

H.E. NO. 86-51

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

In the Matter of

TOWNSHIP OF CHERRY HILL,

Charging Party/Respondent,

-and-

Docket Nos. CE-86-1-54
& CO-86-39-55

F.O.P. LODGE NO. 28,

Respondent/Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Township of Cherry Hill violated §5.4(a)(5) and, derivatively, 5.4(a)(1) of the New Jersey Employer-Employee Relations Act when its agent failed to present to the Township Council the true terms of a tentative agreement reached with representatives of FOP Lodge No. 28. The Hearing Examiner recommends that the Commission dismiss allegations that the Township violated §5.4(a)(6) of the Act, since the agreement ratified by the Township Council differed on a substantive issue from the agreement ratified by the FOP. As a remedy, the Hearing Examiner recommends that the Township Council, in good faith, consider and vote upon the true terms of the tentative agreement reached by agents for both parties.

The Hearing Examiner also recommends that the Commission dismiss alleged violations of §5.4(a)(2) and (3) and §5.4(b)(1) and (3) for failure of the respective Charging Parties to prove these allegations by a preponderance of the evidence.

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.

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Respondent/Charging Party.

Appearances:

For the Charging Party/Respondent
Alan Rosenberg, Esq.

For the Respondent/Charging Party
Oxford, Cohen & Blunda, Esqs.
(Mark J. Blunda, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On August 5, 1985, the Township of Cherry Hill ("Township") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that Cherry Hill F.O.P. Lodge No. 28 ("FOP") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Township alleged that the FOP refused to execute a collective agreement ratified by both parties in violation of

N.J.S.A. 34:13A-5.4(b)(4).^{1/} The Township also alleged that the negotiator for the FOP "affix[ed] the signature of the [Township's] negotiator to an altered document...." While the Township did not allege a specific subsection as to this allegation, the issue was fully and fairly litigated^{2/} and will be treated as an alleged violation of N.J.S.A. 34:13A-5.4(b)(3).^{3/}

On August 12, 1985, the Cherry Hill FOP Lodge No. 28 filed an Unfair Practice Charge against the Township of Cherry Hill alleging that the Township had violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (6).^{4/} The FOP charge, like that of the

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

^{2/} See Commercial Twp. Bd. of Ed. and Commercial Twp. Support Staff Assn., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Docket No. A-1642-82T2 (12/8/83) and Passaic Valley Water Commission, P.E.R.C. No. 85-4, 10 NJPER 47 (¶15219 1984).

^{3/} This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

^{4/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning

Township, referred to the extensive negotiations between the parties in 1985. The FOP alleged that the Township negotiator failed to present the "true terms of the Memorandum of Agreement to the Cherry Hill Township Committee" and that the Township refused to reduce the parties' ratified agreement to writing.

On September 24, 1985, the Director of Unfair Practices issued an Order consolidating the two cases and also issued a Complaint and Notice of Hearing. On September 11 and October 15, 1985, the Township and the FOP respectively filed their answers in the matters. The FOP admitted that it "refused and continues to refuse to sign a draft of the contract prepared and forwarded by the negotiator for the Cherry Hill Township." The FOP's answer, consistent with its own allegations, focuses on the absence of eight sick days in addition to other sick leave provisions in the contract submitted by the Township of Cherry Hill. The FOP maintains that the eight days were part of the agreement reached by the parties. The Township denied that the eight days had been negotiated by the parties.

