P.E.R.C. NO. 81-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-80-18-52

INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL #473,

Charging Party.

SYNOPSIS

The Commission holds that the Atlantic County Sewerage Authority violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when, without any justification, it withdrew the recognition it had extended to the International Brotherhood of Firemen and Oilers, Local 473 only six weeks earlier. The Commission further finds that the Authority violated these subsections when, despite Local 473's protest, it implemented a 10% annual pay raise without prior negotiations. As a remedy, the Commission orders the Authority to recognize and negotiate in good faith with Local 473.

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ATLANTIC COUNTY SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-80-18-52

INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL #473,

Charging Party.

Appearances:

For the Respondent, Horn, Kaplan, Goldberg and Gorny, Esqs.
(Thomas C. Bonner, of Counsel)

For the Respondent, Freedman & Lorry, Esqs.
(Mark P. Muller, of Counsel)

DECISION AND ORDER

The Atlantic County Sewerage Authority (the "Authority") has filed exceptions to the Hearing Examiner's Recommended Report and Decision in the above matter, contending that he erred in finding that the Authority refused to negotiate in good faith when it revoked its recognition of the International Brotherhood of Firemen and Oilers, Local 473 ("Local 473") as the representative of the employees in question. We reject those exceptions and adopt the Hearing Examiner's findings.

On July 17, 1979, Local 473 filed an Unfair Practice Charge against the Authority. The Charge alleged that the

Authority violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (7),[1/] when it withdrew the recognition it had extended Local 473 only one month previously and when it subsequently instituted a 10% wage increase for all employees without negotiations.

On February 1, 1980, the Director of Unfair Practices issued a Complaint with a Notice of Hearing, pursuant to N.J.A.C. 19:14-2.1.[2/] On June 5, 1980, Hearing Examiner Edmund G. Gerber conducted a hearing and afforded the parties the opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Both parties submitted post-hearing briefs.

At the hearing, Local 473 presented the testimony of its President, Michael Matz, and certain documentary evidence. Matz identified a March 7, 1979 letter from him to the Authority's attorney, Howard Goldberg. In this letter, Matz claimed that Local 473 represented a majority of employees in a unit composed

1/ These subsections prohibit public employers, their representatives, or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (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; and (7) violating any of the rules and regulations established by the Commission.

2/ The Authority failed to file an Answer within the 10-day period prescribed by N.J.A.C. 19:14-3.1. On March 31, 1980, Local 473 filed a Motion for Summary Judgment pursuant to N.J.A.C. 19:14-4.8 on the grounds that failure to file a timely answer constituted an admission of all relevant facts alleged in the answer. The Commission referred the motion to the Hearing Examiner who, on May 8, 1980, denied it. In re Atlantic County Sewerage Authority, H.E. No. 80-44, 6 NJPER 283 (¶11134 1980). No party has challenged the Hearing Examiner's decision denying the motion.

of the following job classifications: (1) Laborers; (2) Helpers; (3) Mechanics; (4) Machinists; (5) Custodians; (6) Equipment Operators; (7) Electricians; and (8) Water Pollution Control Employees. The letter also asked for a meeting to discuss the Union's claim.

Matz testified that on April 16, 1979, he and a union shop steward met with Goldberg and Robert Shipley, the Authority's plant superintendent and construction manager. According to Matz, he read the names which were on the authorization cards and Shipley checked the names against his payroll list. After reading each card, Matz placed it on the table where the Authority's representatives had the opportunity to inspect it. At one point, Goldberg picked the cards up, counted them, and put them back down again. After the Union and Authority representatives finished checking off the authorization cards against the payroll list, Goldberg stated that he only had authority to grant recognition for specific job classifications in which Local 473 had a majority. The cards showed a majority for only two classifications: (1) Custodial; and (2) Operations.[3/] Goldberg then wrote and signed the following statement dated April 16, 1979: "As attorney for the Atlantic County Sewerage Authority I am empowered to recognize your Union in the following bargaining units. Custodial [and] Operations." Matz took this note,

3/ Matz testified he had cards to prove that a bare majority of the 62 or 63 employees in the eight job classifications together endorsed local 473. However, since 99% of the employees in Operations signed cards, Local 473 did not have a majority in some of the other job classifications.

obtained Goldberg's permission to post it on an Authority bulletin board regularly seen by all employees, and gave it to the shop steward for posting. Matz stated that the note remained on the bulletin board for ten days.

