P.E.R.C. NO. 78-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLAINFIELD,

Respondent,

Docket No. CO-76-276-88

-and-

PLAINFIELD P.B.A. LOCAL 19,

Charging Party.

SYNOPSIS

In an Unfair Practice proceeding initiated by the P.B.A. the Commission, in agreement with the Hearing Examiner, concludes that the City committed an Unfair Practice by incorporating in agreements it maintains with all employee organizations other than the P.B.A., the identical parity clause by which the City agrees that if any other employee group is granted a salary increase in excess of that therein provided or receives additional fringe benefits applicable to all City employees, that said increase in salary and/or benefits shall also apply to the contracting representative's membership. More specifically, the Commission adopts the Hearing Examiner's conclusion that the operation of a parity clause constitutes, as a matter of law, a violation of the Act and, as such, is an illegal subject of collective negotiations. The Commission determines that a parity clause is invalid because it unlawfully limits the right of an employee organization to negotiate fully its own terms and conditions of employment. The Commission therefore orders the City to cease and desist from interfering with, restraining or coercing employees in the exercise of rights protected by the New Jersey Employer-Employee Relations Act and from refusing to negotiate in good faith with the Plainfield P.B.A. Local 19 by maintaining, complying with, enforcing or seeking to enforce a parity clause with any other employee organization to the extent that it would increase benefits to the employees in the unit represented by these organizations contingent upon the collective negotiations agreement negotiated by the Plainfield P.B.A. Local 19.

In its decision the Commission affirms that its decision does not foreclose a public employer from considering the historical background of collective negotiations and traditional patterns of

comparability with the different employee organizations it has previously negotiated with. A public employer may voluntarily choose to maintain certain relationships between two or more employee organizations. Additionally, the Commission concludes that a reopener clause does not offend the Act because there is no predetermined result, nor is there a guarantee of equality of the economic packages.

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In the Matter of

CITY OF PLAINFIELD,

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PLAINFIELD P.B.A. LOCAL 19,

Charging Party.

Appearances:
For the Respondent, Sachar, Bernstein, Rothberg, Sikora & Mongello, Esqs. (Mr. David H. Rothberg, Of Counsel)

For the Charging Party, Kleimel, Juman & Juman, Esqs. (Mr. Stephen F. Juman, Of Counsel)

DECISION AND ORDER

On April 20, 1976, the Plainfield P.B.A. Local 19 (the "P.B.A.") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the City of Plainfield (the "City") had violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").[1/] The P.B.A. charges that the City has violated N.J.S.A. 34:13A-5.4 (a)(1), (3) and (5)[2/] by incorporating in agreements it maintains

1/ By agreement of the parties, and with the approval of the Hearing Examiner, the first of the two paragraphs of the original charge alleging a refusal and failure of the Respondent to comply with a commitment made by its City Administrator at a fact-finding session and subsequent negotiating session relating to shift differentials has been held in abeyance and is now being litigated in the instant proceeding.

2/ These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Discriminating in regard to hire or tenure of employment (Continued)

with all employee organizations other than the P.B.A. the identical so-called "parity" clause by which the City agrees that if any other employee group is granted a salary increase in excess of that therein provided or receives additional fringe benefits applicable to all City employees, that said increase in salary and/or benefits shall also apply to the contracting representative's membership. The charge further alleges that this clause mandates that all negotiations with the P.B.A. for salary, increases in cost of living, longevity, shift differential, dental plan or other monetary issues are not bargained on a one-to-one relationship because the City must make the exact allocation to the other City groups, thereby precluding fair and open bargaining with the P.B.A.

It appearing that the allegations, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 9, 1977. A supplemental and amended charge filed during the hearing on May 3, 1977 charges that the allegations of unfair practices are ongoing, realleges the claim with respect to all parity clauses in agreements in effect within the period encompassed by the original charge and the amendment, and alleges that the Respondent, by its City Manager, exhibited a pattern of bad faith conduct by using the clause to

2/ (Continued) 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 terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

reject P.B.A. demands during the course of negotiations meetings and in correspondence looking toward successor collective negotiations agreements for 1975 and 1976-77. The City, by its written answer dated February 22, 1977 and by oral answer to the amended complaint, denies the allegations of unfair practice, specifically denying that the contract language precludes fair and open bargaining, or that the Respondent, by its City Manager, relied in any manner upon the parity language in other agreements between the City and other employee organizations during the course of negotiations with the P.B.A. The City's formal answer also notes that the P.B.A. membership enjoys additional benefits not granted to other bargaining units.

Hearings were held before Robert T. Snyder, Hearing Examiner of the Commission, on April 20, May 3, June 2 and August 10, 1977. All parties were given full opportunity to present relevant evidence, to examine and cross-examine witnesses and to file briefs.[3/] Post-hearing briefs were filed by the P.B.A. on November 11, 1977, and by the City on December 6, 1977. On May 5, 1978, the Hearing Examiner issued his Recommended Report and Decision, which report included findings of fact, conclusions of law and a recommended decision. The original of the report was filed with the Commission and copies were served upon all parties. A copy is attached

3/ Branch #7, Firemen's Mutual Benevolent Assn.; Fire Officers Assn.; Plainfield Municipal Employees Assn.; and Local 37, Int'l. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America were afforded the opportunity to intervene and were notified of scheduled hearings. None of these organizations sought to intervene.

hereto and made a part thereof.[4/]

On May 16, 1978, exceptions were filed by the City. By letter dated May 22, 1978, the P.B.A. advised the Commission that it had no exceptions to the Hearing Examiner's Recommended Report and Decision.

The Hearing Examiner found that the four other employee organizations in Plainfield (see footnote 3) have had the identical parity clause[5/] in their respective contracts for several years. The Hearing Examiner then traced the history of the contract negotiations between the City and the P.B.A. with respect to the inclusion of this parity clause in the other employee organizations' contracts. During the course of negotiations for the 1975 and 1976-77 agreements, the P.B.A. sought from the City an assurance that the City would not insert the parity clause in contracts to be negotiated with the four other employee organizations. Each time the City refused to negotiate with the P.B.A. concerning language that then existed in other collectively negotiated agreements. The P.B.A. maintains that the inclusion of this parity clause in other agreements precluded fair and open bargaining between the City and the P.B.A.

4/ H.E. No. 78-32, 4 NJPER ___ (Par. ___ 1978).

5/ The clause reads: "The City agrees that if any other employee group is granted salary increase in excess of the provisions of /this salary article/ of this agreement or receives additional fringe benefits, which would be applicable to all City employees that said increases in salaries and/or benefits shall also apply to /this employee organization's/ membership."

Recognizing that this issue is of first impression before this Commission, the Hearing Examiner concluded that the operation of a parity clause constitutes, as a matter of law, a violation of the Act and, as such, is an illegal subject of negotiations. The Hearing Examiner found that the existence of this clause has the inherent effect of impairing the ability of the P.B.A. to fulfill its obligation of negotiating on behalf of the employees it represents. The issue of whether or not the City used the parity clause in rejecting P.B.A. proposals during the course of negotiations was not reached by the Hearing Examiner due to the finding that the mere existence of the clause constitutes a violation of the Act. The Hearing Examiner concluded that the inevitable consideration of this clause by the City had a coercive effect on calculations by the City when considering all financial proposals submitted by the P.B.A. The Hearing Examiner cited cases in Massachusetts, New York and Connecticut[6/] which reached similar decisions based on similar parity clauses.

