

P.E.R.C. NO. 90-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC CITY HOUSING AUTHORITY  
AND URBAN REDEVELOPMENT AGENCY,

Respondent,

-and-

Docket No. CO-H-89-109

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, COUNCIL 71,  
LOCAL 3463,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the American Federation of State, County and Municipal Employees, Council 71, Local 3463 against the Atlantic City Housing Authority and Urban Redevelopment Agency. The charge alleged that the Authority violated the New Jersey Employer-Employee Relations Act when, without notifying AFSCME, it signed a collective negotiations agreement and then renegotiated an overtime provision of that agreement. The Chairman, in agreement with the Hearing Examiner, finds that AFSCME failed to prove that the Authority refused to negotiate in good faith.

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LOCAL 3463,

Charging Party.

Appearances:

For the Respondent, Martin R. Pachman, P.C.  
(Evelynn S. Caterson, of counsel)

For the Charging Party, Joseph Asbell & Associates, P.A.  
(Joseph Asbell, of counsel)

DECISION AND ORDER

On October 24, 1989, the American Federation of State, County and Municipal Employees, Council 71, Local 3463 ("AFSCME") filed an unfair practice charge against the Atlantic City Housing Authority and Urban Redevelopment Agency ("Authority"). The charge alleges that the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(5)<sup>1/</sup> when, without notifying AFSCME, it signed a collective negotiations agreement and then renegotiated an overtime provision of that agreement.

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<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(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."

On January 6, 1989 a Complaint and Notice of Hearing issued.

On February 17, 1989, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On July 28, 1989, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 90-4, 15 NJPER \_\_\_\_ (¶ \_\_\_\_ 1989). He found that AFSCME failed to prove that the Authority violated the Act when it negotiated, ratified and signed the parties' collective agreement.

The Hearing Examiner served his report on the parties and informed them that exceptions were due August 10, 1989. Neither party filed exceptions or requested an extension of time.

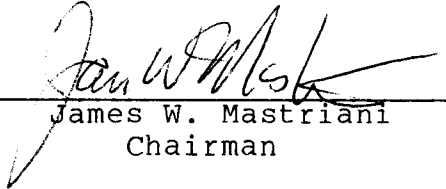
I have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 2-11) are accurate. I incorporate them here.

Acting pursuant to authority granted to me by the full Commission in the absence of exceptions, I agree that AFSCME failed to prove that the Authority refused to negotiate in good faith. Accordingly, the Complaint is dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
August 28, 1989

H.E. NO. 90-4

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

In the Matter of

ATLANTIC CITY HOUSING AUTHORITY  
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Docket No. CO-H-89-109

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, COUNCIL 71,  
LOCAL 3463,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Atlantic City Housing Authority and Urban Redevelopment Agency did not violate the New Jersey Employer-Employee Relations Act by the manner in which its collective agreement with AFSCME, District Council 71, Local 3463 was negotiated, ratified or signed.

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. 90-4

STATE OF NEW JERSEY  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Appearances:

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(Evelynn S. Catterson, of counsel)

For the Charging Party, Joseph Asbell & Associates,  
P.A.  
(Joseph Asbell, of counsel)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public  
Employment Relations Commission ("Commission") on October 24, 1988,  
by the American Federation of State, County and Municipal Employees,  
Council 71, Local 3463 ("AFSCME") alleging that the Atlantic City  
Housing Authority & Urban Redevelopment Agency ("Authority")  
violated subsection 5.4(a)(5) of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").<sup>1/</sup> AFSCME alleged that the Authority violated the Act by refusing to bargain in good faith with the majority representative; that on or about October 3, 1988 the Authority signed a collective agreement without notifying the majority representative; and that the Authority has engaged in renegotiating the collective agreement regarding overtime provisions without notice to the majority representative.

A Complaint and Notice of Hearing (C-1) was issued on January 6, 1989. A hearing was conducted on February 17, 1989.<sup>2/</sup> Both parties filed post-hearing briefs by April 26, 1989.