On April 30, 1978, the President of the Authority wrote Goldberg a letter which confirmed the conversation and meeting concerning the recognition of Local 473. The letter stated, in pertinent part:

> As you know, they have shown a majority of the designation cards to you and Mr. Shipley and accordingly, pursuant to the resolution of the Atlantic County Sewerage Authority, you are authorized to recognize the Union for the following categories: Mechanical, Electrical, Operational, Labor [and] Custodial. Matz

Matz received a copy of this letter at a second meeting between Authority and Union representatives sometime in May, 1979.

The May meeting took place as the result of a letter from Matz to Goldberg dated May 7, 1979, in which Matz requested a recognition of Local 473 on behalf of all laborers and laboratory workers employed by the Authority in addition to previously recognized classifications. According to Matz, he again showed Goldberg and Shipley the authorization cards, thus satisfying them that Local 473 represented a majority of employees in the classifications set forth in the April 30, 1979 letter. Matz then presented a written contract proposal. At the close of the meeting, Matz directed the shop steward to post a copy of the April 30, 1979 letter on the Authority's bulletin board for at least ten days; the shop steward did so.

Matz next identified a June 11, 1979 letter from Goldberg to him. In it, Goldberg informed Matz that he had bad news: the Authority had retained an independent labor consultant and accepted his advice to withdraw recognition of Local 473 for various reasons. The letter also stated that the independent labor consultant believed that Local 473 should proceed through PERC if it insisted upon its claim of majority status.

In response to the June 11, 1979 letter, Matz sent the Authority's labor consultant a letter dated June 19, 1979. The letter recited the history leading to Local 473's recognition and demanded negotiations. The letter also objected to the proposed implementation of a pay raise on July 1, 1980. On June 22, 1979, the consultant denied Local 473's claim to negotiate and advised Local 473 to seek representation rights through P.E.R.C.

The authority presented the testimony of Robert Shipley. Shipley recalled an April 16, 1979 meeting to discuss possible recognition, but at first did not recall actually seeing the authorization cards at that time.[4/] He did deny checking any names off on his payroll list at that meeting. However, he also testified that he did attend the second meeting, which he believed occurred on May 23, 1979. He testified that at this time, Matz read the names on the authorization cards, and Shipley checked them against his payroll records and verified their employee status.

4/ He later denied testifying that he had not seen any cards at the April 16, 1979 meeting.

While Shipley did not handle the cards, he believed Goldberg may have. According to Shipley, some of the cards had been signed in 1978. The parties discussed the apparent desire of one or two laboratory technicians to revoke their authorization cards, but at no time during this meeting did anyone question Local 473's majority showing in the job classifications set forth in the April 30, 1979 letter.[5/]

Shipley identified a petition purportedly signed by Authority employees. The Petition was marked "Received June 15, 1979," four days after Goldberg's letter to Matz informing him that the Authority was revoking its recognition. The petition stated that the undersigned employees did not want Local 473's representation and desired an election. The petition proposed a grievance committee in the event of the defeat of union representation and requested the Authority to reveal salary scales and merit raises by "the originally proposed date of July 1, 1979." Shipley could not testify how many of these employees had also signed authorization cards, although he believed some of them had. The Authority failed to present any testimony concerning the job classifications held by the petitioning employees, the circumstances under which the petition was signed, or the effort, if any, the Authority made to verify the validity of the signatures on the petition.

5/ According to Matz, one or two employees sought to revoke their authorization cards after recognition. The record does not reveal the job classifications these employees held.

On July 1, 1979, the Authority, over Local 473's written objection, granted all its employees a 10% raise. According to Shipley, annual pay raises normally come in July. There is no testimony in the record on whether a 10% raise is unusual.

