H.E. NO. 2000-5

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

In the Matter of

CITY OF EAST ORANGE,

Respondent,

-and- Docket No. CO-H-99-77

EAST ORANGE ENGINEERING
SUPERVISORY PERSONNEL ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the City of East Orange violate the New Jersey Employer-Employee Relations Act by negotiating in bad faith, unlawfully implementing changes in terms and conditions of employment and repudiating its collective agreement with ESPA by unilaterally implementing a 12 hour work week and an hourly rate for the Superintendent of Weights and Measures.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Charging Party.

Appearances:

For the Respondent, McCormack & Matthews, attorneys
(Thomas M. McCormack, of counsel)

For the Charging Party, Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, attorneys
(Bruce D. Leder, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On September 15, 1998, the East Orange Engineering Supervisory Personnel Association (ESPA or Association), filed an unfair practice charge with the New Jersey Public Employment Relations Commission alleging that the City of East Orange (City) violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4a(1) and (5).[1/] The ESPA

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

alleged that the work hours of employee Gaetano Fragola, who had been laid off effective November 1, 1995, but reinstated by the Merit System Board by June 1998, were unilaterally reduced by the City from 35 to 12 hours per week. The ESPA further alleged that since June 1998 the City has refused to reinstate Fragola's work hours.

The ESPA seeks an order directing the City to restore Fragola to a 35-hour work week; negotiate collectively if the City seeks to reduce those hours; and other relief.

A Complaint and Notice of Hearing was issued on March 4, 1999 (C-1). The City filed an Answer on March 17, 1999, admitting certain facts, but denying that it reduced Fragola's hours. The City asserts that Fragola's position was changed from full to part-time, and that, thereafter, no full-time position existed.

A hearing was held on July 20, 1999.2/ Both parties filed post-hearing briefs by November 8, 1999.

Based upon the entire record, I make the following:

1/ Footnote Continued From Previous Page

restraining or coercing 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."

2/ The transcript will be referred to as "T".

FINDINGS OF FACT

1. The ESPA is the majority representative of many supervisory employees employed by the City, including the position of Superintendent of Weights and Measures from the City's Department of Public Works. The 1994-96 and 1996-99 collective agreements between the City and ESPA provide that the Superintendent shall be paid at level 3 of the salary schedules which list annual salaries (J-1; J-2, respectively). Article XV of both agreements, the over-time clause, provides that the regular work week is either 35 or 40 hours per week, and the regular work day is either 7 or 8 hours per day, depending on which work week applies.

In negotiations leading to the 1996-99 agreement, the City did not propose to use part-time workers, nor did it propose to reduce the work hours for the Superintendent of Weights and Measures position (T16). Employees working nineteen hours per week or less are not covered by the health insurance provisions of J-1 and J-2 (T19).

2. The parties stipulated the following verbatim and enumerated facts, interspersed with my narrative findings:

1) Gaetano Fragola has been employed by the City of East Orange since 1985 as the Superintendent of Weights and Measures. Until November 1, 1995 he worked thirty-five hours per week (T7).

2) Mr. Fragola is covered by the collective bargaining agreements, which agreements have been marked as J-1 and J-2 (T7).

3) On or about November 1, 1995, the City laid off Mr. Fragola from his position as Superintendent of Weights and Measures (T7).

4) Mr. Fragola filed a timely appeal with the Department of Personnel concerning this layoff (T7-T8).

5) In April of 1996 the City adopted the Ordinance which has been marked as Exhibit J-4 (T8).

On April 4, 1996, the City approved an ordinance (J-4) deleting the negotiated annual salary for the Superintendent of Weights and Measures from the City's salary ordinance (which was $49,079 - $59,079 at that time) and substituted a per hour salary rate ($26.97 - $32.46).

6) The ESPA filed an unfair practice charge in response [to J-4] marked as C-3 (T8).

Exhibit C-3 is not the instant charge. It is a copy of the charge ESPA filed against the City on June 24, 1996, Docket No. CO-96-408, in response to J-4. Exhibit C-3 alleged in pertinent part that by adopting J-4 the City had unilaterally reduced the Superintendent of Weights and Measures position from a full time 35 hours per week position to a part-time position of 19 hours per week (or less) in violation of the Act. The ESPA also alleged in C-3 that the City acted without negotiations; that the new position was offered without the benefits which Fragola had received as a full-time employee; and that the City combined job duties of two full time positions into one part-time position without seeking a job audit by the Department of Personnel. That charge further

alleged that on November 1, 1995, Fragola filed a civil service appeal of his October 31 layoff. The appeal proceeded to OAL for hearing.

