P.E.R.C. NO. 81-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

-and-

Docket No. CO-80-240-95

LOCAL 2273, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

-and-

Docket No. CO-80-251-96

LOCAL 2312, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

In an unfair practice matter, the Commission affirms its Hearing Examiner's recommended finding that the employer violated the Employer-Employee Relations Act by demoting an employee to a lower salaried position, and then reassigning him the duties he performed previously.

The Commission also affirms the Hearing Examiner by dismissing that portion of the charge alleging that the employer had earlier subcontracted unit work or assigned it to non-unit employees without negotiations. The Charging Party failed to sustain its burden of proof.

P.E.R.C. NO. 81-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

-and- Docket No. CO-80-240-95

LOCAL 2273, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

-and- Docket No. CO-80-251-96

LOCAL 2312, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

Appearances:
For the Respondents, Thomas Lauricella, Personnel Manager

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs. (Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

Unfair practice charges were filed with the Public Employment Relations Commission by Locals 2273 and 2313, Council 52, AFSCME, AFL-CIO (the "Locals") alleging violations of the New Jersey Employer-Employee Relations Act by the Board of Managers of Preakness Hospital and the Board of Chosen Freeholders of Passaic County ("Respondents"). A hearing was held before Commission Hearing Examiner Alan R. Howe on July 7, 1980, and he issued his

Recommended Report and Decision on August 12, 1980, H.E. No. 81-2, 6 NJPER 420 (¶11211 1980). Exceptions have been filed by both the Locals and the Respondents.

The Hearing Examiner recommended that the Respondents be found to have violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by unilaterally demoting one Harry Dellanno to a lower paying position and then reassigning him the same duties he performed while in the higher salaried position. However, he recommended that the Commission dismiss the portion of the complaint alleging that Respondents violated the same provisions by unilaterally either subcontracting out work to third parties or reassigning it to non-unit employees. This was due to his judgment that the Locals had not met their burden of proof.

Having reviewed the record and the exceptions filed we adopt the Hearing Examiner's recommendations substantially for the reasons set forth in his report. We agree that the testimony offered by the Locals does not establish that work was subcontracted or given to non-unit employees. The Locals' exceptions are devoid of any substantive merit and are rejected.

Similarly, the Respondents' exceptions regarding Mr. Dellanno amount to no more than attempts to introduce facts not placed in evidence at the hearing either in testimonial or documentary form. We will not consider the new "exhibits" submitted with the exceptions, and no grounds sufficient for not adopting the Hearing Examiner's recommendation are before us. The undisputed factual record indicates that Mr. Dellanno performed the same duties but at a greatly reduced salary, employer conduct

which is clearly contrary to the intent of the Act. In re New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), affmd App. Div. Docket No. A-2450-77 (1979).

ORDER

Based upon the entire record and for the foregoing reasons, IT IS HEREBY ORDERED:

A. That the Respondents cease and desist from:

1. Interfering with, restraining or coercing their employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing in April 1980 to restore to Harry Dellanno his prior annual salary after he resumed performing the same supervisory duties that he had performed prior to March 18, 1980.

2. Refusing to negotiate in good faith with the Charging Parties concerning terms and conditions of employment of employees in the two collective negotiations units involved herein, particularly, by failing to negotiate any change in the annual salary of Harry Dellanno after he assumed the same supervisory duties which he had exercised prior to March 18, 1980.

B. That the Respondents that the following affirmative action:

1. Forthwith restore the status quo ante with respect to Harry Dellanno, namely, resume compensating Dellanno at his annual salary of $17,679, and thereafter negotiate in good faith with the Charging Parties with respect to any proposed change in the annual salary of Harry Dellanno.

2. Forthwith make Harry Dellanno whole for all monetary losses suffered by him since April 1980 as a result of the failure to restore him to his former annual salary of $17,679

after he was reassigned the same supervisory duties as Senior Transportation Foreman that he had performed prior to March 18, 1980 as Supervisor of Transportation.

3. 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 Respondents' authorized representative, shall be maintained by them for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that these notices are not altered, defaced or covered by other material.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondents have taken to comply herewith.

BY ORDER OF THE COMMISSION

Bernard M. Hartnett, Jr.
Acting Chairman

Commissioners Graves, Hartnett, Hipp, Newbaker and Parcells voted for this decision. None opposed.

DATED: Trenton, New Jersey
October 21, 1980
ISSUED: October 22, 1980

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing in April 1980 to restore to Harry Dellano his prior annual salary after he resumed performing the same supervisory duties that he had performed prior to March 18, 1980.

