

H.E. NO. 2000-6

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

In the Matter of

BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-H-96-207

BELMAR LIFEGUARD SUPERVISORY  
ASSOCIATION/BELMAR LIFEGUARD  
ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Hearing Examiner of the Public Employment Relations Commission grants in part, and denies in part, the Borough's Motion for Summary Judgment. The Hearing Examiner finds that some of the charging party's allegations are not viable; others do not fall within the purview of the Act and others fail to set forth a claim under the Act. The Hearing Examiner, however, finds that genuine issues of material fact exist with respect to the remaining allegations; a hearing will commence on them.

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Appearances:

For the Respondent, Ruderman & Glickman, P.C.  
(Mark S. Ruderman, of counsel)

For the Charging Party, William D. Mack, pro se

**HEARING EXAMINER'S DECISION**  
**ON MOTION FOR SUMMARY JUDGMENT**

On January 26 and February 27, 1996, the Belmar Lifeguard Supervisory Association (BLSA) filed an unfair practice charge and first amendment, respectively, against the Borough of Belmar (Borough). On April 1, 1996, the BLSA filed a second amendment adding the Belmar Lifeguard Association (BLA) as an additional Charging Party to its original charge and on June 13, 1996, the Charging Party, now designated as the Belmar Lifeguard Supervisory Association/Belmar Lifeguard Association, filed a third amendment.

The original charge alleges that the Borough violated 5.4a(1) through (5) of the New Jersey Employer-Employee Relations

Act, N.J.S.A. 34:13A-1 et seq. (Act),<sup>1/</sup> when, from August 1, 1995 to the present: 1) it terminated supervisory personnel when it learned of the BLSA's intention and efforts to organize and represent supervisory personnel employed by the Borough and; 2) it sought to establish a new structure, organization and rules as a result of the BLSA's intention to organize supervisory personnel. The first amendment entitled "Specification of Charges" sets forth the following, more specific, allegations:

1. In August of 1995 two supervisors were terminated when the Respondent learned that the rank and file and supervisors were organizing for union representation, [in violation of] N.J.S.A. 34:13A-5.4a(1), (3) and (4).

2. In August of 1995, through the use of police and other municipal personnel, the respondent interfered with formation of an employee organization by threatening arrest for displaying signs of support of fired supervisors, [in violation of] N.J.S.A. 34:13A-5.4a(2) and (4).

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<sup>1/</sup> These provisions 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

3. In August of 1995 supervisory personnel and rank and file beach employees were threatened with termination of employment for supporting supervisors who were fired and were organizing a bargaining unit, [in violation of] N.J.S.A. 34:13A-5.4a(1) (3) (4) and (8).<sup>2/</sup>

4. After the summer of 1995 respondent refused to continue the longstanding employment of the lifeguard chief Bill Mack because of one or more of the following [in violation of] N.J.S.A. 34:13A-5.4a(1), (3) and (4)]:

(a) his support of the organizing efforts of the lifeguards who were not supervisors, and has publicly advertised his job for the 1996 season.

(b) In 1993 William Mack refused to arrange bidding specification to assist one supplier favored by the Mayor and business administrator of respondent over all other;

(c) In 1993 and 1995 William Mack insisted upon practice and use of all water safety equipment;

(d) In 1995 over the objections of William Mack, [the Borough] hired as Assistant Chief Lifeguard a person who could not pass water safety test for all employees of the beach;

(e) Refused to honor the Chief Lifeguard recommendations to discipline the Assistant Chief Lifeguard for securing alcohol for underage female lifeguards and other activities in violation of N.J.S.A. 2C:33-15 and 33-17.

(f) In 1995 removed all disciplinary power when the Chief Lifeguard attempted to assert same against lifeguards and supervisory personnel.

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<sup>2/</sup> While the Charging Party also alleged a violation of provision 5.4a(8) of the Act, no such provision exists. Thus, Charging Party's a(8) allegation is dismissed.