Based upon the entire record, I make the following:

Findings of Fact

1. AFSCME, Council 71 was certified by the Commission on August 6, 1987 as the majority representative of all blue collar employees employed by the Authority (RO-87-154). In negotiations for a collective agreement AFSCME proposed that Local 3463 be added to the name of the majority representative (R-1). At a negotiations session on February 26, 1988 the Authority agreed to AFSCME's proposal to add Local 3463 to the majority representative's name (R-2), and that changed name was reflected in the parties' 1987-1990 collective agreement (J-1).

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<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(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."

<sup>2/</sup> References to the transcript will be designated as ("T").

2. AFSCME's negotiations team included Emanuel Murray, a Staff representative for Council 71 and AFSCME's chief spokesperson for negotiations, and employees Robert Callender (who initially was the local president), Raymond Harris, William Meredith, Dolores Bost, and Violet Barrett (T14-T15, T107, T205, T206). Murray never notified the Authority of any change in AFSCME's negotiations team (T108). The Authority's team included Martin Pachman, the Authority's labor counsel and its chief spokesperson for negotiations, and Jean Wolfram, the Authority's Personnel Officer. On occasion Pachman's associate, Lynn Caterson, participated in negotiations (T14, T205-T206).

Murray never told any members of AFSCME's negotiations team that they could not sign any final agreement (T47-T48), and he never told the Authority that AFSCME's team members did not have the right to sign a final agreement (T37).<sup>3/</sup> Similarly, Wolfram was never notified that Murray believed that only he and not his team members

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<sup>3/</sup> Murray testified that he never told the Authority or the other AFSCME team members that they (the team members) could sign any final agreement (T13-T15). He also testified that only he had the authority to sign any agreement and that the Authority knew that only he could sign (T18, T108). I do not credit that testimony to show that the Authority Team members or the AFSCME team members knew that only Murray could sign a final agreement for AFSCME. Murray admitted that he never told his team members or the Authority that his team members could not sign a final agreement (T37, T47). AFSCME's whole negotiations team signed CP-1, the memorandum of agreement, and given Murray's admission that he never told them or the Authority that they did not have the right to sign, from the signing of CP-1 the AFSCME team members and the Authority could reasonably conclude that they did have the right to sign an agreement.

was the one individual authorized to sign a final agreement (T159, T161), nor was she aware that Murray had to sign a final agreement (T192, T196, T202).

3. During negotiations Callender did not attend several negotiation sessions. The first time Callender failed to appear at a session Pachman asked Murray if Callender was still on AFSCME's team, and Murray responded, "I don't know." (T210). Callender was present, however, at the mediation/negotiation session on July 22, 1988. On that date the parties reached a memorandum of agreement (CP-1). Pachman and Wolfram signed the memorandum under the column entitled: "For the Authority," and Murray, Callender, Bost, Barrett, Harris and Meredith signed under the column entitled: "For the Union." While CP-1 was being signed Murray never notified the Authority that AFSCME's team members did not have the right to sign CP-1 for AFSCME (T211), and there was no notation on CP-1 that those team members were not authorized to sign that Agreement (T37, T46-T48).<sup>4/</sup>

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<sup>4/</sup> Murray testified that at the start of the second or third negotiations session he verbally notified Pachman that Callender was no longer part of AFSCME's negotiating team (T45). Even if that was true, once Callender appeared at the mediation/negotiation session on July 22, 1988, and in fact signed CP-1, in the absence of any remarks by Murray at the time Callender was signing CP-1 that he (Callender) did not have the authority to sign (T46), Pachman and Wolfram could reasonably conclude that Callender was back on AFSCME's team and that he and the other AFSCME team members had the authority to sign agreements for AFSCME.



4. The tentative agreement, CP-1, included the language: "O.T. will be calculated retroactively to April 1, 1987." The parties agreed to that language, but there were no calculations done by either party at the time CP-1 was reached to determine how that language would economically affect the employees (T28, T83, T235-T237).

On August 5, 1988 Murray met with the employees and advised them of CP-1, and AFSCME then ratified the agreement (T18-T19). By letter of August 8, 1988 (R-3), Murray notified the Authority that AFSCME had ratified the tentative agreement. By letter of August 23, 1988 (R-4) Pachman sent Murray a draft of the proposed collective agreement and asked him to review it and to notify him when he (Murray) would be prepared to execute the agreement. The second paragraph of R-4 provided as follows:

Subsequent to execution by the Union, we will have the Agreement approved at the next meeting of the Authority so that the increases may be processed and retroactive checks distributed to our employees.