On October 21, 1980, the Hearing Examiner issued his Recommended Report and Decision, In re Atlantic County Sewerage Authority, H.E. No. 81-15, 6 NJPER 566 (¶11287 1980). He found that the Authority violated its duty to negotiate in good faith with Local 473 when it revoked its recognition of Local 473, despite the absence of a good faith doubt of its majority status. Consequently, he recommended that the Commission order the Authority to negotiate in good faith with Local 473 for a reasonable period of time. However, the Hearing Examiner found that the 10% raise which the Authority unilaterally granted all employees after revoking Local 473's recognition did not violate the Act.

On November 12, 1980, the Authority, after receiving an extension of time, filed its Exceptions to the Recommended Report and Decision and an accompanying brief. N.J.A.C. 19:14-7.3. On November 14, 1980, Local 473 responded by letter to the Authority's exceptions. Local 473 did not file any cross-exceptions.

The Authority's exceptions to the Hearing Examiner's Recommended Report and Decision are quite limited in nature and do not merit extended discussion. The first exception charges the Hearing Examiner with disregarding Shipley's testimony concerning

the absence of authorization cards at the April 16 meeting. Another exception states that the Hearing Examiner disregarded testimony that the Authority representatives were unable to satisfy themselves that Local 473 was a freely chosen majority representative. A third exception alleges that the Hearing Examiner "failed to consider or give due weight to the Authority's pleadings and testimony." All these exceptions suffer from a common and fatal deficiency: They attempt to replace the Hearing Examiner's solidly grounded findings of fact and credibility determinations with propositions lacking in any significant evidentary support. Thus, for example, while Shipley testified at one point that he did not recall seeing any cards at the April 16th meeting, at another point he denied having testified that he had not seen any cards at this meeting. Further, Matz testified without any inconsistency that he presented cards at the April 16th meeting, and that Goldberg based his handwritten note, which the Authority concedes is authentic and which extended recognition, on these cards. The testimony of Matz and Shipley is consistent that the Authority's representatives had full opportunity to examine the cards; the only dispute is over the extent to which the representatives exercised this opportunity. In short, the Hearing Examiner did consider the Authority's testimony, but properly found it wanting in comparison with Local 473's more detailed and consistent evidence. Accordingly, we perceive no basis for displacing the Hearing Examiner's findings of fact.

The Authority's last exception alleged that the Hearing Examiner improperly disregarded the June 15, 1979 petition and its indication that Local 473's majority may have evaporated. To the contrary, the Hearing Examiner thoroughly considered the June 14, 1979 petition and conclusively explained why this petition failed to support the Authority's claim that it revoked recognition because of a good faith doubt of Local 473's continuing majority status. Most dramatically, as the Hearing Examiner noted, the Authority reneged on its recognition by a letter of June 11, 1979; four days before it received the petition. Thus, the petition could not have played a part in the Authority's decision to revoke. See, e.g., International Harvester Co., 247 NLRB No. 140, 103 LRRM 1273 (1980). Additionally, the unit was limited to those positions for which Local 473 had satisfied the Authority's representatives that it represented a majority of employees.[6/] The petition does not show the job classification of each signatory employee and thus affords no basis for believing that Local 473 had lost majority support in any of the job classifications listed in the April 30 recognition letter.[7/]

6/ There is no dispute concerning the appropriateness of the recognized unit. Accordingly, N.J.S.A. 34:13A-5.3 bars Commission intervention concerning the appropriateness of the recognized unit.

7/ The Hearing Examiner noted that during their meetings on extending recognition, the parties discussed the fact that a few employees withdrew their authorization requests. According to Matz, these employees were Laboratory Technicians, a job classification not recognized in the April 30th letter. The Authority has made no showing that any withdrawals affected the majority for a job classification which was in fact recognized.

