

P.E.R.C. NO. 80-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF GARFIELD,

Respondent,

-and-

Docket No. CO-79-202-93

P.B.A. LOCAL #46, GARFIELD
POLICE DEPARTMENT,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission concludes that the City violated the Act by failing and refusing to execute a memorandum of agreement incorporating the terms of a successor collective negotiations agreement with the P.B.A. for the year 1978. Neither party filed exceptions to the Hearing Examiner's Recommended Report and Decision which reached this result. The Hearing Examiner found that an agreement had been reached between the P.B.A. and the City's counsel who had the actual authority to bind the City to an agreement. The City, therefore, was ordered to formally execute the memorandum of agreement.

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Docket No. CO-79-202-93

P.B.A. LOCAL #46, GARFIELD
POLICE DEPARTMENT,

Charging Party.

Appearances:

For the Respondent, Walsh, Sciuto & Dimin, Esqs.
(Mr. Anthony J. Sciuto, Of Counsel)

For the Charging Party, Osterweil, Wind & Loccke, Esqs.
(Mr. Richard D. Loccke, Of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on February 6, 1979 by P.B.A. Local No. 46, Garfield Police Department (the "P.B.A.") alleging that the City of Garfield (the "City") engaged in unfair practices within the meaning of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") by refusing to sign a written memorandum of agreement approved by both the City Attorney and the City Manager resolving all economic and non-economic issues for inclusion in a successor collective negotiations agreement for the year 1978. This action was alleged to be a violation of N.J.S.A. 34:13A-5.4(a) (1), (5), (6) and (7).^{1/}

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
(Continued)

A hearing was held before Commission Hearing Examiner Robert T. Snyder who, following a hearing on July 2, 1979, issued his Recommended Report and Decision on July 19, 1979, H.E. No. 80-3, 5 NJPER ____ (¶ ____ 1979). The Hearing Examiner concluded that the City violated N.J.S.A. 34:13A-5.4 subsections (a)(5) and (a)(6) and, derivatively, subsection (a)(1) when the City refused and failed to execute a Memorandum of Agreement incorporating all terms of a successor collective negotiations agreement. That agreement, a combination of an interest arbitration award as to disputed economic issues and certain stipulations with respect to non-economic issues, was agreed to by the City's counsel at an arbitration proceeding. The Hearing Examiner concluded that the City's counsel had been clothed with actual authority to bind the City to an agreement and, accordingly found, that the City is estopped from now objecting to certain terms contained in the Memorandum of Agreement.

Having reviewed the record ourselves, and noting the absence of exceptions to the Hearing Examiner's Recommended Report and Decision, ^{2/} the Commission hereby adopts the findings of fact and the conclusions of law contained within the Hearing Examiner's

1/ (Continued)

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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; and (7) Violating any of the rules and regulations established by the commission."

2/ N.J.A.C. 19:14-7.3(b) provides in part that, "Any exception which is not specifically urged shall be deemed to have been waived."

Report, essentially for the reasons cited by the Hearing Examiner.

ORDER

A. For the foregoing reasons and upon the entire record herein, it is hereby ORDERED that the Respondent, City of Garfield, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the P.B.A. Local #46, Garfield Police Department, concerning the terms and conditions of employment of the employees represented by the P.B.A. and by failing and refusing to execute a Memorandum of Agreement incorporating the terms of a successor collective negotiations agreement with the P.B.A. for the year 1978.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.:

(a) Formally execute, upon request, the Memorandum of Agreement, designated as Charging Party Exhibit No. 2, that resulted from an interest arbitration award and stipulations of the parties and was reduced to writing by the P.B.A. and proffered to the City for its approval and give retroactive effect to such Agreement.

(b) Post at its City Hall and Police Headquarters in the City of Garfield, New Jersey copies of the attached notice marked "Appendix A". Copies of said notice, on forms provided by the Commission, shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material.

(c) Notify the Chairman, in writing, within twenty (20) days from the date of receipt of this Order what steps have been taken to comply herewith.

B. It is further ORDERED that the portion of the Complaint alleging a violation of N.J.S.A. 34:13A-5.4(a)(7) is hereby dismissed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hipp, Hartnett and Parcels voted for this decision. None opposed. Commissioners Graves and Newbaker were not present.

