

L.D. No. 2006-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

BOROUGH OF POINT PLEASANT BEACH,

Respondent,

-and-

Docket No. CO-L-2005-171

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LOCAL UNION NO. 469, SUPERVISORY,

Charging Party.

Appearances:

For the Borough, Starkey, Kelly, Bauer & Kenneally,
Esqs., (Kevin N. Starkey, of counsel)

For Local 469, Timothy R. Hott, P.C.
(Timothy R. Hott, of counsel)

DECISION

On December 22, 2004, International Brotherhood of Teamsters Local Union No. 469, Supervisory (Local 469) filed an unfair practice charge against the Borough of Point Pleasant Beach (Borough) alleging that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1) and (5), when it refused to negotiate with Local 469 regarding terms and conditions of employment of certain unit employees, unilaterally changed terms and conditions of employment of certain unit employees and bargained directly with a unit employee regarding terms and conditions of employment. More specifically, Local 469

alleges that the Borough dealt directly with unit employee Michael Gardner and thereafter, changed Gardner's terms and conditions of employment by reducing his annual salary rate by \$10,000.

On May 25, 2005, Staff Agent Deirdre K. Hartman conducted an exploratory conference in this matter. The parties were then unable to resolve this dispute; subsequently, on August 12, 2005, Ms. Hartman issued a letter to the parties recommending that the case be referred to the Commission's Litigation Alternative Program (LAP). On August 18, 2005, the parties signed an agreement to submit the matter to the Litigation Alternative Program; the agreement provides that the LAP decision will constitute the agency's final decision in this case and shall be final and binding on the parties. Ms. Hartman was designated to serve as Hearing Officer. On September 7, 2005, a hearing was conducted during a conference call with the parties; each party subsequently submitted written statements of position and other information setting forth relevant facts and legal arguments, the last of which was received on November 17, 2005. On or about November 29, 2005, Ms. Hartman went on an extended maternity leave. With the parties' agreement, this case was subsequently assigned to the undersigned hearing officer to render a decision in this matter. Based upon the parties' submissions, the following pertinent facts appear.

* * *

On or about September 27, 1999, Michael Gardner was hired by the Borough to fill three titles: Building Sub-Code Official, Fire Sub-Code Official, and Construction Official. In March 2001, the Borough added a stipend to Gardner's salary when he was designated Head of the Building Department.

On April 17, 2003, Local 469 filed a Petition for Certification of Public Employee Representative with the Commission, seeking to represent a collective negotiations unit of supervisory employees of the Borough. In November 2003, the Borough recognized Local 469 as the exclusive representative of a unit of supervisory employees of the Borough. Gardner is included in that unit. The parties then commenced negotiations, but as of October 2005, had not yet concluded an initial collective negotiations agreement.

In August 2004, Gardner was receiving an annual salary of \$67,803 for the three positions which he held with the Borough. Gardner's work week for all three positions was 32.5 hours per week. On August 12, 2004, the New Jersey Department of Personnel (DOP) issued a Final Administrative Action to the Borough requiring that the Borough's construction official positions be filled by the top candidate on DOP's list of Certification of Eligibles for Appointment. By letter of August 19, 2004, the Borough informed Gardner of the DOP action and notified him that

he would be terminated effective September 1, 2004, if the top candidate on the DOP list accepted the position.

By letter of September 1, 2004, the Borough notified Gardner that the top candidate for the construction official position had officially declined the job. Gardner was formally offered the Construction Official position, which also included the duties of the Building Sub-Code Official position and the Fire Sub-Code Official position. In that letter, the Borough offered Gardner an annual salary of \$60,881.00 for a 40-hour work week. Prior to that time, Gardner had been earning \$67,803.00 for performing those duties in a 32.5-hour work week. Gardner then told the Mayor and Borough Administrator that he could not accept the terms of the Borough's new offer due to the scheduling conflict created by the Borough's new work schedule with Gardner's second job -- the work schedule in Gardner's second job was such that he could not work more than the 32.5 hours per week he was then working for the Borough. Gardner had worked 32.5 hours per week for the Borough for the last five years.

After initially asking Gardner to choose between the 40 hours per week terms and his second job, the Mayor and Administrator offered him the Construction Official job (which also included the other sub-code position duties) at \$57,837.00 annually, with a 32.5-hour work week. Gardner accepted the offer, despite the \$9,966 annual pay cut. Additionally, the

Borough designated Gardner as the "Director of Community Development," though his job duties remained the same as they were before the Borough's August 19, 2004 letter regarding the DOP action.