On November 18 and 25, 1985, I conducted hearings in the matters in Trenton, New Jersey, at which time the parties had

4/ Footnote Continued From Previous Page

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."

opportunities to examine and cross-examine witnesses, present relevant evidence and argue orally. The parties submitted post-hearing briefs and a responding letter memorandum; the latter was received on February 27, 1986.^{5/}

Upon the entire record I make the following:

FINDINGS OF FACT

1. The Township of Cherry Hill is a public employer within the meaning of the Act and is subject to its provisions.
2. FOP Lodge No. 28 is an employee representative within the meaning of the Act and is subject to its provisions.
3. In February 1985, the FOP and the Township entered negotiations for a collective agreement to begin in January 1985. Between February and July 1985, the parties conducted approximately ten negotiations sessions. Nancy Scott, Esq., was the sole negotiator for the Township throughout negotiations. The FOP's negotiating team was headed by Ronald Villano, a labor relations consultant, and included the President, First Vice President, and Secretary of the FOP and the President of the Cherry Hill PBA.^{6/} (Transcript of November 18, 1985, hereafter TI, at pp. 13-14, 130-133, 191-192 and 197-198).

^{5/} At the request of the parties I extended the briefing schedule.

^{6/} The PBA is a minority representative in Cherry Hill; by agreement between the PBA and FOP, the PBA President participates as a full member of the FOP's negotiating committee.

4. Scott testified that the issue of accumulated sick leave was "the focal point of these [contract] negotiations around which all of the other issues were secondary." (TI at p. 66). FOP negotiators confirmed that the Township's proposal for limitations on accumulated sick leave emerged early in the negotiations and were discussed throughout the negotiations. Further, all witnesses who attended negotiations testified that a memorandum of agreement on sick leave accumulation reached in previous negotiations between the Township and the Police Superior Officers Association ("SOA") was essential to these discussions. At the second negotiations session, FOP First Vice President Paul Culbertson reviewed the SOA memorandum in detail with Township negotiator Scott. The parties reviewed the document line by line including a provision for eight days of sick leave in addition to a 200-day cap on accumulated sick leave for certain employees. Scott testified that the eight day provision would cost the Township approximately \$79,000. (TI at pp. 20-23, 44, 85-86, 132-134, 165-166, 193-194 & 207).

5. The SOA agreement continued to be a subject of discussions throughout negotiations. While the document itself was not reviewed line by line in all sessions, it was produced and discussed at length when the parties met with a mediator and later an arbitrator assigned by the Commission. (TI at pp. 91, 136-137, 166, 198 & 208). In all such discussions, the PBA's position was consistent: it would not accept any sick leave cap which was less than what the SOA had negotiated. (TI at pp. 132, 184 & 207).

Discussions regarding the SOA agreement included reviews of necessary date changes, since the SOA agreement was negotiated in 1983 and the FOP proposed agreement was being negotiated in 1985. (TI at pp. 134, 167 & 232).

6. In June, 1985, intensive negotiations sessions led to a memorandum of agreement between the parties. In both a proposed memorandum of agreement of June 12, 1985 and the final memorandum of agreement reached on June 19, 1985, the sick leave accumulation language between the SOA and the Township was referenced. In the June 12th memorandum the SOA Township agreement was referred to as follows:

SOA language covering all members of Lodge No. 28
employed or on leave as of 1/1/85 (200 day cap)

In the memorandum of agreement reached on June 19, 1985 the relevant clause stated as follows:

Effective January 1, 1985, present SOA language
(attached) shall be implemented for all members
covered under this agreement. This shall be the 200
day cap as outlined under the SOA contract.

Both of the above memoranda were handwritten by the FOP's chief negotiator Villano (Exhibit A-2, TI at pp. 34, 94 and 182).

7. The June 19, 1985 memorandum was signed by four members of the FOP's negotiating team and Township negotiator Scott. This three-page handwritten document was stapled to an unaltered copy of the SOA agreement (a two page, six paragraph, typewritten document). I find that FOP Vice President Culbertson

testified credibly that he stapled the SOA agreement to each copy of the handwritten memorandum of agreement and distributed them to the negotiating representatives. Culbertson's testimony was corroborated credibly by the other members FOP negotiations team who testified under a sequestration order. (TI at pp. 137-138, 168, 201-202 and 238).^{7/}

8. The memorandum of agreement signed by all negotiators that were present on that day begins with the following phrase: "Subject to the ratification of both parties the following is the complete agreement of the parties." The agreement ends with the following phrase: "The parties agree to recommend this settlement to their constituents." (Exhibit A-2).

