

P.E.R.C. NO. 89-134

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LAKEWOOD,

Respondent,

-and-

Docket No. CO-H-89-66

TEAMSTERS UNION LOCAL NO. 97,
AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Township of Lakewood violated the New Jersey Employer-Employee Relations Act when it unilaterally granted salary increases during negotiations and when the township manager questioned the employees' need for the union to represent them and promised benefits outside the collective negotiations process. The Commission dismisses allegations concerning the superintendent's role in a decertification effort. The Complaint was based on an unfair practice charge filed by Teamsters Union Local No. 97, AFL-CIO.

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Docket No. CO-H-89-66

TEAMSTERS UNION LOCAL NO. 97,

AFL-CIO,

Charging Party.

Appearances:

For the Respondent, John P. Miraglia, Labor Consultant

For the Charging Party, Goldberger & Finn, Esqs.
(Howard A. Goldberger, of counsel)

DECISION AND ORDER

On August 31 and October 21, 1988, Teamsters Union Local No. 97, AFL-CIO ("Local 97") filed an unfair practice charge and amended charge against the Township of Lakewood ("Township"). The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (5) and (7),^{1/} when its

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative, and (7) Violating any of the rules and regulations established by the commission."

supervisors intimidated employees and undermined Local 97, when it refused to negotiate a collective negotiations agreement, when it offered foremen a \$2,000 raise plus six percent, and when it unilaterally increased unit members' salaries by six percent.

On November 15, 1988, a Complaint and Notice of Hearing issued. On November 23, the Township filed an Answer denying the allegations.

On February 23 and March 13, 1989, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They waived post-hearing briefs.

On April 21, 1989, the Hearing Examiner issued his report and recommendations. H.E. No. 89-33, 15 NJPER ____ (¶ 1989). He found that the Township's overall conduct showed that it was engaged in "surface bargaining" in violation of subsections 5.4(a)(1) and (5). He also found that the Township independently violated subsection 5.4(a)(1) when its manager told Local 97 negotiations committee members that they did not need the union to represent them and that they should have come to him; and when the superintendent of public works solicited new employees to sign a decertification petition. He recommended dismissal of the remaining allegations.

On May 15, 1989, the Township filed exceptions. It claims that the uncorroborated testimony of Local 97's representative is insufficient to support finding a violation concerning the decertification petition and the statement suggesting employees did

not need the union. It also claims that the parties discussed many items and that it negotiated in good faith.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-10) are generally accurate. We incorporate them with these changes.

We modify finding no. 7 to show that the Township requested documentation of salary inequities and stated it would correct reclassification inequities (2T74, 2T77).

We add to finding no. 8 that the Township already had supplied raingear, gloves and coveralls where needed.

We add to finding no. 12 that testimony about ex parte communications with the mediator was excluded.

N.J.S.A. 34:13A-5.4(a)(5) makes it an unfair practice for a public employer to refuse to negotiate in good faith with a majority representative concerning terms and conditions of employment. See State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976). In determining whether an employer has violated this provision, we examine the parties' overall conduct.

We find that the Township's unilateral grant of salary increases during negotiations violated subsection 5.4(a)(5) and, derivatively, (a)(1).^{2/}

^{2/} We agree with the Township that the record does not indicate that seven percent increases were paid effective January 1989. However, LaPointe testified that a newspaper article

We also find that LaPointe's statement questioning the employees' need for Vasfailo to represent them and promising benefits violated subsections 5.4(a)(1) and (5). It not only signaled a failure to negotiate in good faith but it interfered with the employees' right to join and assist an employee organization.

We dismiss the allegation concerning the superintendent's role in a decertification effort. Assuming Vasfailo's hearsay testimony was credible, that testimony alone is insufficient to support a legal determination that Scalisi's action violated the Act. There was no residuum of legally competent evidence in the record to support that ultimate finding. N.J.A.C. 1:1-15.5; Weston v. State, 60 N.J. 36 (1972). We also dismiss the subsection 5.4(a)(2), (6) and (7) allegations for the reasons stated by the Hearing Examiner. H.E. at 13 n.11.

