

P.E.R.C. NO. 91-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE SUPERIOR OFFICERS,
F.O.P. LODGE NO. 22,

Respondent,

-and-

Docket No. CE-H-89-22

TOWNSHIP OF OLD BRIDGE,

Charging Party.

TOWNSHIP OF OLD BRIDGE,

Respondent,

-and-

Docket No. CO-H-89-346

OLD BRIDGE SUPERIOR OFFICERS
F.O.P. LODGE NO. 22,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Township of Old Bridge against the Old Bridge Superior Officers, FOP Lodge No. 22. The charge alleged that the FOP violated the Act by refusing to negotiate in good faith during successor contract negotiations. The Commission, in agreement with the Hearing Examiner, finds that the FOP did not breach its negotiations obligation.

The Commission also considers a Complaint based on an unfair practice charge filed by the FOP against the Township. The Commission finds that the Township violated the Act when it repudiated the negotiated grievance procedure by continuing to schedule step 4 hearings, despite an arbitration award interpreting the contract to preclude such hearings, and by substituting a designee for the Mayor and scheduling a hearing at step 5. It dismisses the FOP's remaining allegations.

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Docket No. CO-H-89-346

OLD BRIDGE SUPERIOR OFFICERS
F.O.P. LODGE NO. 22,

Charging Party.

Appearances:

For the Township, Savage and Serio, attorneys
(Thomas J. Savage, of counsel)

For the FOP, William P. McDonnell, labor consultant

DECISION AND ORDER

On April 24, 1989, the Township of Old Bridge filed an unfair practice charge against the Old Bridge Superior Officers, F.O.P. Lodge No. 22 (CE-89-22). The charge alleges that the FOP violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1), (2), (3) and

(5),^{1/} by refusing to negotiate in good faith during successor contract negotiations..

On May 18, 1989, the FOP filed an unfair practice charge against the Township (CO-89-346) alleging that the Township refused to negotiate in good faith by refusing to discontinue level four grievance hearings despite an arbitrator's award requiring it to do so.

On July 7, 1989, a Complaint and Notice of Hearing and an Order Consolidating Cases issued. On July 18, the Township filed an Answer denying that it had repudiated the grievance procedure. Instead it claims that the FOP refuses to discuss grievances or supply enough data to permit intelligent grievance responses. On July 24, the FOP filed an Answer denying that it had negotiated in bad faith and stating that the parties have since signed off on tentative agreements in accordance with mutually-established ground rules.

^{1/} These subsections prohibit employee organizations, 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) interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances, (3) refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit and (5) violating any of the rules and regulations established by the commission."

On March 29, 1990, the FOP amended its charge to allege that the Township violated subsections 5.4(a)(1), (2), (3) and (5),^{2/} by discontinuing negotiations over promotional procedures.^{3/}

On May 16, 1990, Hearing Examiner Stuart Reichman conducted a hearing. The parties introduced exhibits and examined FOP Grievance Negotiations Chairman William Cerra. Both parties waived oral argument. Only the FOP filed a post-hearing brief.^{4/}

On October 17, 1990, the Hearing Examiner recommended dismissing the allegations against the FOP. He also recommended finding that the Township repudiated the parties' contractual grievance procedure. H.E. No. 91-10, 16 NJPER 575 (¶21253 1990)

The Hearing Examiner served his decision on the parties and informed them that exceptions were due October 30, 1990. On November 7, the Township requested a 20 day extension of time to

2/ 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 and (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."

3/ The amendment was withdrawn at the hearing.

4/ The record was reopened to admit agreements reached during negotiation sessions held on July 13 and August 1, 1989.

file exceptions. On November 9, the FOP refused to consent to the Township's untimely request. No exceptions have been filed.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 4-12) are accurate. We incorporate them here.

We agree with the Hearing Examiner that the FOP did not breach its negotiations obligation. The FOP's overall conduct during the negotiations process evidenced a desire to reach, rather than avoid, an agreement. See State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976).

We also agree with the Hearing Examiner that the Township repudiated the negotiated grievance procedure by continuing to schedule step 4 hearings, despite an arbitration award interpreting the contract to preclude such hearings, and by substituting a designee for the Mayor and scheduling a hearing at step 5. See N.J. Transit Bus Operators, Inc., P.E.R.C. No. 89-29, 14 NJPER 638 (¶19267 1988). All other allegations against the Township are dismissed.