DATED: Trenton, New Jersey
August 28, 1979
ISSUED: August 29, 1979

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 employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the P.B.A. Local #46, Garfield Police Department, concerning the terms and conditions of employment of the employees represented by the P.B.A. and by failing and refusing to execute a Memorandum of Agreement incorporating the terms of a successor collective negotiations agreement with the P.B.A. for the year 1978.

WE WILL formally execute, upon request, the Memorandum of Agreement, designated as Charging Party Exhibit No. 2, that resulted from an interest arbitration award and stipulations of the parties and was reduced to writing by the P.B.A. and proffered to the City for its approval and give retroactive effect to such Agreement.

CITY OF GARFIELD

(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, 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

CITY OF GARFIELD,

Respondent,

- and -

Docket No. CO-79-202-93

P.B.A. LOCAL #46,
GARFIELD POLICE DEPARTMENT,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find the City of Garfield committed unfair practices when it failed and refused to sign a Memorandum of Agreement embodying agreed upon terms of a successor collective negotiations agreement for the year 1978.

P.B.A. Local #46, Garfield Police Department had charged that at a compulsory interest arbitration hearing the City had appeared by counsel who had stipulated on the record to all terms of a successor labor agreement except for two economic terms - wages and clothing allowance - which were disputed before the arbitrator. After an interest arbitration award on the disputed terms, the P.B.A. prepared and submitted the Memorandum to the City for its execution. The City refused to sign because it questioned certain non-specified economic items, not disputed before the arbitrator, which had been the subject of the stipulations entered by its counsel at the arbitration hearing.

The Examiner found that the City had clothed its counsel with actual authority to fully represent its interests in the arbitration proceeding. Counsel's stipulation to the terms of a successor agreement was thus binding upon it and the City was obliged to sign the agreement embodying the arbitration award as well as the stipulations carrying forward the prior year's agreement with certain agreed upon modifications. The Examiner concluded that the City's refusal to sign constitutes a violation of N.J.S.A. 34:13A-5.4(a)(6) which prohibits an employer from refusing to reduce a negotiated agreement to writing and to sign such agreement, as well as violations of its negotiations obligation and the prohibition against interference with employee rights guaranteed by the Act contained in subsections 5.4(a)(5) and (1), respectively. He recommends an order requiring the City to sign the Memorandum and to post notices to its employees advising them of such actions.

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.

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

In the Matter of
CITY OF GARFIELD,
Respondent,

- and -

Docket No. CO-79-202-93

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GARFIELD POLICE DEPARTMENT,
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Appearances:

For the Respondent
Walsh, Sciuto & Dimin, Esqs.
(Anthony J. Sciuto, Esq., Of Counsel)

For the Charging Party
Osterweil, Wind & Loccke, Esqs.
(Richard D. Loccke, Esq., Of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On February 6, 1979, P.B.A. Local #46, Garfield Police Department ("P.B.A.") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the City of Garfield ("City") engaged in conduct in violation of N.J.S.A. 34:13A-5.4(a)(1),(5),(6) and (7) ^{1/}when, commencing sometime before Christmas 1978, and continuing to date, it refused and declined to sign a written memorandum of agreement approved by both the City Attorney and the City Manager resolving all economic and non-economic issues for

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; (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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; and (7) Violating any of the rules and regulations established by the commission."

inclusion in a successor collective negotiations agreement for the year 1978.

It appearing that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 24, 1979. By Answer filed June 18, 1979, the City denied that negotiations for 1978 are complete, and averred that it had certain objections to the written memorandum conveyed to it which were not substantial but they must be discussed and negotiated further before it would authorize execution of the 1978 agreement. Hearing was held on July 2, 1979. Both parties were given the opportunity to examine witnesses, to present evidence and to argue orally. Both parties waived the filing of post-hearing briefs.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