> 7) As a result [of C-3] a memorandum of agreement was executed by the parties on September 27, 1996 which has been marked as Exhibit J-3 (T8).

The memorandum of agreement (J-3) was a settlement agreement resulting in the withdrawal of C-3, the original charge. J-3 was signed on September 27, 1996 and provides as follows:

> The City of East Orange and the Engineering Supervisory Personnel Association (ESPA) agree to the following in resolution of the above-captioned unfair practice charge:
>
> 1. The City and ESPA will meet to negotiate the terms and conditions of employment of the Municipal Superintendent of Weights and Measures. Negotiations shall include hours of work, wages, and benefits.
>
> 2. The City agrees not to fill the position of Municipal Superintendent of Weights and Measures or to offer the position to any individual until said negotiations have been completed.
>
> 3. The City will contact ESPA within a week of the signing of this agreement to schedule mutually agreeable negotiations dates.
>
> 4. ESPA withdraws the above-captioned unfair practice charge, Docket N. CO-96-408.
>
> * * *
>
> 8) In July of 1997 an Administrative Law Judge rendered a decision on the appeal filed by Gaetano Fragola concerning his layoff (T8).

The ALJ found in Fragola's favor.

9) On December 31, 1997 a final administrative action of the merit system was issued. Which is Exhibit C-4 (T8).

Exhibit C-4 is the December 31, 1997 final decision of the Merit System Board (MSB) regarding Fragola's layoff appeal. The MSB adopted the ALJ's decision in Fragola's favor and issued the following order:

> The Merit System Board finds that the appointing authority's action in laying off appellant was not justified. The Board therefore reverses that action and orders that appellant be reinstated to his position.
>
> The Board further orders that appellant be awarded back pay, benefits and seniority for the period of the layoff. The amount of back pay awarded is to be mitigated to the extent of any income earned by appellant during this period.
>
> The Board further orders that counsel fees be awarded to the attorney for appellant pursuant to N.J.A.C. 4A:2-2.12. Proof of income earned and affidavit of services in support of reasonable counsel fees should be submitted to the appointing authority within 30 days of receipt of this Order.
>
> This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

In its decision preceeding the order, the MSB noted that an unfair practice charge had been filed with the Commission. The MSB wrote:

> Upon inquiry to PERC regarding the status of the unfair practice charge, PERC advised that the matter was resolved in September of 1996 when the parties entered into a settlement agreement providing that the parties would negotiate the terms and conditions of employment of the position, including hours of work. Accordingly,

this decision does not address the propriety of the City's action reducing the position or rule on the issue of whether the position of Superintendent of Weights and Measures is required to be full-time or may be reduced to part-time (C-4).

10) On June 8, 1998, the City sent a letter to Gaetano Fragola offering him reinstatement to twelve hours per week, which is marked as Exhibit J-5 (T9).

J-5 provides in pertinent part:

Pursuant to the Final Administrative action of the Merit System Board, you are to be reinstated to the position of Superintendent of Weights & Measures. Said position is currently a part-time position. Please report to work on June 22, 1998. You will work three (3) days per week for four hours per day. Said days and hours will be determined by Mr. Larry Johnson, Director of Property Maintenance.

11) The City paid Mr. Fragola twelve hours a week at the Ordinance rate in a lump sum for the period April 1996 through June 22, 1998, or the day before he returned to work.

The City has reimbursed Mr. Fragola for the cost of his health insurance from November 1, 1995 through June 1998.

Mr. Fragola has not been reimbursed for medical expenses since July 1, 1998 (T10-T11).

The "Ordinance rate" refers to the hourly rate of pay set forth in J-4.

12) The only position of Superintendent of Weights and Measures in the City of East Orange is the one discussed in J-4 and the only person to hold the title of Superintendent of Weights and Measures in the City of East Orange since 11/1/95 is Gaetano Fragola (T11).

13) In settlement of the prospective part of this case, the parties stipulated that when Mr. Fragola returns to work after July 20, 1999 he will be assigned to a thirty hour work week. Any remedy that might be awarded in this case regarding work hours would only cover that time period preceeding the start of the thirty hour work week. As a thirty-hour a week employee, Mr. Fragola is entitled to other contractual benefits including health benefits, and a pro rata benefit package of vacation and sick time. Settlement of the prospective elements of this case cannot be used to the detriment of either party in deciding what-if any-prior remedy should apply (T32-17 -- T35-22).