ORDER

The Township of Old Bridge is ordered to:

A. 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 scheduling hearings at steps 4 and 5 and by appointing a designee at step 5 of Article 21 of the parties' collective agreement.

2. Unilaterally altering the established grievance procedure.

B. Take the following action:

1. Process grievances at step 4 without scheduling hearings and process grievances at step 5 with only meetings not hearings and without substituting a designee for the Mayor.

2. Negotiate in good faith at the appropriate time with the FOP before deviating from or changing the language in the grievance procedure.

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 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.

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

The remaining allegations in the consolidated Complaint are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
December 17, 1990
ISSUED: December 18, 1990



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 interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by scheduling hearings at steps 4 and 5 and by appointing a designee at step 5 of Article 21 of the agreement between the Township of Old Bridge and Old Bridge Superior Officers, FOP Lodge No. 22.

WE WILL NOT unilaterally alter the established grievance procedure.

WE WILL process grievances at step 4 without scheduling hearings and process grievances at step 5 with only meetings not hearings and without substituting a designee for the Mayor.

WE WILL negotiate in good faith at the appropriate time with the FOP before deviating from or changing the language in the grievance procedure.

Docket No. CI-H-89-22
CO-H-89-346

TOWNSHIP OF OLD BRIDGE
(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. 91-10

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

In the Matter of

OLD BRIDGE SUPERIOR OFFICERS,
F.O.P. LODGE #22,

Respondent,

-and-

Docket No. CE-H-89-22

TOWNSHIP OF OLD BRIDGE,

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Docket No. CO-H-89-346

OLD BRIDGE SUPERIOR OFFICERS
F.O.P. LODGE #22,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Old Bridge Township violated the New Jersey Employer-Employee Relations Act by repudiating the parties' contractual grievance procedure. The Hearing Examiner also recommended that Old Bridge FOP Lodge #22 did not violate the Act by its conduct during the negotiations process.

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.

H.E. NO. 91-10

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

In the Matter of

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Docket No. CO-H-89-346

OLD BRIDGE SUPERIOR OFFICERS
F.O.P. LODGE #22,

Charging Party.

Appearances:

For the Township, Savage and Serio, Attorneys
(Thomas J. Savage, of counsel)

For the FOP, William P. McDonnell, Labor Consultant

**HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION**

On April 24, 1989, the Township of Old Bridge (Township) filed an unfair practice charge (CE-H-89-22) with the Public Employment Relations Commission (Commission) alleging that the Old Bridge Superior Officers F.O.P. Lodge #22 (FOP) violated subsections 5.4(b)(1), (2), (3) and (5) of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).^{1/} On May 18, 1989 the FOP filed an unfair practice charge (CO-H-89-346)^{2/} with the Commission alleging the Township violated subsections 5.4(a)(1), (2) and (5) of the Act.^{3/}

In CE-89-22 the Township alleged generally that the FOP violated the Act by refusing to negotiate and abruptly leaving a negotiations session on April 20, 1989. In CO-89-346 the FOP alleged generally that the Township failed to properly process

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- 1/ These subsections prohibit employee organizations, 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) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."
- 2/ CO-89-346 listed the FOP's name as Old Bridge Superior Officers F.O.P. Lodge #22. CE-H-89-22 listed the FOP's name as Old Bridge FOP Lodge #22. At hearing on May 16, 1990 the FOP's representative gave the FOP's name as "Fraternal Order of Police, Old Bridge Lodge No. 22, Superior Officers Association" (T12). I will use the name the FOP gave itself on CO-89-346.
- 3/ 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. (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."

grievances, refused to discontinue imposing hearings at step 4, did not respond to grievances at step 4, forced the FOP to proceed to arbitration, and repudiated the collective agreement.

A Complaint and Notice of Hearing and Order Consolidating the two charges issued on July 7, 1989. Answers were filed on July 18 and 24, 1989 by the Township and FOP respectively. The Township denied it repudiated the collective agreement, refused to process grievances, forced the FOP into arbitration, acted in conflict with a previous arbitration award, or that it otherwise violated the Act. The FOP denied it violated the Act and argued that the parties have since negotiated and reached a tentative agreement.

On March 29, 1990 the FOP filed an amendment to its Charge alleging violations of subsections 5.4(a)(1), (2), (3) and (5) of the Act^{4/} claiming that on or about December 6, 1989 the Township discontinued negotiations over promotional procedures and refused to resume negotiations over those procedures.

