

P.E.R.C. NO. 87-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEW BRUNSWICK,

Respondent,

-and-

Docket No. CO-85-174-24

NEW BRUNSWICK MUNICIPAL
EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the City of New Brunswick violated the New Jersey Employer-Employee Relations Act when it unilaterally granted a wage increase to Thomas North, the City's Animal Control Officer. A Hearing Examiner recommended this conclusion and the Commission, in the absence of exceptions, adopts it.

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Appearances:

For the Respondent, Rubin, Rubin & Malgran, Esqs.
(Ralph Stanzione, of counsel)

For the Charging Party, Smoriadasky & Stawnychy, Esqs.
(Petro R. Stawnychy, of counsel)

DECISION AND ORDER

On January 16, 1985, the New Brunswick Municipal Employees Association ("Association") filed an unfair practice charge against the City of New Brunswick ("City"). The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1),(2) and (5),^{1/} when it unilaterally granted wage increases to certain employees represented by the Association.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On August 7, 1985, a Complaint and Notice of Hearing issued. The City, contrary to the mandate set forth in N.J.S.A. 19:14-3.1, did not file an Answer. Therefore, the Complaint's allegations are deemed to be true. N.J.A.C. 19:14-3.1.

On November 25, 1985, Hearing Examiner Jonathon Roth conducted a hearing. The parties entered into stipulations, including that the charge had been resolved with the exception of the unilateral salary increase given to Thomas North, the City's Animal Control Officer. The City also presented the testimony of one witness, who stated the City's reasons for granting the increase.

On October 17, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-26, 12 NJPER ____ (¶ ____ 1986). He found that the City violated the Act when it unilaterally increased Thomas North's salary. As a remedy, he recommended that the increase be rescinded and the negotiated contractual rate be restored, but that North not be required to return any monies received in excess of that rate.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-4) are accurate. We adopt and incorporate them here.

We agree that the City violated the Act when it unilaterally increased North's salary. Negotiation over compensation with individual employees rather than their majority representative strikes at the heart of our Act: the exclusivity doctrine. Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409, 426

(1970); North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 86-29, 12 NJPER ____ (¶ ____ 1985). We recognize that the City had a legitimate interest in granting the increase: it sought to retain a good employee. But under our Act it was obligated to address its concerns with the majority representative since compensation is a mandatory subject of negotiations. Bd. of Ed. Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). There is nothing in the record that would indicate that its concerns would not have been addressed at negotiations. But even if they had not been, the City would have had the right to have unilaterally granted the increase after it had reached impasse with the Association over this issue. Rather than do this, it unilaterally increased North's salary and thereby violated the Act. In the absence of exceptions, we adopt the Hearing Examiner's remedial order.^{2/}

ORDER

The City of New Brunswick is ordered to:

A. Cease from:

1. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act, particularly by unilaterally granting a salary increase to a unit employee.

2. Refusing to negotiate in good faith with the New Brunswick Municipal Employees Association concerning the salary of unit employee Thomas North.

^{2/} We dismiss the allegation that the City violated subsection 5.4(a)(2).


B. Take the following affirmative action:

1. Forthwith reduce prospectively the annual salary of Thomas North to the appropriate 1985-86 contractual rate.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice 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 Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Reid was not present.

DATED: Trenton, New Jersey
November 17, 1986
ISSUED: November 18, 1986

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease from interfering with, restraining or coercing our employees in the exercise of rights guaranteed to them by the Act, particularly by unilaterally granting a salary increase to a unit employee.

WE WILL cease from refusing to negotiate in good faith with the New Brunswick Municipal Employees Association concerning the salary of unit employee Thomas North.

WE WILL forthwith reduce prospectively the annual salary of Thomas North to the appropriate 1985-86 contractual rate.

Docket No. CO-85-174-24

CITY OF NEW BRUNSWICK

(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 the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

H.E. NO. 87-26

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

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-and-

Docket No. CO-85-174-24

NEW BRUNSWICK MUNICIPAL
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Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission finds that the City of New Brunswick violated subsection 5.4(a)(5) and derivatively (a)(1) of N.J.S.A. 34:13A-5 et seq. when it unilaterally increased the salary of an Animal Control Officer represented in a collective negotiations unit by the New Brunswick Municipal Employees Association.