1. The City of Garfield is a public employer within the meaning of the New Jersey Public ~~Employer-Employee~~ Relations Act, as amended, and is subject to its provisions.
2. P.B.A. Local #46, Garfield Police Department, is a public employee organization within the meaning of the same Act and is subject to these provisions.
3. The P.B.A. has been the exclusive collective negotiations representative for the members of the Garfield Police Department since 1973, and the parties have entered into collective negotiations agreements covering years beginning in or about 1974. As stipulated by the parties in Matter of Garfield and P.B.A. Local 46, P.E.R.C. No. 79-16, stipulation No. 4 of a formal Stipulation submitted directly to the Commission for determination provides as follows: "The parties negotiated a collective agreement for the years 1974 and 1975. The negotiations for the 1976 agreement commenced in the year 1975 and continued through 1976 and 1977 with a contract ultimately reached in the latter part of 1977, with an expiration date of December 31, 1977, and covering the single year 1977. There was a hiatus in the collective negotiations agreements in that there was never an agreement reached and negotiated and effected during the year 1976. The Employer did honor the terms and conditions as set forth in '74, '75 and through '76 and they lived up to those obligations. Although there was no contract as such during the year 1976, the Employer did continue the terms and conditions in 1976, carried over from the 1974 and 1975 contract. There was a wage freeze during the year 1976, which explains in part the reason why there was not a contract effected for the year 1976 as such."

4. The 1977 agreement at the foot thereof bears the signatures of Frank Amato, P.B.A. President and Gustav Deak, City Manager, as well as the seal of the City of Garfield dated December 21, 1977.

5. Negotiations for a successor agreement for the year 1978 led to an impasse, and, after impasse procedures had been invoked, to a compulsory interest arbitration held pursuant to N.J.S.A. 34:13A-1.1 et seq. before Jonas Silver, Arbitrator, duly appointed to arbitrate the parties' dispute under the Commission's Rules and Regulations (See N.J.A.C. 19:16-5.6).

6. An interest arbitration hearing was held before Arbitrator Silver on February 20 and 21, 1978. Appearing for the City was the law firm of Walsh, Sciuto & Dimin, by Anthony J. Sciuto, Esq. and appearing for the P.B.A. was the law firm of Osterweil, Wind & Loccke, by Richard D. Loccke, Esq.^{2/} These are the same attorneys who have appeared on behalf of the same clients in the instant proceeding. At the outset of the hearing, Arbitrator Silver noted on the official stenographic transcript of the proceeding that by virtue of certain earlier discussions off the record it had been established that there were two issues under the caption of "Economic", to wit; the wages and uniform allowance, which were being submitted to binding arbitration (p. 4 of Arbitration Transcript, Charging Party Exhibit No. 1).

7. On the record, immediately thereafter, at the Arbitrator's request, Mr. Loccke noted the agreements which had been reached with respect to non-economic issues. Noting first that there was an agreement in existence between the parties which covered the calendar year 1977, Loccke stated that it had been agreed, subject to three changes, that the 1977 agreement would remain in full force and effect for the year 1978. (C.P. Ex. No. 1, p. 5, lines 13 to 17). Loccke then went on to recite the three changes. The first change was to paragraph No. 24.03. That paragraph provides an option for an employee to receive, upon retirement, at his sole option, either a percentage of his accumulated sick leave or ninety (90) days of terminal leave with full pay and benefits. The change substituted the phrase "three (3) months" for the phrase "ninety (90) days." The second change was to paragraph 22.05 which provided that vacations may be taken in one (1) day segments. The change deleted that provision and in its place substituted the sentence "Vacations may be taken in three segments." The third change was to paragraph 20.01 which provided that each new Employee shall receive from the employer, free of charge in lieu of a clothing allowance, a complete

^{2/} Also present for the City were Manager Deak and Finance Officer John Nunno. Chief of Police Carmine Perrapato was also present either as a City or P.B.A. witness and P.B.A. President Frank Amato also appeared.

uniform. The change removed that paragraph and, instead, continued the present practice which is to pay a uniform allowance in the first year and have it applied towards such uniforms as may be required (C.P. Ex. No. 1, p. 5, line 18 to p. 6, line 14). Mr. Sciuto noted his agreement on the record that subject to those three changes the contract was to continue in full force and effect for the year 1978 (C.P. Ex. No. 1, p. 6, lines 15 to 19).

8. In addition to the above agreements, the parties, by their respective counsel, also agreed to the insertion of one additional clause in the 1978 agreement to the effect that the Police Department would provide that twice a year police officers be given pistol training and qualification according to police qualification standards which are in effect (C.P. Ex. No. 1, p. 6, line 20 to p. 7, line 9).