(g) In 1995 hired an Assistant Chief Lifeguard without posting the position for other supervisory personnel to apply in accordance with prior practice over many years and complaint of Chief Lifeguard;

(h) In August 1995 over the objections of Chief Lifeguard, lifeguards were not hired to guard against rough waters created by numerous storms that month which later resulted in several emergencies then publicly blamed by the administrator on the supervisory staff.

\* \* \*

5. Respondent discriminated against supervisory personnel organizing for representation by unilaterally removing supervisory authority and discharging two supervisory employees [for] the discipline of a son of an important political ally of the Mayor of respondent municipality, [in violation of] N.J.S.A. 34:13A-5.4a(1) (2) (3).

6. Respondent has refused to negotiate in good faith with a representative of a majority of supervisory personnel in an appropriate unit on the terms and conditions of employment including, but not limited to continuation of supervisory functions over the rank and file beach employee which had been conducted for over 20 years, [in violation of] N.J.S.A. (1), (2), (3), (5).

7. After closing of the beaches and up to and including the date of this filing respondent pretextually proposed new work rules for supervisory personnel and refuses to honor longstanding authority of supervisors to train, evaluate and discipline regular lifeguards, [in violation of] N.J.S.A. 34:13a-5.4a(1) (2) and (3).

8. In May of 1995, respondent hired an unqualified personnel, (Asst. Chief) at the request of the Mayor of respondent municipality in contravention of longstanding procedures for the hiring of supervisor personnel and in an effort to infiltrate the organizing activities of the charging party.

9. In an effort to continue the afore described infiltration of the charging party's organizing activities the respondent mayor and business administrator refused to discipline the assistant chief lifeguard even though that person had secured alcoholic beverages for underage female lifeguards in violation of N.J.S.A. 2C:33-17 and conspiring to violate N.J.S.A. 2C:33-15, [in violation of] N.J.S.A. 34:13A-5.4a(1), (2) and (3).

10. In an effort to continue the afore described infiltration of the charging party's organizing activities respondent refused and continues to refuse, to discipline the said assistant chief lifeguard because of his political and other connections with the mayor, and contrary past practices, even though after the events specified in the previous specificate (sic) said Assistant Chief Lifeguard took said females out in a lifeboat owned by the respondent after midnight, lost oars, damaged equipment and endangered the lives of those female lifeguards, [in violation of] N.J.S.A. 34:13A-5.4a(1), (2) and (3).

In 1995 and up and until this date respondent refuses to negotiate in good faith with a majority representative of supervisory employees employed on the beach concerning terms and conditions of employment of employees of that unit and refuses to process grievances presented by the Chief Lifeguard on disciplinary, hiring, training and safety matter.

11. In 1995 and up and until this date respondent \*\*\* discriminates against the charging party by not recognizing it despite the fact that it has recognized other supervisory units and negotiated with said unit, which consist of full time year round supervisors consisting of twelve borough workers, [in violation of] N.J.S.A. 34:13A-5.4a(3) and (5).

12. The respondent, in asserting that the chief lifeguard is a management position even though respondent has publicly stated in 1995 he had neither management nor supervisory powers, resulted in a pretextual posting of that job and the positions of assistant chief lifeguard disregarding William Mack and others longstanding

here by the respondent without need to requalify or compete for said position, all as a result of Mr. Mack and others organizing the charging party, [in violation of] N.J.S.A. 34:13A-5.4a(1), (2), (3) and (5).

13. As a result of the charging party's organizing efforts the respondent created a hostile work place in August and September of 1995 by threatening firings, attacking supervisory personnel in the media for lack of organization despite respondent's removal of supervisory authority, and not ??? personnel involved in organizing charging party, [in violation of] N.J.S.A. 34:13A-5.4a(1), (2), (3) and (5).

On April 17, 1996, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the original charge and first two amendments.

The third amended charge alleges that the Borough violated provisions 5.4a(1), (2), (3), (4) and (5) of the Act. That amendment, entitled "Amended Specifications", further asserts:

14. On or about April 30, 1996 respondent fired William Mack by written notice, without cause and solely as a result of his union activity.