The Authority has not filed any exceptions disputing the legal conclusions the Hearing Examiner reached based on the facts he found.[8/] Under the facts of this case, we agree with the Hearing Examiner that the Authority entered into a negotiations obligation where it voluntarily recognized Local 473, and that the Authority violated this obligation when, without any justification whatsoever, it arbitrarily withdrew its recognition. Accordingly, we hold that the Authority violated subsection 5.4 (a)(5) and, derivatively, subsection 5.4(a)1) of our Act when it withdrew recognition and refused to negotiate with Local 473.

Finally, we consider whether the 10% pay raise which the Authority unilaterally granted on July 1, 1979 violated the Act. The Hearing Examiner found that the pay raise did not, apparently because it was given to all employees and came at the usual time for annual raises. In the absence of countervailing evidence, these facts tended to neutralize any suggestion arising from the June 15, 1979 petition that the Authority gave the pay raise in order to encourage its employees to withdraw their support from Local 473. We disagree. The Hearing Examiner erroneously focused on lack of proof showing either a subjective anti-union motivation or an objective tendency to discourage union support, a focus common to charges that an employer directly violated

8/ At the hearing, the Authority contended that Local 473's failure to demonstrate satisfaction of the procedural requirement of N.J.A.C. 19:11-2.8 necessarily precluded the creation of any negotiations obligation between the Authority and Local 473. The Authority does not press this contention before us, perhaps because In re Salem Board of Education, P.E.R.C. No. 81-6, 6 NJPER 371, 372 (¶11190 1980) so clearly establishes that a negotiations obligation can arise through recognition regardless of technical compliance with N.J.A.C. 19:11-3.1.

subsections 5.4(a)(1), (a)(2) and (a)(3) of our Act. Here, however, Local 473 has alleged that the Authority violated subsections 5.4(a)(5) and 5.4(a)(1) derivatively, when it refused to negotiate with the majority representative over a matter at the heart of the terms and conditions of employment, despite Local 473's explicit demand and warning of the consequences of a failure to negotiate. While the Authority may have had the unrestricted power to give employees outside the unit an annual pay raise, it abdicated any such power without prior negotiation when it recognized Local 473 as the majority representative. Thus, the Authority's granting of a pay raise contravened the statutory duty to negotiate regardless of whether it was designed or it tended to undercut Local 473's majority support. See, e.g. Blue Valley Machine Co. v. NLRB, 436 F.2d 649, 76 LRRM 2310 (8th Cir. 1971); Capitol Temptrol Corp., 243 NLRB No. 91, 102 LRRM 1106 (1979); Cartwright Hardware Co., 229 NLRB No. 110, 95 LRRM 1262 (1977).[9/] We do not, however, order any relief with respect to this violation since Local 473 has not requested it.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Respondent, the Atlantic County Sewerage Authority:

9/ Contrast a pre-election situation in which an employer has no duty to negotiate and may implement pay raises stemming from considerations, such as an established past practice on timing and amount, unrelated to the representation proceedings. Passaic Valley Sewerage Commission, P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980).

1. Cease and desist from refusing to recognize and to negotiate in good faith with the Charging Party, Local 473, International Brotherhood of Firemen and Oilers.

2. Recognize and negotiate in good faith with the Charging Party, Local 473, International Brotherhood of Firemen and Oilers.

3. Post at places where notices to employees are customarily posted, copies of the attached Notice marked as "Appendix A." Copies of such notices on forms to be provided by the Commission shall be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative, shall be maintained by the Respondent for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material. The Respondent shall notify the Chairman of the Commission within twenty days of the receipt of the notice of the steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Hipp, Newbaker and Parcells voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 20, 1981
ISSUED: January 21, 1981

H. E. No. 81-15

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

In the Matter of

ATLANTIC COUNTY SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-80-18-52

INTERNATIONAL BROTHERHOOD OF
FIREMEN AND OILERS, LOCAL 473,

Charging Party.

SYNOPSIS

In an unfair practice charge brought by Local 473 of the International Brotherhood of Firemen and Oilers, a Hearing Examiner finds that the Atlantic County Sewerage Authority refused to negotiate in good faith with the Union after voluntarily recognizing that Union as the exclusive majority representative of certain employees of the Authority. It was found that the Authority revoked this voluntary recognition although it had no reasonable doubt as to the majority status of the Union. It was recommended that the Commission order that the Authority negotiate for a reasonable time with the Union.