The Borough's submission does not dispute any of the Charging Party's facts, but only generally opposes the charge.

ANALYSIS

Once certified or recognized as the majority representative of a collective negotiations unit, a labor organization has the exclusive right to negotiate with the public employer regarding terms and conditions of employment for all unit employees.

N.J.S.A. 34:13A-5.3. An employer that seeks to change any established term and condition of employment -- such as salary -- is obligated to initiate negotiations with the majority representative over any proposed change prior to implementing the change. Hunterdon County, P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1986), P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987), aff'd App. Div. Docket No. A-5558-86T8 (3/21/88), aff'd 116 N.J. 322 (1989); New Brunswick Bd. Ed., P.E.R.C. No. 78-47,4 NJPER 84,85 (¶4040 1978). Failure to engage in such negotiations with the majority representative prior to changing terms and conditions of employment violates the Act. N.J.S.A. 34:13A-5.4a(5).

Further, engaging in negotiations regarding terms and conditions of employment with a unit employee - - i.e., dealing directly with an employee over their compensation or other terms and conditions of employment -- rather than with the majority representative, also violates the Act. Matawan-Aberdeen Regional School District, P.E.R.C. No. 89-130, 15 NJPER 411 (¶20168 1989); Newark Bd. Ed. P.E.R.C. No. 85-24, 10 NJPER 545, 548 (¶15254 1984).

Charging Party Local 469 argues that the Borough violated the Act by its direct dealing with Gardner and its failure to negotiate directly with Local 469 regarding Gardner's salary before changing his salary. Local 469 seeks the issuance of an order requiring the Borough to: "(1) cease and desist from taking any unilateral action as to the salary or job duties of any unit employee; (2) reinstate Gardner's salary to what it was prior to the Borough's unlawful acts; (3) require the Borough to bargain in good faith with the union over terms and conditions of all unit employees; and (4) require the Borough to maintain the status quo ante as to all unit employees' salaries and terms and conditions of employment during the course of such collective bargaining." Pg. 2, letter brief, Local 469, dated October 5, 2005.

The essential facts in this matter are not in dispute -- the Borough unilaterally reduced Gardner's salary, without

negotiations with Local 469, after dealing directly with Gardner. In addition to constituting a unilateral change, these actions interfere with rights guaranteed by the Act -- to be represented in collective negotiations by an exclusive majority representative -- and have a coercive effect on unit employees. Employees included in a collective negotiations unit that is represented by a statutory majority representative cannot be placed in a position where they seemingly must negotiate directly -- and thereby under duress -- with their employer regarding terms and conditions of employment. N.J.S.A. 34:13A-5.4a(1) & (5) and 5.3.

CONCLUSION

The Borough violated sections 5.4a(1) and (5) of the Act when it negotiated directly with Michael Gardner over terms and conditions of his employment (salary and hours) and thereafter changed Gardner's salary without negotiating regarding these terms and conditions of employment with the exclusive majority representative (Local 469) of the supervisory employee unit in which Gardner was included.

* * *

ORDER

Pursuant to the foregoing findings of fact and conclusions of law, it is hereby ORDERED:

A. That the 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 negotiating directly with unit employees rather than with the statutory majority representative of the collective negotiations unit of supervisory employees (Local 469) and by unilaterally changing terms and conditions of employment without first negotiating with the majority representative.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment by negotiating directly with unit employees rather than with the majority representative of the unit of supervisory employees (Local 469) and by unilaterally changing terms and conditions of employment without first negotiating with the majority representative.

B. That the Borough take the following affirmative action:

1. Reinstate Michael Gardner to the position of employment in which he was employed prior to August 19, 2004.

2. Restore to Michael Gardner the annual salary amount which he had been paid and the weekly amount of hours worked prior to August 19, 2004.

3. Compensate Michael Gardner by making him whole for the difference in salary occasioned by the salary rate change implemented by the Borough on August 19, 2004 -- i.e., pay Gardner an amount reflecting the difference between (a) the

amount which he would have earned between August 19, 2004 and the present had his salary not been reduced on August 19, 2004 and (b) the amount he was actually paid between August 9, 2004 and the present.

4. Negotiate in good faith with Local 469 regarding terms and conditions of employment of unit employees, regarding any proposed new terms and conditions of employment, before they are established.

Charles A. Tadduni
Hearing Officer

DATED: February 3, 2006
Trenton, New Jersey