9. Both Scott and the FOP negotiations team sought approval by their respective constituents of the June 19th memorandum. The FOP held a ratification meeting on June 25, 1985, where the exact memorandum and attached SOA language were read to unit members. Following questions by unit members and answers by members of the negotiating committee, including unqualified discussions about the eight days referenced in the SOA language, the

^{7/} By contrast, Scott testified that the SOA agreement was not stapled to the three-page handwritten memorandum of agreement (TI at pp. 63-65). However, I do not credit that testimony. In contrast to the straightforward and credible testimony on this issue reviewed above, Scott was evasive and abrupt on the point. Moreover, her testimony that she signed an agreement which referenced an "attached" document, but nonetheless no document was actually attached, is illogical and inconsistent with prudent negotiations techniques.

unit members voted unanimously to ratify the agreement (TI at pp. 139-140, 182-183 and 238-240).

10. Scott met with the Township Council three times to discuss the June 19 memorandum of agreement. At various times during those meetings, Council members reviewed the handwritten memorandum, the SOA agreement, and a summary of the June 19 agreement prepared by Scott. Scott thoroughly discussed sick leave issues with the Council but denied discussing the eight day issue with it. On July 1, 1985, the Township Council unanimously ratified the June 19 agreement. After the ratification, Scott proposed a revised salary schedule to the FOP negotiations team which it immediately rejected (TI at pp. 44-52, 74, 76-80, 100-102 and 214-215; Exhibit CH-1).

11. With Villano's consent, Scott prepared a contract, reconciling the memorandum of agreement with the expired collective agreement. She signed and delivered drafts of the contract to FOP representatives on July 1, 1985. Villano reviewed the draft and determined that the eight days were not included in the sick leave provisions. Villano then redrafted the sick leave provisions, inserting the eight days, and substituted his typewritten pages for those prepared by Scott. On July 15, 1985, Villano mailed a signed copy of the amended contract and a cover letter noting his revisions of the sick leave provisions to Scott (TI at pp. 102-109 and 215-218; Exhibit A-2 and FOP-1).

12. The amended contract draft which Villano mailed to Scott included the additional eight days of sick leave, but did not include language similar to the final paragraph of the SOA agreement. The final paragraph of the SOA agreement established that accumulated sick leave up to the time of the agreement could not be used until after exhaustion of sick leave accumulated after that agreement. Furthermore, the SOA agreement provided payment for the eight days at retirement rates and Villano's draft called for payment of the eight days at earned (thus less expensive) rates. Villano testified that this change was consistent with language in the prior FOP-Township contract, and he thought that the change would "put the whole thing to bed...." (TI at pp. 56, 117-122 and 215-220; Exhibit A-2).

13. By letter of July 22, 1985, Scott informed Villano that his modification of her contract draft was unacceptable to the Township, and that, in her opinion, the parties had not reached a collective agreement (TI at pp. 42-43; Exhibit A-2).

ANALYSIS

I. Alleged violations of 5.4(a)(6) and 5.4(b)(4)

These subsections of the Act stress the obligations of public employers and employee organizations to reduce to writing and sign agreements which are negotiated in good faith. The Commission has found violations of these subsections in two situations:

1. Apparent/Actual Authority: Consistent with agency/principal doctrines of contract law, the Commission has found

violations of section 5.4(a)(6) where employers have failed to execute collective agreements reached by employer agents with actual or apparent authority to conclude agreements. Thus, when employer representatives were fully authorized, worked within general guidelines set forth by their principal, and reached an agreement containing no conditions precedent (e.g. as to the need for ratification by the principal), employers who refused to execute agreements have violated section 5.4(a)(6). Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975); East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976), mot. for recon. den., P.E.R.C. No. 77-26, 3 NJPER 16 (1977); Long Branch Bd. of Ed., P.E.R.C. No. 77-70, 3 NJPER 302 (1977), mot. for recon. den. P.E.R.C. No. 78-6, 3 NJPER 314 (1977), Camden Fire Dept., P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982), and South Amboy Bd. of Ed., P.E.R.C. No. 82-10, 7 NJPER 448 (¶12200 1981). See also Boro of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (¶12066 1981) where the charging party failed to prove a similar allegation. The doctrine also applies to employee organizations; see Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 78-83, 4 NJPER 249, 250 (¶4126 1978), where the Commission found that the employee organization had not violated 5.4(b)(4) because its negotiations team made an express "qualifying statement" regarding the need to ratify the proposed agreement. Also, see Glen Rock Bd. of Ed., P.E.R.C. No. 82-11, 7 NJPER 454 (¶12201 1981), reviewed infra.