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. 81-15

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

In the Matter of

ATLANTIC COUNTY SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-80-18-52

INTERNATIONAL BROTHERHOOD OF FIREMEN
AND OILERS, LOCAL 473,

Charging Party.

Appearances:

For the Respondent
JPM Group, Inc. (John P. Miraglia)
Horn, Kaplan, Goldberg & Gorny, Esqs.
(Thomas C. Bonner, on the Brief)

For the Charging Party
Freedman & Lorry, Esqs.
(Mark P. Muller, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On July 17, 1979, the International Brotherhood of Firemen and Oilers, Local 473 (Union or Charging Party) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the Atlantic County Sewerage Authority (Authority or Respondent) had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. It claimed that on or about April 6 and 30, 1979, the Authority recognized the Union as the exclusive employee representative for all mechanical electrical, operational, labor and custodial employees of the Authority. This recognition was based upon the presentation of authorization cards designating the union as exclusive "bargaining agent" executed by a voting majority of the unit employees. It was alleged that on or about June 11, 1979, the Authority through its attorney, notified the Charging Party that it was withdrawing its recognition and, despite union demands that negotiations commence between the Union and the Authority, the Authority has refused to negotiate with the Union. It was further alleged that on or about July 1, 1979, the Authority unilaterally

instituted a wage increase of ten percent (10%) to all unit employees, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (5) and (7) of the Act. 1/

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 1, 1980. Pursuant to the Complaint a hearing was held in this matter on June 5, 1980, 2/ in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing briefs were submitted by both parties on or before July 30, 1980. In its brief the Charging Party renewed its motion, first made in its Motion for Summary Judgment, that the failure of the Respondent to file an answer within the time period prescribed by N.J.A.C. 19:14-3.1 constitutes an admission of all facts contained in the charge filed by Local 473. This issue was dealt with in the Hearer's Decision on Motion for Summary Judgment, H. E. No. 80-44, 6 NJPER ___ (¶ , 1980) and will not be considered here.

* * * * * * *

Michael Matz, President of Local 473 of the International Brotherhood of Firemen and Oilers, participated in an organizing drive of all employees of the Authority on behalf of the Union. He testified that on March 7, 1979, he sent a letter to Howard Goldberg, Esq., then counsel for the Authority, stating that the Union represented a majority of employees in some eight job classifica-

1/ These subsections prohibit public employers, their representatives or agents from "(1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (5) refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit or refusing to process grievances presented by the majority representative; (7) violating any of the rules and regulations established by the commission."

2/ Pursuant to the Complaint and Notice of Hearing this matter was originally set to be heard on March 20, 1980. John Miraglia, the representative of the Authority, requested an adjournment. The next mutually agreeable date was April 21, 1980, but on March 31, 1970, Mark Muller, the attorney for the Charging Party, filed a Motion for Summary Judgment with the Commission. Said motion was referred to the Hearer on April 14, 1980, whereupon the scheduled hearing date was adjourned. On April 24, 1980, the Hearer sent a letter to the parties in which he stated his intentions vis-a-vis the motion and suggested that the parties may respond before May 2, 1980. On May 8 the Hearer issued a decision denying the Motion for Summary Judgment and at that time the hearing was set down for June 12, 1980.

tions 3/ and asked for a meeting to discuss the Union's claim.

On April 16, 1979, Matz and Donahue, a Union shop steward, met with Goldberg and Robert Shipley, the Authority's plant superintendent and construction manager. At the meeting Matz read off names on authorization cards. 4/

Matz testified that he read off the names on the cards and Shipley checked the names again his own list. Afterward Goldberg picked up the cards and flipped through them. According to Matz, Goldberg said that he only had the authority to grant recognition as to specific job classifications. Goldberg believed that the Union had a majority of cards from only two classifications, custodial and operations. Goldberg then wrote out on a pad "As attorney for the Atlantic County Sewerage Authority I am empowered to recognize your Union in the following bargaining units. Custodial, Operation (signed) Howard Goldberg." At this meeting Matz and/or the Authority's representatives discussed letters written by four or five employees who wished to rescind their authorization cards. (There was no testimony as to whether or not cards from these employees were withdrawn.)