Because we have found that some of the Township's conduct violated its duty to negotiate in good faith and have ordered negotiations, we need not examine each instance of alleged "surface bargaining." Negotiations were frustrated. While neither party can be forced to agree, both have an obligation to meet, to be responsive to respective positions and to seek to reach an agreement. We have

2/ Footnote Continued From Previous Page

correctly quoted his statement that the Township agreed on 7-percent boosts for 102 Public Works Department employees." That announcement goes beyond simply reporting a budget allocation. It implies that an increase has been granted and in the absence of negotiations, violates the obligation to negotiate in good faith.

ordered the Township to negotiate in good faith with Local 95 over all terms and conditions of employment for a first collective negotiations agreement. We are prepared to enforce that order should the Township fail to meet its statutory negotiations obligation. N.J.S.A. 34:13A-5.3.

ORDER

The Township of Lakewood is ordered to:

A. 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 making statements in negotiations which seek to undermine the status of Teamsters Union Local No. 97, AFL-CIO as the collective negotiations representative for the employees in the Township's DPW collective negotiations unit, and by unilaterally granting and announcing wage increases during collective negotiations.

2. Refusing to negotiate in good faith with Local 97 concerning terms and conditions of employment, particularly by making statements in negotiations which seek to undermine the status of Teamsters Union Local No. 97, AFL-CIO as the collective negotiations representative for the employees in the Township's DPW collective negotiations unit, and by unilaterally granting and announcing wage increases during collective negotiations.

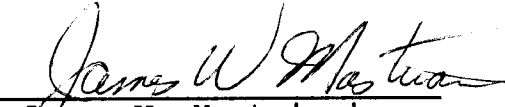
B. Take the following affirmative action:

1. Within 14 days or at a mutually agreed-upon time, commence good faith negotiations with Local 97 for a first collective negotiations agreement.

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

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

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 23, 1989
ISSUED: June 26, 1989

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 making statements in negotiations which seek to undermine the status of Teamsters Union Local No. 97, AFL-CIO as the collective negotiations representative for the employees in the Township's DPW collective negotiations unit, and by unilaterally granting and announcing wage increases during collective negotiations.

WE WILL NOT refuse to negotiate in good faith with Local 97 concerning terms and conditions of employment, particularly by making statements in negotiations which seek to undermine the status of Teamsters Union Local No. 97, AFL-CIO as the collective negotiations representative for the employees in the Township's DPW collective negotiations unit, and by unilaterally granting and announcing wage increases during collective negotiations.

WE WILL within 14 days or at a mutually agreed-upon time, commence good faith negotiations with Local 97 for a first collective negotiations agreement.

Docket No. CO-H-89-66

TOWNSHIP OF LAKEWOOD
(Public Employer)

Dated _____

By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

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

In the Matter of

TOWNSHIP OF LAKEWOOD,

Respondent,

-and-

Docket No. CO-H-89-66

TEAMSTERS UNION LOCAL NO. 97, AFL-CIO,

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 its Township Manager addressed the Union's committee at a negotiations session in terms which unequivocally sought to undermine the majority status of the Charging Party and urged them to negotiate with him individually and, further, when the Superintendent of Public Works sought to direct newly hired employees to an employee who was circulating a petition to decertify the Charging Party. Finally, the Hearing Examiner found that the totality of conduct of the Township manifested a predetermined intention to avoid reaching an agreement [State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975)].