9. On March 20, 1978, Arbitrator Silver issued an Interest Arbitration Award providing that effective for the period January 1, 1978 to December 31, 1978 the existing salary scale of all police officers in the bargaining unit shall be increased by 9% at each supervisory rank as well as at each step-year within Patrolman; the uniform allowance of \$225 currently in effect as to police officers in the bargaining unit shall be increased to \$250; and that subject to these two changes and as stipulated, the 1977 agreement shall remain in full force except as modified by the changes in the three paragraphs and the addition to the agreement as previously enumerated.

10. By Final Order and Judgment dated June 19, 1978, Judge Sherwin D. Lester of the Superior Court of New Jersey, Chancery Division of Bergen County, upon application of plaintiff, the Charging Party herein, ordered confirmation of the Award of Arbitrator Silver and directed the defendant City of Garfield, the Respondent herein, to fully comply with each and every term of said Award and further ordered that the amount of the Award be considered an exclusion from the municipal budget CAP of the defendant and an exclusion from CAP under N.J.S.A. 40A:4-45.3g. Garfield PBA, Local 46 vs. City of Garfield, Sup. Ct. Chancery Div: Bergen County, Docket No. C-3089-77 (unpublished). ^{3/}

11. The City has complied with the economic terms of the Interest Arbi-

^{3/} Recently, the Supreme Court determined that the CAP law applies to awards under the compulsory arbitration provision of N.J.S.A. 34:13A-16, New Jersey State Policemen's Benevolent Ass'n, Local 29 (Irvington PBA) v. Town of Irvington et al., Sup. Ct. Docket No. A-188 (Decided 6/12/79); City of Atlantic City et al. v. John F. Laezza, et al., Sup. Ct. Docket No. A-189 (Decided 6/12/79).

tration Award as confirmed by the Final Order and Judgment of the Superior Court.

12. During December, 1978, the P.B.A. prepared and presented to the City a one page Memorandum of Agreement for adoption by the City. The Memorandum accurately reflects the terms of the Interest Arbitration Award including the stipulation of the parties continuing in full force and effect the written agreement of the parties for the year 1977 except as modified and added to specifically as previously enumerated (C.P. Ex. No. 2). It also contains provisions that the economic terms of Arbitrator Jonas Silver's Award shall be fully complied with and that this Memorandum of Agreement shall be an effective date of January 1, 1978 through December 31, 1978. At its foot the Memorandum contains space for the signatures of the authorized representatives of each of the parties and provision for entry of the date of its execution.

13. At meetings held between representatives of the parties in December, 1978 and January, 1979, the P.B.A. made demand for City execution of the Memorandum of Agreement. The City refused to sign because several items included in the 1977 collective negotiations agreement which by terms of the Memorandum were continued in full force and effect for 1978, were not to its liking. ^{4/} The City's refusal to execute the Memorandum has continued to date.

14. At the instant hearing, the City appeared by its counsel, Anthony J. Sciuto, who had also appeared on its behalf and officially represented the City at the interest arbitration proceeding which ultimately resulted in the Award previously described. Attorney Richard D. Locke made an opening statement on behalf of the P.B.A. in which he summarized the facts later presented by the Charging Party in testimony and exhibits and which have been enumerated herein. Mr. Sciuto responded on behalf of the City by acknowledging the stipulations entered before Arbitrator Silver, agreeing that the Memorandum was presented to the City Council for its approval and that the City refused to sign the Agreement because certain members were of the opinion that there were other items of an economic nature with respect to which the contract should be negotiated further (Tr. 9, lines 12 to 17). The City did not produce any witnesses and offered no testimony in support of its defense to the Charge and Complaint.

^{4/} As previously noted in describing its Answer to the Complaint, the City had certain exceptions to the Memorandum but did not believe its objections were substantial, yet they were required to be discussed and negotiated further before the City Council would authorize execution of the 1978 agreement.

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ISSUE

Did the City violate the Act by failing and refusing to sign the collective negotiations agreement which resulted from the interest arbitration proceeding and which had been reduced to writing and presented to it by the P.B.A.?

ANALYSIS

The facts are not in dispute. They lead to the conclusion that the City has failed and refused to execute a Memorandum of Agreement incorporating all terms of a successor collective negotiations agreement. That agreement resulted from the combination of an interest arbitration award as to disputed economic issues and certain stipulations regarding all other terms of a successor agreement which were entered on the record before the interest arbitrator and were incorporated by him in his award and confirmed by the reviewing court.

