sheriff, P.E.R.C. No. 86-107, 12 NJPER 341, 347 (¶17130 1986) where it was stated once again that in determining whether or not an employer has agreed to provide a term and condition of employment:

...We must examine the totality of the circumstances to determine what the parties' contractual agreement was or indeed whether there was any meeting of their minds. [citing Mt. Olive and Jersey City, supra]...

(12 NJPER at 347).

See also, Boro of Matawan, P.E.R.C. No. 86-87, 12 NJPER 135, 136 (¶17052 1986) and Trenton Bd. of Ed., P.E.R.C. No. 88-49, 13 NJPER 848, 849 (¶18327 1987).

The Commission has on many occasions restated the standard for determining when a refusal to negotiate in good faith has occurred, this having been first set forth in State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976). See, for example, Ocean County College, P.E.R.C. No. 84-99, 10 NJPER 172, 173 (¶15084 1984) and Hamilton Tp. Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737, 739 (¶17276 1986). In State of New Jersey, supra, it was stated that:

...A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and/or attitude of the party charged. The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a predetermined intention to go through the motions, seeking to avoid, rather than reach, an agreement. [Id. at 40][Footnotes omitted][Emphasis supplied].

The Hearing Examiner is convinced that the instant record demonstrates conclusively that the Borough's negotiators, Cevetello

and Santos, conducted themselves throughout the period from December 14, 1989, through mid-October 1990 in a manner consistent with the desire to reach an agreement with the Union. They did not by their conduct manifest an "intention to go through the motions, seeking to avoid, rather than reach, an agreement."

When the Borough's contract proposals were presented to the Union at the second session on December 28, 1989, the Borough stated that it reserved the right to add or delete from their proposals and that the offer was to be considered as a package with any changes subject to the agreement of an overall contract settlement. (Finding of Fact No. 8). The conduct of the Borough's negotiators thereafter was at all times consistent with this reservation. While the Hearing Examiner acknowledges that the Borough's negotiators obviously engaged in "hard bargaining," particularly on the issue of health benefits coverage, this conduct finds support in State of New Jersey, supra:

It is well established that the duty to negotiate in good faith is not inconsistent with a firm position on a given subject. 'Hard bargaining' is not necessarily inconsistent with a sincere desire to reach an agreement...(and)...is not necessarily a failure to negotiate in good faith. [Id. at 40]

Although the Borough's negotiators became aware that the Union sought health benefits to be paid by Borough and three additional personal days on December 28, 1989, the date that they first received the Union's contract proposals, actual negotiations on these demands did not commence until the critical fourth session on March 15th (Findings of Fact Nos. 6 & 10). Negotiations on that

date focused upon "single health coverage" and how it might be provided by adjusting downward the Borough's 6% per year salary offer. The issue of personal days was also covered. It is most significant that during this March 15th session the Borough's negotiators made no offer regarding "single coverage" health benefits or additional personal days. Potter acknowledged this fact when he testified that at the conclusion of the March session:

They were going to wait back to hear from us. They were going to talk with the Chief regarding the sick leave policy and they were going to discuss themselves if that offer was acceptable, you know, single coverage, they were going to discuss what other monies, if any, could be available for the second and third year to wind up the negotiations... (1 Tr 109).

Serious substantive negotiating took place on only two subsequent occasions, at the sixth session on May 16th and at the seventh session on July 25th (Findings of Fact Nos. 12 & 13). At the July 25th meeting Potter offered various combinations of contract years in which health benefits coverage might fall based upon the amount of a necessary reduction in the proposed annual wage increase to cover the cost. At neither of these two meetings did Potter suggest that an understanding had been reached between the parties on the health benefits coverage issue. However, at the July 25th session, Potter pressed Cevetello for a commitment from the governing body on salaries, health benefits and the clothing allowance.