By letter of September 14, 1988 (R-6) Murray notified Pachman that he reviewed the draft agreement and that it required some clarification regarding uniforms, and the double time language in the overtime provision (T24, T53-T54). In a telephone conversation on September 26, 1988, Pachman agreed to the items Murray sought, and by letter to Murray on the same day (R-7), Pachman confirmed the telephone conversation with Murray and enclosed a new draft of the collective agreement incorporating the uniform and double time language the parties had agreed to (T24,

T57, T216-T218, T242). The draft agreement enclosed with R-7 was the same document (minus the signatures) that was admitted into evidence as J-1, the parties' signed April 1987 through March 1990 collective agreement (T58, T105). Murray received R-7 and the J-1 draft agreement on September 28, 1988 (T105).

The J-1 draft agreement mailed with R-7 represents everything that was included in CP-1, plus all of the "TOK'ed" language items that had been agreed to prior to CP-1, plus the uniform and double time items agreed to in R-7 (T219). When Pachman spoke with Murray on September 26 and sent R-7 and the draft agreement, he believed that there were no open issues and that the agreement could be signed (T218-T219). Murray received the draft agreement on September 28 and was authorized to sign it on that date (T106). Murray did not subsequently notify Pachman that he had questions about the agreement or that he still sought to negotiate over other items (T106-T107). I find that the parties had reached a final collective agreement on September 26, 1988 and that J-1 incorporated that agreement. J-1 was ratified by the Authority on Thursday, September 29, 1988, and signed by three AFSCME team members on Friday, September 30, 1988, and signed by the Authority and one AFSCME team member on Monday, October 3, 1988 (T147-T148, T203). Wolfram telephoned Murray on October 4, 1988 to tell him that the Authority had signed J-1 and that there was a problem with

the overtime calculations, but Murray was not available and did not return the call until October 17, 1988 (T155-T156).<sup>5/</sup>

5. The Authority ratified the agreement on September 29, 1988. The following day Callender and Meredith telephoned Wolfram and asked her if the Authority had ratified the agreement (T148). They, and other employees, were interested in getting their retroactive paychecks. Wolfram told Callender and Meredith that the retroactive raise could not be paid until both AFSCME and the Authority signed the agreement (T149, T171). Wolfram did not know who was supposed to sign the agreement, she was not instructed to tell anyone to sign the agreement, and on September 30, 1988, she did not advise anyone to sign the agreement (T171-T172).

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<sup>5/</sup> Murray was asked on cross-examination whether he was ready and willing to sign the agreement on September 28, the day he received it (T105-T106). He testified that he had the authority to sign it but that he was not ready or willing to sign it because he believed that there were still some questions about it. He said he had a question about bereavement leave and about the interpretation of the overtime language. But when asked whether he notified Pachman about these questions he admitted that he did not (T106-T107). I do not credit Murray's testimony to show that there were any open issues for negotiations on September 26 when Murray and Pachman agreed to the uniform and double time language. Murray had received a draft of the agreement with R-4 and R-5 (R-5 dated August 24, 1988, contained a corrected table of contents and a new page 29) and the only problems he had with the draft were the two items, uniforms and double time, that he raised in R-6 but which were resolved by R-7. AFSCME had not raised bereavement leave during negotiations and did not raise any question about the interpretation of the overtime language or seek to renegotiate the overtime language prior to or on September 26, on September 28 when Murray received J-1, or even prior to October 3 when the agreement was fully executed (T225, T228-T229).

After calling and asking Wolfram about the Authority's ratification, and learning that the agreement had to be signed, Callender, Harris and Meredith, on their own, came to Wolfram's office and signed J-1 on September 30, 1988 (T148-T149, T190, T203). Wolfram learned that Barrett was on vacation that day (T149-T150). Wolfram observed Callender, Harris and Meredith signing the agreement and none of them told her that Murray needed to sign the agreement (T202-T203).

On October 3, 1988 Barrett was home on vacation and received a telephone call from her supervisor who told her that Wolfram wanted her to sign the agreement. Barrett went to Wolfram's office that day and signed J-1 (T135). Barrett was aware that Murray was supposed to sign the agreement but she did not tell Wolfram (T140). But when she returned home that day Barrett telephoned Murray and asked him if he knew about the signing of the agreement (T137).