I find the following additional facts:

3. Subsequent to the execution of J-3 on September 27, 1996, which resolved C-3, a negotiations meeting was held in October 1996 in an effort to set the work hours for the Superintendent of Weights and Measures position. Beverly Wright, the City's personnel director, and Donald Wharton, the Association president, attended the meeting, along with both parties' counsels. The Association wanted to keep the Superintendent's hours at 35 per week. The City offered 19 hours. ESPA was willing to compromise at 27 hours per week, but the City would not move off of its position (T17-T19, T25-T26).

4. A second negotiations session was held in October 1997. The Association's attendees were the same, and the City sent two attorneys. ESPA voiced its intent to compromise at 27 hours per

week and negotiate over back pay. The City's representatives may have given the impression that they might agree to compromise, but no agreement was reached (T19-T21, T26).

5. A third negotiations session was held sometime prior to June 1998. The Association's attendees remained the same, and one of the City attorneys attended. It appeared to the Association representatives that the City was going to offer more than nineteen hours per week, but when the City's attorney brought City official Philip Lucas into the meeting, Lucas lowered the City's offer to 12 hours per week (T21-T22; T27). During the negotiations, the City honored item 2 of J-3, by not offering the Superintendent's position to anyone else (T24-T25).

6. By the end of June 1998, the City offered to reinstate Fragola to the Superintendent's position at 12 hours per week. Although Fragola was reinstated to 12 work hours at that time, the City had not requested the Association's approval for those hours. The Association had not agreed to those hours of work, nor had it agreed to any change in Fragola's 35 hour work week at the time he was reinstated (T22-T23, T29-T30).

7. Sometime between June and September 15, 1998, but after Fragola was reinstated to 12 hours per week (and prior to the prospective settlement reached on July 20, 1999), the City offered to make the Superintendent's position 30 hours a week (retroactivly, I presume) if the ESPA would accept its offer regarding Fragola's back pay. The offer was rejected. The City did not offer to employ

Fragola at 30 hours per week at that time without some agreement on his back pay (T27-T32).

ANALYSIS

A public employer generally has the "non-negotiable prerogative to reduce the overall number of its employees through layoffs," Pascack Valley Reg. H.E. District, P.E.R.C. No. 99-104, 25 NJPER 295, 296 (¶30124 1999),[3/] but, "short of abolishing a position, an employer ordinarily has a duty to negotiate before reducing its employees' workday, workweek or work year for other than governmental or educational policy reasons." Id. at 297.[4/]

3/ Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 74 N.J. 248 (1977).

4/ See, e.g., Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 8 (1978); In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98 (App. Div. 1978); Lenape Valley Reg. Bd. of Ed., P.E.R.C. No. 97-25, 22 NJPER 360 (¶27189 1996); City of Newark, P.E.R.C. No. 94-118, 20 NJPER 276 (¶25140 1994); Gloucester Cty., P.E.R.C. No. 93-96, 19 NJPER 244 (¶24120 1993); Stratford Bd. of Ed., P.E.R.C. No. 90-120, 16 NJPER 429 (¶21182 1990); Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER 332 (¶19124 1988); Willingboro Bd. of Ed., P.E.R.C. No. 86-76, 12 NJPER 32 (¶17012 1985); State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985); Cherry Hill Bd. of Ed., P.E.R.C. No. 85-68, 11 NJPER 44 (¶16024 1984); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); East Brunswick Bd. of Ed., P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982); Hackettstown Bd. of Ed., P.E.R.C. No. 80-139,

Footnote Continued on Next Page

The City may have intended to follow the above legal principles by implementing Fragola's layoff, but it never abolished the Superintendent's position. Instead, five months after Fragola's layoff, the Superintendent's work week was unilaterally reduced.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable.

> [A] subject is negotiable between public employer and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

In its post hearing brief, the City, relying on Local 195, argued that its decision to reduce the Superintendent's work week was a

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4/ Footnote Continued From Previous Page

6 NJPER 263 (¶11124 1980), aff'd NJPER Supp.2d 108 (¶89 App. Div. 1982), certif. den. 89 N.J. 429 (1982). Compare and contrast State of New Jersey (DEP), P.E.R.C. No. 95-115, 21 NJPER 267 (¶26172 1995), aff'd 285 N.J. Super. 541 (App. Div. 1995), certif. denied, 143 N.J. 519 (1996) (reduction of State employees' workweek would ordinarily be negotiable, but reduction in that case was a layoff action under Merit System Board regulations and was preempted by those regulations).

determination of governmental policy because it was necessitated by emergent conditions resulting from a severe financial crisis. That argument lacks merit.

