

P.E.R.C. NO. 87-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF GLOUCESTER,

Respondent

-and-

Docket No. CO-86-99-160

CAMDEN COUNCIL NO. 10, N.J.C.S.A.,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, finds that the Township of Gloucester violated the New Jersey Employer-Employee Relations Act when it unilaterally increased the salary of a unit employee who received a new title after a desk audit. The Chairman further finds, however, that the Township did not illegally threaten that employee. A Hearing Examiner recommended these conclusions and the Chairman, in the absence of exceptions, agreed with them.

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Charging Party.

Appearances:

For the Respondent, Louis Rosner, Esq.

For the Charging Party  
Tomar, Seliger, Simonoff, Adourian & O'Brien, Esqs. (Mary  
L. Crangle, Esq.)

DECISION AND ORDER

On October 18, 1985, Camden Council 10, NJCSA ("Council 10") filed an unfair practice charge against the Township of Gloucester ("Township"). The charge alleges that the Township violated subsections 5.4(a)(1), (3) and (5)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> 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;(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."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it unilaterally increased the salary of a unit employee who received a new title, legal stenographer, after a desk audit, and when it threatened the employee for having requested the desk audit.

On April 23, 1986, a Complaint and Notice of Hearing was issued.

On May 1, 1986, the Township filed an Answer. It asserted that it negotiated with Council 10 over the appropriate salary for the new title, and it moved to dismiss the allegations concerning threats on the ground they were not specific enough.

On June 10, Hearing Examiner Richard C. Gwin conducted a hearing. At the outset, he dismissed the subsection 5.4(a) (3) allegations, but denied the Township's motion concerning the subsection 5.4(a) (1) allegations. The parties then argued orally, examined witnesses, and introduced exhibits. They filed briefs by August 6.

On September 2, the Hearing Examiner issued his report and recommended decision H.E. NO. 87-18, 12 NJPER \_\_ (¶\_\_ 1986). He concluded that the Township had unilaterally increased the employee's salary, thus violating subsections 5.4(a) (1) and (5), but had not illegally threatened that employee. He recommended an order requiring the Township to negotiate with Council 10 concerning the appropriate salary and to post a notice of its violation and remedial action taken.

The Hearing Examiner served his report on the parties and informed them exceptions were due by September 15. Neither party filed exceptions or requested an extension.

I have reviewed the record. The Hearing Examiner's findings of fact (pp.2-5) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, and under all the circumstances of this case, I also adopt the recommended conclusions of law and remedial order.

ORDER

The Township of Gloucester is ordered to:

I. Cease and desist from:

A. Interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act by unilaterally implementing the salary rate for a new title.

B. Refusing to negotiate in good faith with Council 10, by unilaterally establishing the salary rate for a new title, a term and condition of employment.

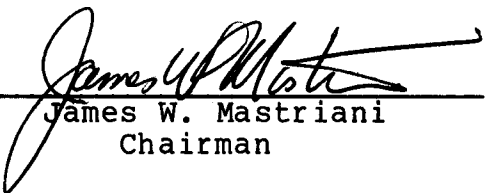
II. Take the following affirmative action:

A. Upon receipt of the Commission's order, negotiate with Council 10 concerning the salary rate for the title of legal stenographer.

B. Post in all places where notices to employees are customarily posted, copies of the attached notice. Copies of the notice will be provided by the Commission, and shall be signed by

the Township's authorized representative, and posted immediately upon receipt. The notices shall remain posted for at least sixty (60) consecutive days. The Township must take reasonable steps to ensure that the notices are not altered, defaced or covered by other materials.

The remaining allegations of the Complaint are dismissed.

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
October 15, 1986

H.E. NO.87-18

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

In the Matter of

TOWNSHIP OF GLOUCESTER,

Respondent,

-and-

Docket No. CO-86-99-160

CAMDEN COUNCIL NO. 10, N.J.C.S.A.,

Charging Party.

SYNOPSIS

The hearing examiner recommends that the Township violated subsection 5.4(a)(5) and, derivatively, (a)(1) by unilaterally implementing the salary for a new title. The hearing examiner also recommends that an alleged threat to transfer a unit employee if she failed to perform her job was not a violation of subsection 5.4(a)(1).

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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Appearances:

For the Respondent  
Louis Rosner, Esq.

For the Charging Party  
Tomar, Seliger, Simonoff, Adourian & O'Brien, Esqs.  
(Mary L. Crangle, Esq.)

HEARING EXAMINER'S  
REPORT AND RECOMMENDED DECISION

On October 18, 1985, Camden Council 10, NJCSA ("Council 10") filed an unfair practice charge alleging that the Township of Gloucester ("Township") violated subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Council 10 alleges that the Township unilaterally increased a unit employee's salary when, as a result of a Civil Service desk audit, she obtained a new title. Council 10 also alleges that the Township threatened, coerced and retaliated against the employee for requesting the desk audit.