Murray learned that in order for the Authority to ratify the agreement it had to be presented at a regular board meeting. Although he contacted the Authority and learned when the next regular board meeting was scheduled, he did not contact anyone to find out whether the agreement was executed (T63-T65). The AFSCME team members, at least Callender, Harris, and Meredith, did not contact him to tell him that the Authority had ratified the

agreement (T66), but Barrett contacted him about the signing of the agreement.<sup>6/</sup>

After talking with Barrett on October 3, and not being available for Wolfram's call on October 4, Murray on October 17, 1988 telephoned Wolfram and asked her if the agreement had been signed. She confirmed that it had and she agreed to send him a copy of J-1 (T20, T156). By letter of October 17, 1988 (R-8) Murray notified the Authority's Executive Director as follows:

Please be advised; Mr. Robert Callender is not an authorized Representative of AFSCME, Council #71 Local #3463--Atlantic City Housing Employees.

Therefore, Mr. Callender has no authority to represent employees in AFSCME's Bargaining Unit.

Any and all representational matters are to [sic] conducted through this office only....

Although Murray testified that neither Callender nor Meredith were authorized to sign J-1 because they had resigned from the union (T21-T23, T66), Murray said nothing in R-8 about their signing of J-1. Murray did testify that both Harris and Barrett legitimately signed J-1 (T23), and I credit that testimony.

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<sup>6/</sup> Murray may be technically accurate that the AFSCME team members did not literally tell him that the Authority had ratified the agreement. Barrett, however, had telephoned Murray on October 3 and asked if he knew about the signing of the agreement. Murray allegedly said, "no" (T137). I credit Barrett's testimony. I infer therefrom, however, that on October 3 Murray must have had notice from Barrett that she and the other team members had signed the agreement, and therefore he must have known that the Authority had ratified the agreement since he knew that the Authority had scheduled a meeting to vote on ratification.

6. After the Authority ratified the agreement, it did the calculations for the overtime provision. Since employees were not entitled to overtime until after 40 hours a week had been worked, the Authority determined that some employees would actually owe money to the Authority (T151-T152, T222).

Once having learned of the overtime problem, Wolfram, on October 4, attempted to notify Murray about the problem but he did not return her call until October 17 (T155-T156). Caterson spoke with Murray on October 17, informed him of the problem, and offered to change the agreement language to eliminate the problem. By letter of October 18, 1988 (R-10), Pachman confirmed that conversation, formally notified Murray that J-1 had been signed, and offered to negotiate a change in the agreement language to eliminate the overtime problem.<sup>7/</sup>

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7/ R-10 provides as follows:

This letter is to confirm your telephone conversation of October 17, 1988 with Ms. Caterson.

First, the parties have signed the Labor Agreement, and it is my understanding that you spoke with Personnel Officer Jean Wolfram, and that she will send you a copy as you requested.

Second, there has arisen an issue concerning the retroactive calculation of overtime. Applying the words of the contract as it now reads would result in quite a few unit members owing the Housing Authority money - a total over \$11,000. The Housing Authority is willing to change the contract language so that there is no retroactive overtime, and instead to have the overtime provision effective with the date of signing.

I am available to meet with the Union to discuss the matter on Wednesday, November 9, or Thursday, November 17, 1988. Please advise.

By letter of October 21, 1988 (R-12), Murray filed a grievance with the Authority alleging that the Authority violated Article 10 of J-1 by denying retroactive pay as set forth in the agreement and CP-1. The Authority agreed to hear the grievance and to negotiate over the overtime provision (T96). By letter of October 27, 1988 (R-13), Wolfram informed Murray that a negotiations session was confirmed for November 17, at 10:30 a.m., and she emphasized that the Authority was also willing to hold a third-step grievance meeting. But by letter dated November 11, 1988 but actually received by Wolfram on November 9, 1988 (R-14), Murray told Wolfram that he wanted a grievance hearing to be scheduled for November 17 at 10:30 a.m., he said nothing about using that time for negotiations. By letter of November 10, 1988 (R-15), however, Pachman confirmed that pursuant to Murray's request the November 17 meeting would be used to conduct an exploratory conference on the unfair practice charge and not as a negotiations or grievance meeting. By letter of November 16, 1988 (R-16) Murray wrote Wolfram telling her that he was still waiting to schedule the grievance hearing that she agreed to have in R-13. He concluded that if he did not receive a hearing he would select an "alternate forum for resolution."