Matz then asked if there was a bulletin board which was regularly seen by all employees. Matz was told there was a bulletin board by the time clock. Matz gave Donahue Goldberg's note and had him make a copy of it and post it on the bulletin board. Matz stated the note remained on the bulletin board for ten days.

The same parties, along with another Union representative, Lutz, met a second time. Matz did not recall the date but it was after April 30. On cross-examination Matz testified the meeting might have been on May 23, 1979. Matz again showed Goldberg authorization cards. Thereupon Goldberg gave Matz a letter from Howard Haneman, President of the Authority, to Goldberg which states,

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3/ These classifications are laborers, helpers, mechanics, machinists, custodians, equipment operators, electricians and water pollution control.

4/ Although there was no testimony concerning the writing on the cards, it was never disputed that these cards were proper authorization cards which state that the signer wishes that a given organization, in this case the Charging Party, represent him or her as their exclusive representative for the purposes of collective negotiations.

"This is to confirm our conversation and meeting concerning recognition of the International Brotherhood of Firemen and Oilers.

As you know, they have shown a majority of the designation cards to you and Mr. Shipley and accordingly, pursuant to the resolution of the Atlantic County Sewerage Authority, you are authorized to recognize the union for the following categories:

Mechanical
Electrical
Operational
Labor
Custodial

Please let us know the next step. Thanks."

Matz then had Donahue make a copy of this letter and place it on the bulletin board. It was posted on the bulletin board for more than ten days.

Shortly thereafter Matz presented a proposed contract and asked to commence negotiations but the Authority did not respond. On June 11, 1979, Goldberg sent Matz a letter which in pertinent part stated:

"I am afraid that I am going to have to give you bad news. As I indicated to you in our last conference, the Atlantic County Sewerage Authority was considering retaining an independent consultant for labor matters. They have now retained John Miraglia.

John Miraglia has advised the Atlantic County Sewerage Authority, and they have accepted his advice, that the recognition of your union should be withdrawn for various reasons. Mr. Miraglia believes that you should continue to proceed through PERC if you are determined to have your union recognized."

Shortly thereafter the Union brought the instant action.

Shipley was the only witness for the Sewerage Authority. His recollections of the two meetings are somewhat at variance with Matz's. He does not recall going through the authorization cards at the April 16 meeting. Shipley stated Matz and Goldberg had been in contact with each other and he was not familiar with what information may have passed between them. Significantly, Haneman's letter of April 30, 1979, indicates that Shipley and Goldberg were shown a majority of the representation cards and this letter was written prior to the second meeting. Shipley testified that at the

second meeting, which he believed was on May 23, 1979, Matz read off the names on all of the authorization cards that he had. Shipley cross-checked those names on his own payroll records and took down the date that each card was signed. Shipley testified"it was verified that the cards were employees (sic) of the Sewerage Authority." Shipley did not look at the cards. He testified that Goldberg may have handled them but he wasn't sure. Shipley testified that there were a significant number of cards and the dates on the cards were in groups. Some of the cards were from 1978 but there was no testimony that any of the cards were more than six months old. Neither Shipley nor Goldberg questioned the majority of cards. There was some discussion about a few employees who had withdrawn their authorization requests.

