P.E.R.C. NO. 78-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DENVILLE,

REspondent,

Docket No. CO-77-298-140

-and-

DENVILLE PUBLIC WORKS ASSOCIATION,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law contained in the Hearing Examiner's Recommended Report and Decision in an unfair practice proceeding. The Hearing Examiner found, and the Commission affirms, that the Township violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively 5.4(a)(1) by posting a letter addressed to unit employees cancelling the terms and conditions of the expired collective negotiations agreement during the course of negotiations over a successor agreement. In addition, the Commission determines that the execution of a successor agreement between the parties does not render the matter moot, or obviate the need for an order to remedy the violations and to prevent future violations.

The Commission orders the Township to cease and desist from interfering, restraining or coercing its employees in the exercise of rights guaranteed to them by the act, by threatening employees with unilateral alteration of their terms and conditions of employment. It was further ordered that the Township revoke that portion of a letter threatening alteration of terms and conditions of employment, to post the Commission's order, and to notify the Chairman in writing of the steps taken to comply with that order. That portion of the complaint alleging a violation of N.J.S.A. 34:13A-5.4(a)(3) is dismissed.

P.E.R.C. NO. 78-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DENVILLE,

Respondent,

Docket No. CO-77-298-140

-and-

DENVILLE PUBLIC WORKS ASSOCIATION,

Charging Party.

Appearances:
For the Respondent, Einhorn & Harris, Esqs.
(Mr. Gary Platt, Of Counsel)

For the Charging Party, Morris & Hantman, Esqs.
(Mr. Walter C. Morris, Of Counsel)

DECISION AND ORDER

On April 13, 1977, the Denville Public Works Association (hereinafter the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Township of Denville (hereinafter the "Township") had committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (hereinafter the "Act"). Specifically, the Association alleged that the Township had violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) by: threatening a reduction in force to coerce a contract settlement; during the course of negotiations for a successor agreement issuing a notice cancelling the prior agreement and placing everyone on an eight hour shift with no work guarantee and ceasing all prior contractual benefits; and refusing to negotiate in good faith with the association owing to the foregoing conduct.

It appearing that the allegations, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 30, 1977. A hearing was held on September 12, 1977 before Alan H. Howe, Hearing Examiner of the Commission, at which time the parties were given the opportunity to present relevant evidence, examine and cross-examine witnesses, and to argue orally. Post-hearing briefs were submitted by both parties. On November 9, 1977, the Hearing Examiner issues his Recommended Report and Decision, which report included findings of fact and conclusions of law and a recommended order. The original of the report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.[1/]

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.3.

Essentially, the Hearing Examiner concluded that the Township had violated the Act by posting a letter dated April 5, 1977 indicating a cessation of all contractual benefits and stating that "...we will be on an eight hour shift, no work guaranteed." He found this to constitute a violation of N.J.S.A. 34:13A-5.4(a)(5) and, derivatively, a(1). He recommended dismissal of all other aspects of the charge.

Upon careful consideration of the entire record in this matter, the Commission adopts the findings of fact and conclusions

1/ H.E. No. 78-13, 3 NJPER ___ (1977).

of law rendered by the Hearing Examiner, substantially for the reasons cited by him. More specifically, we find that the within matter is not rendered moot by the execution of a successor agreement by the parties at some time after the issuance of the Hearing Examiner's Recommended Report and Decision. It is our belief that our determination is fully consistent with the opinion of the Superior Court Appellate Divsion in Galloway Township Board of Education and Galloway Township Education Association, 149 N.J. Super. 352, (1977), cert. granted 75 N.J. 29 (1977).

The New Jersey Act is patterned upon the National Labor Relations Act (the "NLRA") and the experience and adjudications under the copied NLRA are applicable as a guide in administering the New Jersey Act.[2/] In distinguishing the negotiations relationship between private sector employers and majority representatives on one hand and commercial contractual relationships on the other, the Supreme Court of the United States has explained:

> ...When most parties enter into contractual relationships they do so voluntarily in the sense that there is no real compulsion to deal with one another, as opposed to dealing with other parties. This is not true of the labor agreement. The choice is generally not between entering or refusing to enter into a relationship, for that in all probability pre-exists the negotiations. Rather, it is between having the relationship governed by an agreed upon rule of law or leaving each and every matter subject to a temporary resolution dependent solely upon the relative strength at any given moment, of the contending forces.
> United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 580 (1960)

2/ Lullo v. Firefighters, 55 N.J. 409 (1970)

