

P.E.R.C. NO. 86-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Respondent,

-and-

Docket No. CO-85-154-120

EAST BRUNSWICK MUNICIPAL
EMPLOYEES' ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman of the Commission, pursuant to authority delegated by the full Commission and in the absence of exceptions to a Hearing Examiner's report and recommended decision, finds that the Township of East Brunswick violated the New Jersey Employer-Employee Relations Act by failing to negotiate salary increases with the East Brunswick Municipal Employees' Association. The Chairman orders the Township to retract the step increase on the salary guide given five employees, cease and desist from failing to negotiate over salary increases and to post a notice of its violation and remedial action taken. The allegations of the Complaint alleging violations of subsections 5.4(a)(2),(3) and (7) are dismissed.

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BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Respondent,

-and-

Docket No. CO-85-154-120

EAST BRUNSWICK MUNICIPAL
EMPLOYEES' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Savage & Serio, Esquires (Thomas
J. Savage, of Counsel)

For the Charging Party, Bosco-McDonnell Associates
(Simon M. Bosco, Consultant)

DECISION AND ORDER

On December 17, 1984, the East Brunswick Municipal
Employees' Association ("Association") filed an unfair practice
charge against the Township of East Brunswick ("Township"). The
charge alleged that the Township violated subsections 5.4(a)(1),
(2), (3), (4), (5) and (7)^{1/} of the New Jersey Employer-Employee

^{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
(Footnote continued on next page)

Relations Act, N.J.S.A. 34:13A-1 et seq., when it granted "merit" increases in salary to five construction inspectors without first negotiating with the Association.^{2/}

On April 29, 1985, a Complaint and Notice of Hearing issued.

On July 17, Hearing Examiner Alan R. Howe held a hearing. The day before this hearing, the Township's attorney told the Hearing Examiner he would not attend and he would file a written admission of the Complaint's allegations. Given these representations, no testimony or exhibits were received at the hearing. Instead, the Association submitted a request for relief and the Hearing Examiner allowed the Township until August 1 to respond. The Township did not.

On August 12, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-7, 11 NJPER ____ (¶ ____ 1985 (copy attached). He concluded that the Township had violated the Act by failing to negotiate salary increases with the Association

(Footnote continued from previous page)
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; and (7) Violating any of the rules and regulations established by the commission."

^{2/} On July 17, 1985, the Association filed an amended charge. That amendment, however, was resolved through the Commission's Litigation Alternative Program and will not be further considered.

and he recommended an order requiring the Township to retract the step increase on the salary guide given the five employees.* He further recommended an order requiring the Township to cease and desist from failing to negotiate over salary increases and to post a notice of its violation and remedial action taken.

The Hearing Examiner served his report on all parties and advised them that exceptions, if any, were due on or before August 26. Neither party filed exceptions or requested an extension of time. The Township instead stated that it will comply with the order.

I have reviewed the record. The Hearing Examiner's findings of fact and conclusions of law are accurate. Accordingly, acting pursuant to authority delegated to me by the full Commission, I enter the following order.

ORDER

It is ORDERED:

A. That the Respondent Township 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 unilaterally granting salary increases to five employees in the Building Department without collective negotiations with the Association.

2. Refusing to negotiate in good faith, upon demand, with the East Brunswick Municipal Employees' Association concerning the salaries of employees in the Building Department.

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

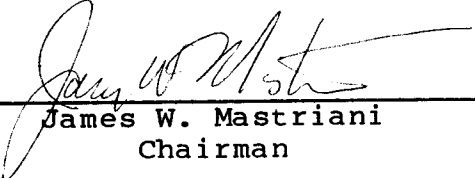
1. Forthwith reduce by one step on the current salary guide the annual salary of the five concerned employees in the Building Department.

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

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

C. That the allegations in the original unfair practice charge that the Township violated N.J.S.A. 34:13A-5.4(a)(2), (3), and (7) be dismissed in their entirety.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
September 12, 1985

APPENDIX A
NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally granting salary increases to five employees in the Building Department without collective negotiations with the Association.

WE WILL NOT refuse to negotiate in good faith, upon demand, with the East Brunswick Municipal Employees' Association concerning the salaries of employees in the Building Department.

WE WILL forthwith reduce by one step on the current salary guide the annual salary of the five concerned employees in the Building Department.

TOWNSHIP OF EAST BRUNSWICK
(Public Employer)

Dated _____

By _____ (Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 86-7

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

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Respondent,

-and-

Docket No. CO-85-154-120

EAST BRUNSWICK MUNICIPAL
EMPLOYEES' ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent township violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when, commencing in 1983, it unilaterally granted salary increases to five employees in the Building Department without collective negotiations with the Association. By way of remedy, the Hearing Examiner recommends that the salaries of the five affected employees in the Building Department be reduced one step prospectively in order to equalize their treatment with that of other employees in the collective negotiations unit and to comport with the negotiated agreement between the parties.

