

P.E.R.C. NO. 81-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BRADLEY BEACH,

Respondent,

-and-

Docket Nos. CO-89-178-111 and
CO-80-321-112

P.B.A. LOCAL NO. 50, BRADLEY
BEACH SECTION and RICHARD J.
LIZZANO,

Charging Parties.

SYNOPSIS

The Commission adopts the recommended decision and order of its Hearing Examiner, finding that the Borough of Bradley Beach did commit an unfair practice when its Mayor sent a letter to the Chairman of the P.B.A. requesting that the P.B.A. not name any new employees to its negotiating team. The Commission agrees with the Hearing Examiner that the Mayor may not have been motivated by an intent to interfere with the organization, but the letter did have that tendency regardless of motive and therefore constituted an independent violation of Subsection 5.4(a)(1) of the New Jersey Employer-Employee Relations Act.

The Commission dismisses the remaining unfair practice allegations including an allegation that the Borough's change in the shift schedule of certain P.B.A. members was done to harass the Association.

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STATE OF NEW JERSEY
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In the Matter of

BOROUGH OF BRADLEY BEACH,

Respondent,

- and -

Docket Nos. CO-80-178-111
CO-80-321-112

P.B.A. LOCAL NO. 50, BRADLEY
BEACH SECTION and RICHARD J.
LIZZANO,

Charging Parties.

Appearances:

For the Borough of Bradley Beach
Keith, Winters & Schueler, Esqs.
(Michael L. Detzky, Esq.)

For P.B.A. Local No. 50, Bradley Beach Section
and Richard J. Lizzano
Hanlon, Dempsey & McHeffey, Esqs.
(Joseph N. Dempsey, Esq.)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 27, 1979 by P.B.A. Local No. 50, Bradley Beach Section and Richard J. Lizzano (hereinafter the "Charging Parties", the "PBA" or "Lizzano") alleging that the Borough of Bradley Beach (hereinafter the "Respondent" or the "Borough") 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"). Specifically the charge alleged that the Respondent's Mayor sent a letter to Lizzano, Chairman of the PBA, under date of December 14, 1979 requesting that the PBA refrain from naming to its negotiating team any of the last three members appointed to the Police Department,

stating as the reason therefor, "This will eliminate any feeling of reprisal, etc., should the present budget situation make it necessary to reduce the number of men on the Police Department." The PBA alleges that this was an attempt by the Respondent to dictate the composition of its negotiating team in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7) of the Act.

A second Unfair Practice Charge was filed with the Commission on April 24, 1980 by the Charging Parties alleging that the Respondent's Mayor had threatened to dismiss the President of the PBA (Lizzano) and, further, that the Respondent's Chief of Police has discriminated against and harassed the President of the PBA (Lizzano) by unilaterally changing his shift assignments in violation of the notice provision in the collective negotiations agreement. These actions were alleged to be violations of N.J.S.A. 34:13A-5.4(a)(1), (3), (4) and (5) of the Act, supra.

- 1/ These subsections prohibit public employers, their representatives or agents from:
- "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.
 - "(2) Dominating or interfering with the formation, existence or administration of any employee organization.
 - "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act.
 - "(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act.
 - "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.
 - "(7) Violating any of the rules and regulations established by the commission."

It appearing that the allegations of the Unfair Practice Charges, if true, might constitute unfair practices within the meaning of the Act, two Complaints and Notices of Hearing were issued on May 28, 1980, and an order was also issued consolidating them for hearing and decision. Pursuant to the Complaint and Notice of Hearing, a hearing was held on August 19, 1980 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.

On September 26, 1980 the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-11, 6 NJPER 518 (¶11264 1980). He concluded that the Mayor's December 14, 1979 letter concerning the composition of the PBA's negotiating team interfered with, restrained and coerced the Charging Parties in the exercise of rights guaranteed by the Act in violation of N.J.S.A. 34:13A-5.4(a)(1).^{2/} He recommended that the Respondent be ordered to cease and desist from such action and to affirmatively rescind, in a written document, the December 14, 1979 letter, as well as state, in writing, that the Borough does not intend to interfere with or dictate the composition of the PBA's negotiating team.