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. 89-33

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

In the Matter of

TOWNSHIP OF LAKEWOOD,

Respondent,

-and-

Docket No. CO-H-89-66

TEAMSTERS UNION LOCAL NO. 97, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, John P. Miraglia, Labor Consultant

For the Charging Party, Goldberger & Finn, Esqs.
(Howard A. Goldberger, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on August 31, 1988, and amended on October 21, 1988, by Teamsters Union Local No. 97, AFL-CIO ("Charging Party," "Local 97" or "Union") alleging that the Township of Lakewood ("Respondent" or "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. ("Act"), in that prior to and after negotiations, the Township by its supervisors threatened, coerced and attempted to undermine the Union during working hours in the garages and assigned work places during the months of March through May 1988, and during this period the employees were intimidated on a daily basis by the

Township's supervisors; further, during negotiations the Township refused to negotiate an agreement, in that they refused to discuss any portion of the proposals offered by the Union and on April 25, 1988, the representatives of the Township walked away from the bargaining table; and at a conference on an earlier unfair practice charge, held June 16, 1988, the Township's representatives assured the Union of the continuance of negotiations, as a result of which the Union withdrew the prior Unfair Practice Charge in good faith; but on August 8, 1988, after negotiations were resumed before a Commission mediator, the Township refused all proposals and offered its foremen a raise of \$2,000 plus 6%; and, finally, on October 13, 1988, the Township granted employees represented by the Union a salary increase of 6% without negotiating this matter with the Union; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (5) through (7) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within

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the meaning of the Act, a Complaint and Notice of Hearing was issued on November 15, 1988. Pursuant to the Complaint and Notice of Hearing, after several agreed-upon adjournments, hearings were held on February 22 and March 13, 1989 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and waived the filing of post-hearing briefs.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act exists and, after hearing, and after consideration of the oral argument 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 Township of Lakewood is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. Teamsters Union Local No. 97, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Frank R. Vasfailo, Jr. is a representative of Local 97 who conducted negotiations on its behalf following the certification of Local 97 on November 30, 1987 for a unit of 102 blue collar employees in the Township's Department of Public Works ("DPW")

[RO-88-48].^{2/} Vasfailo thereafter arranged for the first collective negotiations session with Thomas L. LaPointe, the Township manager, which was held on January 19, 1988.

4. According to Vasfailo, there were seven face-to-face collective negotiations sessions between Local 97 and the Township on the following dates: January 19; January 26; February 1; March 30; April 11; April 25 and September 7, 1988. In addition, there were two meetings with a Commission mediator on July 20 and August 8, 1988. According to Vasfailo, LaPointe was present at all times for the Township as was the Township's Labor Consultant, John P. Miraglia.^{3/}

5. The first negotiations session was held on January 19, 1988, at the Town Hall, commencing at about 4:00 p.m. and lasting for about 45 minutes. Vasfailo had with him a committee of DPW employees. LaPointe and Miraglia appeared on behalf of the Township. Vasfailo testified credibly that at the outset of this

^{2/} The certification by the Commission was preceded by a letter claiming majority status, which was sent to the Township by the Union on October 2, 1987 (CP-1).

^{3/} The Hearing Examiner has no doubt but that Miraglia was present at all seven of the negotiations sessions and the two mediation sessions, supra, but initially he had some doubt as to whether LaPointe was present at each of the above sessions. This doubt was based upon LaPointe's testimony that he was present at only two or three of the collective negotiations sessions plus the two sessions with the mediator. However, the testimony of Vasfailo, a forthright and truthful witness, was unequivocal as to LaPointe's presence at each of the nine sessions and since Miraglia did not testify, the Hearing Examiner credits Vasfailo that LaPointe was present at all sessions.

meeting he gave the Township representatives a set of 16 contract proposals on the letterhead of the Union, dated December 18, 1987 (1 Tr 29-30, CP-2).^{4/} According to Vasfailo, LaPointe and Miraglia looked at the contract proposals but made no response thereto and another meeting was scheduled for January 26th (1 Tr 30-32).

6. The second session on January 26, 1988, lasted 45 minutes to an hour, during which time Vasfailo reviewed with LaPointe and Miraglia the 16 points in the Union's contract proposal (CP-2, supra). The Township's representatives indicated that they were not prepared to depart from the existing terms and conditions for employees in the Local 97 unit. [1 Tr 33-35].