WE WILL cease and desist from refusing to negotiate in good faith with the Charging Parties concerning terms and conditions of employment of employees in the two collective negotiations units involved herein, particularly, by failing to negotiate any change in the annual salary of Harry Dellanno after he assumed the same supervisory duties which he had exercised prior to March 18, 1980.

WE WILL forthwith restore the status quo ante with respect to Harry Dellanno, namely, resume compensating Dellanno at his annual salary of $17,679, and thereafter negotiate in good faith with the Charging Parties with respect to any proposed change in the annual salary of Harry Dellanno.

WE WILL forthwith make Harry Dellanno whole for all monetary losses suffered by him since April 1980 as a result of the failure to restore him to his former annual salary of $17,679 after he was reassigned the same supervisory duties as Senior Transportation Foreman that he has performed prior to March 18, 1980 as Supervisor of Transportation.

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and
THE BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY
(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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H.E. No. 81-2

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

In the Matters of

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE
BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

- and -

Docket No. CO-80-240-95

LOCAL 2273, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE
BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

- and -

Docket No. CO-80-251-96

LOCAL 2313, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondents violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act by having failed to restore the annual salary of one Harry Dellanno after he commenced to exercise the same supervisory duties that he had exercised prior to March 18, 1980, the date on which his job was eliminated and he was reclassified to a lower level job. The Hearing Examiner ordered that the Respondents make Dellanno whole for the monetary losses he had suffered by not having his annual salary restored after he had resumed his prior supervisory duties on a specified date in April 1980.

The Hearing Examiner recommended that the Commission dismiss charges of unfair practices involving the same Subsections of the Act, supra, with respect to: (1) the action of the Respondents in adopting a resolution on January 30, 1980 unilaterally eliminating certain job titles in the two collective negotiations units represented by the Charging Parties without negotiations with the Charging Parties as to the decision or its impact; and (2) the Charging Parties' allegation that the Respondents illegally subcontracted unit work to third parties or reassigned unit work to other unit employees.

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.

H.E. No. 81-2

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

In the Matters of

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE
BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

- and -

Docket No. CO-80-240-95

LOCAL 2273, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE
BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY,

Respondents,

- and -

Docket No. CO-80-251-96

LOCAL 2313, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

Appearances:

For the Board of Managers of the Preakness Hospital and The Board of Chosen Freeholders of Passaic County
Thomas Lauricella, Personnel Manager

For Locals 2273, 2313, Council 52, AFSCME, AFL-CIO
Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

Unfair Practice Charges were filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 11, 1980 and February 13, 1980 by Local 2273 and Local 2313, Council 52, AFSCME, AFL-CIO (hereinafter the "Charging Parties") alleging that the Board of Managers of the Preakness Hospital and the Board of Chosen Freeholders of Passaic County (hereinafter the "Respondents") had

engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondents had on February 4, 1980 advised a representative of the Charging Parties that the following job titles would unilaterally be eliminated: Senior X-Ray Technician, Senior Physical Therapy Aide, Chauffeur, Supervisor of Transportation and Food Service Supervisor, and alleging further that the job duties of the affected job titles would be performed by other employees of the Respondents or would be subcontracted to employees of third parties, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act. 1/

It appearing that the allegations of the Unfair Practice Charges, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 24, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on July 7, 1980 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The Charging Parties filed a post-hearing letter brief by August 5, 1980 and the Respondent filed a response thereafter by August 11, 1980.

Unfair Practice Charges having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Board of Managers of the Preakness Hospital and the Board of

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.
"(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.

Chosen Freeholders of Passaic County are public employers within the meaning of the Act, as amended, and are subject to its provisions.

2. Locals 2273 and 2313, Council 52, AFSCME, AFL-CIO are public employee representatives within the meaning of the Act, as amended, and are subject to its provisions.

3. The current collective negotiations agreement between Charging Party Local 2273 and the Respondents was received in evidence as Exhibit CP-3. This agreement covers a collective negotiations unit of "blue collar" employees. Article XVI, Section 16.1(a) provides that in the event the Employer plans to lay off employees for any reason it shall meet with the Union to review such anticipated lay off at least 30 days prior thereto.

4. The current collective negotiations agreement between Charging Party Local 2313 and the Respondents was received in evidence as Exhibit CP-4. This agreements covers a collective negotiations unit of "supervisory" employees. Article 10, Section 6.3(a) provides that in the event the Employer plans to lay off employees for any reason it shall meet with the Union to review such anticipated lay off at least 30 days prior thereto.