2. Post-ratification: In cases where agents did not have authority to bind principals, the Commission has found violations of 5.4(b)(4)^{8/} where both parties have ratified a memorandum of agreement reflecting a meeting of the minds on all substantive issues, followed by a refusal to execute the agreement by the employee organization. See: Bergen County Prosecutor's Office, P.E.R.C. No. 83-90, 9 NJPER 75 (p14040 1982) and Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (¶16208 1985). By contrast, the Commission has dismissed a 5.4(a)(6) allegations where notwithstanding ratifications by both parties the charging party failed to demonstrate a meeting of the minds on all substantive issues. See, e.g., Long Branch Bd. of Ed., P.E.R.C. No. 86-97, 12 NJPER 204 (¶17080 1986).^{9/}

Given the above legal framework, I conclude that there can

^{8/} While the Commission has yet to find a violation of 5.4(a)(6) in a post-ratification setting, it is currently considering a recommendation to that effect by Hearing Examiner Alan R. Howe. Matawan-Aberdeen Bd. of Ed., H.E. No. 86-46, 12 NJPER ____ (¶ _____ 1986).

^{9/} Of course, numerous (a)(6) and (b)(4) allegations have been dismissed where neither apparent authority nor ratification occurred. In these cases, the Commission concluded that no agreement was ever reached, thus no (a)(6) or (b)(4) violation. See, e.g. Lower Twp. Bd. of Ed., P.E.R.C. No. 78-32, 4 NJPER 25 (¶4013, 1977); Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983); Borough of Matawan, P.E.R.C. No. 86-87, 12 NJPER 135 (¶17052 1986); and Passaic Valley Water Comm., P.E.R.C. No, 85-4, 10 NJPER 47 (¶15219 1984).

be no violation of either (a)(6) or (b)(4) based on an apparent or actual authority argument. While the FOP alleged that Township Negotiator Scott "...advised the FOP, both orally and in writing, that she was authorized to negotiate a successor collective bargaining agreement on behalf of the Respondent Township of Cherry Hill....," (§4, FOP Unfair Practice Charge, Exhibit A-1), the FOP presented no evidence to substantiate this claim. Moreover as noted in Finding of Fact Number 8, the memorandum of agreement reached by negotiations on June 19, 1985 begins and concludes with an express qualifying condition of ratification by both principals.

Thus, if a violation of either (a)(6) or (b)(4) occurred, either the FOP or the Township would have to demonstrate ratifications by both parties of a memorandum of agreement reflecting a meeting of the minds on all substantive issues, followed by a refusal by one party to execute a final agreement. Bergen County Prosecutor's Office and Spotswood Bd. of Ed., supra. Both parties allege that this type of post-ratification violation was committed by the other party.^{10/}

In Finding of Fact Numbers 7-10 , I found that negotiators for both parties reached a tentative agreement on June 19, 1985 and that both principals subsequently ratified that memorandum of agreement. The next point of inquiry is to determine whether the

^{10/} Alternatively, the FOP alleges that Township negotiator Scott "...did not present the true terms of the Memorandum of Agreement to the Cherry Hill Township Committee." (§10, FOP Unfair Practice Charge, Exhibit A-1). This allegation will be reviewed infra.