7. Although Vasfailo acknowledged on cross-examination that one of the Union's priorities was "inequities," he insisted that the Township's position at all times was that there were no inequities to be corrected (1 Tr 73-75, 77, 82). LaPointe acknowledged on cross-examination that while a major thrust of the Union had been inequities and reclassifications, he insisted that it was always the position of the Township to "cooperate," adding that he never could learn exactly what was being sought by the Union and, therefore, he made no response. [2 Tr 17-20]. The Hearing Examiner finds LaPointe's testimony incredible on its face in view of Vasfailo's persuasive testimony that he repeatedly reviewed with the Township the Union's contract proposals (see Findings of Fact Nos. 5-13 herein).

^{4/} LaPointe acknowledged receiving the Union's contract proposals at one of the meetings (2 Tr 14).

8. The third negotiations session took place on February 1, 1988. Vasfailo and his committee were present on behalf of the Union and LaPointe and Miraglia were present on behalf of the Township. The meeting lasted about 75 to 90 minutes and the Union's contract proposals were again reviewed paragraph by paragraph. The result was essentially the same with the Township responding in the negative as to a majority of the 16 contract demands, indicating "question marks" as to several proposals and agreeing to paragraphs 10 and 16. [1 Tr 36-39].^{5/}

9. The fourth negotiations session took place on March 30, 1988, with the same parties present. This time the Township "...wanted to talk language..." (1 Tr 39). After reviewing the Union's contract proposals again, LaPointe stood up and pointed to Vasfailo and stated to the committee members present, "...What do you need him to represent you for? You should have came [sic] to me. I would have gave [sic] you anything you wanted..." (1 Tr 40). Vasfailo, in a fit of anger, referred to LaPointe's having been a "Hitler for all these years" and that that was why the employees had come to him (Vasfailo) [1 Tr 40]. At that point Miraglia and LaPointe left the meeting. [1 Tr 39-41].^{6/}

^{5/} Paragraph 10 proposed that the Township "Supply raingear, gloves and coveralls where necessary" and paragraph 16 proposed "retroactivity--from January 1, 1988." (CP-2).

^{6/} At some point shortly after the conclusion of the March 30th meeting, Vasfailo sent to the Township a form of contract that the Union had negotiated with the Township of Lacey for use in future negotiations (CP-6) [1 Tr 42, 43, 68, 69; but compare CP-5].

10. The fifth negotiations session took place on April 11, 1988, with the same parties present and lasted about 45 minutes. The Township's negotiators stated that while they wanted to "talk language" the Lacey contract was not what they were seeking. The Township's representatives, although stating that they wanted to talk about such matters as grievance procedure, vacation or sick time, failed to make any language proposals of their own. [1 Tr 42-45].

11. The sixth negotiations sessions took place on April 25, 1988, with the same representatives present. The Township's representatives stated that they did not want to deal with economic issues, just language, and when Vasfailo stated that the Union had submitted the Lacey contract as a basis for language negotiations, Vasfailo's only recollection was that the Township was adamant against the Agency Shop [1 Tr 45-47].

12. Two sessions with Commission Mediator Theodore Gerber occurred on July 20 and August 8, 1988, following the Union's having withdrawn a prior Unfair Practice Charge (CO-88-288) on June 16, 1988 (CP-3). The Township stated again that it wanted to talk about language but was adamant against the Agency Shop and correcting inequities. Again, the Lacey contract generated no counterproposals. [1 Tr 49-51].

13. The seventh and final negotiations session occurred on September 7, 1988, with the same parties present and lasted about 20 minutes. Vasfailo asked the Township for any counterproposals; the

sole response was that the Township would not grant the Agency Shop. [1 Tr 51-53].

14. In October or November 1988, the Township unilaterally implemented a 6% wage increase for the 102 blue collar employees in the DPW unit represented by Local 97, retroactive to January 1, 1988. The Township conceded that it did not implement this 6% wage increase as a result of collective negotiations with Local 97 (1 Tr 53; 2 Tr 20, 21).

15. At no time did the Township respond in writing to any of the Union's initial 16 written contract proposals. Further it did not offer a negotiated wage increase to the unit employees nor did it agree to adjust any inequities. [1 Tr 53-58, 73-77].