Shipley testified that several weeks later Mr. Haneman showed him a petition with 31 names of employees who did not wish to belong to Local 473 of the Firemen and Oilers. However, this petition was marked as received by the Sewerage Authority on June 15, 1979, 24 days after recognition was afforded the Union and four days after the Union's recognition was revoked in the letter from Goldberg. Moreover, there was no testimony as to how many of those who signed the petition also signed recognition cards, although Shipley testified that some of them did. Similarly there was no testimony as to the total number of employees in either the total unit or the different classifications or what percentage of such employees signed the petition. Nor was there testimony as to how, when or under what conditions these signatures were collected. No evidence at the hearing directly ties the petition, a hearsay document, to the Sewerage Authority's withdrawal of recognition and no other evidence was introduced to prove the Sewerage Authority had a good faith doubt as to the Union's majority status. The petition also contains suspect language. It states in part,

> "We would also hope the Authority would demonstrate its good will by revealing salary scales and merit raises by the originally <u>proposed</u> date of July 1, 1979." (Emphasis supplied.)

While there was no testimony concerning this language, it is apparent that someone was in contact with the employees, although it cannot be determined from the petition language either who was doing the proposing or what was proposed.

Although both Goldberg's note of April 16, 1979, and Haneman's letter of April 30 speak only in terms of Goldberg being authorized to grant recognition,

Goldberg's letter to Matz of June 11, 1979, makes it clear that recognition was granted,for Goldberg expressly states that the recognition of the union was being withdrawn.

The Respondent Sewerage Authority never disputed that recognition was granted. It argues that once the recognition was revoked from the Union no residual rights remained with the Union since that recognition was not in accord with the Commission's recognition procedures, specifically N.J.A.C. 19:11-3.1. 5/ This rule provides that "the commission will treat a voluntary recognition in the same manner as a union certification of exclusive representative, won in a secret ballot election, and grant such recognition the protection of 19:11-2.8(b)" 6/ provided the voluntary recognition satisfies certain criteria. Further, following the satisfaction of these criteria the employer must issue a written grant of recognition. The criteria are 1) the public employer must satisfy itself in good faith, after a check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate unit. 2) The public employer must conspicuously post a notice for at least ten days stating that it intends to grant such exclusive recognition without an election for a specified negotiations unit.

There is no testimony to demonstrate that the employer did not satisfy

5/ 19:11-3.1 Recognition as exclusive representative provides in pertinent part:

"(a) Whenever a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiations unit, the public employer and the employee organization may resolve such matters without the intervention of the commission.

(b) The commission will accord certain privileges to such recognition as set forth in N.J.A.C. 19:11-2.8 (Timeliness of petitions), provided the following criteria have been satisfied prior to the written grant of such recognition by a public employer.

1. The public employer has satisfied itself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative oa a majority of the employees in an appropriate collective negotiations unit;

2. The public employer has conspicuously posted a notice on bulletin boards, where notices to employees are normally posted, for a period of at least 10 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiations unit."

6/ 19:11-2.8(b) provides that "Where there is a certified or recognized representative, a petition for certification or decertification will not be considered as timely filed if during the preceding 12 months an employee organization has been certified by the commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative)."

itself that the Union represented a majority of employees in accordance with 1) above, particularly in light of Haneman's letter of April 30. When the same letter was posted it met the notice requirement of 2). The letter was signed by the employer and states that the Union has shown a majority of cards in certain enumerated categories and grants to Goldberg authorization to recognize the Charging Party. It is readily inferred from the letter that no recognition election is contemplated. The fact that the letter was physically placed by the Union is not violative of the rule,for the letter is clearly authored by the employer and was placed on the employer's bulletin board, which is located by the time clock. Those who see the letter cannot know that it was physically placed by the Union. It was signed by the employer and posted in a conspicuous place in a timely fashion.

Nevertheless 19:11-3.1 was never fully complied with, since there never was a written grant of recognition after 1) and 2) were complied with.

Contrary to the Sewerage Authority's position, however, this rule does not totally eliminate the obligation to negotiate arising in a voluntary recognition. It only defines under what circumstance will a voluntary recognition be treated as a certification after an election. Alternatively, a failure to comply with the rule only means the full protection of 19:11-2.8 will not be granted.

In the instant matter it is not 19:11-3.1 (a representation rule) but the language of the Act which is controlling. Section 5.3 provides

> "Representatives designated or selected by public employees for the pubposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this Act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit."