Therefore, by complying with and giving effect to parity clauses in collectively negotiated agreements between the City and other employee organizations, the Hearing Examiner found that the City engaged in and is engaging in unfair practices within the

6/ Medford School Committee (MLRD, 1977), 3 MLC 1413; City of Albany & Albany Permanent Professional Firefighters Assn., Local 2207, AFL-CIO, 7 PERB 3142 (1974); City of New York and PBA of the City of New York, Inc. & Uniformed Sanitationmens Assn., Local 831, et al, 10 PERB 3006 (1977); Fire Fighters, Local 1219 v. Labor Board, (Conn. Sup. Ct. 1976), ___ Conn. ___, 93 LRRM 2098.

meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5). The recommended remedy included in part that the City should refrain from enforcing or seeking to enforce the parity clause in question in such a manner as to limit the right and ability of the P.B.A. to negotiate terms and conditions of employment of its unit employees.

After careful consideration of the entire record, the Commission adopts the Hearing Examiner's findings of fact, conclusions of law and recommended order for substantially the reasons cited by him.

The current trend in public sector labor relations has been to find parity clauses to be invalid. As noted above, Massachusetts, New York and Connecticut and now, most recently, Pennsylvania[7/] have all reached the conclusion that parity clauses interfere with and inhibit employee organizations' rights to collective negotiations. The New York State Public Employment Relations Board has held that a parity clause is a prohibited subject of negotiations.[8/]

In its case, after citing the Connecticut, Massachusetts and New York cases, the Pennsylvania Labor Relations Board found that "parity agreements necessarily affect subsequent negotiations and impermissibly bring another party /an employee organization with a parity clause in their agreement with the same employer/ to the negotiations table" at p. 172. By entering into agreements with parity clauses, the Commonwealth of Pennsylvania was found to have

7/ Pennsylvania Labor Relations Board v. Commonwealth of Pennsylvania, 9 PPER 169 (Para. 9084 1978).
8/ City of New York and PBA, supra.

committed an unfair practice due to the interference with good faith negotiations between the employer and the employee organization not protected by the parity clause.

This Commission, in agreement with these decisions and the Hearing Examiner, determines that the inclusion of a parity clause in a collective negotiations agreement constitutes an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5) because it unlawfully limits the right of an employee organization to negotiate fully its own terms and conditions of employment.

The City of Plainfield must negotiate in good faith with five employee organizations. With the existing parity clauses, the economic package must be the same for all of these organizations. The City cannot divorce this fact from negotiations with any one organization. The parity clause has a natural and unavoidable coercive effect. When considering economic proposals of one employee organization, the public employer must inevitably reconcile such a proposal with the ultimate result of providing similar economic proposals to any other employee organization which has the protection of a parity clause in its collective negotiations agreement. This result interferes with the right to negotiate in good faith. The issue is not whether or not a public employer actually relies upon a parity clause to deny an employee organization's economic proposals. The mere existence of the clause is sufficient to chill the free exchange between a public employer and an employee organization by permitting a third employee organization, not a

party to the negotiations, to have impact on those negotiations. Parity clauses must be and shall henceforth be illegal subjects for negotiations for this reason.

This result does not foreclose a public employer from considering the historical background of collective negotiations and traditional patterns of wage and benefits relationships including "comparability" with the different employee organizations it has previously negotiated with. A public employer may voluntarily choose to maintain certain relationships between two or more employee organizations. Additionally a reopener clause does not offend the Act because there is no predetermined result that an employee organization only agree to reopen negotiations in good faith if another employee organization is successful in achieving a greater economic settlement. This is no guarantee of equality of the economic packages.

In the Recommended Order, the Hearing Examiner ordered the City to refrain from enforcing or seeking to enforce or to give effect to the parity clause in question. The City excepts to this remedy and urges that the remedy be aimed at the other employee organizations which have sought the inclusion of the parity clause in their agreement with the City. The remedy is prospective and not retroactive. That is to say that the City shall refrain from giving effect to the clause in the future. Economic benefits already received are not affected by this decision. [9/] By reaching the determination that a parity clause is an illegal subject of negotiations, all public employers and all

9/ Teamsters Local 37 filed a letter subsequent to its receipt of the Hearing Examiner's Report regarding the intended effect of the proposed order. Our order is prospective and not intended to cause a recession of benefits already received.

employee organizations are on notice that this Commission will not enforce such a clause and that the request for such a clause in negotiations or the insistence on giving effect to such a clause would constitute an unfair practice.

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the City of Plainfield

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of rights protected by the New Jersey Employer-Employee Relations Act and from refusing to negotiate in good faith with the Plainfield P.B.A. Local 19 by maintaining, complying with, enforcing or seeking to enforce a parity clause with any other employee organization to the extent that it would increase benefits to the employees in the unit represented by these organizations contingent upon the collective negotiations agreement negotiated by the Plainfield P.B.A. Local 19.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

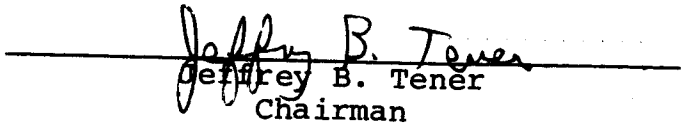
(a) Post immediately, in plain sight, at the headquarters of the Police Department of the City of Plainfield and at the location or locations where sworn personnel employed by the City Police Department report for duty or daily assignment, copies of the attached notice marked "Appendix A". Copies of said notice on forms to be provided by the Public Employment Relations Commission shall, after being duly signed by Respondent's repre-

sentative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices will not be altered, defaced or covered by any other material.

(b) Notify the Chairman, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

Additionally, IT IS HEREBY ORDERED that the complaint alleging a violation of N.J.S.A. 34:13A-5.4(a)(3) be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Parcells and Schwartz voted for this decision. None opposed. Commissioner Hartnett abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
June 30, 1978
ISSUED: July 5, 1978

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 rights protected by the New Jersey Employer-Employee Relations Act and from refusing to negotiate in good faith with the Plainfield P.B.A. Local 19 by maintaining, complying with, enforcing or seeking to enforce a parity clause with any other employee organization to the extent that it would increase benefits to the employees in the unit represented by these organizations contingent upon the collective negotiations agreement negotiated by the Plainfield P.B.A. Local 19.

CITY OF PLAINFIELD

(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

H.E. No. 78-32

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

In the Matter of

CITY OF PLAINFIELD,

Respondent,

- and -

Docket No. CO-76-276-88

PLAINFIELD P.B.A. Local 19,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner issues his Recommended Report and Decision in an unfair practice proceeding. Plainfield P.B.A. Local 19 had charged that the City of Plainfield, by incorporating a parity clause in its collective agreements with other City employee organizations obligating the City to grant to the employees represented by the other organizations during their terms, any more favorable salary or other fringe benefits applicable to all City employees negotiated by the P.B.A., precludes fair and open bargaining with the P.B.A., in violation of N.J.S.A. 34:13A-5.4(a)(1)(3) and (5). An amendment to the charge, made by the P.B.A. after opening of hearing, charged that the City by its City Manager, had exhibited a pattern of bad faith conduct by using the clause to reject P.B.A. demands made during the course of collective negotiations for the 1975 and 1976-77 agreements.