15. On or about May of 1996 the beach supervisor for the respondent, a sergeant in the respondent's police department, falsely accused William Mack of theft of respondent's beach equipment and threatened him with arrest.

16. Respondent, in response to the afore described union activity by lifeguards, and without prior notice, terminated past practice and violated its own ordinance when it refused to hire and pay lifeguards during weekdays after Memorial Day, causing substantial financial injury to the affected union members.

17. Respondent, in response to the afore described union activity by lifeguards, and without prior notice, [has] withheld uniforms

which respondent's beach supervisor has stated are in his possession.

The Hearing Examiner amended the Complaint to include the third amendment. N.J.A.C. 19:14-2.2.

On July 11 and July 15, 1996, the Respondent filed an Answer and Amended Answer, respectively, to the amended charge, specifically denying the Charging Party's allegations in the Specification of Charges and the Amended Specifications, and requesting that the Complaint and Notice of Hearing be dismissed in its entirety. The Borough particularly asserts that the supervisors were not terminated for allegedly engaging in organizing activities. It argues that the Borough voluntarily recognized the BLA upon the filing of its representation petition. Further, according to the Borough, the allegations in paragraph 4 (b), (c), (d), (e), (f), (g) and (h) and in paragraphs 7, 8, 9 and 10 of the Specification of Charges are not within the jurisdiction and purview of the Commission. Moreover, the Borough argued that the allegations in paragraph 11 of the Specification of Charges are moot, since it voluntarily recognized the BLA in May 1996.

Finally, the Borough asserts that the Commission's unfair practice jurisdiction does not go to resolving the representation issues contained in paragraph 11 of the Specification of Charges and that there exists a mechanism before the Commission to decide whether or not the Chief Lifeguard is part of the BLA.

On January 25, 1999, the Respondent filed a Motion for Summary Judgment, along with supporting brief and exhibits with the



Commission. On January 28, 1999, the Motion was referred to Hearing Examiner Margaret Cotoia for a decision. N.J.A.C. 19:14-4.8. On March 11, 1999, the Charging Party filed an opposing response with supporting documents, including certifications. On March 30, 1999, the Respondent filed a reply to the Charging Party's March 11, 1999 response. Pursuant to N.J.A.C. 19:14-6.4, the Director of Unfair Practices reassigned this matter to me on September 27, 1999.

\* \* \*

Summary Judgment will be granted:

if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law.  
[N.J.A.C. 19:14-4.8(d)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995) specifies the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." If that issue can be resolved in only one way, it is not a "genuine issue" of material fact. A motion for summary judgment should be granted cautiously -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

Applying these standards and relying upon the pleadings, I make the following:

**FINDINGS OF FACT**

1. The Borough is a public employer within the meaning of the Act. It is a seashore municipality and hires lifeguards on a seasonal basis to supervise the beach and ocean usage.
2. In 1990, William D. Mack was appointed to the Borough's Chief Lifeguard position by the Borough's mayor.
3. During the 1995 lifeguard season, Mack still served as Chief Lifeguard. At that time, the Borough employed approximately 87 lifeguards and Tim Harmon and James Freda were appointed to the position of "lifeguard captain".
4. On June 2, 1995, Mayor Kenneth A. Pringle advised Borough Administrator Jacqueline A. Ascione that Council had appointed her to oversee the lifeguard management and staff. Pringle's June 2, 1995 memorandum to Ascione stated:

This is to clarify that the Council has assigned you the task of overseeing the lifeguard management and staff. The Council will look to you for recommendations regarding changes in management and staffing, at the end of this summer season. We will then review your recommendations and make any changes that we deem necessary and consistent with Borough policy.
5. On July 26, 1995, Ascione advised Mack that Harmon and Freda were to be assigned to "lifeguards stands daily, on the beach front, that neither have been placed in a managerial position and they should not be utilizing the lifeguard truck or staffing the

office." Mack disagreed with Ascione's directive and so informed her. Ascione also informed Freda and Harmon not to threaten any lifeguards with discipline.