A hearing was conducted on May 16, 1990.^{5/} Both parties

^{4/} Subsection (a)(3) prohibits public employers, their representatives or agents from: "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/} The transcript will be referred to as "T."

This case was originally assigned to Hearing Examiner Arnold H. Zudick for hearing. For personal reasons Hearing Examiner Zudick was not available for hearing on May 16, thus, pursuant to N.J.A.C. 19:14-6.1, the matter was assigned to me for hearing and for issuance of a recommended report and decision.

had the opportunity to call, examine and cross-examine witnesses, present documents, argue orally, and submit post-hearing briefs. At the hearing the Township answered the FOP's amended charge and denied violating the Act (T16-T18). At the end of the hearing the FOP withdrew the amended charge without prejudice over the Township's objection (T86-T88).

The hearing concluded on May 16, but by letter of May 17, 1990 the FOP requested the matter be reopened to admit relevant agreements reached during negotiation sessions held on July 13 and August 1, 1989. By letter of June 1, 1990 the Township consented to the admission of the relevant agreements. The agreements were received on June 7, 1990.^{6/}

The FOP submitted a post-hearing brief on August 2, 1990. Based upon the entire record I make the following:

FINDINGS OF FACT

1. Prior to August 1987 the majority representative of superior officers employed by the Township in the ranks of sergeant, lieutenant, and captain was the Superior Officers Association (SOA) affiliated with the Police Benevolent Association (PBA) Local #127. The Chief and Deputy Chief were not included in the unit. During 1984 the PBA had entered into a collective agreement with the Township (J-2A) covering employees in the above titles effective

^{6/} The agreements referred to will be marked as F-5(A), the Preamble to a new contract, F-5(B) Article 1, F-5(C) Article 5, F-5(D) Article 23, and F-5(E) Article 27.

January 1, 1984--December 31, 1985. During late 1985 or early 1986 the PBA and Township entered into a memorandum of understanding (J-2B) effective January 1, 1986--December 31, 1988 making some changes to, but otherwise continuing the provisions of J-2A. In August 1987 the SOA changed its affiliation from the PBA to the FOP, and has been affiliated with the FOP to date.

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2. Negotiations for a new collective agreement began in late 1988 or early 1989. William Cerra was the FOP's grievance and negotiations chairman and attended all negotiation sessions (T22). He attended the first session where ground rules for negotiations were established which included an agreement that the Township officially authorize a spokesperson for negotiations (T28, T39). Dr. William P. McDonnell was the FOP's designated spokesperson for negotiations. Cerra was also present at a subsequent session when Thomas Savage, Esq. represented the law firm of Savage and Serio as the officially designated spokespersons of the Township for negotiations (T28). McDonnell reviewed the negotiation ground rules with Savage and Serio (T29).

3. Township Councilman Thomas English was not a member of the Township's negotiations committee, had no role in the Township's day-to-day labor relations process, and did not attend negotiation or grievance sessions (T25). On March 9, 1989 an article appeared in The News Tribune, a local newspaper, indicating that Councilman

English was seeking an investigation as to why officers in the PBA unit received an 8% salary increase and favorable work schedule changes as part of the negotiations for J-2A. English allegedly criticized the former administration for the amount of increase and the creation of a 4-4 work schedule. In the article the Township's current Mayor, Arthur Haney, allegedly said everything in J-2A was open for discussion and he was uncertain if the investigation of the PBA contract would affect current negotiations.

In reaction to that article, Savage, on March 13, 1989, hand delivered a letter (T-1) to McDonnell stating in pertinent part:

We remind you that the law firm of Savage and Serio are the sole and exclusive spokespersons for the Township in all labor related matters. Any published statements to the contrary should be ignored.

Cerra did not recall seeing T-1, but he knew about it (T27-T28).

4. One of the ground rules for negotiations was a two-hour maximum for each session (T39). A negotiations session took place on April 20, 1989, Cerra was present, and knew at that time that English had no official role as Township spokesperson for collective negotiations.^{1/} The meeting began at 6:15 p.m. at

^{1/} When Cerra was asked if he was aware on April 20 that English had no official role as Township spokesman in negotiations he said he did not know that, and that T-1 did not clear it up for him (T28). I do not credit that testimony. Cerra had attended all the negotiation sessions, he was aware of the ground rules and knew that Savage and Serio had been retained by the Township and were the Township's spokespersons for negotiations (T28-T29). He admitted that he knew about T-1,

which time the Township presented its proposals. The FOP caucused at 6:22 p.m. and returned at 7:10 p.m. (T33-T34).^{8/}

When the FOP returned to the table Cerra made statements to Savage regarding remarks attributed to English in the newspaper article, and Cerra accused Savage of a conflict of interest. Cerra explained that English questioned the legality of J-2A, and was concerned over why it was raised three and one-half years after it was negotiated. Cerra also told Savage he was concerned about a possible conflict of interest his (Savage's) law firm might have in representing the Township since he previously represented a deputy chief and Mrs. English in other lawsuits involving the Township. Cerra was concerned over what might happen if a conflict arose after the Township and FOP reached an agreement (T30-T31).