He further concluded that the PBA failed to prove that the shift assignments amounted to harassment of the members of the negotiating team and thus were not violative of N.J.S.A. 34:13A-5.4(a)(1). Finally, he concluded that none of the Borough's actions were shown to be violative of N.J.S.A. 34:13A-5.4(a)(2), (3),

^{2/} The Hearing Examiner did not find that the Mayor was motivated by bad faith or a desire to dominate the employee organization in writing the letter. However, he did conclude that absent any bad faith in improper motive, such a request did constitute improper interference with the P.B.A.'s right to select the members of the negotiating team. He therefore found only an independent (a)(1) violation.

(4) or (5). ^{3/}

Neither party has filed exceptions to the Hearing Examiner's Report. After reviewing the entire record in this matter, we conclude that the Hearing Examiner's recommended findings of fact and conclusions of law are supported by substantial evidence and we hereby adopt them. We further believe that the recommended remedy of the Hearing Examiner is reasonably designed to effectuate the policies of the Act and we shall issue an appropriate order. ^{4/}

ORDER

A. That the Respondent Borough cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refraining from sending communications to the PBA with reference to the composition of its negotiating team.

B. That the Respondent Borough take the following affirmative action:

1. Rescind in writing Mayor Leonard W. Riley's letter of December 14, 1979 to Richard J. Lizzano and state affirmatively in writing that the Respondent Borough, its agents and representatives do not intend to interfere with or dictate the composition of the PBA's negotiating team.

2. Post at all places where notices to employees are customarily posted copies of the attached notice marked Appendix "A".

^{3/} During the hearing a Motion to Dismiss the allegation that the Borough violated N.J.S.A. 34:13A-5.4(a)(7) was granted by the Hearing Examiner.

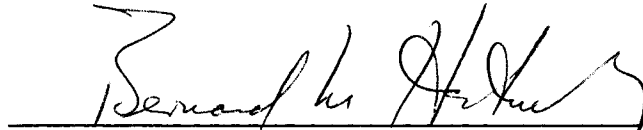
^{4/} Counsel for the Borough, following receipt of the Hearing Examiner's Report, sent a letter to the Commission advising that it was prepared to carry out the obligations set forth in the Hearing Examiner's recommended remedy, which has now been adopted by us as the remedy in this case.

Copies of such notice, on forms to be provided by the Commission, shall be posted immediately by the Respondent Borough upon receipt thereof and after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Borough to insure that such notices are not altered, defaced or covered by other material.

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

C. That the allegations in the Complaint that the Respondent Borough violated subsections 5.4(a)(2), (3), (4) and (5) of the Act be dismissed in their entirety.

BY ORDER OF THE COMMISSION



Bernard M. Hartnett, Jr.
Acting Chairman

Acting Chairman Hartnett, Commissioners Garves, Hipp, Newbaker and Parcels voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
December 10, 1980
ISSUED: December 11, 1980

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 refraining from sending communications to the PBA with reference to the composition of its negotiating team.

WE WILL rescind in writing Mayor Leonard W. Riley's letter of December 14, 1979 to Richard J. Lizzano and state affirmatively in writing that the Borough, its agents and representatives do not intend to interfere with or dictate the composition of the PBA's negotiating team.

BOROUGH OF BRADLEY BEACH

(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.