6. On August 16, 1995, Ascione issued a reprimand to Harmon due to an incident involving his driving the Borough lifeguard truck.

7. On August 25, 1995, Ascione discharged Harmon and Freda. According to the Mayor and Ascione, they were terminated because they did not adhere to the instructions and assignments given to them by Ascione. Neither the Mayor nor Ascione knew whether Harmon and Freda had engaged in organizational activities.

When Freda and Harmon questioned why they were fired Ascione stated, "This is politics. You picked on the wrong person."

8. On August 26, 1995 at approximately 9 a.m., Borough lifeguards conducted a job action in support of Freda and Harmon. Rather than report to their assigned stands, many lifeguards convened on a public beach and engaged in a demonstration. Mack did not participate in the job action. Lifeguards distributed a petition to form a union then.

According to Ascione, but for Kevin Shea, the lifeguards were not disciplined for participating in the demonstration. Shea was disciplined because he acted as a photographer/reporter for a local newspaper and covered the demonstration as a journalist, rather than serve as a lifeguard. He was terminated for non-performance of duty. However, Ascione docked the pay and placed

a letter in the file of each of the 42 lifeguards who participated in the demonstration. The letter which was addressed to each lifeguard and signed by Ascione stated:

Due to the incident which occurred on Saturday, August 26, wherein the lifeguards attempted to strike or walk off the job, all guards who worked on that day are being docked one hours pay.

This incident could have resulted in a water safety issue, and therefore I have reviewed this situation and determined that this disciplinary action is justified.

9. On August 28, 1995, Harmon and Freda were reinstated.

10. On August 30, 1995, Borough Clerk Charles Ormsbee received an August 29, 1995 letter from lifeguard Kevin Schroth stating that "the Belmar Lifeguards would like to be voluntarily recognized by the Borough of Belmar as a union." The name of the proposed representative was the Belmar Lifeguard Association (BLA). The letter stated that if the Borough did not recognize the union, a petition would be filed with the Commission. Ascione also reviewed the letter that day and claims that she was completely unaware, up until that point, of any organizational activities by the lifeguards.

11. On September 21, 1995, the BLA filed a Petition for Certification of Public Employee Representative, RO-96-27, with the Commission seeking a unit of "all lifeguards, lieutenants, captains, O.I.C., Jr. Guard coordinator and Chief Lifeguard". Schroth signed the petition and was listed as the union representative.

12. On October 30, 1995, "Belmar Lifeguard Association's Supervisory Division" filed a Petition for Certification of Public

Employee Representative with the Commission, RO-96-63, seeking a unit of approximately 18 "supervisory lifeguards." The petition was signed by William D. Mack, Chief Lifeguard.

13. On October 30, 1995, the BLA amended RO-96-27 indicating that its proposed unit would be limited to 69 "non-supervisory" lifeguards employed by the Borough.

14. On November 21, 1995, a conference was held at the Commission with regard to RO-96-27 and RO-96-63. In attendance were Mack, Ascione, Schroth, Borough Police Chief Richard Lynch and Borough Labor Attorney Mark Ruderman.

At the meeting, the Borough expressed its position that one unit, excluding the Chief Lifeguard, was appropriate. The BLA and the BLA's Supervisory Division agreed to consider the proposal in December 1995/January 1996.

15. On December 6, 1995, Mack was called to attend a meeting at Borough Hall with Mayor Pringle, Police Chief Lynch and the Council President. Mack was advised that he would be required to apply for his position of Chief Lifeguard for Summer 1996, in contravention of past practice. Mack was also asked by Borough representatives where they should advertise his position.

16. In winter 1996, the Borough reorganized the lifeguard operation and placed it within the police department. The Borough claims the placement was in response to ocean riptide conditions in summer 1995, which convinced Borough officials of the need to coordinate the activities of lifeguards, police, special police and emergency management.

In Mack's and former Borough Clerk Ormsbee's opinions, the reorganization was a "sham" designed as an attempt to cover unfair labor practices and as a response to any potential legal action by individuals or by the union.