A pivotal meeting, which supports fully the Hearing Examiner's determination that there was never a "meeting of the

minds" on the central issues in dispute, occurred on August 30, 1990. Cevetello, Potter and Haugh were present. Its purpose was to establish where the parties stood in negotiations so that Cevetello and Santos could present the Union's position to the governing body (Finding of Fact No. 14). At this meeting Cevetello prepared a chart (R-2), which set out the respective positions of the parties on all outstanding economic issues. Finding of Fact No. 14, supra, makes clear that the Borough's position was "no position" with respect to health benefits coverage and salaries although there was agreement on a graduated increase in personal days.

From this point the negotiating relationship between the parties was all "downhill." The next event was Cevetello's appearance before the Mayor and Council on September 4th where the Borough's position hardened on the factor of the costs involved in granting the health benefits, particularly, since the Borough considered crossing guards part-time employees. Also the grant of additional personal days was negatively received (Finding of Fact No. 15). Following a letter from Cevetello to Potter, the parties met for the ninth time on September 12th where Potter was incensed and demanded that the governing body have a representative present at their next negotiations session. Further, if the Borough refused to do so then Potter wanted the Borough to agree to binding arbitration. When the Mayor and Council refused to accede to Potter's twin requests, the tenth and final meeting occurred on October 4th. This was the last substantive meeting between the

parties. Since the Borough's position was unchanged Potter announced that the Union was filing an unfair practice charge, which it did on October 23rd.

* * * *

In summary, the parties met on ten occasions over a span of ten months and became "hung up" on the key issue among the Union's demands: health benefits coverage. The Borough never made an offer on this issue although there were intensive discussions, using various combinations of numerical solutions, at three negotiations sessions, principally on March 15th and twice thereafter on May 16th and July 25th. At no meeting prior to August 30th did the Borough make an offer to the Union with respect to health benefits coverage for crossing guards. The Union fully understood this, based upon the testimony of Potter, its Chief Negotiator (Findings of Fact Nos. 10, 12 & 13).

On August 30th Cevetello set out the respective positions of the parties on a chart, which the parties understood was to taken to the governing body as reflecting their respective positions as of that date. The Hearing Examiner has previously found that the Borough's negotiators, Cevetello and Santos, had engaged in good faith "hard bargaining" consistent with a sincere desire to reach an agreement. This was plainly the case as of August 30th.

The Hearing Examiner also notes that there is clearly no question as to the absence of a "meeting of the minds" since there was nothing upon which the minds could have met. Consider, for

example, that the Hearing Examiner has found above that the Borough never made an offer with respect to health benefits coverage.^{7/}

Even assuming arguendo that the Borough's negotiators had made an "offer" regarding health benefits coverage prior to September 4th, it is clear beyond doubt that this was "shot down" at the executive session of the Mayor and Council on September 4th. Thus, there was never a "meeting of the minds" on the critical issue of health benefits coverage within the meaning of the Commission's decisions cited above.

* * * *

Based upon the entire record in this case, the Hearing Examiner will recommend that the Complaint be dismissed since the Respondent Borough did not violate Sections 5.4(a)(1) and (5) of the Act by the conduct of its negotiators, Jerome Cevetello and William Santos, between the dates of December 14, 1989 and mid-October 1990. Their conduct, in its totality, demonstrated a sincere desire to reach an agreement, as opposed to merely going through the motions, and the positions taken by them with respect to the health benefits coverage issue manifested mere "hard bargaining" which was not inconsistent with a sincere desire to reach an agreement. Therefore, their conduct did not constitute a failure to negotiate in good faith. Finally, there was no "meeting of the minds" on the

^{7/} This was the only pending issue of substance at the time of the August 30th meeting since the issues of personal days and the uniform allowance had been resolved.

basic issue which separated the parties, namely, the grant of health benefits coverage, whether "single" or "family," since the Borough's representatives at no time made an offer to the Union with respect to this demand, i.e., there was nothing of substance upon which minds of the parties could have met.

* * * *

Based upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Borough did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) when its negotiators, over the course of ten collective negotiations sessions, refused to grant to the Union the requested health benefits coverage for the Borough's crossing guards since the Borough's negotiators manifested good faith in the totality of their conduct and there was no "meeting of the minds" on the issue.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: August 12, 1991
Trenton, New Jersey