The transcript of the hearing before the Arbitrator makes clear that the City appeared by counsel and that counsel agreed to certain stipulations on the record with respect to all terms of a successor collective agreement apart from the two economic issues submitted to the Arbitrator for his determination and inclusion in a 1978 agreement. As the City was fully represented by counsel at the interest arbitration proceeding it cannot now be heard to dispute certain of the terms of that agreement to which its counsel stipulated on its behalf. The appropriate forum to resolve disputes in public fire and police departments which remain after negotiations and impasse procedures have failed to resolve them, is compulsory arbitration pursuant to C. 85, P.L. 1977 which supplements the Act, as amended, N.J.S.A. 34:13A-1.1 et seq., if either party to the dispute timely invokes the procedures for such an arbitration. Here, the interest arbitration procedures were invoked and the City fully participated, without objection, in the arbitration proceeding which ensued. Counsel represented the City in the proceeding and his entry of stipulations on the record before the Arbitrator are binding upon the City. Those stipulations resolved and removed from the area of disputes submitted to the Arbitrator for his determination all issues other than the two economic issues submitted to him. The City is thus bound by the acts of its counsel, has waived its right and is estopped to belatedly object now to certain unspecified other economic terms of the 1977 collective agreement continued in full force and effect for 1978 by stipulation and the Interest Arbitration Award

incorporating that stipulation. ^{5/}

It is noted that the parties' stipulation modifying certain terms of the 1977 agreement for continuation in 1978 all constitute concessions made by the P.B.A. which are to the detriment of the unit employees. These concessions were the subject of agreement of the parties made prior to final submissions to the Arbitrator. They were received by the Arbitrator as stipulations along with the stipulation continuing all other terms of the 1977 agreement. They constitute a bargain struck by the parties which was received by the Arbitrator for incorporation in his Award. For the same reason that the P.B.A. may not be relieved of its bargain on the three items, neither may the City be relieved of its commitment with respect to all other terms of the 1977 agreement not disputed before the Arbitrator.

The attorney Sciuto's assent to removal of items from submission to interest arbitration and his entry of a stipulation regarding the agreed terms of a successor agreement constitute the exercise of actual authority by the attorney agent binding on his principal, the City of Garfield. ^{6/}

In the interest arbitration proceeding, parties must act through representatives duly designated by them to represent their interests. Here, the City held out its attorney as representing its interests and his agreements are as fully binding on the City as if the City Council itself had appeared and participated directly in the proceedings. That representation of its interests must be

^{5/} While it is true that the portions of the 1978 agreement fixing salary and clothing allowance were determined by the Arbitrator they should nonetheless be found to be portions of a "negotiated agreement" as that term is defined in N.J.S.A. 34:13A-5.4(a)(6). The preamble and terms of C. 8, P.L. 1977 make clear that the compulsory arbitration of labor disputes is an alternative and binding procedure for the resolution of disputes and only comes into play upon the failure of parties to reach their own negotiated agreement. Any resulting award fixing terms of a succeeding contract does not supplant the efforts of the parties but becomes an agreement of the parties by operation of law and may be enforced at the instance of either party in the Superior Court, as per the instant award. In any event, in the case, sub judice, it was not the economic terms fixed by arbitration which the City now disputes but, rather, certain unstated economic terms of the 1977 agreement which its counsel agreed to incorporate in a successor agreement.

^{6/} Compare In re East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), motion for reconsideration den., P.E.R.C. No. 77-26, 3 NJPER 16 (1977), dismissed as moot, App. Div. Docket No. A-250-76 (12/2/77) (unpublished opinion) in which the Commission relied upon the employer's creation of circumstances where, absent express qualifying conditions, the employee organization was justified in presuming that the employer's negotiators possessed the apparent authority to conclude a binding agreement. Compare also In re Bergenfield Board Board of Education, P.E.R.C. 90, 1 NJPER 44 (1975), where the union was also entitled to rely upon the apparent authority of the Board's negotiators.

presumed to be effective, otherwise, the provision of the legislation providing for involuntary interest arbitration proceedings before an arbitrator would have very little meaning. One cannot presume that the Legislature has engaged in a futile act, the results of which may be so readily set aside by the principal's subsequent and belated change of mind or reconsideration of the considered actions of its attorney taken on the record of an arbitration proceeding. As the City's attorney was thus clothed with the authority to represent it, his agreements are fully binding on the City. Independent of the foregoing, its attorney's conduct has been fully confirmed by the City's failure to dispute or otherwise contest the series of events and facts as adduced by the Charging Party in this proceeding.