17. On January 26, 1996, the "Belmar Lifeguard Supervisory Association" ("BLSA") filed the instant charge against the Borough alleging that the Borough terminated certain personnel in August 1995 for their organizational activities. Mack signed the charge and was designated as the BLSA's representative.

18. On February 2, 1996, a second conference was held at the Commission which was attended by Mack, Ruderman, Schroth and Thomas F.X. Foley, attorney for the BLSA. CO-96-207 was discussed at the meeting, as well as the two pending representation petitions, RO-96-27 and RO-96-63. The Borough contested the unit/voting eligibility of William Mack, James Freda, Tim Harmon and Kevin Shea.

19. On February 8, 1996, the name of the Belmar Lifeguard Association's "Supervisory Division" in RO-96-63 was amended with the Commission to Belmar Lifeguard Supervisory Association ("BLSA").

20. On February 27, 1996, the BLSA amended its charge adding a "Specification of Charges".

21. On March 1, 1996, the BLSA executed a Request to Proceed with the representation matters, notwithstanding its unfair practice charge. On March 14, 1996, at a meeting at the Commission, both the BLA and the BLSA agreed to the Borough's proposed single non-supervisory unit of lifeguards. The BLSA then withdrew its petition, RO-96-63.

22. On April 1, 1996, the BLSA amended CO-96-207 by adding the BLA as an additional party to its charge.

23. On April 17, 1996, the Director of Unfair Practices issued a Complaint and Notice of Hearing with respect to the initial January 21, 1996 charge, and the February 27 and April 1, 1996 amendments.

24. In late April 1996, the Borough granted voluntary recognition to the BLA, recognizing a unit of lifeguards, including those in the titles of lifeguard, lieutenant, captain, officer in charge and junior lifeguard coordinator.

25. On April 29, 1996, Mack received a letter from Ascione that a determination had been made to assign a police officer to the position of "Lifeguard Supervisor" and that Mack's position of Chief Lifeguard had been eliminated for reasons of "economy". Mack believed that he was not retained by the Borough in retaliation for his union activities. According to the Mayor, Mack was not retained because of the reorganization.

26. Mack was not offered any other position with the Borough in 1996. The positions of Chief Lifeguard and Assistant Chief Lifeguard were advertised in a local newspaper, and in the American Lifeguard, a national magazine. Harmon was offered a position as Assistant Chief Supervisor but declined; he and Freda took positions at the Sea Girt Beach Patrol.

27. The Borough changed the Chief Lifeguard and Assistant Chief Lifeguard positions to Lifeguard Supervisor and Assistant

Lifeguard Supervisor. They created two Assistant Lifeguard Supervisor positions with duties the same as Harmon and Freda.

28. On June 2, 1996, Kevin Schroth, BLA representative, called a union meeting at 20th Street Beach. The captain of 20th Street beach, Doug Richardson, was concerned about this, as he did not want to be perceived as a union organizer. Doug Richardson was fired later that summer. Only 10-15 lifeguards came to the meeting.

29. On June 9, 1996, Schroth conducted another union meeting. The turnout was again poor.

30. During weekends in early June 1996, Lifeguard Lieutenant Harry Harson closely watched Schroth. Harson knew Schroth was the BLA representative.

31. On June 13, 1996, Schroth informed Harson that he was not going to proceed with the formation of the union. Harson indicated he was pleased.

32. Before the weekend of June 22, 1996, Schroth resigned from the beach patrol, based on his conclusions that: 1) the lifeguard supervisors, particularly Harson, had convinced most of the guards that forming a union would make their respective summers miserable; 2) further efforts to form a union would be futile due to a lack of support and anticipated retaliation from management; 3) Harson would make Schroth's summer miserable because he had spearheaded the union effort; and 4) lifeguarding was only worthwhile if it was enjoyable.

33. On June 26, 1996, the BLSA/BLA filed "Amended Specifications" to the instant charge.



34. On January 25, 1999, the Borough filed its Motion for Summary Judgment.<sup>3/</sup> On March 11, 1999, the Charging Party filed a response and on March 30, 1999 the Borough filed a reply to the Charging Party's response.