On April 23, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

On May 1, 1986, the Township filed an answer denying any violation of the Act. The Township asserts that it had several negotiations sessions with Council 10 about the appropriate rate of pay for the new title. It also moved to dismiss Council 10's allegations of threats, coercion and retaliation because they were not supported by specific factual pleadings.

On June 16, 1986, I conducted a hearing. The Township raised its motion to dismiss. I granted the motion, in part, concluding that Council 10 had not pled facts which, if true, would prove a violation of subsection 5.4(a)(3). I denied the motion on the independent 5.4(a)(1) charge and permitted testimony on the alleged threat.

The parties examined witnesses and introduced documents. They waived oral argument but filed briefs, the last of which I received on August 6, 1986. Based upon the entire record, I make the following:

#### FINDINGS OF FACT

The Township is a public employer within the meaning of the Act and subject to its provisions. Council 10 is an employee organization within the meaning of the Act, is subject to its provisions and represents a collective negotiations unit consisting of the Township's clerical employees (CP-1, pp. 4, 5, 27).



Doris Vannoni (formerly Doris or "Dori" Arnold) is employed by the Township as a legal stenographer and is represented by Council 10. She was hired in October, 1979 as a clerk typist and has worked in several Township departments, holding various clerical titles (T pp. 25-28). In July, 1984 she started working in the Township's law department as the secretary to the solicitor. Her duties included dictation, stenography and typing. Her title was clerk typist (T pp. 28, 29).

In May, 1985, Vannoni told the solicitor that she thought her duties went beyond those of a clerk typist. The solicitor, after discussing the matter with John McPeak, the business administrator/finance officer, advised Vannoni to seek a desk audit from Civil Service. She did. Civil Service performed the audit and notified the parties, on July 1, 1985, that the title should be classified as legal stenographer (T pp. 30, 31). Prior to the desk audit, no Township employee had held the title of legal stenographer. No salary rate was provided for the title in the parties' collective agreement.

The Township did not appeal the desk audit (T p. 32).

McPeak sent a memo to Margaret Martin, a Council 10 Trustee, about the desk audit. They scheduled a meeting for the first week of July, 1985 to discuss the new title. At the meeting McPeak maintained that the duties of a legal stenographer were very similar to those of a clerk typist and that Vannoni's new salary should be adjusted accordingly. Martin disagreed. At the

conclusion of their first meeting, McPeak and Martin agreed to obtain the job descriptions of the titles to facilitate further negotiations over an appropriate salary for the new title (T pp. 62-65; CP-2).

Martin obtained the job descriptions and she and McPeak met later in July, 1985 and renewed negotiations. McPeak maintained that the new title was essentially the same as a clerk typist. McPeak also thought that Vannoni was not performing the duties of a legal stenographer. McPeak did offer to place the title at the same salary rate as senior clerk typist. This meant a \$1000 increase in salary for Vannoni, in addition to any increase the parties might negotiate for the title as part of a successor agreement. Martin rejected the proposal, maintaining that the new title should be compensated at a higher rate (T pp. 66-70).

At the conclusion of their second meeting, McPeak told Martin that he was getting ready for an extended vacation and wanted to clear his desk. Before he left, McPeak sent to Civil Service, a CS-6 form, which set a \$1000 salary increase for Vannoni in her new title (T pp. 70, 118-121). McPeak testified that he processed the form with a \$1000 increase because, "that was the figure [he] had arrived at, at that point of [their] discussion." (T p. 120). He did not want Vannoni to wait any longer for her raise. He also testified that he told Martin he was processing the form and that he was willing to discuss the matter further when he returned from his vacation. He testified that the \$1000 was never intended as a final offer (T pp. 120, 121).

On August 19, 1985, Martin sent a memo to McPeak, who had recently returned from his vacation, asking to negotiate Vannoni's salary. McPeak did not respond. Martin also raised the issue in September and October, 1985, at negotiations sessions for a successor agreement. On both occasions McPeak stated that the Township would not move on the issue. During one of these sessions, Martin told McPeak that if the Township was unwilling to pay Vannoni for her stenographer duties, perhaps she should not do them and instead simply perform her clerk typist duties. McPeak said the Township would transfer Vannoni if she did that. Council 10 asserts that McPeak's statement was a threat which violated subsection 5.4(a)(1) of the Act (T pp. 71-79, 140-142).