5. Under date of January 25, 1980 a consultant retained by the Respondents submitted to it a study and recommendations based upon proposed 1980 budget revisions (CP-1). At least as to the X-ray department employees, the consultant recommended that proposed changes, "Must be negotiated with Union." (CP-1, p. 12).

6. On January 30, 1980 the County of Passaic adopted a resolution with respect to Preakness Hospital abolishing, inter alia, the five job titles which are the subject of the instant proceeding, effective on various dates between March 18 and June 30, 1980 (C-2).

7. There were no collective negotiations initiated by the Respondents with the Charging Parties herein at any time prior to the adoption of the aforesaid

resolution by the County of Passaic on January 30, 1980. Upon learning of the adoption of the said resolution, the Charging Parties sought negotiations with the Respondents with respect to the impact of the elimination of the five job titles, which are the subject of the instant proceeding.

8. Prior to March 18, 1980, Harry Dellanno was Supervisor of Transportation with specified supervisory duties, whose annual salary was $17,679. As of March 18, 1980 the position of Supervisor of Transportation was abolished and Dellanno was reclassified to the position of Bus Driver at an annual salary of $13,600. This change was reflected in a memo dated April 8, 1980 (CP-5). By memo dated April 21, 1980 Dellanno was further reclassified to the position of Senior Transportation Foreman (CP-6). Thereafter he was reassigned the same supervisory duties that he had exercised prior to March 18, 1980 as Supervisor of Transportation but his former annual salary was not restored, i.e., he continued to receive an annual salary of $13,600.

9. The evidence adduced by the Charging Party was not conclusive with respect to whether or not the duties of the five eliminated job titles were subcontracted out to specified third parties or whether the duties were transferred to other employees of the Respondents covered by the two collective negotiations agreements (CP-3 and CP-4). 1a/

THE ISSUES

1. Did the Respondents violate the Act when the County of Passaic adopted the January 30, 1980 resolution unilaterally eliminating certain job titles in the two collective negotiations units without negotiations with the Charging Parties herein as to the decision or its impact?

2. Did the Respondents violate the Act by first reclassifying Harry Dellanno, the Supervisor of Transportation, to the position of Bus Driver with

1a/ See Discussion and Analysis at pp. 8, 9, infra.

a reduction in annual salary of $4,079 and thereafter reclassifying him to a new supervisory position of Senior Transportation Foreman with the same supervisory duties previously exercised, but without restoring him to his former annual salary?

3. Have the Charging Parties sustained their burden of proof that the Respondents subcontracted unit work to specified third parties or reassigned unit work to other unit employees in violation of the Act?

DISCUSSION AND ANALYSIS

The Respondents Did Not Violate The Act When The County Adopted The January 30, 1980 Resolution Unilaterally Eliminating Certain Job Titles In The Two Collective Negotiations Units Without Negotiations With The Charging Parties As To The Decision Or Its Impact

The current settled state of the law in New Jersey is that both the decision and impact of a reduction-in-force (RIF) is beyond the pale of an employer obligation to negotiate collectively with the collective negotiations representative.[2/] In Maywood, the public employer's decision to RIF was based on an economic consideration in the same manner as was the decision of the instant Respondents to eliminate certain job titles and lay off employees by the adoption of the resolution of January 30, 1980 (C-2). This action of the County followed receipt on January 25, 1980 of a study and recommendations from an outside consultant, which was based upon proposed 1980 budget revisions (CP-1). Clearly, the action of the instant Respondents was based upon reasons of economy in the operation of the Preakness Hospital for the 1980 fiscal year.[3/] Inasmuch

2/ Maywood Education Association v. Maywood Board of Education, 168 N.J. Super. 45 (App. Div. 1979), pet. certif. den., 81 N.J. 292 (1979). See also. Union County Regional H.S. Board of Education v. Union County Regional H.S. Teachers Association, Inc., 145 N.J. Super. 435 (App. Div. 1976), pet certif. den., 74 N.J. 248 (1977).

3/ Federal private sector precedent is consistent with New Jersey law in the public sector on the issue herein. See, for example, Westinghouse Electric Corp., 150 NLRB 1574, 58 LRRM 1257, 1259 (1965) and NLRB v. Royal Plating & Polishing Co., 350 F.2d 191, 60 LRRM 2033, 2035 (3rd Cir. 1965).

as the evidence indicates clearly that the action of the Respondents in eliminating, inter alia, the five job titles, which are the subject of the instant charges of unfair practices, involves the exercise of a legitimate managerial prerogative, based upon economic considerations, the Hearing Examiner finds and concludes that the Respondents did not violate Subsections (a)(1) and (5) of the Act.