35. On October 6, 1999, I wrote a letter to the Borough's attorney and the BLA, with a copy to Mack, regarding the current status and viability of the BLA. The letter read:

In considering the pending Motion for Summary Judgment, I need to determine the current status and viability of the Belmar Lifeguard Association. In order for me to do so, I ask that you provide information and evidence on the status and viability of the Association. The following are examples of evidence that may establish viability:

1. A copy of any collective negotiations agreement between the Association and the Borough;
2. Copies of any grievances filed by the Association;
3. Copies of dues authorization cards executed by Association members; and
4. Any dated documents demonstrating collective activity by the Association.

Also, I ask that the leadership of the Association advise me if they have any further interest in the continued processing of the instant matter.

I ask for your response by November 1, 1999.

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<sup>3/</sup> From June 26, 1996 through January 25, 1999, the parties did not request us to take any further action in this matter.

On October 8, 1999, the Borough responded to my October 16, 1999 letter. The Borough informed me that: 1) there is no collective negotiations agreement between the Association and the Borough; 2) the Borough is not aware of any grievances filed by the Association; and (3) the Borough does not have a copy of any dues authorization cards.

Neither the BLA nor Mack responded to my letter.

#### ANALYSIS

The Borough notes that the BLSA is now defunct. Thus, it argues it is not a viable organization under the Act and thus can not pursue the instant charge. Further, the BLA did not file a charge on its own but was only an intervenor in the BLSA's charge. Accordingly, the Borough claims that since the BLSA cannot now pursue the instant charge because it no longer exists, the BLA also lacks standing to pursue the charge.

The Borough further notes that the charge is now being brought only by Mack whose position was the only one excluded from the unit. Since a unit of one is not appropriate, it is not appropriate for Mack to bring the instant charge.

The Borough also argues that summary judgment should be granted because the Charging Party fails to show a nexus between the Borough's actions and any protected activity, and further, the Borough's actions were in furtherance of legitimate business needs.

Mack asks that we deny the Borough's Motion for Summary Judgment. Mack argues that the BLSA and the BLA no longer exist because of the illegal activity of the Borough and thus it would be unfair to dismiss the instant charge for lack of standing on the part of the Charging Party.

Further, Mack contends that the Borough discharged Harson, Freda, Shea and himself in retaliation for union activity and that the Borough singled out union organizers in order to dissuade the remaining lifeguards from participating in the union.

\* \* \*

Upon consideration of the record, the Borough's Motion is granted in part and denied in part.

Specifically, I hereby grant the Borough's Motion with regard to all of the Charging Party's a(5) allegations. A violation of 5.4a(5) of the Act occurs when an employer fails to negotiate an alteration of an established practice with the majority representative or repudiates the terms of a collective negotiations agreement. However, an individual employee normally does not have standing to assert an a(5) violation, as the employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike Authority, P.E.R.C. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Dkt No. A-1263-80T3 (10/30/81). An individual employee may pursue an alleged 5.4 a(5) violation only where the charging party has also asserted and proven a breach of the duty of fair representation against the majority representative. Jersey

City State College, D.U.P. No. 97-18, 23 NJPER 1 (¶28001 1996), N.J. Turnpike, D.U.P. No. 80-10, 5 NJPER 18 (¶10268 1979).

Here, neither the BLSA or BLA are currently viable organizations. The BLSA no longer exists by virtue of its withdrawal of RO-96-63. Further, it does not appear that the BLA continues to exist. When I solicited information from the BLA about its viability and existence, I did not receive a response. Mack apparently is pursuing the instant charge as an individual. Therefore, since there does not appear to be a viable majority representative in the instant matter, all allegations related to a refusal to negotiate in good faith, in particular all a(5) allegations, must be dismissed. The following allegations are hereby dismissed:

1) All the a(5) allegations in the January 26, 1996 charge, specifically paragraph B of the charge which reads: B. "Respondent seeks to establish a new structure, organization and rules directly and proximately as a result of charging party's and its members intention to organize."