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

In the Matter of

BOROUGH OF BRADLEY BEACH,

Respondent,

- and -

Docket Nos. CO-80-178-111
CO-80-321-112

P.B.A. LOCAL NO. 50, BRADLEY BEACH
SECTION and RICHARD J. LIZZANO,

Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Borough independently violated Subsection 5.4(a)(1) of the New Jersey Employer-Employee Relations Act when its Mayor on December 14, 1979 sent a letter to the Chairman of the PBA, Richard J. Lizzano, requesting that the PBA not name to its negotiating team any of the last three members appointed to the Respondent's Police Department. The Hearing Examiner found that the Mayor's letter tended to interfere with, restrain and coerce the PBA and its members in their designation of representatives to the PBA's negotiating team. By way of remedy, the Hearing Examiner recommended that the Respondent Borough rescind the Mayor's letter of December 14, 1979 and affirmatively state that it has no intention of interfering with or dictating the composition of the PBA's negotiating team.

The Hearing Examiner further recommended that the Commission find that the Respondent Borough did not independently violate Subsection 5.4(a)(1) of the Act by the conduct of its Police Chief in changing the shift schedules of Lizzano and other members of the PBA's negotiating team in March and April 1980. The Hearing Examiner concluded that the conduct of the Police Chief did not constitute illegal harassment within the meaning of the Act.

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

BOROUGH OF BRADLEY BEACH,

Respondent,

- and -

Docket Nos. CO-80-178-111
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P.B.A. LOCAL NO. 50, BRADLEY BEACH
SECTION and RICHARD J. LIZZANO,

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Appearances:

For the Borough of Bradley Beach
Keith, Winters & Schueler, Esqs.
(Michael L. Detzky, Esq.)

For P.B.A. Local No. 50, Bradley Beach Section
and Richard J. Lizzano
Hanlon, Dempsey & McHeffey, Esqs.
(Joseph N. Dempsey, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (herein the "Commission") on December 27, 1979 by P.B.A. Local No. 50, Bradley Beach Section and Richard J. Lizzano (hereinafter the "Charging Parties," the "PBA" or "Lizzano") alleging that the Borough of Bradley Beach (hereinafter the "Respondent" or the "Borough") 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 Respondent's Mayor sent a letter to Lizzano, Chairman of the PBA, under date of December 14, 1979 requesting that the PBA refrain from naming to its negotiating team any of the last three members appointed to the Police Department, stating as the reason therefor, "This will eliminate any feeling of reprisal, etc., should the present budget situation

make it necessary to reduce the number of men on the Police Department," which the PBA alleges is an attempt by the Respondent to dictate the composition of its negotiating team, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1),(2),(3),(4),(5) and (7) of the Act.^{1/}

A second Unfair Practice Charge was filed with the Commission on April 24, 1980 by the Charging Parties alleging that the Respondent's Mayor had threatened to dismiss the President of the PBA (Lizzano)^{2/} and, further, that the Respondent's Chief of Police has discriminated against and harassed the President of the PBA (Lizzano) by unilaterally assigning him to "harassing shift assignments" in violation of the notice provision in the collective negotiations agreement, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1),(3),(4) and (5) of the Act, supra.

It appearing that the allegations of the Unfair Practice Charges, if true,

1/ These Subsections prohibit public employers, their representatives or agents from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

"(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act.

"(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act.

"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

"(7) Violating any of the rules and regulations established by the commission."

At the hearing, counsel for the Respondent moved for dismissal of the Subsection (a)(7) allegation since the violation of no rule or regulation of the Commission had been alleged in the Charge. This motion was granted by the Hearing Examiner without objection by counsel for the Charging Parties.

2/ Referring to the allegations in the initial Unfair Practice Charge, supra.

may constitute unfair practices within the meaning of the Act, the charges were consolidated and a Complaint and Notice of Hearing was issued on May 28, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on August 19, 1980 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The parties filed post-hearing briefs by September 25, 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 Borough of Bradley Beach is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. P.B.A. Local 50, Bradley Beach Section is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Richard J. Lizzano is a public employee within the meaning of the Act, as amended, and is subject to its provisions.
4. The most recent collective negotiations agreement between the Respondent and the PBA was executed on November 16, 1979 and was effective during the term January 1, 1979 through December 31, 1979 (CP-1). The said agreement was reached as a result of an interest arbitration award dated August 7, 1979 (CP-3). Negotiations for a successor agreement for 1980 are in progress; the PBA petitioned the Commission for the appointment of an interest arbitrator on December 10, 1979 (R-1).

