

H.E. NO. 90-19

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

In the Matter of

TOWNSHIP OF BELLEVILLE,

Respondent,

-and-

Docket No. CO-H-89-279

LOCAL 32, OPEIU,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Township of Belleville violated the New Jersey Employer-Employee Relations Act by passing an ordinance which has the effect of unilaterally changing the initial salary placement of unit employees and thereby reducing the wage rate of such newly hired employees. The issue of lower starting salaries for newly hired employees was not negotiated with Local 32, OPEIU, the majority representative.

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.

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LOCAL 32, OPEIU,

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Appearances:

For the Respondent, Frank J. Cozzarelli, Esq.

For the Charging Party, Lois Cuccinello, Bus. Rep.

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On March 23, 1989, Local 32, Office and Professional Employees International Union ("Local 32") filed an Unfair Practice Charge against the Township of Belleville ("Township"). The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically Section 5.4(a)(5).<sup>1/</sup> by unilaterally implementing a reduced starting salary for employees included in certain titles represented

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<sup>1/</sup> This subsection prohibit 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."

by Local 32 and hired after the effective date of a Township ordinance providing for such reduced salary.

On May 12, 1989, the Director of Unfair Practices issued a Complaint and Notice of Hearing. A hearing was conducted on August 22, 1989, at the Commission's offices in Newark, New Jersey. The parties were afforded an opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. On October 6, 1989, the Charging Party filed a timely post-hearing brief. The Township did not file a brief.

Upon the entire record, I make the following:

FINDINGS OF FACT

1. The parties stipulated that the Township is a public employer and that Local 32 is a public employee representative within the meaning of the Act (T6).<sup>2/</sup>

2. The Township's personnel practices and programs are regulated by the New Jersey Department of Personnel (T36).

3. In September, 1987, Local 32 sent the Township a letter requesting negotiations for a successor agreement (T16). Local 32's proposal included a demand for an across-the-board increase for all unit titles (T26). On January 19, 1989, the

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<sup>2/</sup> The transcript citation "T6" refers to the transcript produced on August 22, 1989, at page 6.

parties executed a memorandum of understanding<sup>3/</sup> (J-2<sup>4/</sup>). The memorandum of understanding provides for a wage increase in each of the three years covered by the agreement.<sup>5/</sup> The memorandum does not include a provision for a lower wage rate for newly hired employees during the three-year term of the collective agreement.

4. On March 14, 1989, the Township adopted an ordinance (J-1) showing the minimum and maximum salaries to be paid to negotiating unit employees during each of the three years covered by J-2. Section VII of the ordinance reads as follows:

Notwithstanding the salary ranges as set forth in this ordinance the minimum and maximum of each salary range, with the exception of hourly and part-time workers, be reduced \$1,000 for newly hired employees effective with the date of adoption of this ordinance. The titles of laborer in the Departments of Parks and Public Property and Public Works shall be reduced by the sum of \$2,000 for minimum and maximum for employees hired after the date of adoption. The salary steps between minimum and maximum range shall be adjusted accordingly. The provisions of this section shall not affect any employee who is employed by the Township of Belleville prior to the date of adoption hereof either within, that employees current job title or any job title to which he or she may be transferred or promoted.

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<sup>3/</sup> The memorandum calls for the duration of the successor agreement to be January 1, 1988 through December 31, 1990. The parties ratified the memorandum (T54).

<sup>4/</sup> Exhibits marked "J" are documents which were jointly offered by the parties and admitted into evidence.

<sup>5/</sup> J-2 provides for a 5% increase, effective January 1, 1988; 5.5% increase, effective January 1, 1989; and a 6% increase, effective January 1, 1990 (J-2).

5. The Township is approximately 150 years old (T39). The median income of the Township's residents is around \$13,000, yet the average property tax runs between \$4,000 and \$5,000 per year (T40; T42). As a means to achieve future economic savings, the Township decided to include Section VII in J-1 (T36; T53; T55). The impact of Section VII of J-1 is limited to new hires and does not affect the salary levels of unit employees employed by the Township prior to its passage (T37; T53-T54).

6. While the testimony demonstrates some disagreement among the witnesses regarding whether the issue of a lower hiring rate for new employees was ever raised at the negotiations table,<sup>6/</sup> the record establishes that the parties never conducted negotiations upon the issue nor reached an agreement which would allow the Township to reduce salaries by \$2,000 for newly hired employees serving in the laborer title and by \$1,000 for all other newly hired employees (T28; T34; T52-T53).

7. Local 32 recognizes a practice which allows the Township to exercise its discretion in determining the particular step on the salary guide at which an employee is initially placed when hired (T24). The employer determines whether to hire the

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<sup>6/</sup> Viola Narucki, President of Local 32 (T16), testified that she remembered the Township mentioning the issue of a new wage rate for newly hired employees during one of the negotiating sessions. Narucki stated that the issue was never raised by the Township again (T18-T19). Mayor Pizzi and Commissioner Frantantoni, members of the Township's negotiating team, testified that the issue was never raised at the negotiating table (T34; T52-T53).

employee at the minimum step on the salary guide or at some other step above the minimum (T36).