It is important in a collective negotiations relationship that when parties engage in illegal conduct, it be adjudicated so that they may know in the future whether such conduct is permitted or prohibited. This concept was recognized by the courts of this State in Galloway Township Board of Education v. Galloway Township Educational Secretaries Association, 149 N.J. Super. 346, (App. Div., 1977), cert. granted, 75 N.J. 29 (1977) wherein the Court held that a public employer's announcement, no less than the imposition, of unilateral changes in terms and conditions of employment, during the course of negotiations for a successor agreement, had a "chilling effect on the right of collective negotiations and amounted to a refusal to negotiate in good faith". /pg. 351, emphasis added/

The instant case is to distinguished from the finding of mootness by the Court in Galloway Township Board of Education v. Galloway Township Education Association, 149 N.J. Super. 352 (App. Div. 1977), cert. granted 75 N.J. 29 (1977). In this latter case the Court found that the signing of the successor agreement, resulting in the payment of withheld length of service increments, satisfied the affirmative relief ordered by the Commission, and thus obviated the need for an adjudication. The facts presented herein are entirely different. The operative event in this finding of unfair practice concerns the Township's posting of a letter cancelling the terms and conditions of the prior agreement which had theretofore remained in full force and effect. To date that letter has not been revoked and the payment of sums or benefits due under the

successor agreement in our judgment does not erase the continuing chilling effect of that letter on the ongoing negotiations relationship between the parties. The signing of a successor agreement by the parties does not remedy such unlawful negotiations conduct. Without a determination of the impropriety of such conduct, there would be no reason to believe that it might not be repeated during the next round of contractual negotiations. For us to decline to pass upon this matter would be to shirk the Commission's statutory duty to prevent labor disputes and to prevent and remedy unfair practices in public employment. See N.J.S.A. 34:13A-1 and 34:13A-5.4.

For all the reasons cited herein we find, determine and order as follows:

Respondent Township of Denville is HEREBY ORDERED:

A. To cease and desist from interfering with, restraining or coercing its employees in the exercise guaranteed to them by the Act by threatening employees in the negotiating unit, represented by the Denville Public Works Association, with unilateral alteration of the terms and conditions of their employment as set forth in the collective negotiations agreement of 1975-1976.

B. Take the following affirmative action:

1. Revoke immediately, in writing, the last paragraph of Thomas Grady's letter of April 5, 1977.

2. Post in all locations where notices are normally given to employees copies of the attached notice marked Appendix "A". Copies of said notice, on forms provided by the Commission, shall, after being signed by the Respondent's representative, be

posted by Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to assure that such notices are not altered, defaced or covered by any other material.

3. Notify the Chairman of the Commission in writing, within twenty (20) days from the day of receipt of this Decision and Order, what steps have been taken to comply herewith.

Respondent Township of Denville did not violate N.J.S.A. 34:13A-5.4(a)(3) and this allegation in the Complaint and charge is dismissed.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hipp, Hurwitz and Parcells voted for this decision. None opposed.

DATED: Trenton, New Jersey
February 16, 1978
ISSUED: February 17, 1978

"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 our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise guaranteed to them by the Act by threatening employees in the negotiating unit, represented by the Denville Public Works Association, with unilateral alteration of the terms and conditions of their employment as set forth in the collective negotiations agreement of 1975-1976.

WE WILL revoke immediately, in writing, the last paragraph of Thomas Grady's letter of April 5, 1977.

TOWNSHIP OF DENVILLE
(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

H.E. No. 78-13

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

In the Matter of

TOWNSHIP OF DENVILLE,

Respondent,

-and-

DOCKET NO. CO-77-298-140

DENVILLE PUBLIC WORKS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Township of Denville interfered with, coerced and restrained its employees in the exercise of rights guaranteed to them by the Act and refused to negotiate in good faith with the majority representative of said employees by having issued a letter on April 5, 1977 in which it announced that as of April 1, 1977 the terms and conditions in effect under a prior collective negotiations agreement were cancelled. This was found to be a violation of the Commission's Piscataway doctrine and the Township was ordered to rescind the letter of April 5, 1977 forthwith.

The Hearing Examiner also recommended to the Commission that the charges that the Township had earlier coerced its employees in the exercise of protected rights by threatening a reduction in force be dismissed.

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 conclusions of law.

H.E. No. 78-13

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

In the Matter of
TOWNSHIP OF DENVILLE,
Respondent,
-and- DOCKET NO. CO-77-298-140
DENVILLE PUBLIC WORKS ASSOCIATION,
Charging Party.

Appearances:

For the Township of Denville
Einhorn & Harris, Esqs.
(Gary Platt, Esq.)