2) All of the a(5) allegations in the February 27, 1996 "Specification of Charges". Specifically, paragraphs 6 and 7 as well as the second allegation in paragraph 10 that "In 1995 and up until this date respondent refuses to negotiate in good faith with a majority representative of supervisory employees employed on the beach concerning terms and conditions of employment of employees of that unit and refuses to process grievances presented by the Chief

Lifeguard on disciplinary, hiring, training and safety matter(s)" are dismissed.

3) Paragraphs 16 and 17 of the June 13, 1996 "Amended Specifications" are dismissed in their entirety. They involve an alleged refusal to negotiate in good faith and since no viable majority representative exists, the allegations are not plausible.

In addition to the a(5) allegations, certain allegations do not fall within the purview of the Act and must therefore, be dismissed:

1) In the February 27, 1996 "Specification of Charges" paragraph 4(b) through 4(h) and paragraph 9 do not fall within the Commission's jurisdiction and they must be dismissed.

2) The first part of paragraph 10 which states: "In an effort to continue the afore described infiltration of the charging party's organizing activities respondent refused and continues to refuse, to discipline the said assistant chief lifeguard because of his political and other connections with the mayor, and contrary with past practices, even though after the events specified in the previous specificate said assistant chief lifeguard took said females out in a lifeboat owned by the respondent after midnight, lost oars, damaged equipment and endangered the lives of lifeguards" must be dismissed. This allegation does not set forth an unfair practice under the Act.

3) Paragraph 8 must be dismissed. Hiring and the determination of job qualifications are managerial prerogatives.

Perth Amboy Board of Education, P.E.R.C. No. 83-52, 8 NJPER 636 (¶13301 1982). Accordingly, it is not an unfair practice for the Borough to hire an allegedly unqualified individual.

4) Paragraph 11 must be dismissed, as it is not an unfair practice for the Borough to choose not to voluntarily recognize a negotiating unit. In any event, the Borough did eventually voluntarily recognize the BLA and thus the allegation is moot.

5) Paragraph 12 must be dismissed, as it does not set forth an unfair practice. It is not a violation of the Act for the Borough to assert that the chief lifeguard is a management position.

6) Paragraphs 15 and 16 of the June 13, 1996 Amended Specifications fail to set forth any violations of the Act and thus also must be dismissed.

Finally, the Borough's Motion for summary judgment is denied with respect to the following allegations:

1) The 5.4a(1), a(2), a(3) and a(4) allegations in paragraph A of the January 26, 1996 charge.

2) Paragraphs 1, 2, 3, 4(a), and 5 of the Specification of Charges in their entirety, and the 5.4a(1), (2) and (3) allegations in paragraph 13.

3) Paragraph 14 of the Amended Specifications.

Genuine issues of material fact exist with regard to the above. Brill. A hearing will commence with respect to the above allegations on a date mutually agreed upon by the parties.

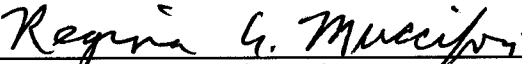
DECISION

The Borough's Motion for Summary Judgment is hereby granted with respect to the following allegations.

1. Paragraph B of the January 26, 1996 charge.
2. Paragraphs 4(b) through 4(h), 6, 7, 8, 9, 10, 11, and 12 of the February 27, 1996 Specification of Charges.
3. Paragraphs 15, 16 and 17 of the June 13, 1996 Amended Specifications.

The Borough's Motion for Summary Judgment is hereby denied with respect to the following allegations:

1. The 5.4a(1) through (4) allegations in paragraph A of the January 26, 1996 charge.
2. Paragraphs 1, 2, 3, 4(a), 5 and the 5.4a(1), (2) and (3) allegations in paragraph 13 of the February 27, 1996 Specification of Charges.
3. Paragraph 14 of the June 13, 1996 Amended Specifications.

  
Regina A. Muccifori  
Hearing Examiner

DATED: February 15, 2000  
Trenton, New Jersey