The Hearing Examiner concludes that the parity clause itself is an illegal subject of bargaining in that its inevitable effect is to limit and restrain the P.B.A. in its exercise of the negotiating obligation. This is so, reasons the Examiner, because for every salary increase or additional fringe benefit demanded by the P.B.A., the City must calculate the immediate economic consequence of identical increases to every other group of employees whose organization has negotiated a parity clause. Thus, the organizations with the clause, in this case, Branch No. 7, Firemens Mutual Benevolent Association, Fire Officers Association and Local 37, International Brotherhood of Teamsters became a party to negotiations between the P.B.A. and the City without having been invited to participate and against the express wishes of the P.B.A. The clause thus impairs the ability of the P.B.A., as exclusive representative of all sworn police personnel below the rank of chief to fulfill its obligation of negotiating terms and conditions of employment.

Having found the parity clause invalid and unenforceable as it affects the P.B.A., the Examiner finds unnecessary any resolution of the conflict in testimony between the City Manager and P.B.A. Chief Negotiator as to the City's alleged reliance on the clause in bargaining. As the mere existence of the clause, coupled with admitted evidence of its application is found to constitute an inherent interference with employee and organizational bargaining rights, its operation, as a matter of law, constitutes a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5), prohibiting interference with employees' protected rights and a refusal to negotiate in good faith with the P.B.A. in an appropriate unit, even in the absence of evidence of express reliance on the clause by the City. Like determinations in other jurisdictions which have considered the issue of parity, notably Connecticut, New York and Massachusetts, were cited with approval by the Examiner. The Examiner also concludes that by the foregoing conduct the City has not violated subsection (a)(3) prohibiting discrimination to discourage the exercise of rights protected by the Act.

Each of the other employee organizations in Plainfield received notice of the pendency of the proceeding and that it may affect their contractual rights with respect to the parity clause. Each chose not to appear or seek to intervene in this proceeding.

The Examiner also noted that his recommended decision should not be interpreted as precluding either wage "comparability" as a consideration of employers in negotiations, or an employee organization demand for a wage reopener which permits the reopening of a contract to negotiate and match another contract's economic settlement but without creating a predetermined result.

The Hearing Examiner recommends that the Respondent City of Plainfield cease and desist from interfering with, restraining or coercing employees or refusing to negotiate collectively in good faith by maintaining or enforcing a parity clause to the extent it would increase benefits to employees in units having such a clause contingent upon the collective agreement negotiated by the P.B.A., also that the City post notices supplied by the Commission advising its employees of these corrective actions; and notify the Commission in writing of the steps taken to comply with its order.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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

In the Matter of

CITY OF PLAINFIELD,

Respondent,

- and -

Docket No. CO-76-276-88

PLAINFIELD P.B.A. LOCAL 19,

Charging Party.

Appearances:

For the Respondent, Sachar, Bernstein, Rothberg, Sikora & Mongello, Esqs.
(David H. Rothberg, Esq., Of Counsel)

For the Charging Party, Kleimel, Juman & Juman, Esqs.
(Stephen F. Juman, Esq., Of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

Statement of the Case

An Unfair Practice Charge filed with the Public Employment Relations Commission ("Commission") on April 20, 1976 by the Plainfield P.B.A. Local 19 ("P.B.A." or "Charging Party") alleges that the City of Plainfield ("City" or "Respondent") has 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. (the "Act"). [1/] The P.B.A. charges that the City has violated 13A-5.4(a)(1)(3) and (5) of the Act [2/] by incorporating in agreements it maintains with all employee organizations other than the P.B.A., the identical so-called parity

1/ By agreement of the parties, and with the approval of the Hearing Examiner, the first of the two paragraphs of the original charge alleging a refusal and failure of the Respondent to comply with a commitment made by its City Administrator at a fact finding session and subsequent bargaining session relating to shift differentials, has been held in abeyance and is not being litigated in the instant proceeding.

2/ These subsections prohibit employers, their representatives or agents from:
"(1) Interfering with, restraining or coercing employees in the exer-
(continued page 2)

clause by which the City agrees that if any other employee group is granted a salary increase in excess of that therein provided or receives additional fringe benefits applicable to all City employees, that said increase in salary and/or benefits shall also apply to the contracting representative's membership. The charge further alleges that this clause mandates that all negotiations with the P.B.A. for salary, increase in cost of living, longevity, shift differential, dental plan or other monetary issues are not bargained on a one to one relationship since the City must make the exact allocation to the other City groups, thereby precluding fair and open bargaining with the P.B.A.

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 9, 1977. A supplemental and amended charge filed during the hearing [3] on May 3, 1977 charges that the allegations of unfair practices are on-going, realleges the claim with respect to all parity clauses in agreements in effect within the period encompassed by the original charge and the amendment, and

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2/ (continued)

cise of the rights guaranteed to them by this Act.

(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 terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

3/ The motion to supplement and amend the charge and complaint which realleged the same subdivisions of the Act, was granted (Tr. 209-11) over objection by the Respondent's attorney after the Charging Party's attorney was provided an opportunity to, and did, incorporate in the written amendments, particulars as to time, place of occurance and the name of Respondent's agent by whom the alleged acts were committed, in accordance with Commission Rule 19:14-1.3(c). Additionally, under the ground rules established for submission of the supplemental and amendatory pleading, Respondent was granted an extension of time before engaging in cross-examination of Charging Party's witness who testified with respect to the newly pleaded matters and to prepare and introduce its own case against the amended charge. (Tr. 164-5). Some of the allegations consisted of testimony already in the record. Charging Party's attorney emphasized that the allegations, some of which standing alone, if true, admittedly could not constitute unfair practices on the part of Respondent, are claimed to form a pattern of conduct violative of the Act. In view of the foregoing, Respondent was not prejudiced by the amendment, particularly given the lengthy period of time which ensued prior to Respondent's cross-examination of Charging Party's chief witness who testified with respect to the amendment and introduction of its defense to the amended complaint. (Tr. 262-64 and 291). See Rule 4:9-2 of the New Jersey Court Rules, Civil Practice, and I.A.F.F. Local 2081, AFL-CIO and City of Hackensack, P.E.R.C. No. 78-30.

alleges that the Respondent, by its City Manager, exhibited a pattern of bad faith conduct by using the clause to reject P.B.A. demands during the course of negotiating meetings and in correspondence looking toward successor collective negotiation agreements for 1975 and 1976-77. The City by its written answer dated February 22, 1977 and by oral answer to the amended complaint denies the allegations of unfair practice, specifically denying that the contract language precludes fair and open bargaining, or that the Respondent, by its City Manager, relied in any manner upon the parity language in other agreements between the City and other employee organizations during the course of negotiations with the P.B.A. The City's formal answer also notes that the P.B.A. membership enjoys additional benefits not granted to other bargaining units.

Hearing was held before the undersigned on April 20, May 3, June 2, and August 10, 1977. All parties 4/ were given full opportunity to present relevant evidence, to examine and cross-examine witnesses and to file briefs. Post-hearing briefs were filed by the Charging Party on November 11, 1977 and by the Respondent on December 6, 1977.

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

Findings of Fact

1. The City of Plainfield is a public employer within the meaning of the Act and is subject to its provisions.

2. Plainfield P.B.A. Local 19 is a public employee representative within the meaning of the Act and is subject to its provisions.

