

P.E.R.C. NO. 92-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WEST PATERSON,

Respondent,

-and-

Docket No. CO-H-91-239

PBA LOCAL 173 (WEST PATERSON UNIT),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Borough of West Paterson violated the New Jersey Employer-Employee Relations Act when the Borough failed to pay wage adjustment and salary increments as provided for in its collective negotiations agreement with PBA Local 173 (West Paterson Unit).

STATE OF NEW JERSEY
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In the Matter of

BOROUGH OF WEST PATERSON,

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-and-

Docket No. CO-H-91-239

PBA LOCAL 173 (WEST PATERSON UNIT),

Charging Party.

Appearances:

For the Respondent, Paul J. Konzelmann II, attorney

For the Charging Party, Loccke & Correia, attorneys
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On March 7, 1991, PBA Local 173 (West Paterson Unit) filed an unfair practice charge against the Borough of West Paterson. The charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (5) and (7),^{1/} when the Borough

^{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. (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."

failed to pay contractual wage adjustments and salary increments due February 1, 1991. The Borough allegedly advised the PBA that such payments would not be made until sometime in the future.

On April 8, 1991, a Complaint and Notice of Hearing issued. On May 14, 1991, the PBA moved for summary judgment. The Chairman referred the motion to Hearing Examiner Edmund G. Gerber.

The Borough did not file an Answer, as required by N.J.A.C. 19:14-3.1, or respond to the PBA's motion. On June 19, 1991, the Hearing Examiner found that the Borough had repudiated the parties' collective negotiations agreement by failing to comply with its salary terms. H.E. No. 91-43, 17 NJPER 353 (¶22162 1991). He recommended an order requiring the Borough to pay the disputed wage adjustments and salary increments retroactive to February 1, 1991, plus interest pursuant to R. 4:42-11.

On July 3, 1991, the Borough filed exceptions to the recommendation that it be required to pay interest. It claims that Mayor Zaccaria died within three days of being sworn into office and that delays in appointing an interim mayor and in the transition made it difficult to implement the increases and settle the budget; on February 18, 1991, two police officers, at least one of whom was a PBA representative, met with the interim mayor and the Borough's business administrator on unrelated matters and asked about the status of the pay increases; the mayor assured both officers that the increases would be paid no later than the first pay period in July 1991, and the officers then shook hands with the mayor, thanked him for his support, and left the room; and there was never any

uncertainty that the police officers would be paid retroactive to February 1, 1991. It argues that the imposition of interest is inequitable and unconscionable.

We incorporate the undisputed findings of fact in the charge and affidavit of James Homwey. We cannot consider any factual allegations not before the Hearing Examiner and first raised by the Borough in its exceptions. In the absence of exceptions, we find that the Borough violated subsection 5.4(a)(5) and, derivatively, subsection 5.4(a)(1) by failing to pay the negotiated wage adjustments and salary increments. We order the Borough to cease and desist from violating the Act, pay the increases retroactive to February 1, 1991, and post a notice of its violation.

We also order the payment of interest to make employees whole and to effectuate the purposes of our Act. N.J.S.A. 34:13A-5.4(c). During the period the increases were withheld, the Borough had the use of that money and hence was "unjustly enriched...and therefore equity and justice requires payment by way of interest for its use." Decker v. Elizabeth Bd. of Ed., 153 N.J. Super. 470, 475 (App. Div. 1977), quoting from Hodgson v. American Can Co., 440 F. 2d 916, 922 (8th Cir. 1971); see also Salem Cty. Bd. for Voc. Ed. v. McGonigle, App. Div. Dkt. No. A-3417-78 (9/29/80), (ordering Commission to award pre-judgment interest).

ORDER

The Borough of West Paterson is ordered to:

A. Cease and desist from refusing to negotiate in good faith with PBA Local 173 (West Paterson Unit) by refusing to pay

wage adjustment and salary increments as provided for in the parties' collective negotiations agreement.

B. Take this action:

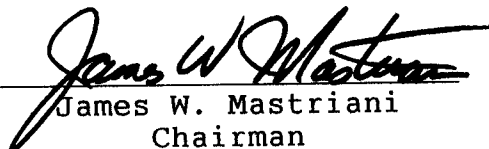
1. Pay all wage adjustments and salary increments, as provided for in the parties' collective negotiations agreement, retroactive to February 1, 1991, plus interest pursuant to R.

4:42-11.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and 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 with this order.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: August 14, 1991
Trenton, New Jersey

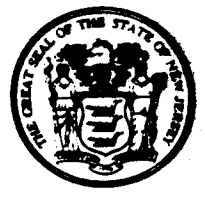
ISSUED: August 15, 1991



NOTICE TO 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 refuse to negotiate in good faith with PBA Local 173 (West Paterson Unit) by refusing to pay wage adjustment and salary increments as provided for in the parties' collective negotiations agreement.

WE WILL pay all wage adjustments and salary increments, as provided for in the parties' collective negotiations agreement, retroactive to February 1, 1991, plus interest pursuant to R. 4:42-11.

Docket No. CO-H-91-239

BOROUGH OF WEST PATERSON

(Public Employer)

Dated: _____

By: _____

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 Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

H.E. NO. 91-43

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

In the Matter of

BOROUGH OF WEST PATERSON,

Respondent,

-and-

Docket No. CO-91-239

PBA LOCAL 173,

Charging Party.