The foregoing finding and conclusion of the Hearing Examiner is not changed by the existence of a provision in the collective negotiations agreements between the Respondents and the Charging Parties wherein the "Employer" has agreed to "...meet with the Union to review such anticipated lay off at least 30 days prior..." thereto (see Findings of Fact Nos. 3 and 4, supra).[4/]

Therefore, the Hearing Examiner will recommend dismissal as to allegations by the Charging Parties that the Respondents violated the Act by unilaterally adopting the resolution of January 30, 1980 without negotiations with the Charging Parties herein as to the decision or its impact.

The Respondents Violated The Act By Failing To Restore Harry Dellanno To His Former Annual Salary Of $17,679 After Reclassifying Him To The Position Of Senior Transportation Foreman With The Same Supervisory Duties That He Had Exercised Prior To March 18, 1980 As Supervisor Of Transportation

By extension of the rationale of the Commission's decision, affirmed and enforced by the Appellate Division in Piscataway Township Board of Education and Piscataway Township Principals Association,[5/] the Hearing Examiner finds and concludes that the Respondents violated Subsections (a)(1) and (5), of the Act by their conduct vis-a-vis Harry Dellanno. The Hearing Examiner, in so

4/ The failure of the Respondents to have complied with the provisions of the collective negotiations agreements in this regard might well have been the basis for a grievance and final and binding arbitration under the said agreements.

5/ P.E.R.C. No. 77-65, 3 NJPER 169 (1977), 164 N.J. Super. 98 (App. Div. 1978).

finding and concluding, recognizes that the Respondents initially exercised a legitimate managerial prerogative in deciding to eliminate the job title of Supervisor of Transportation, which was held by Dellanno until March 18, 1980. Further, the action of the Respondents in reclassifying Dellanno to Bus Driver, with a commensurate reduction in annual salary due to the elimination of his prior supervisory duties, was likewise not improper. However, when the Respondents further reclassified Dellanno to Senior Transportation Foreman by memo dated April 21, 1980, and thereafter reassigned to him the same supervisory duties as he had exercised prior to March 18, 1980, but without restoring him to his prior annual salary of $17,679, the Respondents violated Subsections (a)(1) and (5) of the Act.

It is undisputed that Dellanno is performing precisely the same supervisory duties today as he was prior to March 18, 1980. Only the name of his job title has changed. Thus, Respondents have engaged in an illegal subterfuge in having failed to restore Dellanno to his former annual salary of $17,679. The Hearing Examiner is persuaded that if it was unlawful for a board of education unilaterally to reduce the work year of its vice-principals accompanied by a pro-rata reduction in salary in Piscataway, supra, then a fortiori it is a violation of the Act unilaterally to reduce Dellanno's annual salary by the instant series of reclassifications where his ultimate job duties are the same as those performed prior to the first reclassification.

Therefore, the Hearing Examiner will recommend that Harry Dellanno be made whole for the losses incurred by him as a result of the reduction in his annual salary on and after the date of the reassignment to him of the same supervisory duties that he had exercised prior to March 18, 1980 following his reclassification to Senior Transportation Foreman.

The Charging Parties Have Failed To Sustain Their Burden Of Proof That The Respondents Subcontracted Unit Work To Third Parties Or Reassigned Unit Work To Other Employees In Violation Of The Act

The Hearing Examiner absolves the Respondents from charges of having violated Subsections (a)(1) and (5) of the Act by their conduct herein. The Hearing Examiner is not persuaded that the Charging Parties have sustained their burden of proof that the Respondents illegally and in violation of their negotiations obligation either subcontracted unit work to third parties or re-assigned unit work to other unit employees represented by the Charging Parties. The burden of proof in N.J.A.C. 19:14-6.8 provides that the Charging Party "...shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." This burden has not been met in the instant case.

An examination of the record discloses the inadequacies of the proofs proffered by the Charging Parties. For example, in the case of the Senior X-Ray Technician, the principal witness for the Charging Parties, Richard J. Gollin, testified that he believed that the functions of the X-Ray Department were eliminated on March 18, 1980, and also that he did not believe there was any longer an X-Ray Department at the Preakness Hospital (Tr. 21). When asked how X-rays are now being provided at the Hospital, he responded that although he did not know, he had "...heard at the other Hearings, that they're contracted out; by whom or to whom, I have no idea..." (Tr. 21).