4/ It became evident during the hearing after introduction by the Charging Party of contracts entered into between the City and other employee organizations that the validity of the so-called parity language in these agreements was an issue in this proceeding, and that the Charging Party was seeking as a remedy the voiding of these provisions. Accordingly, the undersigned, with agreement of both attorneys, adjourned the hearing and served notice by certified mail upon each of the other employee organizations that the pendency of the instant proceeding may affect their contractual rights and each was provided an opportunity to seek intervention at the resumed hearing in accordance with Commission Rule 19:14-5.1. (Tr. 254-56; Commission Exhibits 6 and 7). These employee organizations are Branch #7, Firemen's Mutual Benevolent Association ("FMBA"), Fire Officers Association ("FOA"), Plainfield Municipal Employees Association ("PMEA") and Local 37, International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America ("Teamsters"). When none of the organizations contacted the undersigned or appeared at the resumed hearing, another certified letter advised each of them of a further scheduled hearing at which they could appear. None of these four employee organizations sought to intervene following these formal, timely, notices of the pendency of the instant proceeding.

3. The P.B.A. has been and continues to be the exclusive representative for collective negotiations concerning the terms and conditions of employment of all sworn police personnel excluding the police chief since at least 1970. A series of successive collective negotiations agreements have been negotiated and entered into between the City and P.B.A. since 1970, for the periods 1970-71, 1972, 1973-74, 1975 and 1976-77, the most recent of which was executed August 4, 1976.

4. Since 1970, the FMBA, FOA and Teamsters, and since 1972, the PMEA, as exclusive representative for other groups of City employees, have executed successive collective negotiation agreements with the City for the same periods covered by the P.B.A.-City agreements. In these agreements the FMBA is exclusive representative for all sworn fire personnel excluding fire officers employed by the City; the FOA is exclusive representative for uniformed fire officers within the City Fire Division; the Teamsters are exclusive representative for the employees of the Maintenance Force of the Recreation Division and those of the Public Works Division, including clerical employees in its most recent agreement for 1976-77, but excluding employees at salary grade 14 or above; and the PMEA, successor employee organization to Respondent's City Hall Employees Association ("CHEA") is the exclusive representative for all City employees with the exception of those employees represented by Teamsters, P.B.A., FMBA and FOA and employees of the Signal Division. The FMBA, FOA, Teamsters and PMEA are each a public employee representative within the meaning of the Act and each is subject to its provisions.

5. From 1972 through 1976-77 the Teamsters and PMEA (except for its 1976-77 agreement), and since 1973-74 the FMBA and FOA, have had the following identical clause in the salary article in their collective negotiations agreements with the City:

> The City agrees that if any other employee group is granted salary increase in excess of the provisions of /this salary article/ of this agreement or receives additional fringe benefits, which would be applicable to all City employees that said increases in salaries and/or benefits shall also apply to /this employee organization's/ membership.

6. From the inception of its relationship, through 1976-77, the P.B.A. agreements with the City have not contained the provision described in paragraph five, above.

7. Regarding the history of the relationship between salaries for police and fire personnel employed by the City, for the year 1967 the City adopted an

Ordinance providing identical salaries for the various classes of patrolmen and firemen over six annual steps of a salary guide. In 1968, as a result of police officer's demands, the City Ordinance provided greater salaries for patrolmen than for firemen at each step of a six step salary guide. The differences between the two groups varied between $920 and $880 depending upon the step involved. For 1969 the City Ordinance continued to provide patrolmen higher salaries than firemen at each step of the guide, but the difference now varied between $290 and $90. Then in September, 1969, the City increased the annual salaries of fire officers to the level of comparable police superior officers and finally in January, 1970, rank and file firemen received increases which raised them at each step to the identical level of patrolmen. Since that time, firemen and patrolmen have received identical salary increases and longevity payments in each successive contract and have received the same level of pay at each salary grade.

8. A long time Chief Officer of the FMBA testified that after parity was broken in 1968 and patrolmen received more pay, the firemen were able to restore parity after a 1969 voter referendum on the issue. According to this officer, the parity clause became part of the FMBA's first agreement with the City in 1970 as a result of the FMBA's request for a catch all clause. Because the various employee organizations negotiated and concluded agreements with the City at different times, the clause would provide its membership with a benefit another organization was able to negotiate with the City that could benefit all other employees. According to this witness, "In case somebody does get a little bit more than us, we would be entitled to that, too." (Tr. 125). Another witness, shop steward for the Teamsters, testified that under the parity clause he would be looking to have the City apply to the employees in his unit any increase in base salary, longevity or other economic benefit achieved by any other employee organization. (Tr. 133). According to this witness, every year his organization contracted to retain the parity clause in its agreements.

9. Lawrence Bashe has been City Administrator and Chief Negotiator for the City since the fall of 1974 and negotiated the 1975 and 1976-77 agreements with each of the five employee organizations.

10. During the negotiations for a successor 1975 agreement with the P.B.A., which commenced in the fall of 1974, the P.B.A. negotiators, before bargaining on other issues, sought from Bashe an assurance that the City would not insert the parity clause in the 1975 contracts to be negotiated with the four other employee organizations. Bashe, on behalf of the City, discussed the matter with the P.B.A. but concluded that the demand was not a mandatory subject for negotiations and there-

after, through the negotiations for a 1976-77 agreement, in response to a continuing like demand, has consistently maintained in meetings and correspondence with the P.B.A. that the City was not required to and would not negotiate with the P.B.A. language that then existed in other collective agreements. Filing of the original charge in this proceeding was triggered, when, in response to a P.B.A. request for a policy statement on whether or not the parity clause would continue in the City's agreements with the other employee organizations, Bashe responded that the City would not discuss with the P.B.A. the language in any other employee group contract. (Tr. 152).

11. According to Police Officer Robert Beck, Chairman of the P.B.A. Salary Negotiating Committee for the 1975 and 1976-77 agreements, on those occasions that the P.B.A. sought increased salary, longevity, and other fringe benefits and certain new benefits, including a dental plan and a disability income insurance program, City Manager Bashe responded, inter alia, that the City could not provide the increases demanded because it would have to be provided to all other employee groups. (Tr. 150-53).

12. City Manager Bashe testified that he never brought up or used the parity clause in agreements with the other employee organizations, in rejecting P.B.A. demands during the course of negotiations for the 1975 and 1976-77 agreements. 5/ Instead, according to Bashe, it was the P.B.A. which continually raised parity as it sought City agreement to elimination of the clause from the other contracts. Bashe stated he did bring up the subject of parity once with the P.B.A., when,during negotiations for the 1975 agreement, he advised that the recently concluded 1975 FMBA agreement retained the parity clause.

13. Commencing in 1972 all City employees have received the same percentage or flat dollar amount salary increases in the successive labor agreements and, in those units which negotiated longevity clauses, the same longevity payments. The 1976-77 agreements for all units provided for a new uniform 11 annual step salary plan applicable to all City employees. These agreements also contained identical transition payments to the new salary guide; the same cost of living clauses; conversion of longevity from a per cent of salary to the same flat rate; the same health insurance coverage and the same vacation schedule by the second year of the two year agreements. The manner in which this identity was achieved, particularly between

5/ This conflict between the testimony of Beck and Bashe will be discussed in the course of resolving the issue of alleged City reliance on the parity clause in the Analysis section of the Report, infra.

the P.B.A. and Teamsters, is noteworthy and described in paragraph 14, below.