16. LaPointe testified that he attended three collective negotiations sessions and two sessions with the mediator (2 Tr 8, 9).^{7/} At the first session on January 19th, LaPointe testified that "inequities" were discussed and that there was a lot of concern about "Agency Shop" on the part of the committee members (2 Tr 6). LaPointe then testified that he was also present at the session on February 1st, which would have been the third session, where the discussion centered on inequities and, again, on the "Agency Shop" (2 Tr 6, 7). At the two sessions with the mediator, LaPointe testified that salaries were discussed and "...some grievances on the part of the men working out of job classification..." (2 Tr 12, 13).

^{7/} The accuracy of this testimony has been rejected in Finding of Fact No. 4, supra.

17. LaPointe acknowledged on cross-examination that the Township had received a copy of the Lacey contract (CP-6) and that the Township had never given the Union a written response to their demands (2 Tr 14, 16, 17). Further, although LaPointe acknowledged that a major thrust of the Union had been to address "inequities" and "reclassifications," he was "not sure" that any response had ever been given to the Union as to these matters nor with respect to the Union's demand for an "Agency Shop" or a wage increase (2 Tr 16-20).

18. Finally, LaPointe testified that the Township had always offered a 6% "standard" wage increase to the DPW employees and that this first occurred at the February 1988 budget meeting of the Township (2 Tr 20). However, LaPointe acknowledged that this 6% wage increase offer was never made to the Union in any of the negotiations sessions (2 Tr 21). Further, no notification to the Union was made in writing that the 6% wage increase had been granted in or around October 1988, retroactive to January 1, 1988 (2 Tr 20, 21). A 7% wage increase, which was to become effective January 1, 1989, for the DPW employees, was never offered to the Union in negotiations (2 Tr 22, 23; CP-7).

19. Louis Arroyo, a truck driver and a member of the negotiations unit, attempted to decertify Local 97 as the DPW representative (1 Tr 58-59). Alfred L. Scalisi, the present Superintendent of Public Works since January 1, 1989, had been Acting Superintendent since August 1988 (2 Tr 26). Vasfaiilo

testified that during the period that Scalisi was Acting Superintendent, he directed newly hired employees to Arroyo to sign Arroyo's decertification petition (1 Tr 59, 60). The Hearing Examiner credits the testimony of Vasfailo as to the respective roles of Arroyo and Scalisi in the decertification attempt, and rejects the general denial of Scalisi that he ever had conversations concerning these negotiations with any DPW employees. Vasfailo's version of the events appears clearly more credible. [1 Tr 59-61; 2 Tr 26].^{8/}

DISCUSSION AND ANALYSIS

The Respondent Township Violated §§5.4(a)(1) And (5) Of The Act By The Totality Of Its Conduct In Collective Negotiations Between January And September 1988.

From time immemorial the Commission has held that the standard for determining whether a party has refused to negotiate in good faith is dependent upon an analysis of the overall conduct and/or attitude of the party charged. Thus, the Commission stated in State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976) that the object of the analysis of the overall conduct of the party charged: "...is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an

^{8/} Arroyo did not testify at the hearing.

agreement...Good faith negotiations...only require a willingness to negotiate the issue with an open mind and a desire to reach an agreement..." (1 NJPER at 40). See also, Hamilton Township Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986) and N.J. Dept. of Human Services, P.E.R.C. No. 82-83, 8 NJPER 209, 215 (fn. 31)(¶13088 1982).

In Hamilton Tp., cited above, the Commission found a violation of §§5.4(a)(1) and (5) of the Act, stating "...We have recognized that an employer...may take a hard line in negotiations so long it does so with a sincere intent to reach agreement instead of a predetermined intention to avoid agreement. Ocean County College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984); State of N.J. [supra]..."(12 NJPER at 739). The Commission noted specifically in Hamilton that one of the critical failures of the respondent in that case was its failure to make any counterproposals instead reiterating its initial position in the negotiations in that case.