The City laid Fragola off ostensibly for reasons of economy. The MSB, however, found the layoff unlawful and ordered Fragola reinstated with backpay. The City did not produce evidence of any "financial" problems on this record, let alone show that they were emergent, thus necessitating a unilateral change in a term and condition of employment. Even if a financial crisis existed, the unilateral reduction in the Superintendent's work week five months after Fragola was laid off would not have saved any more money than the layoff had already achieved.

An economic motivation is not normally sufficient to constitute a defense to the obligation to negotiate. In Piscataway Tp. Bd. of Ed., the Court held:

> The Board here argues that economy motivated the action complained of and that there is no material difference between the Board's right to cut staff and the right to cut months of service of staff personnel where the economy motive is common to both exercises. We disagree.
>
> While cutting staff pursuant to N.J.S.A. 18A:28-9 would be permissible unilaterally without prior negotiations, [citations omitted] there cannot be the slightest doubt that cutting the work year, with the consequence of reducing annual compensation of retained personnel who customarily, and under the existing contract, work the full year (subject to normal vacations) and without prior negotiation with the employees affected, is in violation of both the text and the spirit of the Employer-Employee Relations Act. Cf. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). [161 N.J. Super. at 101.]

Similarly, the Commission, relying on Piscataway, held in Sayreville Bd. of Ed., that:

> ...[T]o the extent the Board is merely trying to save money otherwise expended on employee compensation, it must, short of the abolition of a position, negotiate reductions in compensation and work year. 9 NJPER at 141.

See also East Brunswick; Cherry Hill, 11 NJPER at 46.

By applying Piscataway and Sayreville here, and noting the lack of supporting evidence, I find that the City did not establish that the change in the Superintendent's work week was the determination of a governmental policy.

Absent the Local 195 defense, the City's adoption of J-4 in April 1996 was an unlawful unilateral change. While that issue was addressed by C-3 (CO-96-408) and initially resolved by J-3, the City's subsequent actions, nevertheless, violated 5.4a (5) of the Act. Having agreed to negotiate with the ESPA in J-3, the settlement agreement covering C-3 the original unfair practice charge, the City was obligated to negotiate in good faith over terms and conditions of employment for the Superintendent's position. Good faith negotiations includes the obligation to either reach an agreement, or negotiate to impasse, and then follow the impasse procedures prior to implementing a change in terms and conditions of employment. New Jersey Turnpike Authority, P.E.R.C. No. 99-49, 25 NJPER 29 (¶30011 1998); Bayonne City Bd. of Ed., P.E.R.C. No. 91-3, 16 NJPER 433 (¶21184 1990); City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977).

The impasse procedures include the requirement that if ultimately an agreement cannot be reached after exhausting those procedures, the public employer may implement its "last best offer." Jersey City.

The City and ESPA were apparently engaged in good faith negotiations through the first two and until the end of the third negotiations session. The City's last best offer in those sessions was to restore the Superintendent to a 19 hour work week. But the City violated 5.4a(5) of the Act and negotiated in bad faith by implementing something less than its last best offer, a 12 hour work week for Fragola. Fredon Twp. Bd. Ed., P.E.R.C. No. 96-5, 21 NJPER 275 (¶26177 1995); Readington Twp. Bd. Ed., P.E.R.C. No. 96-4, 21 NJPER 273 (¶26176 1995). It also separately violated 5.4a(5) by unilaterally implementing the 12 hour work week prior to first reaching an agreement with ESPA or exhausting the impasse procedures.

The City also separately violated 5.4a(5) of the Act by repudiating the parties collective agreements by passing J-4 and unilaterally implementing a 12 hour work week for Fragola. The salary schedule in the agreement(s) provided the Superintendent's salary be paid at level 3, an annual amount, not the hourly amount unilaterally imposed by J-4. Additionally, Article 15 of the agreement(s) established either a 35 or 40 hour work week, not the 12 hour work week unilaterally imposed by the City. The City could have abolished the position, but it could not simply reduce its hours of work without negotiations. Piscataway Tp. Bd. of Ed..