14. The Teamsters were the first employee organization to settle its contract with the City in 1976, on June 4 of that year. The salary article noted that the 1976 salary ranges would be reflected in the new salary plan containing 11 step increments approximately 3% apart. Among other things, provision was made for slotting employees into the new system. Furthermore, in the article the City agreed to provide a transition payment of $100 to all Teamster unit employees at present step 4½ and maximum of their ranges prior to January 1, 1976.[6/] Thereafter, on August 4, 1976, the P.B.A. and City representatives signed their agreement which they had negotiated. It provided in its salary article an additional increment step jump in the second year of the agreement in addition to the single increment step provided in the PMEA agreement for those employees at step 4 or lower for their range in 1975. It also provided that any employee hired after July 1, 1976 and before September 30 will be eligible for one increment step in 1977. It further provided for a cost of living increase of .5% for each full 1% increase over 8.5% in the cost of living for the twelve month period from October 1, 1975 through September 30, 1976, based on the U.S. Department of Labor price index described. It also included a transition payment to the new salary guide of $150.00 to all unit employees. The P.B.A.-City agreement also contained in its Longevity Article a provision retaining existing longevity payment after eight years of service for those employees who completed such service on July 1, 1975, although eligibility for the longevity benefit commencing in 1976 at City insistence now required a minimum of 10 years of service. None of these benefits regarding salary and longevity had been included in the June 4, 1976 Teamster-City agreement. On September 7, 1976 the PMEA executed its agreement with the City containing every one of the increased economic benefits negotiated by the P.B.A. with the City. Then on September 17, 1976, the Teamsters and City executed an addendum to their June 4, 1976 agreement containing in substance the same P.B.A. increment step increase and longevity benefit increase for eight year employees and, in all other respects, the word for word provisions providing increased benefits above described in the P.B.A. contract. Subsequently, on November 2, 1976 both the FMBA and FOA signed their agreements with the City providing the same salary and longevity benefits negotiated by the P.B.A.

15. Following the filing by Charging Party of its supplemental and amended charge and grant of its motion to amend the Complaint, Officer Beck resumed the witness stand at a subsequent hearing date and described a series of negotiating and

6/ The Teamster salary article also contained the parity clause described in paragraph 5, supra.

other meetings between the P.B.A. and City which, when taken in conjunction with certain contemporaneous correspondence between the parties, is claimed to support the allegation of City reliance on the parity clause in rejecting P.B.A. negotiating demands. These meetings and discussions running from December 14, 1974 to August 4, 1976 cover the period of negotiations for the 1975 and 1976-77 agreements.

City Manager Bashe is described on December 14, 1974 as agreeing privately that the parity clause did place some restraint on the P.B.A.'s scope of negotiations.[7/] At a subsequent meeting of February 21, 1975, Bashe is claimed to have eliminated a P.B.A. demand for a dental program from the negotiating table and to have rejected a demand for a new training benefit because of several factors, including cost and the fact that similar benefits could be a problem. At a meeting of May 30, 1975, Bashe is claimed to have responded finally to the P.B.A. submission of an approximately $11,00 dental plan, that the City couldn't afford any new fringe benefits for any employees, reasoning that the cost was too great and that under the so-called parity clause, the benefit would apply to other employees. (Tr. 220). On the occasion of March 10, 1975, when Bashe informed the P.B.A. that the recently settled FMBA contract included the parity language, he is alleged to have then made the P.B.A. an economic package offer identical to the FMBA settlement. Finally, on December 9, 1975 shortly before final agreement was reached on a 1975 agreement, Bashe, according to Beck, informed the P.B.A. that an additional $100 offer the City had made for clothing maintenance could not be applied as a salary increase retroactive to June 7, 1975, "...because of the fact the other contracts had been signed with this /parity/ clause." (Tr. 224). Early in the negotiations for 1976-77, on February 19, 1976, according to Beck, Bashe again informed the P.B.A. committee that the City was going to continue the parity clause in other agreements.

7/ The Hearing Examiner sustained objection to, and rejected a Charging Party offer into evidence of, a two page document purporting to be the private notes made of a December 14, 1974 negotiation meeting by Mr. Beck while acting as a recording secretary on behalf of the P.B.A. (C.P. Ex. No. 47 Rejected). The notes purport to contain statements made by Bashe admitting constraints on the P.B.A. affecting negotiations because of the parity clause. Other official minutes of this and other meetings prepared by the City's Budget Officer, while not verbatum either, pursuant to understanding had been provided to both parties following the meetings and were subject to correction. On offers made by the P.B.A. they had been received in evidence. The basis of the ruling rejecting the offer appears at Tr. 290. Under Commission Rule 19:14-6.6, the danger of prejudice arising from inclusion of such a self serving document in a record which already contained Officer Beck's independent recollection of the meeting, outweighed whatever limited probative value it may have contained, if any.

Finally, a letter dated August 4, 1976 from P.B.A. attorney Juman addressed to the Commission, attention of Timothy A. Hundley, Assistant to Executive Director, forwarded at the request of Officer Beck, makes reference to a recent exploratory conference on the instant charge. The letter recites that during the conference, in response to a question as to whether the clause at issue here resulted in parity between the different groups, Bashe stated "as to common salary and common benefits what we give one group, we must give the others." Mr. Bashe is further claimed in this letter to have attempted to show that there is no parity because while the police received a $150 transition, City Yards (the Teamsters) received only $100. 8/

16. City Manager Bashe responded to the allegations of the supplemental and amended Complaint in the following manner. He did not recall a private meeting with Beck or others on December 14, 1974. He noted that the parity clauses were carry overs from prior negotiations in which he had not participated and the language of clauses were items which the employee organizations had insisted upon, not the City. At the early meetings with the P.B.A. Bashe had no way of measuring the intensity of feeling of these other groups were the City to seek their elimination. Ultimately, Bashe took the position that the P.B.A.'s demand for their elimination was not a mandatory subject and if the City did bargain the matter with the P.B.A. it would be risking unfair practice charges from the other groups that the City was not bargaining with them openly and individually. (Tr. 297). As to the March 10, 1975 offer by the City, it may have been similar to the FMBA agreement, but not exactly the same since the P.B.A. enjoys various benefits limited to its unit. In the 1976-77 contract these include college incentive payments, along with firemen time and a half overtime pay for employees above grade 14 (those in grade 15), an option to receive payment for or take as vacation days five holidays,

8/ As earlier noted in paragraph 14, the Teamsters later received the $150. While the letter was ultimately received in evidence without objection(Tr. 253-54), it can be given little or no weight in these deliberations. It constitutes a self serving declaration, unsupported by any testimony of any participant in the conference attributing such statements to Mr. Bashe. Furthermore, while at the time the Commission had not yet adopted its formal Rule making inadmissable any admissions against interest made in the context of a conference or discussion related to settlement or adjustment of issues (see Commission Rule 19:14-6.13, effective August 2, 1977), in its form letters the Commission, then and now, has advised parties to a pre-complaint exploratory conference that its purpose is to clarify the issues and explore the possibility of voluntary resolution and settlement of the case. Any statements made at such a conference can be accorded no weight as an admission under the long recognized rule excluding offers of compromise. See Rule 52, New Jersey Rules of Evidence. Statements made in the context of, and during a meeting called to explore compromise of, a charge alleging violation of public rights protected by statute surely fall within the exclusionary rule.

binding arbitration for grievances but with a more limited definition of grievance, an employee advisory board on disciplinary matters, a civilian clothing allowance, a greater uniform maintenance allowance than provided other units, a right to off-duty employment with City uniforms and equipment and a right to borrow against future sick time in case of an extended off-duty illness or injury. 9/ In response to a reference in the minutes of a March 10, 1975 meeting with the P.B.A. to P.B.A. attorney Stephen Juman's statement that he "understands that if the City gives a raise to the P.B.A., it must also give a raise to the other groups," Bashe noted that such a statement was true at the time only for the FMBA since it was the only organization with an executed contract. Bashe added that any increases in excess of the FMBA contract negotiated with the P.B.A. common to all groups would, of necessity, under the clause, be received by the FMBA as well.