The Commission has, of course, decided many cases where the State of N.J. analysis, supra, resulted in the conclusion that the employer or the employee organization was engaged in "hard bargaining" and did not transgress the line, which separates "hard bargaining" from a pre-determined intention to avoid reaching agreement: see, for example, Ocean County College, supra, and Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983).

The findings in this case establish certain facts, namely: (1) that there were seven collective negotiations sessions between January 19 and September 7, 1988, with two separate sessions with a Commission mediator on July 20 and August 8, 1988; (2) the parties' representatives remained the same throughout these nine sessions; (3) while the Township's representatives never failed to meet with Vasfailo and his committee, the substantive negotiations were essentially one-sided, in that Vasfailo, after submitting the Union's contract proposals on January 19th, received no meaningful response to the 16 contract proposals contained in CP-2 and, even after submitting the Lacey contract (CP-6) as a basis for language discussions, the Township at no time made a counterproposal;^{9/} (4) at the fourth negotiations sessions on March 30th, LaPointe personally sought to undermine Vasfailo's status as the negotiator for the DPW unit members when he questioned the employees' need for Vasfailo to represent them [the Hearing Examiner discounts Vasfailo's response "in a fit of anger"]; and (5) the Township unilaterally implemented a 6% wage increase for the 102 blue collar employees in the DPW unit in October or November 1988, retroactive to January 1, 1988, followed by a 7% wage increase, effective January 1, 1989 and in each instance these wage increases were

^{9/} The failure to make counterproposals to at least the language of portions of the Lacey contract is extremely puzzling since from the fourth negotiations session on March 30, 1988, the Township's representatives insisted that they wanted to talk language (see Findings of Fact Nos. 9-13, 15, 17 supra).

unilaterally implemented and never offered to the Union in negotiations (see Findings of Facts Nos. 14 & 18, supra).

If "totality of conduct" is to be given any meaning in this case, the Hearing Examiner cannot conclude other than that the Township was engaged in "surface bargaining," beginning with the fourth negotiations session on March 30, 1988, and, thus, the Hearing Examiner must find and conclude that the Township on and after that date negotiated in "bad faith" with Local 97.^{10/}

Thus, the Hearing Examiner will recommend an appropriate remedy for the violation of §§5.4(a)(1) and (5) of the Act by the Respondent Township.

* * * *

The Respondent Township Independently Violated §5.4(a)(1) Of The Act By The Conduct Of LaPointe On March 30, 1988, And, Further, By The Conduct Of Scalisi In Assisting Arroyo's Decertification Petition.^{11/}

A public employer independently violates §5.4(a) of the Act if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification:

Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988),

^{10/} The Hearing Examiner concedes that the Township's conduct in the first three negotiations sessions of January 19, January 26 and February 1, 1988, satisfied its duty to negotiate in good faith.

^{11/} The Charging Party failed to adduce any proofs that the Township violated §§5.4(a)(2), (6) or (7) of the Act and, accordingly, the Hearing Examiner will recommend hereinafter dismissal of these allegations.

adopting H.E. No. 88-49, 14 NJPER 293, 303 (¶19109 1988); UMDNJ--Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Gorman, Basic Text on Labor Law, at 132-34 (1976). Also, the Charging Party need not prove an illegal motive in order to establish this independent violation of §5.4(a)(1) of the Act: Morris, The Developing Labor Law, at 75-78 (2d ed. 1983).

The Hearing Examiner has concluded that the Respondent Township independently violated Subsection (a)(1) of the Act when LaPointe at the fourth negotiations session on March 30, 1988, stood up and, pointing to Vasfailo, stated to the Local 97 committee members present, "...What do you need him (Vasfailo) to represent you for? You should have came [sic] to me. I would have gave [sic] you anything you wanted..." (see Finding of Fact No. 9, supra). Also, the Hearing Examiner includes within this finding that the Township independently violated Subsection (a)(1) of the Act the conduct of Scalisi in soliciting newly hired employees to sign Arroyo's decertification petition sometime during August of 1988 (see Finding of Fact No. 19, supra).