memorandum embodied a meeting of the minds on all substantive issues. Normally, this inquiry is a matter of contract construction aimed at discovering the intent of the parties. In Jersey City and Long Branch, supra, the Commission reviewed the appropriate method for this analysis:

"The polestar of contract construction is to discover the intention of the parties. Atlantic Northern Airlines, Inc. v. Schwimmer, 12 N.J. 293, 301 (1953). As stated by our Supreme Court in Kearny P.B.A. Local #21 v. Town of Kearny, 81 N.J. 208 (1979):

'[a] number of interpretative devices have been used to discover the parties' intent. These include consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage and the interpretation placed on the disputed provision by the parties' conduct. Several of these tools may be available in any given situation -- some leading to conflicting results. But the weighing and consideration in the last analysis should lead to what is considered to be the parties' understanding...What occurred during negotiations frequently will throw light upon the parties' intent as expressed in the written contract.' [Id. at 221-222]" (emphasis added) Jersey City, supra at 10 NJPER 20-21.

Given that this is not an apparent authority case, the critical factor in contract construction here is emphasized in the above quotation: what did the parties understand to be the final agreement? Put another way, on what did the parties believe they voted when they ratified the June 19, 1985 memorandum?

As noted in Finding of Fact Number 6, the disputed language in the memorandum of agreement stated:

Effective January 1, 1985, present SOA language (attached) shall be implemented for all members covered under this agreement. This shall be the 200 day cap as outlined under the SOA contract.

Although the FOP negotiators and Scott disagreed on the "attached" document and its import (see Finding of Fact Number 7), their disagreement is not dispositive of the parties' intent; the negotiators were agents, without apparent authority, while the principals (i.e. the FOP unit members and the Township Council) were the parties who ultimately had to reach agreement. Thus, the critical factors of contract construction in this case are the actual beliefs of the principals as to the meaning of the disputed clause.

FOP unit members held a ratification meeting on June 25, 1985, where the memorandum of agreement and attached SOA memorandum on sick leave were read aloud verbatim. Questions were asked about the eight additional sick leave days in the SOA memorandum, and FOP negotiations team members responded that those eight days were included in the tentative agreement (Finding of Fact Number 9). I conclude that when FOP unit members ratified the June 19, 1985 memorandum of agreement on June 25, 1985, their intent was to ratify an agreement which included the eight additional sick leave days.

Township Council members met three times with Township negotiator Scott to review the June 19, 1985 memorandum of agreement. In addition to the handwritten memorandum and the SOA agreement, Scott presented her own written summary of the proposed

agreement to Council (Finding of Fact 10; Exhibit CH-1). Scott testified that she discussed sick leave issues extensively with Township Council members, and never discussed the eight days with them. Her summary document (Exhibit CH-1) did not reference the eight days at all; instead, the summary stated: "The cap on payment for accumulated sick leave upon retirement as set forth in the current contract between the Township and the Superior Officers' Association shall be incorporated into the agreement and made applicable to all employees who are employed by the Township on the date of the Memorandum."

Although I have previously discredited Scott's testimony with respect to the actual attachment of the SOA agreement to the June 19, 1985 memorandum of agreement (Finding of Fact Number 7 and footnote 7), I do not discredit her testimony concerning her post-June 19, 1985 presentation to Council leading to ratification on July 1, 1985. Her testimony is consistent with the summary document (Exhibit CH-1) which she presented to Council; moreover, the FOP did not call any witnesses (such as Township Council members) who might conceivably rebut such testimony and documentation.

If the June 19 memorandum and attached SOA agreement were clear and unambiguous as to the additional eight days of sick leave, I would find a constructive meeting of the minds on the issue; that is, even in the face of contrary representations from an agent, a principal can be held to the letter of an unambiguous agreement

which it ratifies. Williston on Contracts, Vol I, §94 (3rd Edition, 1957)(Baker, Voorhis and Co., Inc.; as supplemented, Lawyers Co-operative Publishing Co., Rochester, N.Y. 1985). However, I find that the memorandum of agreement is ambiguous on the eight day issue, especially when presented without a physically attached SOA agreement. The terms "present SOA language (attached)" could mean strictly a paragraph or two; contrast this phrase to the phrase "present SOA agreement (attached)," which I would find clear on its face. Thus, presented with an ambiguous agreement as to sick leave provisions, Township Council members reasonably relied on the representations of their agent who did not reference the eight days. Accordingly, I conclude that when the Township Council ratified the June 19, 1985 memorandum of agreement, it intended to reach an agreement with the FOP which did not include the eight additional days of sick leave.