In Bashe's view, the City was not prepared in 1975 to provide any new fringe benefit, such as the dental plan the P.B.A. sought until the cost of existing fringes stabilized. In any event, the City did provide the P.B.A. with false arrest insurance because of the protection it provided the City. Bashe uniformally denied ever referring to other groups when taking a position on increased P.B.A. economic demands. According to Bashe, at the December, 1975 meeting, he offered an increased clothing allowance because it was recommended by the fact finder and was an easier kind of benefit on which to get the City Council's approval. Bashe noted that if a $100 additional pay increase had been agreed to with the P.B.A. at the time, all the other units would have received such a common benefit under their parity clauses. He was operating under an economic ceiling imposed by the Council which only the Council could lift at his request.

As to the statements attributed to him at an August, 1976 exploratory conference, Bashe stated he told the Commission representative that the City was going to honor its Teamster contract and give those employees the extra $50 benefit negotiated by the P.B.A. (Tr. 320-21). 10/ The payment was agreed to after Bashe polled

9/ The P.B.A. sought to minimize these differences in benefits its members enjoyed by pointing out that the college incentive program was unilaterally adopted by City Ordinance without inclusion in the negotiated agreement, others, including clothing maintenance allowance for criminal investigation unit employees who wear civilian dress and the holiday pay option result from the special nature of police work and its manpower shift requirements, and still others, such as the City authorization for private employment in uniform, do not involve any extra cost to the City. As to time and a half overtime pay, this benefit to police and firemen is consistent with all other units since only non-supervisory employees are eligible, even though only the police and fire departments employ non-supervisory employees at grade 15.

10/ Respondent attorney's questioning of Bashe at this later stage of the proceeding (continued page 11).

the Council members by telephone. Among other defenses, the City points to its willingness to quickly comply with its parity obligation to the Teamsters as evidence that the clause did not inhibit its willingness or ability to negotiate the increased transition payment with the P.B.A. (Tr. 358). 11/ Bashe later added that the September 17, 1976 addendum to the Teamster-City contract contained the added benefits described because the City interprets the reference in the parity clause to common salary or fringe benefits ("applicable to all City employees") as including eligibility for increments in the salary guide. They also include, among other items, according to Bashe, eligibility for longevity payments, health insurance benefit plans, sick time accumulation, and pay back at retirement or termination.

17. According to Bashe, current City policy is to have one common salary guide in which certain relationships are maintained between positions and different salary ranges. This system will continue whether the parity clause is continued or not in the various contracts. In his view, some of the bargaining groups institutionalize the existing City policy into their agreements. Also, certain of the economic benefits negotiated by the City have a greater or lesser effect on a particular negotiating unit, depending upon the age, length of service and composition of the work force. Thus, for example, the conversion (transition) payment and the requirement of greater seniority for longevity payments would have a lesser impact in a unit with more senior employees. Since many Teamster employees were already at maximum salary under the existing guide prior to the adoption of the new salary plan, they would be less concerned with the transition payment, eligibility for increment of new hires between July 1 and September 30, 1976, or the change in longevity benefits. (Tr. 349, 351-53). 12/ In spite of this fact, the increased benefits in these areas were voluntarily applied to the Teamsters under the parity clause without any prior Teamster demand. (Tr. 382).

18. According to Bashe, in view of the City's current common salary policy, he, as Chief Negotiator, would continue negotiations in the same way for salary and the other common benefits with all groups whether the parity clause existed or not.

10/ (continued)
on this subject constitutes a waiver of Respondent's right to object to inclusion of this conference in the record - in effect, a mutual agreement to admit statements made at the conference. See F.N. 7, supra.

11/ That figure represented a compromise below the initial P.B.A. demand. (Tr. 374).

12/ On the other hand, the 1976-77 conversion of longevity from a percentage of salary to a flat rate increase and the 1975 $400 across the board salary increase, were of greater benefit to the Teamster and PMEA unit employees, than to the P.B.A. employees, because the former had lower salary levels.

He indicated he has attempted to bargain out the clause. To the extent it represented a problem for him in negotiations, apparently with the P.B.A., he approached the matter of its continuation with one or more of the units which had the clause. He added he was careful not to tie in the two groups (P.B.A. and other groups with the clause) in their bargaining because in his view, that would be an unfair labor practice. (Tr. 389-90). Nonetheless, Bashe also noted that as an apparent consequence of the existence of the parity provision in all other contracts, 13/ the P.B.A. unit employees may receive only 1/5 of whatever sum is allocated by the City for common salary. (Tr. 363).

19. Frank H. Blatz, Jr., Esq., then corporation counsel for the City, who consented to his substitution by the present firm of attorneys for the Respondent in this proceeding on April 13, 1977, filed a Statement of Position in response to the original Complaint, on February 28, 1977. 14/ In his words, the existence of the challenged clause in the City's labor agreement with the Teamsters reflects, inter alia, "...a willingness by the City to agree to a certain degree of uniformity in municipal salary settlements and in the provision of common fringe benefits. However, the City's past and most recent settlements with P.B.A. Local 19 compared to other groups belies the contention that the clause prohibits the City from bargaining'...on a one to one relationship since the City must make the exact allocation to other City groups.' "

ISSUES

Whether the parity clause on its face constitutes a restraint or coercion on the rights of the P.B.A. and the employees represented by it to negotiate with the City with respect to their terms and conditions of employment.

Whether the City relied on the clause in responding to, or rejecting P.B.A. economic demands, and, if so, whether such conduct inhibited or diminished

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13/ As earlier noted, the 1976-77 PMEA contract did not contain the parity clause.

14/ The document was received in evidence over objection of Respondent's substituted counsel as an initial pleading responsive to the Complaint filed by Respondent's then counsel for submission to the Commission. (Tr. 173). Substituted counsel's claim that the statement constituted an attorney's privileged work product was rejected. (Tr. 172). Early in the hearing, the Examiner granted motion made by David H. Rothberg, Esq., of counsel to Respondent's new law firm, to be relieved of a stipulation made by predecessor counsel prior to hearing and that the pleading not be received in evidence as part of Respondent's answer. (Tr. 6-17). That ruling did not preclude Charging Party's later offer of the document into evidence during presentation of its case for whatever admissions against Respondent's interest it may have contained.

the exercise of their negotiating rights by the P.B.A. and the employees it represents.