Cerra's attorney had advised him of a possible conflict prior to the April 20th meeting, but as of the date of hearing here, Cerra had taken no action regarding the alleged conflict (T31, T32). After Cerra made those statements a member of the FOP team

7/ Footnote Continued From Previous Page

and knew that English was not on the Township's negotiation committee and did not attend negotiation sessions (T25, T29). Thus, I find that on April 20 Cerra knew that English's published remarks should be disregarded and that Savage and Serio were the Township's designated spokespersons for negotiations.

8/ On direct examination Cerra testified that the FOP caucused at 6:22 (T33), but on cross-examination he testified that the Township caucused at 6:22 (T39). The latter testimony was in error. The only scenario that makes sense is that the FOP caucused at 6:22.

remarked that the FOP would refuse to negotiate until the conflict of interest issue was resolved (T33).^{2/} Then Cerra and the FOP team left the meeting at 7:20 p.m. without making a counterproposal or otherwise responding to the Township's proposal (T32-T33).

5. After April 20, 1989 there were at least two negotiation sessions but the conflict of interest issue was not raised (T35, T36). In negotiation sessions on July 13 and August 1, 1989 the parties agreed to contract language for at least five different articles of the contract (F-5(A)-(E)). In Article I, the recognition clause (F-5(B)), the SOA-FOP (and not the PBA) was noted as the majority representative. Within five months prior to the hearing the parties had engaged in interest arbitration, but that process had not been completed by the hearing date (T41-T42).

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6. Article 21, Section D of J-2A, the steps of the grievance procedure, provides as follows:

D. The following constitutes the sole and exclusive method for solving grievances between the parties covered by this Agreement, and shall be followed in its entirety unless any Step is waived by mutual consent.

^{2/} On direct examination Cerra denied that he said that the FOP would refuse to negotiate until it was determined whether Savage had a conflict of interest. When pressed further, however, Cerra testified that "the statement was never made by me...." (T33) I find that Cerra testified in an evasive manner regarding this issue. Therefore, I find that his remark that the statement was never made by him was a negative pregnant, from which I infer that although he may not have made the statement, it was made by someone else on the FOP negotiations team.

Step One. Any grievance must be filed within thirty (30) days after the occurrence of application or interpretation of this Agreement which gives rise to any dispute. An earnest effort shall be made within three (3) working days after the filing of the grievance by the grieved employee and/or Association and his immediate supervisor for the purpose of resolving the matter informally.

Step Two. If no satisfactory agreement is reached within three (3) working days after Step One, then the grievance shall be reduced to writing and submitted through chain of command to the employee's Bureau Commander.

Step Three. If no satisfactory agreement is reached within five (5) working days after Step Two, then a conference will be arranged with the Chief of Police or his designee.

Step Four. Should no acceptable agreement be reached within five (5) working days after Step Three, then the matter shall be submitted to the Business Administrator or his designee, who shall have ten (10) working days to submit his decision.

Step Five.

a. The parties agree that the last step for any grievance arising out of the interpretation or application of Article XVII, Management Rights, section A, subsections 2 and 4 shall be at the Mayor's level. Such grievance shall be submitted within ten (10) working days of the receipt of the Business Administrator's response. A meeting between the SOA and the Mayor shall be scheduled within ten (10) working days thereafter. Following the meeting the Mayor shall have ten (10) working days to submit the Mayor's decision in writing.

b. The parties agree that in the event the last step of the grievance is not satisfactorily resolved, either party may, within twenty (20) days request binding arbitration by serving said request upon the other. In that event, the parties, in accordance with the rules of the State Board of Mediation, shall agree upon one arbitrator whose decision shall be binding.

That Article was not changed by J-2B.