For the Denville Public Works Association
Morris & Hantman, Esqs.
(Walter C. Morris, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on April 13, 1977 by the Denville Public Works Association (hereinafter the "Charging Party" or the "Association"), alleging that the Township of Denville, (hereinafter the "Respondent" or the "Township") had 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 Township had: (1) On November 10, 1976 and January 13, 1977 threatened a reduction in force in order to coerce a contract settlement; (2) During the course of negotiations issued a notice cancelling the prior agreement, placing everyone on an eight hour shift with no work guarantee and ceasing all prior contractual benefits; and (3) Refused to negotiate in good faith with the Association by its action in cancelling the prior agreement and ceasing all contractual benefits. The foregoing was alleged to be violations of N.J.S.A. 34:13A-5.4

(a)(1), (3) and (5) of the Act. 1/

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 30, 1977.

Pursuant to the Complaint and Notice of Hearing, a hearing was held in Newark, New Jersey on September 12, 1977, at which time the parties were given the opportunity to examine witnesses, present relevant evidence, and argue orally. Post-hearing briefs were submitted by the Charging Party on October 18, 1977 by the Respondent on November 2, 1977.

An Unfair Practice Charge having been filed with the Commission, a question concerning the alleged violations within the Act, as amended, exists and, after hearing and after the filing and considerations of briefs, 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 Denville is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Denville Public Works Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The parties have executed a series of collective negotiations agreements, the most recent being dated June 8, 1976 and effective during the term January 1, 1975 to December 31, 1976. The terms and conditions of the

1/ These subsections prohibit 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.

"(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees of 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 employees in that unit, or refusing to process grievances presented by the majority representative."

said agreement have been continued in full force and effect pending negotiations for a successor agreement.

4. Negotiations for a successor agreement commenced September 22, 1976 and a series of negotiations sessions have been held since that date.

5. At a negotiations session on November 10, 1976, Thomas Grady, the Township Administrator, advised representatives of the Association that the Township had not received "budget cap" data from the State but the Township expected to receive it by January 1, 1977. Grady stated that without this data the Township could not respond to the Association's economic demands. Grady also discussed the possibility of reductions in the work force in the context of the 5% "budget cap".

6. Upon receipt of the "budget cap" data from the State, the Township Administrator asked the State to increase the 5% "budget cap", which was refused by the State. The Township was told by a representative of the State Treasurer's Office that in order to make more money available it could reduce its work force or its services.

7. At a negotiations session on January 13, 1977, Grady informed the representatives of the Association that in order for the Township to exceed the 5% "budget cap" it would have to reduce the work force or services.

8. Following a negotiations session on March 23, 1977, the attorney for the Charging Party wrote to Grady on March 30, 1977 advising that the Association required <u>one</u> of the following in order to reach an agreement: One additional holiday; one additional personal day; a paid lunch hour; or a 6% raise in 1977 and a 5% raise in 1978 with no wage reopener.

9. On April 5, 1977, Grady responded, denying each of the four requested alternatives to settlement of the contract, and stating further, as follows:

> "I will now institute the procedures that we have no further contract with the Department of Public Works Association and we will be on an eight hour shift, no work guaranteed. All previous contracts, benefits, and commitments are now ceased as of April 1, 1977."

10. Shortly after the receipt of Grady's letter of April 5, 1977, the attorney for the Association provided Grady with a copy of the Commission's decision in "Piscataway" [P.E.R.C. No. 90]. After Grady discussed the "Piscataway" decision with the attorney for the Township, the above-quoted provisions of Grady's letter of April 5, 1977 were never implemented.

11. The provisions of Grady's April 5, 1977 letter, above-quoted, were never revoked in writing although the Township Superintendent was orally advised that the letter was revoked. Grady assumed that the Superintendent thereafter informed the affected unit employees.

12. The representatives of the Association who attended the exploratory conference and the hearing in this matter were not paid by the Township for time lost. These employees are seeking reimbursement for lost time by way of remedy in the instant proceeding.

THE ISSUE

1. Did the Township violate the Act by its conduct on November 10, 1976, January 13, 1977 and April 5, 1977?

2. Are Association representatives who attended an exploratory conference and hearing on the instant charges entitled to reimbursement by the Township for lost time?

DISCUSSION AND ANALYSIS

Positions of the Parties

It is the position of the Charging Party that the Township independently violated §(a)(1) of the Act on November 10, 1976 and January 13, 1977 by threatening a reduction in force to coerce a contract settlement. Further, the Charging Party contends that the Township violated §§(a)(3) and (5) of the Act when Grady wrote the letter of April 5, 1977 cancelling the contract, placing everyone on an eight hour shift with no work guarantee and cancelling all previous contractual benefits. The Charging Party also seeks reimbursement for lost time at the exploratory conference and hearing.

It is the position of the Township that it never threatened a reduction in force to coerce a contract settlement but merely advised that if there was no additional revenue beyond the 5% "budget cap" it would either have to reduce the work force or reduce services in order to meet the Association's economic demands. The Township further argues that the latter part of Grady's letter of April 5, 1977 was never implemented (although never revoked in writing) and that the prior contract has remained in full force and effect. The Township argues that there is no statutory authority for payment of lost time. Finally, the Township dehors the record urges that the matter is moot because the basic contract was settled as of October 31, 1977.