ANALYSIS

The issues presented in this proceeding are of first impression before the Commission. In The Matter of Township of Hillside, P.E.R.C. No. 77-47, 3 NJPER 98, the Commission found that P.B.A. Local No. 70, the Charging Party, had failed to meet its burden of proof that the Respondent Township was a party to a parity agreement, whether written or oral. Thus, the Commission did not reach the issue of the effect of a parity agreement on employee rights under the Act, specifically declining to rule on the question of whether parity agreements constitute a required, permissive or illegal subject of negotiations. Yet, the Commission did find that the totality of the Township's bargaining conduct, including even the expression of a desire to retain parity in basic annual salary between the Police and Fire Department, revealed no violation of the duty to bargain in good faith. The Township in the Hillside case had not obligated itself to maintain parity but, rather, had voluntarily chosen to maintain parity in negotiating with two separate employee organizations.

The Commission has found employee rights protected by the Act under 34:13A-5.3 to include activities at the negotiating table, In the Matter of Laurel Springs Board of Education, P.E.R.C. No. 78-4. Analysis of the first issue posed requires an understanding of the effect the parity language has upon the right of employees to engage in negotiating activity. In order to arrive at that understanding one must first understand the nature of the obligation undertaken by an employer entering a parity agreement. Such an agreement, including the instant agreement, obligates the employer to grant to the contracting employee organization during its term, any more favorable benefits in salary or fringes negotiated with another organization. 15/ That obligation arises immediately upon the grant of such a salary increase or additional fringe benefit. Witness City Manager Bashe's voluntary approach to the Teamsters, without any prior demand, to increase its already existing benefit package after he had negotiated certain additional transitional, incremental, cost of living and longevity benefits with the P.B.A. By its very nature, therefore, the employer, such as Respondent, who, during the course of negotiations for a new agreement, agrees to grant any salary increase or additional fringe benefit must weigh the immediate economic consequences of identical increases to those other

15/ Such benefits would clearly be "applicable to all City employees" as required by the instant agreement.

employees who are the beneficiaries of such an agreement. Even where the employee organization which is not a party to such an agreement is the first of the organizations to settle its contract, the employer who deals with multiple bargaining units must recognize the strong likelihood that the organization which had a parity agreement in an expired agreement will want to continue the clause, and, unless strongly opposed by the employer, will thus be continued, requiring the employer to match the first settlement in its later executed collective agreements. Manager Bashe recognized this result when he noted that the P.B.A. was limited in its economic benefit package to 1/5 of the total amount available to all of the units with which the City negotiated. The employee organization which has negotiated a parity agreement thus becomes a determinent of the scope of the bargaining, the size and nature of the economic benefit package of the employee organization which seeks to negotiate independent of such a clause. Put another way, the organization with the clause becomes a party to negotiations between another organization and the same employer with which both have a bargaining relationship without ever having been invited to participate and against the express wishes of the latter organization. The clause thus impairs the ability of the exclusive representative - here, the P.B.A. - to fulfill its obligation of negotiating on behalf of the employees it represents.

Other jurisdictions which have considered the validity of a parity clause have come to the same conclusion. The Massachusetts Labor Relations Commission found such a clause unlawful on two counts, as interfering with employee protected rights and their representative's right to free collective negotiations, Medford School Committee, (MLRC, 1977), 3 MLC 1413. The New York Public Employment Relations Board ruled that "... an agreement of this type /parity/ between the City and one employee organization would improperly inhibit negotiations between the City and another employee organization representing employees in another unit." City of Albany and Albany Permanent Professional Firefighters Association, Local 2007, AFL-CIO, 7 PERB 3142, 3146 (1974). More recently, the New York Board concluded that a "parity" clause is a prohibited subject of negotiations. City of New York and Patrolmen's Benevolent Associty of the City of New York, Inc. and Uniformed Sanitationmens Association, Local 831, et. al., 10 PERB 3006 (1977). The Connecticut State Board of Labor Relations stated, with respect to a parity clause negotiated by a Firefighters Local and its effect on police union negotiations, "Where equality in future treatment is in question, then each of the groups sought to be equated has a statutory right to bargain about the point.

It is this right which the parity clause in the firemen's contract actually interferes with and restrains. If this clause is given effect, the policemen will be bound to a rule of equality in negotiating their own terms and conditions, without ever having had a chance to negotiate the rule itself. This we conclude constitutes a violation of the Act. Only by joint bargaining can a rule of parity properly be imposed by contract," City of New London, Ct. Bd. of Labor Rel., Case No. MPP - 2268, 505 GERR F-1 (5/28/73), aff'd., Fire Fighters, Local 1522 v SBLR (Conn. 1973, Ct. of Common Pleas), 2 PBC para. 20, 117. See also Fire Fighters, Local 1219 v. Labor Board (Conn. Sup. Ct. 1976), ___Conn.___, 93 LRRM 2098, 2 PBC para. 20, 192, where the Connecticut Supreme Court confirmed a determination of the Connecticut Board that a parity clause was void and unenforceable notwithstanding an arbitration award that would have enforced the provision. 16/

These decisions taken together may be read as concluding that a true parity clause of the kind present in the instant proceeding constitutes an illegal subject of negotiations and is unenforceable and void. Such a result follows under 34:13A-5.4(a)(1) without regard to Respondent's actual good or bad faith in the negotiating process. City of New London, supra. As recently noted by the Commission:

> "It is the tendency of an employer's conduct to interfere with those employee rights protected by (a)(1), rather than his motives, that is controlling" /Footnote omitted/ In The Matter of City of Hackensack, P.E.R.C. No. 78-71

The fact that City Manager Bashe may never have referred to or utilized the parity clause in rejecting or responding to P.B.A. bargaining demands is thus

16/ Respondent in its brief argues that the Connecticut Court's reasoning is distinguishable because the Connecticut Municipal Employee Relations Act, unlike the New Jersey Act, explicitly prohibits a parity clause. Such a conclusion constitutes a serious misreading of the Connecticut Act, the Court's reasoning and decision. The Court relied upon and affirmed the Connecticut Board's conclusions in the City of New London case which dealt at length with an interpretation of the right of municipal employers under Sec. 7-468(a) of the Conn. Act "to bargain collectively..on questions of wages, hours and other conditions of unemployment...free from...interference, restraint or coercion," rights similarly protected by N.J.S.A. 34:13A-5.3, and the prohibition upon employers under Sec. 7-470(a)(1) from interfering, restraining or coercing employees in the exercise of those rights guaranteed in Sec. 7-468(a), strikingly similar to the employer unfair practice in N.J.S.A. 34:13A-5.4(a)(1). Nowhere in the Connecticut Supreme Court's decision or the prior Connecticut Board decision is mention made or reliance placed upon any supposed specific anti-parity provision. On the contrary, the Supreme Court notes with approval that "/ t /he Board concluded that the mere presence and necessary operation of the clause would inevitably interfere with, restrain and coerce the police union in future negotiations with the City..."

not significant. Neither is it necessary to consider the City's contention that it has always negotiated in good faith with every group, including the P.B.A., as a separate and district labor group. The mere existence of the clause, in various agreements, coupled with the record evidence showing their application at a time relevant to consideration of the supplemental and amended complaint is sufficient to justify the conclusion that it is an inherent interference with employee and organizational bargaining rights. Accordingly, I find it unnecessary to resolve the conflict earlier described between the testimony of the City and P.B.A. representatives as to whether the City actually relied upon the clause during the course of negotiations. I also conclude that even in the absence of express reliance on the clause, its operation, as a matter of law, constitutes a violation of the Act. Whether or not City Manager Bashe mentioned the clause in the course of responding to or rejecting P.B.A. economic demands, its coercive effect derives from the inevitability of its consideration by the City Manager and City Council in calculations as to all financial proposals submitted by the P.B.A.