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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For the Respondent
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(Ralph Stanzione, of Counsel)

For the Charging Party
Smoriadasky & Stawnychy, Esqs.
(Petro R. Stawnychy, of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On January 16, 1985, the New Brunswick Municipal Employees Association ("MEA" or "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the City of New Brunswick ("Employer" or "City") violated the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq. The Association specifically alleged that the City violated subsections (a)(1) and (5) when it unilaterally

increased the salaries of several unit employees.^{1/} On July 31, 1985 the Association filed an amendment to its charge alleging that the City unilaterally increased the salary of an another named unit employee. On August 7, 1985, the Director of Unfair Practices issued a Complaint and Notice of Hearing.^{2/}

On November 25, 1985, I conducted a hearing. The parties stipulated that the Unfair Practice Charge had been resolved except with respect to the one unit employee named in the Association's July 31 amendment. The parties also had the opportunity to examine witnesses and introduce documents. Post-hearing briefs were submitted by January 16, 1986.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The City of New Brunswick is a public employer within the meaning of the Act.

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (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."

2/ The Employer did not file an Answer pursuant to N.J.A.C. 19:14-3.1. Since the City did not deny the factual allegations of the July 31 amended charge and the parties stipulated that the original charge was resolved, I deem the allegations of the amended charge are as true and incorporate them into the findings of fact.

2. The New Brunswick Municipal Employees' Association is a public employee representative within the meaning of the Act.

3. Thomas North is a public employee within the meaning of the Act. He is an Animal Control Officer and is included in the Association's collective negotiations unit of all City employees excluding police officers, firefighters, crossing guards and other professional employees (J-1, J-2).

4. The parties stipulated that on April 30, 1985, North received a wage increase of \$4,000. The agreement in place at the time of the increase had expired December 31, 1984 (J-1). On July 1, 1985, the parties executed a collective negotiations agreement for 1985-86 which is retroactive to January 1, 1985 (J-2).

5. The parties stipulated that under the agreement North's 1985 salary as Animal Control Officer would be \$16,000 and on January 1, 1986 his salary would be \$17,000. North's current salary is \$19,500.

6. The parties stipulated that they did not negotiate a change in North's compensation before the April 30, 1985 wage increase.

7. The City Business Administrator, Stanley Marcinczyk, testified that sometime before April 30, 1985 North threatened to quit his post unless his salary was increased. He also testified that the City was disappointed in the job performances of other employees hired before North in the title (T 10-11). The City determined his new salary by approximately averaging the salaries of

Animal Control Officers in surrounding communities. The Business Administrator approved that salary increase.

DISCUSSION

The City does not dispute that it unilaterally increased Thomas North's salary on April 30, 1985. Although the City raised the Animal Control Officer's salary to retain North's services, it cannot lawfully alter a term and condition of employment without negotiating with the Association. Middletown Tp., P.E.R.C. No. 85-122, 11 NJPER 377 (¶16136 1985), East Brunswick Tp., P.E.R.C. No. 86-41, 12 NJPER ____ (¶ 1985), Trenton Housing Authority, P.E.R.C. No. 82-49, 7 NJPER 677 (¶12305 1981).

In Trenton Housing Authority, the employer unilaterally increased the salaries of certain unit employees above those negotiated with the majority representative. The Commission, in agreement with the Hearing Examiner, found that the employer's action violated §5.4(a)(5) and derivatively (a)(1) of the Act. The facts of this case compel me to find the same violations, especially since the employer has not alleged that the union waived its right to negotiate the salary increase. Accordingly, I find that the City of New Brunswick violated §5.4(a)(5) and derivatively (a)(1) of the Act when it increased Thomas North's salary on April 30, 1985.

At the hearing, the Association specifically requested that the increase North received on April 30, 1985 be rescinded prospectively so as to place him within the contractual guide. It also specifically requested that the employee not be ordered to

return any monies he received in excess of the contractually agreed upon salary.

RECOMMENDED ORDER

I recommend that the Commission ORDER that

A. Respondent cease from

1. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act, particularly by unilaterally granting a salary increase to a unit employee.

2. Refusing to negotiate in good faith with the New Brunswick Municipal Employees Association concerning the salary of unit employee Thomas North.

B. The Township take the following affirmative action:

1. Forthwith reduce prospectively the annual salary of Thomas North to the appropriate 1985-86 contractual rate.

2 Post in all places where notices to employees are customarily posted, copies of the attached notice 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 Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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


Jonathon Roth
Hearing Examiner

Dated: October 17, 1986
Trenton, New Jersey