#### ANALYSIS

Our Supreme Court has recognized that compensation is a negotiable term and condition of employment. Woodstown-Pilesgrove Reg. Ed. Ass'n, 88 N.J. 582 (1980). Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 49, 4 NJPER 344 (¶4163 1978); Bd. of Ed. of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). In applying these cases, the Commission has long held that initial salary placement is a mandatorily negotiable subject. See Somerset County, P.E.R.C. No. 86-136, 12 NJPER 453 (¶17171 1986); No. Brunswick Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶16203 1985); Fairview Bd. of Ed., P.E.R.C. No. 84-59, 10 NJPER 10 (¶15006 1983); Oaklyn Bd. of Ed., P.E.R.C. No. 82-125, 8 NJPER 378 (¶13173 1982); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80-T1 (5/24/82); Eastern Camden Bd. of Ed., P.E.R.C. No. 80-158, 6 NJPER 348 (¶11174 1980); Dennis Tp. Bd. of Ed., P.E.R.C. No. 80-157, 6 NJPER 334 (¶11167 1980); N.J. College of Medicine & Dentistry, P.E.R.C. No. 80-127, 6 NJPER 213 (¶11104 1980). The Appellate Division has affirmed that position. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986).

In the instant case the parties have negotiated and agreed to a compensation program applicable to unit employees. The negotiated compensation program is memorialized in J-2. The

Township concedes that it never negotiated with Local 32 regarding a salary program which reduced compensation for employees hired after March 14, 1989, the date J-1 was passed. The Township's decision to compensate such newly hired unit employees at a level less than that provided by J-2 was based solely on its desire to achieve future economic savings. The Township's actions constitute a unilateral change in the terms and conditions of employment for newly hired unit employees in violation of Section 5.4(a)(5) and, derivatively, (a)(1) of the Act.

Based upon the record, I make the following:

CONCLUSIONS OF LAW

1. The Township violated Section 5.4(a)(5) and, derivatively, (a)(1) of the Act by (1) failing to negotiate with Local 32 and (2) unilaterally changing the initial salary placement of unit employees and thereby reducing the wage rate of employees hired after the effective date of its ordinance (J-1).

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the 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 failing to negotiate with Local 32 prior to

changing the salary level of unit employees hired after the effective date of the ordinance (J-1).<sup>7/</sup>

B. That the Township take the following affirmative action:

1. Cease and desist from implementing the terms of Section VII of the Township ordinance (J-2) for unit employees.

2. Restore the status quo ante by adjusting the salary of any employee whose salary was affected by Section VII of J-2, to the appropriate step on the negotiated salary guide applicable to employees who were hired before the effective date of the ordinance. Any such affected employee shall be entitled to the monetary difference between what he/she was paid and what he/she should have been paid, retroactive to his/her date of hire, along with interest in accordance with R.4:42-11.

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,

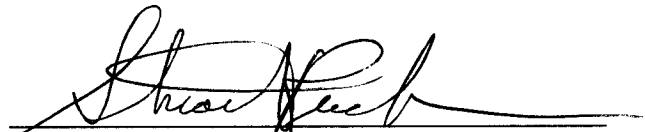
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<sup>7/</sup> Since the parties have concluded negotiations for a salary program, I do not recommend that an order to negotiate be issued in this case. The Township's opportunity to negotiate for the lower wage rate for new employees was during the time the parties were negotiating for its successor agreement. Since a memorandum of agreement has been reached which includes a compensation program, the compensation issue has been set for the duration of the collective agreement and, absent a specific agreement to reopen negotiations on that issue, neither party can compel the other to negotiate. Of course, the parties are free to reopen negotiations on the compensation issue on a voluntary basis.



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.



Stuart Reichman  
Hearing Examiner

DATED: October 31, 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 New Jersey Employer-Employee Relations Act, particularly by (1) failing to negotiate with Local 32, OPEIU prior to reducing the salary level of newly hired unit employees affected by the Township ordinance adopted March 14, 1989, and (2) by unilaterally changing the initial salary placement of employees hired after the adoption of such Township ordinance.

WE WILL NOT implement the terms of Section VII of the Township ordinance adopted on March 14, 1989.

WE WILL restore the status quo ante by adjusting the salary of any employee whose salary was affected by Section VII of the Township ordinance adopted on March 14, 1989, to the appropriate step on the negotiated salary guide applicable to employees who were hired before the effective date of the ordinance. Any such affected employee shall be entitled to the monetary difference between what he/she was paid and what he/she should have been paid, retroactive to his/her date of hire, along with interest in accordance with R.4:42-11.

Docket No. CO-H-89-279

TOWNSHIP OF BELLEVILLE

(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.