7. Background

Beginning in 1988 everytime the FOP processed a grievance the Township scheduled a hearing at step 4 of the grievance procedure. The FOP argued that it was improper to schedule a hearing at step 4 due to the language in Article 21, Section D. Since the Township insisted on scheduling step 4 hearings the FOP processed the relevant grievances to arbitration and filed an unfair practice charge with the Commission. The statement in the grievance(s) filed on May 9, 1988, accused the Township of altering the negotiated procedure. The charge (CO-88-340)(T-3) was filed on June 24, 1988, and alleged 5.4(a)(1), (3) and (5) violations of the Act.

Arbitration hearings were held on September 2, 19 and October 19, 1988. The charge was withdrawn on October 3, 1988. On December 12, 1988 the arbitrator issued his Award (J-1) finding that the Township violated the contract by imposing a hearing at step 4 and by failing to issue timely responses at step 4. The arbitrator ordered the Township to discontinue imposing hearings at step 4.

8. On March 8, 1989, the FOP filed a grievance (F-1) which proceeded to step 4 by March 10 (T50). By letter of March 15, 1989 Township Business Administrator Joseph Leo notified Cerra and others that he had set a hearing on the grievance for March 23. Cerra responded to that letter on March 20 notifying Leo that pursuant to the arbitration award there could be no hearing at step 4 and he would consider Leo's response a denial of the

grievance. On March 23 Leo notified Cerra that since he did not come to the hearing and provide information the grievance was denied. On March 27 Cerra referred the grievance to the Mayor, but on April 10 the Mayor referred the grievance to Leo as his "official designee" for a step 5 hearing. On April 13 Leo notified Cerra of a step 5 hearing set for April 19. On April 14 Cerra notified Leo that there were no hearings at the Mayor's Level, the Mayor could not designate someone else at step 5, and he (Cerra) was proceeding to arbitration. On April 17 Leo sent Cerra a memo indicating that the FOP had not cooperated in meeting with the Township to resolve the grievance. On April 17 the FOP filed for arbitration (F-1).

On March 22, 1989 the FOP filed a grievance (F-2) about which Leo also scheduled a hearing at step 4 (T51, T62). Cerra would not attend the hearing for the same reason he didn't attend the scheduled hearing in F-1 (T63). The grievance proceeded to arbitration (T52).

On April 14, 1989 the FOP filed another grievance (F-3) about which Leo again scheduled a hearing at step 4 (T51). Cerra did not attend the hearing and the grievance was moved to arbitration but was resolved prior to arbitration (T52, T63).

On February 26, 1990 the FOP filed another grievance (F-4), but no hearing was scheduled at step 4 in that grievance and it was resolved in arbitration (T51, T63).

9. On May 1, 1989 Cerra filed a grievance (T-2) alleging the Township failed to give him longevity pay. Since the Township

did not pay the longevity claim within two to three weeks, Cerra filed a disorderly persons complaint against Leo. Approximately two weeks later the longevity issue was resolved and Cerra withdrew the complaint (T65-T66).

10. Cerra believed that the FOP had the right to pursue any grievance to step 5 (T76).

11. There were no facts presented to show how the Township may have dominated or interfered with the administration of the FOP, or how it may have discriminated against any employee(s) because of the exercise of protected activity.

ANALYSIS

The FOP did not violate the Act by its conduct at the April 20, 1989 negotiations session, but the Township did violate subsections 5.4(a)(1) and (5) of the Act by certain actions which repudiated the parties' grievance procedure.

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The standard for determining whether a party refused to negotiate in good faith is based upon an analysis of the overall conduct of the respondent during the negotiations process. State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976). In implementing the standard it is necessary to determine whether the respondent came to the table with a sincere desire to reach, or with a predetermined intention to avoid reaching, an agreement. Id. 1 NJPER at 40.

In deciding whether the FOP violated the Act it must be decided whether its totality of conduct during the negotiations process, and not just its conduct on April 20, demonstrated an intent to reach agreement. See Hillside Township, P.E.R.C. No. 77-47, 3 NJPER 98 (1977). Here, while the FOP's conduct on April 20 may have been inappropriate, its overall conduct showed its desire to properly conclude the negotiations process. After the April 20 session the parties met again, and despite Savage's alleged conflict, they reached agreement on several issues and the negotiations eventually proceeded to interest arbitration. Under all these circumstances, the FOP's behavior on April 20 was an isolated incident not indicative of its overall behavior and was not in violation of the Act. Thus, CE-89-22 should be dismissed.