#### ANALYSIS

AFSCME did not prove by a preponderance of the evidence that any of the Authority's actions were in violation of the Act. First, there was no evidence that the Authority engaged in any

unlawful practice or that it took any action that could be construed to be a refusal or failure to negotiate in good faith.

Second, Murray knew on October 3 from Barrett that the AFSCME team members had signed J-1, and even if he did not know that day that the Authority had signed, on October 4, 1988 the Authority attempted to notify Murray that it had signed J-1 on October 3 but he was not available. When Murray finally contacted the Authority on October 17 he was told that the Authority had signed the Agreement on October 3, and that was confirmed by R-10. The Authority was not legally required to notify Murray on October 3 that it had signed J-1 that day, and its attempt to notify him on October 4 that it had signed, and its notification to him on October 17 and by R-10 that it had signed demonstrated a good faith effort to notify him and was not in violation of the Act.

Third, AFSCME's allegation that the Authority "engaged" in renegotiating J-1 regarding overtime without notice to the majority representative was not supported by any evidence. In R-10, which was addressed to Murray, Pachman specifically offered to renegotiate the overtime language to alleviate the problem that had developed regarding retroactive payments. Wolfram in R-13 confirmed that a negotiations session had been set for November 17 regarding the overtime provision. The evidence conclusively shows that that Authority adequately notified Murray about the offer to renegotiate the overtime language.



Although there were no other allegations on the face of the charge, at hearing AFSCME attempted to show that the Authority violated the Act because it allowed or allegedly encouraged AFSCME team members to sign J-1, because it allegedly never gave Murray the opportunity to sign J-1, because it allegedly attempted to bypass Murray to prevent him from reviewing J-1 before it was signed, and because the Authority did not know that allegedly only Murray was authorized to sign J-1. There was no evidence that the Authority violated the Act under any of those theories.

First, Wolfram did not know who was authorized to sign J-1 on AFSCME's behalf and she did not ask Callender, Meredith or Harris to sign the Agreement. They went to Wolfram's office and signed on their own volition. Wolfram may have told a supervisor to ask Barrett to sign J-1, but even if she had, that would not have been in violation of the Act. Second, Murray knew from Barrett on October 3 that his team members had signed J-1 and knew by October 17 that the Authority had signed. There was no evidence that any Authority representative said anything or did anything to in any way prevent or interfere with Murray's right to sign J-1. Murray received a draft of the proposed agreement in August attached to R-4. He reviewed that document and notified Pachman in mid-September by R-6 that he only had two problems with the draft, uniform allowance and double time language. The parties resolved those issues and by letter of September 26 (R-7) Pachman sent Murray the final draft of J-1. Murray admitted that the draft he received

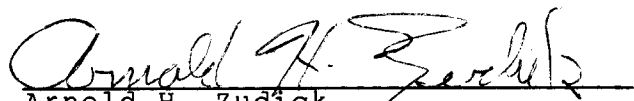
on September 28 was the same document--minus the signatures--that was signed as J-1. Thus, Murray did review the Agreement before it was signed, he had the actual agreement before it was signed, and the final draft he received on September 28 included the parties' entire agreement, the TOK'ed language, the CP-1 language, and the uniform and double time language. On September 28 there were no outstanding issues, and with the Authority's ratification on September 30, J-1 was a final and binding agreement.

Third, since Callender, Meredith, Harris, and Barrett (in addition to Murray and Bost) signed CP-1, and since Murray never told the Authority that they were not authorized to sign CP-1 or J-1, neither Wolfram nor Pachman could have known that only Murray was authorized to sign J-1.

Accordingly, based upon the above findings of fact and analysis, I make the following:

Recommendation

I recommend that the Complaint be dismissed.

  
Arnold H. Zudick  
Hearing Examiner

Dated: July 28, 1989  
Trenton, New Jersey