As described by the Connecticut Board in the New London case in language quoted with approval by the Connecticut Supreme Court in the Firefighters case:

> "We find that the inevitable tendency of such an agreement is to interfere with, restrain and coerce the rights of the later group to have untrammeled bargaining. And this affects all the later negotiations (within the scope of the parity clause) even though it may be hard or impossible to trace by proof the effect of the parity clause upon any specific terms of the later contract (just as in the case before us). The parity clause will seldom surface in the later negotiations but it will surely be present in the minds of the negotiators and have a restraining or coercive effect not always consciously realized. And while the evidence in the present case may not have shown a specific connection between the parity clause and the terms of the Police contract, it certainly did not indicate the lack of such connection. The economic terms offered to policemen and finally accepted by them were just the same as those previously given to the firemen."

Contrary decisions in other jurisdictions cited by Respondent in its brief appear to represent a minority position on the issue. In one, West Allis Professional Policemen's Assn. v. City of West Allis, WERC Case XX, No. 17300, MP-294, Decision No. 12706, 1974, the Wisconsin Employment Relations Commission found the distinction between parity agreements and parity calculations of employers in the absence of such agreements artificial and not warranting the conclusion that agreements make the practice unlawful. Such reasoning overlooks the vice of such agreements, articulated by the Connecticut Board, that because they require the employer

to immediately grant to the signatory employee organization any concession won by the other organization, the clause itself will tend to deter the granting of the concession to the other organization in the first place, thus interfering with and restraining the freedom of its bargaining. 17/ In the other decision, City of Detroit and Detroit Police Officers, Case No.C 72 A-1 (12/29/72) the Michigan Employment Relations Commission appears also to have given unsufficient weight to the conclusion of its own Trial Examiner that the effect of an arbitration award requiring the City to pay firemen any increase subsequently granted to police precluded free bargaining. Contrary to the Michigan Commission, that award did more than merely give due consideration in the City-Police Union bargaining to its impact on other units. The award, in effect, made the police the bargaining agent for the firemen.

The fact that the P.B.A., and even the other organizations enjoy certain unique benefits does not detract from the conclusion that the clause is illegal. Those benefits are separate and apart from what are generally acknowledged to be the bread and butter subjects, the basic terms and conditions of employment including salary and cost of living increases which have a 'snow ball' or 'ripple' effect on all wage related benefits, such as overtime payments, vacation and holiday pay, pensions and the like. And it is those economic terms, central to the employees' concerns, which are the subjects of the parity clause.

As the existence of the clause alone, without more, has the inherent effect of limiting the bargaining of the organization seeking to overcome its effect, the employees that organization represents have been restrained in their right to be represented for purposes of bargaining and to seek agreements beneficial to them freely and without restriction. Accordingly, I conclude, as did the Massachusetts Board in Medford School Committee, supra, at page 14, that by its conduct in entering agreements with the FMBA, FOA and Teamsters for 1976-77 containing identical

17/ Respondent's defense, that it readily granted concessions to the P.B.A. even though its parity obligation to the Teamsters compelled a matching of the benefits is disingenuous. It fails to take account of the City's calculation that in this instance it was willing to match the benefits all around (all units which later settled received the same terms). It fails to reveal that although the P.B.A. sought a greater transition payment, it finally settled at a lower figure of $150 and, further, that because of the differing impact of the same economic benefits on different bargaining units, certain of the benefits such as those for new hires and longevity would have less financial impact on other units. Nonetheless, uniformity in economic contract terms was retained. The fact remains that the City's bargaining posture was inhibited by consideration of the costs of any increases which were required, by virtue of the parity clause, to be applied to all other City employees represented in negotiating units.

parity clauses, and by maintaining and enforcing those clauses, the Respondent has engaged in independent violations of 34:13A-5.4(a)(1) and (5) of the Act. This conclusion should in no way be interpreted as precluding an employer from considering wage "comparability" as did the Township in the Commission's Hillside decision, cited, supra at page 13, or from providing in an agreement for a wage reopener so as to permit one representative to seek to match in negotiations another's economic settlement with the same employer. "Unlike the 'parity' clauses discussed above, the reopener provision does not create a predetermined result. Such provisions encourage early settlement by providing that if more favorable contracts are reached, negotiations may be reopened", Medford School Committee, 3 NJPC 1413, at 1415.

By its conduct above described the Respondent has not violated N.J.S.A. 34:13A-5.4(a)(3).

Upon the basis of the foregoing Findings of Fact, and Analysis and the entire record in this case, I make the following recommended:

CONCLUSIONS OF LAW

1. By complying with and giving effect to parity provisions contained in collective agreements negotiated with other employee organizations, [18/] thereby unlawfully limiting the right of the P.B.A. and its unit employees to negotiate fully their own terms and conditions of employment, the Respondent, City of Plainfield, has engaged in and is engaging in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).

2. By the same conduct, the Respondent has not engaged in any unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(3).

THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5), I will recommend that Respondent cease and desist therefrom and take certain affirmative action. As I have found that the parity clause constitutes an unlawful subject of negotiation in its effect upon the P.B.A. and all employees in the unit it represents, I shall recommend that the City refrain from enforcing or seeking to enforce or give effect to the parity clause in question in such a manner as to limit the right and ability of the P.B.A. to negotiate terms and conditions of employment of its unit employees.

18/ Inasmuch as each of the four other employee organizations have received timely notice to intervene in this proceeding (see F.N. 4, supra), to the extent that their contractual interests may be affected by the results of this proceeding I am also forwarding a certified copy of this Report to each such organization, and I recommend that the Commission provide each such organization with a copy of its final order in this matter.

I shall also recommend that the City post a Notice on forms supplied by the Commission addressed to P.B.A. unit employees advising of this corrective action and, further, notify the Commission in writing of the steps taken to comply herewith.

RECOMMENDED ORDER

Upon the basis of the foregoing recommended Findings of Fact, Conclusions of Law, and Remedy it is recommended that the Respondent, City of Plainfield, shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing employees by maintaining, enforcing or seeking to enforce a parity clause with any other employee organization to the extent that it would increase benefits to the employees in the units represented by these employee organizations contingent upon the collective agreement negotiated by the Plainfield P.B.A. Local 19.

(b) Refusing to negotiate collectively in good faith with the Plainfield P.B.A. Local 19 as the exclusive representative of all sworn police personnel excluding the police chief by complying with or giving effect to the parity provision contained in any current agreement negotiated with any other employee organization.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post immediately, in plain sight, at the headquarters of the Police Department of the City of Plainfield and at the location or locations where sworn personnel employed by the City Police Department report for duty or daily assignment, copies of the attached notice marked "Appendix A". Copies of said notice on forms to be provided by the Public Employment Relations Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices will not be altered, defaced or covered by any other material.

(b) Notify the Chairman, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

Robert T. Snyder

Robert T. Snyder, Hearing Examiner

DATED: Newark, New Jersey
May 5, 1978

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 by the Act or refusing to negotiate in good faith with Plainfield P.B.A. Local 19 concerning terms and conditions of employment by complying with or giving effect to a parity provision contained in any agreements negotiated with any other employee organizations which would increase benefits to the employees in units represented by such organizations contingent upon the collective agreement negotiated by Plainfield P.B.A. Local 19.

City of Plainfield
(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