CO-89-346

Since the Arbitration Award in J-1 clearly held that the Township was not entitled to schedule hearings at step 4 of the grievance procedure, the Township's deliberate scheduling of hearings at that level (relative to F-1, F-2, and F-3), subsequent to the Award, was a repudiation of the Award and collective agreement and violated subsections 5.4(a)(5) and, derivatively,

(a)(1) of the Act.^{10/} N.J. Transit Bus Operations, Inc., P.E.R.C. No. 89-29, 14 NJPER 638 (¶19267 1988). Similarly, the Township's scheduling of a "hearing" rather than a "meeting" at step 5 and appointment of a designee to substitute for the Mayor at step 5 of the procedure regarding the handling of F-1, repudiated the agreement and also violated the Act.

Steps 3 and 4 of the grievance procedure allow for a designee to be substituted for the Chief of Police and the Business Administrator, respectively, at those steps of the procedure, but there is no similar language in step 5. The Township's creation of a designee at step 5 of the procedure in relationship to the handling of F-1 was a unilateral change of the language in J-2A. The step 5 language also calls for a meeting, not a hearing, at that level. The Township also violated the Act by these actions.

While the Township is not entitled to set a hearing or appoint a designee for the Mayor at step 5, the FOP, contrary to Cerra's assertion, is not entitled to take every grievance to step 5. The language of step 5 limits that step to grievances arising out of the interpretation or application of Article 27, Section A(2)

^{10/} This is not to suggest that the Township cannot approach the FOP for the purpose of obtaining additional information or clarification it may need in order to properly respond to a grievance. If mutually agreeable, the parties can meet to explore settlement possibilities. Without the FOP's cooperation in this regard, the Township would have no alternative but to deny what might be a meritorious, resolvable grievance, which could result in burdening both parties with needlessly expending time and resources.

and (4) of J-2A. Grievances not involving that Article proceed directly to arbitration from step 4. The Township can voluntarily continue or refuse to hold step 5 meetings for grievances not involving that Article. If a dispute occurs over whether a grievance arises out of the interpretation or application of Article 27, Section A(2) and (4), it should be decided in arbitration, not by the Commission unless the Township repudiates the collective agreement. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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

CONCLUSIONS OF LAW

1. The Township violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively (a)(1) by repudiating the language in steps 4 and 5 of Article 21 of the parties' collective agreement.
2. The Township did not violate N.J.S.A. 34:13A-5.4(a)(2) or (3).
3. The FOP did not violate N.J.S.A. 34:13A-5.4(b)(1), (2), (3) or (5) by its conduct in a negotiations session on April 20, 1989.

RECOMMENDED ORDER

I recommend the Commission ORDER:

- A. That the Township 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 scheduling hearings at steps 4 and 5 and by appointing a designee at step 5 of Article 21 of the parties' collective agreement.

2. Unilaterally altering the established grievance procedure.

B. That the Township take the following action:

1. Process grievances at step 4 without scheduling hearings, process grievances at step 5 with only meetings not hearings, and not substitute a designee for the Mayor at step 5 of the grievance procedure.

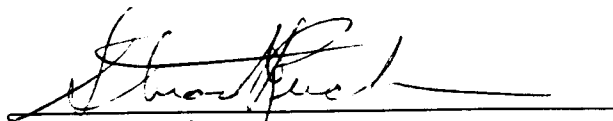
2. Negotiate in good faith at the appropriate time with the FOP before deviating from or changing the language in the grievance procedure.

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 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.

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

C. That the 5.4(a)(2) and (3) allegations of CO-89-346 be dismissed.

D. That the Complaint in CE-89-22 be dismissed.

A handwritten signature in black ink, appearing to read "Stuart Reichman", is written over a horizontal line.

Stuart Reichman
Hearing Examiner

Dated: October 17, 1990
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 the rights guaranteed to them by the Act, particularly by scheduling hearings at steps 4 and 5 and by appointing a designee at step 5 of Article 21 of the parties' collective agreement.

WE WILL cease and desist from unilaterally altering the established grievance procedure.

WE WILL process grievances at step 4 without scheduling hearings, WE WILL process grievances at step 5 with only meetings, not hearings, and WE WILL NOT substitute a designee for the Mayor at Step 5 of the grievance procedure.

WE WILL negotiate in good faith at the appropriate time with the FOP before deviating or changing from the language in the grievance procedure.

Docket No. CO-H-89-346

TOWNSHIP OF OLD BRIDGE

(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.