The Alleged Violations by the Township

The Hearing Examiner finds and concludes that there was no independent §(a)(1) violation of the Act by the Township on November 10, 1976 and January 13, 1977. At the negotiations sessions on these dates reductions in force were discussed but the Township engaged in no conduct which constituted a threat seeking to coerce a contract settlement. At the November 10 session Grady informed the Association representatives that the "budget cap" data had not been received from the State but was expected by January 1, 1977. Thereafter, he was advised by the State that there could be no increase in the 5% "budget cap", and that to gain any additional revenue the Township would either have to reduce its work force or its services. This was subsequently communicated to the Association's representatives. It was in this context that a reduction in force was discussed by the parties in their negotiations on November 10 and January 13.

The Hearing Examiner finds and concludes that the provisions of Grady's letter of April 5, 1977 quoted above constituted a technical violation of §(a)(5) of the Act under the authority of the Commission's decision in Piscataway Township Board of Education, P.E.R.C. No. 90, 1 NJPER 49 (1975), notwithstanding that the clear threat contained in the letter was never implemented. This also constituted a derivative violation of §(a)(1) of the Act. See Galloway Township Board of Education, P.E.R.C. No.77-3, 2 NJPER 254 (1976).

The Hearing Examiner finds and concludes that the Township did not independently violate the provisions of §(a)(3) of the Act by the communication of Grady's letter of April 5, 1977. The Hearing Examiner will, accordingly, recommend dismissal of this portion of the charge and Complaint.

The Requested Monetary Remedy

As noted previously, the Charging Party is requesting by way of remedy that the Association representatives, who attended the exploratory conference and hearing in this matter, be compensated for lost time by reason of the Township's refusal to pay for attendance at the exploratory conference and hearing. The Hearing Examiner finds and concludes that he is without authority to grant the relief requested by the Association. The provisions of the Act do not provide for such relief either expressly or by implication. It is well settled in the private sector that employees cannot be made whole for attendance at hearings or conferences in the course of an unfair labor practice proceeding. 2/ Accordingly, the request for such relief is denied.

The Alleged Mootness

The Hearing Examiner will make no findings or conclusions with respect to matters not of record. The Township's claim of mootness is rejected.

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

CONCLUSIONS OF LAW

1. The Respondent Township committed a technical violation of N.J.S.A. 34:13A-5.4(a)(5) by Thomas Grady's letter of April 5, 1977, cancelling the terms and conditions of the prior agreement, which theretofore were in full force and effect.

2. The Respondent Township did not independently violate N.J.S.A. 34:13A-5.4 (a)(1) on November 10, 1976 and January 13, 1977, but did so derivatively on April 5, 1977.

2/ Heck's Inc., 191 NLRB No. 146, 77 LRRM 1513, 1517 (1971); International Transportation Co., 199 NLRB 689, 82 LRRM 1094 (1972); Fuqua Homes Missouri, Inc., 201 NLRB 130, 82 LRRM 1142 (1973).

3. The Respondent Township did not violate N.J.S.A. 34:13A-5.4 (a)(3).

4. The matter is not moot.

RECOMMENDED ORDER

I. Respondent Township of Denville is HEREBY ORDERED:

A. To cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise guaranteed to them by the Act.

2. Threatening employees in the negotiating unit, represented by the Denville Public Works Association, with unilateral alteration of the terms and conditions of their employment as set forth in the collective negotiations agreement of 1975-1976.

B. Take the following affirmative action:

1. Revoke immediately, in writing, the last paragraph of Thomas Grady's letter of April 5, 1977.

2. Post in all locations where notices are normally given to employees copies of the attached notice marked Appendix "A". Copies of said notice, on forms provided by the Commission, shall, after being signed by the Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to assure that such notices are not altered, defaced or covered by any other material.

3. Notify the Chairman of the Commission in writing, within twenty (20) days from the day of receipt of this Recommended Report and Decision, what steps have been taken to comply herewith.

II. Respondent Township of Denville did not violate N.J.S.A. 34:13A-5.4 (a)(3) and this allegation in the Complaint and charge is dismissed.

Alan R. Howe
Hearing Examiner

DATED: November 9, 1977
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 employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act.

WE WILL NOT threaten employees in the negotiating unit, represented by the Denville Public Works Association, with unilateral changes in the terms and conditions of their employment as set forth in the collective negotiations agreement of 1975-1976.

WE WILL immediately revoke, in writing, the last paragraph of Thomas Grady's letter of April 5, 1977.

TOWNSHIP OF DENVILLE
(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780