5. Lizzano has been a police officer with the Respondent since 1978 and has been Chairman of the PBA since January 1979.

6. In December 1979 there were 16 police officers employed by the Respondent, who were in the PBA collective negotiations unit. In order of seniority ranking Lizzano was No. 15 or second from the bottom.

7. Under date of December 14, 1979 the Respondent's Mayor, Leonard W. Riley, who is also the Director of Public Safety, addressed a letter to Lizzano as Chairman of the PBA, which stated:

"Since we both know salary negotiations sometimes can be of a long term nature, in order that nothing delay the process and continuity be maintained, I respectfully ask the Association refrain from naming any of the last three members appointed to the Police Department and that they not be included as part of the Police Department negotiating team.

"This will eliminate any feeling of reprisal, etc., should the present budget situation make it necessary to reduce the number of men on the Police Department.

"Kindly bring this request to the attention of the Association for their consideration." (CP-2) .

8. Lizzano responded to Mayor Riley's letter (CP-2 , supra) in an undated communication, the thrust of which charged that the Mayor was committing an unfair practice by illegally making "...an effort to influence the selection of persons to represent the Bradley Beach Police Department in negotiations..." (R-2).

9. Lizzano testified that, as a result of Mayor Riley's letter of December 14, 1979, supra, he was going to resign as Chairman but did not do so after having been prevailed upon by the other unit members to remain.

10. Article VIII, Section G of the most recent collective negotiations agreement (CP-1) provides that:

"The work schedule shall be posted at least two (2) months in advance, with the understanding that the current rotating schedule be continued and that two months prior notice of the scheduling be given."

11. In October 1979 Lizzano was successful in challenging a change in his shift through the grievance procedure, citing it as a violation by the Borough of Article VIII, Section G, supra (CP-4 and CP-5).

12. In February 1980 Lizzano initiated a grievance under the contractual grievance procedure concerning the denial of voluntary shift change between police officers, which was resolved in Lizzano's favor and resulted in a notice to all police officers from Mayor Riley dated March 25, 1980 (CP-6 and CP-8).

13. Extensive testimony was adduced at the hearing with respect to changes in the 1980 shift schedules and a copy of the bi-weekly shift schedules from January 1, 1980 to date was received in evidence as CP-9. Although Lizzano testified as to certain schedule changes made under the direction of the Chief of Police, which affected him in six instances in March and April, and which affected PBA Negotiating Committee members Jose Ortiz and Kenneth Horrocks in one instance each, the Hearing Examiner, after examination of CP-9 and based upon the testimony adduced, finds as a fact that the changes in shift schedules constituted, if anything, arguable violations of the notice provision of Article VIII, Section G of the collective negotiations agreement, supra.^{3/}

THE ISSUES

1. Did the Respondent Borough violate the Act when its Mayor on

^{3/} It is noted that, in contrast to Lizzano's actions in filing two prior grievances with respect to shift matters (see Findings of Fact Nos. 11 and 12, supra), no additional grievances were filed with respect to any schedule changes reflected on CP-9, about which Lizzano testified. It is also noted that Lizzano acknowledged on cross examination that he had had a fair mixture of the scheduled shifts within the Police Department since January 1, 1980 and further that there had been no change in the distribution of his shifts since Mayor Riley's letter of December 14, 1979 (CP-2).

December 14, 1979 sent a letter to the Chairman of the PBA requesting that the PBA refrain from naming to its negotiating team any of the last three members appointed to the Police Department?

2. Did the Respondent Borough violate the Act by the conduct of its Chief of Police in the changing of shift schedules of Richard J. Lizzano and the other members of the PBA's Negotiating Committee in March and April 1980, i.e., did the Respondent Borough engage in illegal harassment of the PBA's Negotiating Committee?