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

H. E. No. 86-7

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

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Respondent,

-and-

Docket No. CO-85-154-120

EAST BRUNSWICK MUNICIPAL
EMPLOYEES' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Savage & Serio, Esqs.
(Thomas J. Savage, Esq.)

For the Charging Party
Bosco-McDonnell Associates
(Simon M. Bosco, Consultant)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 17, 1984, and amended on July 17, 1985, by the East Brunswick Municipal Employees' Association (hereinafter the "Charging Party" or "Association") alleging that the Township of East Brunswick (hereinafter the "Respondent" or the "Township") 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. (hereinafter the "Act"), in that the Township and the Association reached a tentative collective negotiations agreement on October 17, 1984 in all respects except that the Association was to develop and submit to the Township salary guides; the Township on December 5, 1984 rejected the salary guides submitted by the Association, the background of which is that on October 9, 1984 the Township's Finance Director requested that five Construction Inspectors receive a "merit" increase without negotiations with the Association and thereafter unilaterally implemented the proposed merit increases, effective October 8, 1984, and unilaterally placed the said Construction Inspectors at a "Step 8-1/2" on the salary guide, notwithstanding that no such step exists in the collective negotiations agreement between the parties; and on October 17, 1984 the Township's Finance Director stated his intention to make other "merit" increases for other employees, which were not to be forthcoming until "negotiations have been completed," and when the Association attempted to secure copies of the "personnel action forms" involved in the "merit" increases heretofore mentioned, the Township refused so to provide. The amended Unfair Practice Charge of July 17, 1985 alleges that on July 8, 1985 the Township's Administrator rejected the reclassification requests of Linda Langone, Administrative Finance Clerk, and Charlene Haun, Clerk, inter alia, because of the original Unfair Practice Charge of the Association regarding the concept of "merit increases" and, additionally, the fact that the Association has questioned the

ability of the Township to make management decisions regarding reclassifications. All of the foregoing is 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/}

It appearing that the allegations of the Unfair Practice Charge, prior to amendment, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 19, 1985. Pursuant to the Complaint and Notice of Hearing, a hearing was held on July 17, 1985 in Newark, New Jersey. The Association appeared at the hearing by its representative but the Respondent elected not to do so either by representative or its counsel, Thomas J. Savage, Esq. Mr. Savage had advised the Hearing Examiner on July 16, 1985 that neither he nor any representative of the Township would appear at the hearing but that he would file with

^{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."

the Hearing Examiner a written admission of the allegations in the original Unfair Practice Charge, which was received on July 24, 1985.

At the hearing, the Association filed an amended Unfair Practice Charge, which was allowed, and a copy of same was served upon Mr. Savage on July 17, 1985. The allegations of the original Unfair Practice Charge having been admitted, no testimony was taken nor was any documentary evidence submitted and the hearing was adjourned on July 17th, pending the response of the Township to the amended Unfair Practice Charge.^{2/} At the request of the Hearing Examiner the Association submitted a written memorandum on July 23, 1985, setting forth the demand for relief on the original Unfair Practice Charge. Notwithstanding a written request of Mr. Savage to respond to the Association's demand for relief by August 1, 1985, Mr. Savage failed to do so.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after an ex parte hearing, and after consideration of the post-hearing memorandum of the Association, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the record, consisting of the admitted allegations in the original Unfair Practice Charge, the Hearing Examiner makes the following:

^{2/} The matter of the amended Unfair Practice Charge will be the subject of a Supplemental Recommended Report and Decision.

FINDINGS OF FACT

1. The Township of East Brunswick is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The East Brunswick Municipal Employees' Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The parties have been operating under a collective negotiations agreement which expired by its terms on December 31, 1983. The parties have been negotiating for a successor agreement since October 1983 and have been assisted by a Commission-appointed mediator, J. J. Pierson.

4. The parties reached a tentative collective negotiations agreement on October 17, 1984, which included a total compensation package with the distribution thereof on salary guides to be developed and submitted by the Association to the Township.

5. On October 9, 1984, the Township's Finance Director, L. Mason Neely, requested that five Construction Inspectors receive a "merit" increase because the Township's inspectors had been offered jobs in other communities on more attractive terms. The Construction Inspectors are members of the Association's unit and are on a specific salary guide. The "merit" increases offered by the Township were deemed by it to be an additional step move on the salary guides, namely, "Step 8-1/2," which does not exist on the current salary guides under which the parties are operating. The

Association alleges that the affected Construction Inspectors would thus be removed from the salary guides.

6. On October 17, 1984 Neely advised the Township's Administrator, David Weill, of his intention to make other "merit" increases to other employees in the unit "after the negotiations have been completed." When the Association learned of this proposed action by Neely it attempted to secure copies of the "Personnel Action Forms" involved, but the Township refused so to provide.