In view of the above, and that a sick leave cap and a \$79,000 benefit were important issues in negotiations, I find that there was no meeting of the minds of the principals as to a substantive issue. Thus, the parties did not reach an agreement which either side could be compelled to execute, and neither party carried its burden of proof by a preponderance of the evidence. Accordingly, I recommend that the Commission dismiss the Township's allegation that the FOP violated N.J.S.A. 34:13A-5.4(b)(4), and dismiss the FOP's allegation that the Township violated N.J.S.A. 34:13A-5.4(a)(6).

II. Alleged violation of 5.4(a)(5)

The FOP also alleged that Township negotiator Scott "...did not present the true terms of the Memorandum of Agreement to the Cherry Hill Township Committee." This allegation, if proven by a preponderance of the evidence, would constitute a violation of 5.4(A)(5). Lower Twp. Bd. of Ed. and Boro of Wood-Ridge, supra.

As noted in Finding of Fact Number 10, Township negotiator Scott did present the June 19, 1985 memorandum of agreement and the SOA agreement to the Township Council, along with her own summary and recommendations of these documents. Under normal circumstances, presentation of tentative agreements by agent to principal is consonant with negotiations in good faith, and recommendation is also required where, as here, the agents have agreed to recommend the tentative agreement to their principals. South Amboy Bd. of Ed., supra.

However, under the totality of circumstances, I find that the Township, by the conduct of its agent, did not negotiate in good faith. When Scott presented the June 19, 1985 memorandum of agreement and the SOA agreement to the Township Council, she did not discuss the eight day clause of the SOA agreement with them. Given the documents themselves, which did not eliminate the eight day clause, and the negotiations history, where repeated references to the SOA agreement (including FOP insistence that it would settle for nothing less than the SOA received) resulted in a memorandum of agreement which attached that agreement unaltered, Scott either knew

or should have known that the intent of the agreements on June 19, 1985 was to include the eight days. Whether Scott actually believed the intent of the parties was to exclude the eight days is of no consequence; the Commission will not be persuaded by an agent who asserts a mistake or confusion at the table in the face of evidence rendering such claims implausible. See, e.g. Glen Rock Bd. of Ed., supra, where the Commission found that the employee organization violated 5.4(b)(3) when its negotiating committee professed an improbable "mistake" as to a tentative agreement, and then failed to present the true terms of the tentative agreement to their principal for ratification.

Thus here, as in Glen Rock, the principal is responsible for its agent's failure to negotiate in good faith, but at the same time, the principal cannot be ordered to enter an agreement which it never voted upon due to the failure of its negotiator to present the true terms of the agreement. I find that Scott failed to present the true terms of the agreement to the Township Council when she failed to review the eight day issue with them. The appropriate remedy, for the reasons stated above, cannot be to require the Township to ratify the agreement of June 19, 1985 and attached SOA agreement as negotiated by the principals. Instead, I recommend that the Commission order the Township Council to consider and vote upon the agreement reached by agents for the Township and the FOP on

June 19, 1985.^{11/}

Alleged violation of 5.4(b)(3)^{12/}

The Township alleged that FOP negotiator Villano "affix[ed] the signature of the [Township's] negotiator to an altered document...." As noted on page 2 of this decision, the Township did not allege a specific subsection as to this violation, but the issue has been fully and fairly litigated and is reviewed on the merits, consistent with cited case law.