DISCUSSION AND ANALYSIS

The Respondent Borough Independently Violated Subsection (a)(1) Of The Act When Its Mayor On December 14, 1979 Sent A Letter To The Chairman Of The PBA Requesting That The PBA Refrain From Naming To Its Negotiating Team Any Of The Last Three Members Appointed To The Police Department

The Commission in North Brunswick Township Board of Education, P.E.R.C. No. 80-122, 6 NJPER 193 (1980) decided that a public employer violated Subsections (a)(1) and (5) of the Act when it refused to negotiate with the majority representative based upon an objection to the composition of the majority representative's negotiating team.

The Commission's most recent statement of the standard for finding an independent Subsection (a)(1) violation is set forth in New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (1979) where it was stated that:

"...It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification..." (5 NJPER at 551) (Emphasis supplied).

Applying the foregoing Commission decisions to the facts in the instant case, the Hearing Examiner finds and concludes that the Mayor's December 14, 1979 letter to the Chairman of the PBA, Richard J. Lizzano, tended to interfere with the right of Lizzano and other employees in the collective negotiations unit to serve as members of the PBA negotiating term and thus constituted an independent violation of Subsection (a)(1) of the Act.

In so finding and concluding, the Hearing Examiner has duly considered the statements of the Mayor that he did not intend any illegal purpose or effect in having written the December 14th letter and was motivated to "...eliminate any feeling of reprisal..." in the event that the budget situation made it necessary to reduce the complement of the Police Department (see CP-2). However, a decision on whether or not an unfair practice has been committed must turn on an inquiry as to whether or not the actions of a public employer tend to interfere with, re-^{4/}strain or coerce employees in the exercise of rights guaranteed by the Act. Re-lying upon North Brunswick Township Board of Education, supra, the Hearing Ex-^{5/ 6/}aminer concludes that the December 14th letter did so interfere.

Finally, the Hearing Examiner finds and concludes that the Respondent Borough has failed to demonstrate in its proofs that the actions of the Mayor in writing the December 14, 1979 letter were based upon "...a legitimate and substantial business justification..." Clearly, there was no compelling need for

^{4/} Crown Central Petroleum Corp. v. NLRB, 430 F.2d 724, 74 LRRM 2855, 2859 (5th Cir. 1970) and Welch Scientific Co. v. NLRB, 340 F.2d 199, 203, 58 LRRM 2237 (2nd Cir. 1965).

^{5/} It will be recalled that Lizzano's reaction was to resign as Chairman of the PBA since he was one of the three officers with the least seniority (see Findings of Fact Nos. 6 and 9, supra).

^{6/} However, the said letter did not constitute a violation of Subsection (a)(2) of the Act: North Brunswick Township Board of Education, supra.

such a letter to be written. The composition of the PBA's negotiating team was of no legitimate interest or concern of the Borough. The mere fact that the Mayor may have thought that he was obviating a future problem for the Borough in having to lay off members of the PBA negotiating team does not, in the opinion of the Hearing Examiner, constitute a legitimate and substantial business justification for the Mayor's actions.

Thus, the Hearing Examiner will recommend that, by reasons of having independently violated Subsection (a)(1) of the Act, the Respondent Borough must rescind in writing the statements contained in the Mayor's letter of December 14, 1979 and affirmatively indicate to the PBA that the complement of its negotiating team is of no legitimate interest or concern to the Respondent Borough.