SYNOPSIS

In a decision on a motion for summary judgment brought by PBA Local 173, a Hearing Examiner recommended that the Commission find the Borough of West Paterson committed an unfair practice when it failed to pay certain salary increases due pursuant to the contract between the parties. The Borough failed to file an answer to the Complaint and failed to file papers in opposition to the motion for summary judgment.

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

In the Matter of

BOROUGH OF WEST PATERSON,

Respondent,

-and-

Docket No. CO-91-239

PBA LOCAL 173,

Charging Party.

Appearances:

For the Respondent, Paul J. Konzelmann, attorney

For the Charging Party, Loccke & Correia, attorneys
(Manuel A. Correia, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 7, 1991, Policemen's Benevolent Association Local 173 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Borough of West Paterson ("Borough") alleging the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (2), (3), (5) and (7)^{1/} when the Borough failed to pay wage adjustments and

^{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

implement certain incremental step movements due under the parties' collective negotiations agreement effective February 1, 1991.

The Borough allegedly advised the PBA that such payments would not be made until sometime in the future.

On April 8, 1991, a Complaint and Notice of Hearing was issued on the allegations against the Borough and on May 14, 1991, the PBA filed a motion for summary judgment with the Commission. The Commission referred the motion to me for determination as hearing examiner.

The Borough has neither filed an answer to the Complaint nor responsive pleadings to the motion for summary judgment.

The PBA submitted the affidavit of James Homwey with its motion. Homwey affirms that he is a police officer and the authorized representative of the PBA. Salary adjustments were due and owing to each member of the bargaining unit on February 1, 1991, but such adjustments were not made by the Borough. He notified the Borough that such adjustments should be made. A Borough representative, Mr. Al Reda, stated that such payments would not be

1/ Footnote Continued From Previous Page

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. (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."

made until sometime in the future. No negotiations took place and no payments have been made.

N.J.A.C. 19:14-3.1 provides that a respondent shall file an answer within 10 days of the service of a complaint.

...if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge shall be deemed to be admitted to be true, and shall be so found by the Commission, unless good cause is shown to the contrary....

Here, since neither an answer nor a response to the motion was filed (See N.J.A.C. 19:14-4.8), the allegations in the charge as incorporated in the Complaint must be deemed as true. N.J.A.C. 19:14-3.1.

Accordingly, I find as true, the following allegations of the charge filed by the PBA.

1. PBA Local 172 is a public employee organization within the meaning of N.J.S.A. 34:13A-1 et seq., and is the duly-authorized representative of all law enforcement personnel for the Borough of West Paterson, excluding the Chief and Deputy Chief of Police.
2. The Borough of West Paterson is a public employer within the meaning of N.J.S.A. 34:13A-1 et seq., as well as the Rules and Regulations of the Public Employment Relations Commission promulgated in accordance therewith.
3. The parties currently have and are working under a Collective Bargaining Agreement for the years 1989 through 1991. Included therein are specified wage adjustments which are to occur on the date specified within the Collective Bargaining Agreement and were mutually agreed to between the parties and their duly-authorized representatives preceding the execution of the currently effective work contract.

4. Said wage adjustments for the year 1991 were to have occurred on February 1, 1991, as well as continuing incremental step movements for those employees within the rank of Patrolman who have not as yet achieved the top-rate of pay applicable to the rank of Patrolman.

5. For the year 1991, all wage adjustments for all ranks were to have been made on February 1, 1991, but the Employer has unilaterally refused to compensate the employees and adjust the rates on the dates so specified for the members of this bargaining unit.

6. A representative of the Borough of West Paterson, specifically the Borough Administrator, has advised the PBA and its representatives that such payments will not be made until sometime in the future.

The employer's refusal to comply with the salary terms of the contract is a repudiation of the agreement and constitutes a violation of subsection (a)(5) and, derivatively, (a)(1) of the Act. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). I, therefore, grant the PBA's motion for summary judgment and recommend the Commission find that the Borough violated the Act. N.J.A.C. 19:14-4.8(e).

There are no facts in the charge which, if true, would constitute violation of subsections 5.4(a)(2), (3) and (7). Therefore, I recommend the allegations regarding those subsections be dismissed.

RECOMMENDATION

I recommend the Commission find the Borough of West Paterson violated subsection 5.4(a)(5) and, derivatively, (a)(1) when it refused to pay the wage adjustment due February 1, 1991.

I recommend that subsection 5.4(a)(2), (3) and (7) allegations be dismissed.

RECOMMENDED ORDER

I recommend the Commission ORDER that:


A. The Respondent cease and desist from refusing to negotiate in good faith with PBA Local 173 (West Paterson Unit) by refusing to pay wage adjustment and salary increments as provided for in the collective negotiations agreement.

B. That Respondent take the following affirmative action:

1. Pay all wage adjustments and salary increments as provided for in the parties collective negotiations agreement, retroactive to February 1, 1991, plus interest, pursuant to R.4:42-11.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and 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 with this order.



Edmund G. Gerber
Hearing Examiner

DATED: June 19, 1991
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 cease and desist from refusing to negotiate in good faith by refusing to pay salary adjustments and salary increments provided for in the collective negotiations agreement.

We will pay for all wage adjustments and salary increments as provided for in the collective negotiations agreement retroactive to February 1, 1991, plus interest.

Docket No. CO-H-91-239

Borough of West Paterson

(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.

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