Further, with respect to the Chauffeur, Gollin testified that the title was eliminated but not the function (Tr. 22). He responded in the affirmative to a question that there are still unit employees performing the Chauffeur functions but did not identify the persons or job titles performing such functions or what the nature or extent of any increase in duties or work might be with

respect to any such persons or job titles.

Additionally, with respect to the Food Service Supervisors, whose job titles were eliminated and the incumbent employees laid off, Gollin could only testify that the duties were given to"...other employees of the hospital, various employees based on dietitians"(Tr. 34). When asked if the Dietitians were in the Supervisory Unit, Gollin stated that he did not know (Tr. 34, 35).

Finally, regarding the elimination of the job title and lay off of employees who served as Senior Physical Therapy Aides, Gollin could only testify that he believed that the job function was contracted out, stating"...but I'm not sure..." and stating that he knew that "...the function was eliminated from the hospital" (Tr. 43).

The foregoing references to the testimony of the principal witness for the Charging Parties indicate clearly to the Hearing Examiner that the Charging Parties have failed to sustain their burden of proof that there was either an illegal subcontracting out of unit work or an illegal reassignment of work from laid off unit employees to other unit employees employed by the Respondents. The subcontracting cases cited by the Charging Parties in their letter Brief can only come into play where the record establishes that there has in fact occurred a subcontracting out of unit work or a clear and present threat to do so by a public employer.

The Charging Parties having failed to sustain their burden of proof in this area of the Complaint, the Hearing Examiner will recommend that the allegations that the Respondents have violated the Act in this respect be dismissed.

* * * *

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

CONCLUSIONS OF LAW

1. The Respondents did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) by adopting the January 30, 1980 resolution which unilaterally eliminated certain job titles in the two collective negotiations units without negotiations with the Charging Parties as to the decision or its impact.

2. The Respondents did violate N.J.S.A. 34:13A-5.4(a)(1) and (5) by the series of reclassifications of Harry Dellanno, which resulted ultimately in his exercising the same supervisory duties as exercised prior to March 18, 1980 but without having been restored to his former annual salary of $17,679.

3. The Charging Parties failed to sustain their burden of proof that the Respondents subcontracted unit work to third parties or reassigned unit work to other employees in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondents cease and desist from:

1. Interfering with, restraining or coercing their employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing in April 1980 to restore to Harry Dellanno his prior annual salary after he resumed performing the same supervisory duties that he had performed prior to March 18, 1980.

2. Refusing to negotiate in good faith with the Charging Parties concerning terms and conditions of employment of employees in the two collective negotiations units involved herein, particularly, by failing to negotiate any change in the annual salary of Harry Dellanno after he assumed the same supervisory duties which he had exercised prior to March 18, 1980.

B. That the Respondents take the following affirmative action:

1. Forthwith restore the status quo ante with respect to Harry Dellanno, namely, resume compensating Dellanno at his annual salary of $17,679, and thereafter negotiate in good faith with the Charging Parties with respect to any proposed change in the annual salary of Harry Dellanno.

2. Forthwith make Harry Dellanno whole for all monetary losses suffered by him since April 1980 as a result of the failure to restore him to his former annual salary of $17,679 after he was reassigned the same supervisory duties as Senior Transportation Foreman that he had performed prior to March 18, 1980 as Supervisor of Transportation.

3. 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 Respondents' authorized representative, shall be maintained by them for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that these notices are not altered, defaced or covered by other material.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondents have taken to comply herewith.

Alan R. Howe

Dated: August 12, 1980
Trenton, New Jersey

Alan R. Howe
Hearing Examiner

Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing in April 1980 to restore to Harry Dellanno his prior annual salary after he resumed performing the same supervisory duties as he had performed prior to March 18, 1980.

WE WILL forthwith restore the status quo ante with respect to Harry Dellanno, namely, resume compensating Harry Dellanno at his annual salary of $17,679, and thereafter negotiate in good faith with the Charging Parties with respect to any proposed change in the annual salary of Harry Dellanno.

WE WILL forthwith make Harry Dellanno whole for all monetary loses suffered by him since April 1980 as a result of the failure to restore him to his former annual salary of $17,679 after he was reassigned the same supervisory duties as Senior Transportation Foreman that he had performed prior to March 18, 1980 as Supervisor of Transportation.

BOARD OF MANAGERS OF THE PREAKNESS HOSPITAL and THE BOARD OF CHOSEN FREEHOLDERS OF PASSAIC COUNTY
(Public Employer)

Dated _____ By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780