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

Conclusions of Law

The City violated 5.4a(5) and derivatively a(1) of the Act by negotiating in bad faith; unlawfully implementing changes in terms and conditions of employment; and repudiating its collective agreement with ESPA by unilaterally implementing a 12 hour work week and an hourly rate for the Superintendent of Weights and Measures.

Remedy

The MSB found that Fragola's layoff was unlawful and he was entitled to reinstatement, back pay, benefits and seniority for the period of layoff which lasted from November 1, 1995 to at least June 23, 1998. If it were not for the City's unlawful change in Fragola's work week he would have been retroactively reinstated to a full 35 hour work week.

Although ESPA was willing to agree to a 27 hour work week for the Superintendent to resolve this litigation, the City did not take advantage of that opportunity. In fact, the City offered reinstatement to a 30 hour work week with some back pay restrictions to resolve this litigation. Nevertheless, lacking a negotiated agreement changing Fragola's hours, he was entitled to reinstatement to his original 35 hour work week and all the benefits provided thereto, minus mitigation.

RECOMMENDED ORDER

I recommend the Commission **ORDER**:

A. That the City of East Orange cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by negotiating in bad faith, unlawfully implementing changes in terms and conditions of employment, and repudiating its collective agreement with the East Orange Engineering Supervisory Personnel Association by unilaterally implementing a 12 hour work week and an hourly rather than a salary rate of pay for the Superintendent of Weights and Measures.

2. Refusing to negotiate in good faith with the ESPA concerning terms and conditions of employment of unit employees, particularly by negotiating in bad faith, unlawfully implementing changes in terms and conditions of employment, and repudiating its collective agreement by unilaterally implementing a 12 hour work week and an hourly rather than a salary rate of pay for the Superintendent of Weights and Measures.

B. That the City take the following action:

1. Reimburse Gaetano Fragola with backpay from November 1, 1995 through July 20, 1999 at the rate of 35 hours per week at the salaries provided in J-1 and J-2, as appropriate, plus interest as provided by R.4:42-11(a) minus mitigation from partial backpay, unemployment payments, and other employment.

2. Reimburse Gaetano Fragola for any financial expenses he may have incurred due to the lack of benefits from November 1, 1995 through July 20, 1999 minus mitigation.

3. Restore any vacation, sick time, and other benefits Gaetano Fragola would have earned had he been employed from November 1, 1995 through July 20, 1999.

4. Restore Gaetano Fragola's employment seniority with the City as if he had been employed without a break in service from November 1, 1995 through July 20, 1999.

5. Negotiate in good faith with the ESPA before changing terms and conditions of employment of titles represented in its negotiations unit.

6. 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.

7. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

Arnold H. Zudick
Senior Hearing Examiner

Dated: November 24, 1999
Trenton, New Jersey

RECOMMENDED

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,

H.E. No. 2000-5

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by negotiating in bad faith, unlawfully implementing changes in terms and conditions of employment, and repudiating its collective agreement with the East Orange Engineering Supervisory Personnel Association by unilaterally implementing a 12 hour work week and an hourly rather than a salary rate of pay for the Superintendent of Weights and Measures.

WE WILL cease and desist from refusing to negotiate in good faith with the ESPA concerning terms and conditions of employment of unit employees, particularly by negotiating in bad faith, unlawfully implementing changes in terms and conditions of employment, and repudiating its collective agreement by unilaterally implementing a 12 hour work week and an hourly rather than a salary rate of pay for the Superintendent of Weights and Measures.

WE WILL reimburse Gaetano Fragola with backpay from November 1, 1995 through July 20, 1999 at the rate of 35 hours per week at the salary provided for in the collective agreement, plus interest, minus mitigation from partial backpay, unemployment payments, and other employment.

WE WILL reimburse Gaetano Fragola for any financial expenses he may have incurred due to the lack of benefits from November 1, 1995 through July 20, 1999 minus mitigation.

WE WILL restore any vacation, sick time, and other benefits Gaetano Fragola would have earned had he been employed from November 1, 1995 through July 20, 1999.

WE Will restore Gaetano Fragola's employment seniority with the City as if he had been employed without a break in service from November 1, 1995 through July 20, 1999.

WE WILL negotiate in good faith with the ESPA before changing terms and conditions of employment of titles represented in its negotiations unit.

Docket No. CO-H-99-77 City of East Orange
(Public Employer)

Date: _____ 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, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

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