In support of his conclusion that these two instances of conduct by the Township's Representatives constituted a violation of the Act, the Hearing Examiner cites two cases from the private sector, namely, Oil Workers Local 1-1978 v. Standard Oil Co., _____

F.Supp. _____, 112 LRRM 2108 (D.C.W.D. Wash. 1982) and Fremont Newspapers, Inc. v. NLRB, 436 F.2d 665, 76 LRRM 2049 (8th Cir. 1970). The Oil Workers case involved an existing contract where the employer attempted to undermine it. The court stated that if the employer assisted a decertification effort its actions would arguably have been a violation of the recognition clause of the contract.

More to the point is Fremont, supra, where the Court of Appeals enforced a decision of the NLRB that the employer there violated Section 8(a)(1) of the National Labor Relations Act when a supervisor encouraged employees to repudiate membership in the certified union and urged withdrawal from that union in order to form an independent union.

Admittedly, these two cases are not on all fours with the situation presented to the Hearing Examiner. However, the Hearing Examiner has no question whatsoever but that the principles contained in these two cases from the private sector, plus the above-cited Commission precedent, ineluctably support his conclusion that the Township independently violated §5.4(a)(1) of the Act by its conduct herein since the conduct of LaPointe and Scalisi, without regard to motive, tended to interfere with the DPW unit members' rights under the Act and was devoid of a business justification.

* * * *

Based 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) by the conduct of Thomas L. LaPointe, the Township's Manager, on March 30, 1988 and, further, by the conduct of Alfred L. Scalisi, the Township's Superintendent of Public Works, on and after August 1988.

2. The Respondent Township violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by its conduct in collective negotiations and mediation between March 30, 1988 and September 7, 1988, having manifested "bad faith" in the negotiations and mediation sessions between the parties during this period.

3. The Respondent Township did not violate N.J.S.A. 34:13A-5.4(a)(2), (6) or (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 refraining from making statements in negotiations or otherwise, which seek to undermine the status of the Charging Party as the collective negotiations representative for the employees in the Township's DPW collective negotiations unit and, further, by refraining from seeking to undermine the Charging Party's majority status by encouraging newly hired employees to enlist in an effort to decertify the Charging Party.

2. Refusing to negotiate in good faith with the Charging Party concerning terms and conditions of employment, specifically the reaching of the terms and conditions of employment for a first collective negotiations agreement.

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

1. Upon demand, negotiate in good faith with the Charging Party as to terms and conditions of employment for a first collective negotiations agreement.

2. Refrain from conduct which seeks to undermine the majority status of the Charging Party such as the statement of Township Manager LaPointe on March 30, 1988, and the conduct of Superintendent of Public Works Scalisi in aiding any attempt to decertify the Charging Party as collective negotiations representative.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the 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.

4. 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 that the Respondent Township violated N.J.S.A. 34:13A-5.4(a)(2), (6) or (7) be dismissed in their entirety.



Alan R. Howe
Hearing Examiner

Dated: April 21, 1989
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 refraining from making statements in negotiations or otherwise, which seek to undermine the status of the Charging Party as the collective negotiations representative for the employees in the Township's DPW collective negotiations unit and, further, by refraining from seeking to undermine the Charging Party's majority status by encouraging newly hired employees to enlist in an effort to decertify the Charging Party.

WE WILL NOT refuse to negotiate in good faith with the Charging Party concerning terms and conditions of employment, specifically the reaching of the terms and conditions of employment for a first collective negotiations agreement.

WE WILL upon demand negotiate in good faith with the Charging Party as to terms and conditions of employment for a first collective negotiations agreement.

WE WILL refrain from conduct which seeks to undermine the majority status of the Charging Party such as the statement of Township Manager LaPointe on March 30, 1988, and the conduct of Superintendent of Public Works Scalisi in aiding any attempt to decertify the Charging Party as collective negotiations representative.

Docket No. CO-H-89-66

TOWNSHIP OF LAKEWOOD
(Public Employer)

Dated _____

By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.