#### ANALYSIS

Salary for a new title is a mandatory subject of negotiations. State v. Local 195, IFPTE, 88 N.J. 393 (1982); Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582 (1980); Teaneck Bd. of Ed. v. Teaneck Teachers Assn., 94 N.J. 9 (1983); Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Ed. Secs., 78 N.J. 1 (1978); Englewood Bd. of Ed. v. Englewood Ed. Assn., 64 N.J. 1 (1973); In re County of Somerset, 12 NJPER 453 (¶17171 1986); North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶16203 1985).

The Commission articulated the standard for determining whether a negotiations obligation has been violated in State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975) aff'd sub. nom, State v.

Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976):

It is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred...The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a predetermined intention to go through the motions, seeking to avoid, rather than reach an agreement....Good faith collective negotiations do not require one party to adopt the position of the other; they only require a willingness to negotiate the issue with an open mind and a desire to reach agreement.  
1 NJPER at 40.

I conclude that the Township did not negotiate in good faith. McPeak and Martin met twice to negotiate a salary for the new title of legal stenographer. They could not agree on what that salary should be. Because it was the figure he had arrived at, McPeak processed the necessary civil service forms to secure a salary increase of \$1000 for Vannoni. The simple fact is, in the middle of negotiations, McPeak unilaterally set the salary level for the new title.

The Township asserts that McPeak's assurances that he would discuss the matter further when he returned from his vacation and that the \$1000 was not a final offer somehow mitigate against the finding of an unfair practice. The Township is wrong. Council 10 agreed neither to McPeak's salary offer nor to rely on his assurances and accept the \$1000 for the time being and try to negotiate a higher increase when McPeak returned. Further, McPeak's conduct in his subsequent dealings with Martin bely those

assurances. When the issue was brought up by Martin in September and October, McPeak persistently refused to move on it. The harm was done when McPeak processed the civil service forms. The Township cannot meet its duty to negotiate after-the-fact. In re Mount Holly Bd. of Ed., 9 NJPER 596 (¶14252 1983).

I move now to the issue of whether the Township violated subsection 5.4(a)(1) of the Act when it allegedly threatened to transfer Vannoni. I conclude it did not.

N.J.S.A. 34:13A-5.4(a)(1) prohibits public employees from, "interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act." (emphasis supplied). The controlling element in an independent 5.4(a)(1) case is whether the employer's conduct tends to interfere with employee rights. Wharton Borough Bd. of Ed., 12 NJPER 402 (¶17157 1986); In re Commercial Tp. Bd. of Ed., 8 NJPER 550 (¶13253 1982) aff'd App. Div. Docket No. A-1642-82T2 (1983). McPeak said that he would transfer Vannoni only after Martin threatened that Vannoni might not perform the duties attendant to her job. The conduct hypothesized by Martin was not within those rights guaranteed to employees by the Act. The Township could lawfully transfer or discipline Vannoni if she refused to do her job. McPeak's statement did not interfere with employee rights; he simply stated what the Township had a right to do. I recommend dismissal of the independent 5.4(a)(1) charge.

#### CONCLUSIONS OF LAW

1) The Township violated subsection 5.4(a)(5) and, derivatively, (a)(1) when it unilaterally set a salary level for the

new title of legal stenographer.

2) The Township did not violate subsection 5.4(a)(1) when McPeak said he would transfer Vannoni if she refused to perform her job.

3) Council 10 did not plead facts which, if true, would prove a violation of subsection 5.4(a)(3) of the Act.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Township cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act by unilaterally implementing the salary rate for a new title.

2. Refusing to negotiate in good faith with Council 10, by unilaterally establishing the salary rate for a new title, a term and condition of employment.

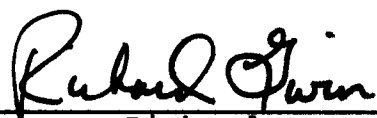
B. That the Township take the following affirmative action:

1. Upon receipt of the Commission's order, commence negotiations with Council 10 concerning the salary rate for the title of legal stenographer.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice. Copies of the notice will be provided by the Commission, and shall be signed by the Township's authorized representative, and posted immediately upon receipt. The notices shall remain posted for at least sixty

(60) consecutive days. The Township must take reasonable steps to ensure that the notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of its receipt of the Commission's order about what steps it has taken to comply with the order.

  
\_\_\_\_\_  
Richard C. Gwin  
Hearing Examiner

Dated: September 2, 1986  
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 interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act by unilaterally establishing a salary rate for the new title of legal stenographer.

WE WILL cease and desist from refusing to negotiate in good faith with Council 10, by unilaterally establishing the salary rate for a new title, a term and condition of employment.

WE WILL negotiate with Council 10 over the salary rate to be paid for the new title of legal stenographer.

Township of Gloucester

(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 James Mastriani, Chairman, Public Employment Relations CN-429, 495 W. State Street, Trenton, New Jersey 08625 Telephone (609) 292-6780