Accordingly, for the foregoing reasons, it is concluded that the City violated N.J.S.A. 34:13A-5.4 subsections (a)(6) and (a)(5) ^{7/} and derivatively, subsection (a)(1) ^{8/} when the City refused and failed to execute the proffered Memorandum of Agreement commencing in December, 1978.

As no evidence was presented to support the allegation of violation of N.J.S.A. 34:13A-5.4(a)(7), it shall be recommended that the Complaint in that regard be dismissed.

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

CONCLUSIONS OF LAW

1. The Respondent City of Garfield violated N.J.S.A. 34:13A-5.4(a)(6), (5) and (1) by refusing and failing to sign the Memorandum of Agreement prepared and presented to it by the P.B.A. that reflected the interest arbitration award and certain stipulations entered into in the course of that proceeding and thus comprised a successor collective negotiations agreement for the year 1978.

2. The Respondent City of Garfield did not thereby violate N.J.S.A.

^{7/} The Commission has found such conduct as the City has engaged in here as constituting not only a violation of the prohibition against refusing to reduce a negotiated agreement to writing and to sign such agreement, but also as a failure to negotiate in good faith with the P.B.A. concerning terms and conditions of employment of the members of the negotiating unit, In re East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), dism. as moot, App. Div., Docket No. A-250-76 (12/2/77)(unpublished opinion).

^{8/} See Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976).

34:13A-5.4(a)(7).

RECOMMENDED ORDER

A. For the foregoing reasons and upon the entire record herein, it is hereby ORDERED that the Respondent, City of Garfield, shall:

1. Cease and desist from:

- (a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the Act and refusing to negotiate in good faith with the P.B.A. Local #46, Garfield Police Department, concerning the terms and conditions of employment of the employees represented by the P.B.A. by failing and refusing to execute a Memorandum of Agreement incorporating the terms of a renewal collective negotiations agreement with the P.B.A. for the year 1978.
- (b) Refusing to reduce agreements negotiated with said P.B.A. to writing and sign such agreements.

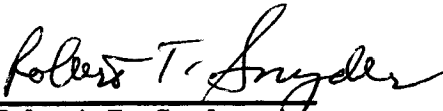
2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

- (a) Formally execute, upon request, the Memorandum of Agreement, designated as Charging Party Exhibit No. 2, that resulted from an interest arbitration award and stipulations of the parties and was reduced to writing by the P.B.A. and proffered to the City for its approval and give retroactive effect to such Agreement.
- (b) Post at its City Hall and Police Headquarters in the City of Garfield, New Jersey copies of the attached notice marked "Appendix A." Copies of said notice, on forms provided by the Commission shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material.

(c) Notify the Chairman, in writing, within 20 days from the date of receipt of this ORDER what steps have been taken to comply herewith.

B. It is further ORDERED that the portion of the Complaint alleging a violation of N.J.S.A. 34:13A-5.4(a)(7) is hereby dismissed.

DATED: Newark, New Jersey
July 19, 1979


Robert T. Snyder
Hearing Examiner

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 or refuse to negotiate in good faith with the P.B.A. Local #46, Garfield Police Department concerning the terms and conditions of employment of the employees represented by said P.B.A. by failing and refusing to execute a Memorandum of Agreement incorporating the terms of a renewal collective negotiations agreement with said P.B.A. for the year 1978.

WE WILL NOT refuse to reduce agreements negotiated with said P.B.A. to writing and sign such agreements.

WE WILL formally execute, upon request, the Memorandum of Agreement, designated as Charging Party Exhibit No. 2, that reflects the Interest Arbitration Award of Arbitrator Jonas Silver including the stipulations our counsel entered on the record in the arbitration proceeding, and was reduced to writing by the P.B.A. and submitted to us for our signature, and give retroactive effect to such agreement.

CITY OF GARFIELD

(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, 429 East State Street, Trenton, New Jersey 08608 Telephone (609) 292-6780