The Respondent Borough Did Not Violate The Act
By The Conduct Of Its Chief Of Police In Chang-
ing The Shift Schedules Of Richard J. Lizzano
And Other Members Of The PBA's Negotiating Com-
mittee In March and April 1980 And Such Conduct
Did Not Constitute Illegal Harrassment

The Hearing Examiner finds and concludes that the Charging Parties have failed to prove by a preponderance of the evidence that the Respondent Borough violated the Act by the conduct of its Chief of Police in changing the shift schedules of Lizzano and other members of the PBA's negotiating team in March and April 1980. The Hearing Examiner has found as a fact, based upon an examination of CP-9 and the testimony adduced at the hearing, that the changes in shift schedules constituted, if anything, arguable violations of the notice provisions of Article VIII, Section G of the collective negotiations agreement (see Finding of Fact No. 13, supra, and N.J. Dept. of Corrections, PERC No. 80-132, 6 NJPER 218 [1980]).

For the Hearing Examiner to conclude that the conduct of the Respondent's Chief of Police herein constitute illegal harassment under the Act of the PBA's negotiating team, a clear causal connection would have to be established between the

pattern of changes in the shift schedules by the Chief of Police and the course of collective negotiations between the PBA and the Respondent Borough. The Hearing Examiner is fully satisfied that no such causal connection has been established. There was no testimony adduced that any of the changes in shift schedules interfered with the course or conduct of the negotiations between the parties. While it is true that collective negotiations have not yet resulted in an agreement for the year 1980, the Hearing Examiner cannot speculate by concluding that the reason therefor was the conduct of the Chief of Police in the changing of the shift schedules of Lizzano and the other members of the PBA's negotiating team.^{7/}

Accordingly, the Hearing Examiner will recommend dismissal of the allegations in the Complaint with respect to the conduct of the Chief of Police in changing the shift schedules of Lizzano and other members of the PBA's negotiating team.

* * * *

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

CONCLUSIONS OF LAW

1. The Respondent Borough independently violated N.J.S.A. 34:13A-5.4 (a)(1) when its Mayor on December 14, 1979 sent a letter to the Chairman of the PBA requesting that the PBA refrain from naming to its negotiating team any of the last three members appointed to the Police Department.

2. The Respondent Borough did not independently violate N.J.S.A. 34:13A-5.4(a)(1), or any other provision of the Act, by the conduct of its Chief of Police in changing the shift schedules of Richard J. Lizzano and the other

^{7/} The statement in Respondent's Brief (p.4) that the 1980 agreement is signed is not part of the record.

members of the PBA's negotiating team in March and April 1980, i.e., the Respondent Borough did not engage in illegal harassment of the PBA's Negotiating Committee within the meaning of the Act.

3. The Respondent Borough did not violate N.J.S.A. 34:13A-5.4(a)(2), (3), (4) and (5) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Borough cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refraining from sending communications to the PBA with reference to the composition of its negotiating team.

B. That the Respondent Borough take the following affirmative action:

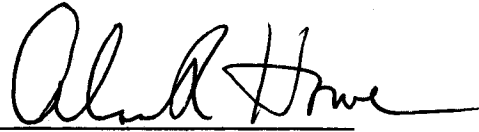
1. Rescind in writing Mayor Leonard W. Riley's letter of December 14, 1979 to Richard J. Lizzano and state affirmatively in writing that the Respondent Borough, its agents and representatives do not intend to interfere with or dictate the composition of the PBA's negotiating team.

2. Post at all places where notices to employees are customarily posted copies of the attached notice marked Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately by the Respondent Borough upon receipt thereof and after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Borough to insure that such notices are not altered, defaced or covered by other material.

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

C. That the allegations in the Complaint that the Respondent Borough violated Subsections 5.4(a)(2), (3), (4) and (5) of the Act be dismissed in their entirety.

Dated: September 26, 1980
Trenton, New Jersey



Alan R. Howe
Hearing Examiner

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 refraining from sending communications to the PBA with reference to the composition of its negotiating team.

WE WILL rescind in writing Mayor Leonard W. Riley's letter of December 14, 1979 to Richard J. Lizzano and state affirmatively in writing that the Respondent Borough, its agents and representatives do not intend to interfere with or dictate the composition of the PBA's negotiating team.

BOROUGH OF BRADLEY BEACH
(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 Chairman, Public Employment Relations Commission,
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780