7. On December 5, 1984 the Township formally rejected the salary guides prepared by the Association and on December 17, 1984 the original Unfair Practice Charge was filed with the Commission.

DISCUSSION AND ANALYSIS

The Requested Relief

The Association, in response to the Hearing Examiner's request for a statement of the relief sought in the original Unfair Practice Charge, has submitted the following demand:

1. The posting of a notice by the Township, which notice shall admonish the Township for having circumvented the Association as the exclusive collective negotiations representative in granting to five employees in the Building Department unilateral salary increases beginning in 1983. Each of these five employees have, thus, moved to a higher step on the salary guide than otherwise would have been the case if they were treated in the same manner as all other employees in the collective negotiations unit.

2. Although the Association does not seek to have any of the five employees in question "pay back the extra money" that they

received as a result of the Township's unilateral action, the Association does request that the Hearing Examiner order that each of the five employees be reduced one step on the salary guide in order to equalize their situation with that of other employees in the unit. Such an order by the Hearing Examiner is not to be retroactive but prospective only.

The Relief Requested By The Association Is Granted.

The five employees involved herein in the Building Department of the Township were unilaterally granted a salary increase, which was in the nature of a "merit increase," the subject matter of which was clearly mandatorily negotiable: Trenton Housing Authority, P.E.R.C. No. 82-49, 7 NJPER 677 (1981); County of Sussex, P.E.R.C. No. 83-4, 8 NJPER 431 (1982); and Middletown Twp., H.E. No. 85-39, 11 NJPER 328 (1985), aff'd. P.E.R.C. No. 85-122, 11 NJPER 377 (1985).

The Commission's approach in Trenton Housing Authority, supra, is instructive since there a violation of §(a)(1) and (5) of the Act was found where salary increases were granted in excess of the negotiated salary increases without the knowledge of the union. The Commission, in agreement with the Hearing Examiner, ordered the Housing Authority to negotiate with the union over the salary increases illegally granted. However, the Commission did not order the illegal salary increases be rescinded retroactively since this would have worked a severe financial hardship upon the employees involved.

It is noted that the Association in the instant case is not seeking to have the five employees in the Building Department make payment back retroactively of the monies received as a result of the Township's illegal action in unilaterally granting them a salary increase, commencing in 1983. Here, however, there is a distinction between this case and Trenton Housing Authority, in that the Association is requesting that the five employees in the Building Department be prospectively reduced one step on the salary guide "...so as to comport with the negotiated agreement..." This request appears to the Hearing Examiner to be reasonable and warranted and, accordingly, it will be granted in the recommended order hereinafter.

The Association has identified the five employees, as follows: Betty Coyle; Joseph Messina; Douglas Joyce; Robert Bittle; and Art VanDursen. Thus, the recommended order will identify these five individuals as those who are to suffer a reduction of one step on the salary guide in order to equalize their status with other employees in the unit and "...comport with the negotiated agreement..."

Finally, there having been no evidence adduced that the Township has violated §§(a)(2), (3) and (7) of the Act the Hearing Examiner will recommend dismissal of these allegations. There will be no recommendation as to the §(a)(4) allegation since this would appear to be implicated in the amended charge of July 17th.

* * * *

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

CONCLUSIONS OF LAW

1. The Respondent Township violated N.J.S.A. 34:13A-5.4(a) (1) and (5) when in 1983 it unilaterally granted salary increases to five employees in the Building Department without collective negotiations with the Association.

2. The Respondent Township did not violated N.J.S.A. 34:13-5.4(a)(2), (3) and (7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Township 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 unilaterally granting salary increases to five employees in the Building Department without collective negotiations with the Association.

2. Refusing to negotiate in good faith, upon demand, with the East Brunswick Municipal Employees' Association concerning the salaries of employees in the Building Department, specifically, Betty Coyle; Joseph Messina; Douglas Joyce; Robert Bittle; and Art VanDursen.

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

1. Forthwith reduce by one step on the current salary guide the annual salary of the following five employees in the Building Department: Betty Coyle; Joseph Messina; Douglas Joyce; Robert Bittle; and Art VanDursen.

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

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

C. That the allegations in the original Unfair Practice Charge that the Township violated N.J.S.A. 34:13A-5.4(a)(2), (3) and (7) be dismissed in their entirety.



Alan R. Howe
Hearing Examiner

Dated: August 12, 1985
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally granting salary increases to five employees in the Building Department without collective negotiations with the Association.

WE WILL NOT refuse to negotiate in good faith, upon demand, with the East Brunswick Municipal Employees' Association concerning the salaries of five employees in the Building Department.

WE WILL forthwith reduce by one step on the current salary guide the annual salary of five employees in the Building Department.

TOWNSHIP OF EAST BRUNSWICK
(Public Employer)

Dated _____

By _____

(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey 08618 Telephone: (609) 292-9830