In Finding of Fact Number 11, I found that Villano did insert his own typewritten pages into a document previously composed and signed by Scott. Contemporaneously, Villano noted the change by a cover letter to Scott. These facts do not indicate an attempt by Villano to confuse Scott nor otherwise engage in bad faith. I find the allegation concerning Villano's conduct to be without merit, and recommend that this charge be dismissed.

^{11/} The Township Council should consider and vote on the draft of the contract submitted to Scott by Villano. While the draft differs slightly from the agreement reached by the agents on June 19, the differences are beneficial to the Township and constitute a waiver by the FOP as to those differences (see Finding of Fact Number 12).

^{12/} In its answer to the FOP's charge, the Township alleged that the FOP violated this subsection, but did not reference particular conduct. Assuming that the charge concerns the FOP's actions in negotiations and post-ratification, I find that the Township has failed to prove this allegation. Instead, I have found supra that, while the FOP negotiators acted in good faith, the Township, through its negotiator, did not negotiate in good faith.

Alleged violations of 5.4(a)(1), (2) and (3)

The FOP alleged that the Township violated these subsections by seeking additional concessions from the FOP post-ratification, by seeking FOP agreement to a contract without the additional eight days of sick leave reviewed above, and by filing the instant Unfair Practice Charge. While the FOP proved all the above conduct (see Findings of Fact Numbers 10 and 11), I find that none of the conduct violates any of the cited subsections of the Act. A party to a ratified or effective collective bargaining agreement can always seek concessions from the other side; there is simply no obligation on the part of the other side to negotiate. As for the Township's efforts to get the FOP to sign a contract without the eight days, this was consistent with what the Township Council ratified at its July 1, 1985 meeting. Finally, the Township was within its rights as a public employer to file an Unfair Practice Charge. Absent extraordinary circumstances, the mere filing of an Unfair Practice Charge cannot constitute coercion within the parameters of 5.4(a)(1) of the Act.

While I recommend that the Commission dismiss independent violations of subsections 5.4(a)(1), (2) and (3), I recommend that the Commission find a derivative violation of 5.4(a)(1) based on the violation of 5.4(a)(5) previously found.

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RECOMMENDED ORDER

Based on the above Findings of Fact and Conclusions of Law,
I recommend that the Commission:

ORDER

A. That the Township of Cherry Hill cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to submit to Township Council the true terms of tentative agreements reached with representatives of FOP Lodge No. 28.

2. Refusing to negotiate in good faith with FOP Lodge No. 28 by virtue of such conduct.

B. That the Township of Cherry Hill take the following affirmative action:

1. In good faith, consider and vote upon the true terms of the tentative agreement reached by its negotiator and representatives of FOP Lodge No. 28 on June 19, 1985, as embodied in a contract draft forwarded by the FOP's chief negotiator to the Township on July 15, 1985.

2. Post at all places where notices to employees from FOP Lodge No. 28 are customarily posted copies of the attached "Notice to Employees" marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Township's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter.

Reasonable steps shall be taken by the Township to ensure that such notices are not altered, defaced or covered by other material.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps it has taken to comply herewith.

C. That the allegations in the Complaint that the Township of Cherry Hill violated N.J.S.A. 34:13A-5.4(a)(2), (3) and (6) be dismissed, and that allegations in the Complaint that FOP Lodge No. 28 violated N.J.S.A. 34:13A-5.4(b)(3) and (4) be dismissed.



Mark A. Rosenbaum
Hearing Examiner

Dated: April 18, 1986
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, particularly, by refusing to submit to Township Council the true terms of tentative agreements reached with representatives of FOP Lodge No. 28.

WE WILL NOT refuse to negotiate in good faith with FOP Lodge No. 28 by virtue of such conduct.

WE WILL, in good faith, consider and vote upon the true terms of the tentative agreement reached by our negotiator and representatives of FOP Lodge No. 28 on June 19, 1985, as embodied in a contract draft forwarded by the FOP's chief negotiator to the Township on July 15, 1985.

TOWNSHIP OF CHERRY HILL

(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 James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey 08618, Telephone (609) 292-9830