In accordance with the statute, there was a designation of a majority representative in an undisputed unit. Pursuant to that designation the Charging Party becme the exclusive negotiations representative. The Sewerage Authority refused to honor the designation in violation of the Act. They argue however that no order to negotiate should issue for "federal labor law does not call for a bargaining order in this case" and cite NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481 (1969) and Linden Lumber Div. of Summer & Co. v. NLRB, 419 U.S. 301,

87 LRRM 3236 (1974). Neither of these cases are on point. As stated by Justice Douglas in Linden Lumber, in neither Gissel nor Linden Lumber, "had the employer agreed to a voluntary settlement and then reneged."

However, NLRB v. Cayuga Crushed Stone, Inc., 474 F. 2d 1380 (CA 2, 1973), 82 LRRM 2952, is a federal labor law case with a factual pattern similar to the instant matter. A manager of Cayuga met with two unions' representatives and although he never saw the unions' authorization cards, the manager executed a recognition agreement with the unions. The parties initially entered into negotiations but before there was any agreement,Cayuga withdrew recognition of the unions and refused to negotiate. Cayuga's alleged reason for their action was their belief that the union had lost majority support. Cayuga based this upon a letter from an employee stating that a majority of employees were not happy with the union and wanted an election. The unions jointly filed an unfair labor practice charge. At the evidentiary hearing the Board determined that the employee's letter lacked objective substantiation and Cayuga had no reasonable basis to question in good faith the union's majority status. The circuit court of appeals upheld the Board when it ruled that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair change to succeed."[7/] The court went on to acknowledge that if the bargaining relationship had been established by Board certification after an election, the representative status of the union, absent unusual circumstances, would be irrebuttably presumed to continue for one year. Although there is no fixed period of collective bargaining where uncertified unions are involved, the court upheld the Board's order in Cayuga which mandated that Cayuga must bargain with the union for a reasonable period of time even though a union might have lost majority employee support. The court held "there is an interest in and policy in support of the principle that employees should have a freedom in selecting or rejecting bargaining representatives. However...there is a competing interest in providing stability for bargaining relationships which have been lawfully established...." So too here. The Authority granted recognition. It was not demonstrated at the hearing that the Authority had an objective reason for the revocation of recognition. As noted above, the employee's petition was not received by the Authority until after tha Authority

7/ The Board cited French Bros. Co. v. NLRB, 321 U.S. 702, 705, 14 LRRM 591 (1944).

revocation. It was not demonstrated that the signatures on the petition represented a significant percentage of employees who signed the authorization cards or a majority of all employees who are employed by the Authority. The Respondent did not demonstrate they had a good faith doubt of the Union's majority status at the time recognition was revoked. 8/ Accordingly they had a duty to negotiate, not in accordance with N.J.A.C. 19:11-3.1, but for a reasonable period of time. 9/ When the Authority refused to negotiate with the Charging Party they violated subsections 5.4(a)(5) and derivatively subsection 5.4(a)(1).

The evidence adduced at the hearing does not demonstrate that the Union was granted recognition for all employees of the Sewerage Authority. The evidence demonstrates only that recognition was granted, on the basis of Haneman's letter, for the labor, custodial, operational, electrical and mechanical units and any duty to negotiate is limited to negotiations for those particular units. The raise of July 1, 1979, was not given by the Sewerage Authority until after the operative event here, specifically the revocation of the recognition. The only testimony relating to the raise came from Shipley who stated that the employer always gave annual raises on or about July 1st. There was no testimony that a ten percent raise was out of the ordinary. The language of the June 16 employee's petition is highly suggestive but it was never shown what type of proposals were made or who made them. A promise of benefits made during a representation campaign is violative of the Act but such a promise was never demonstrated. Accordingly, the Charging Party failed to prove that the raise was violative of the Act.

Proposed Order

It is recommended that the Commission ORDER that the Sewerage Authority

1) negotiate in good faith for a reasonable time with the Charging Party, Local 473, International Brotherhood of Firemen and Oilers for a reasonable period of time.

2) Post at all places where notices to employees are customarily posted copies of the attached Notice, marked as Appendix "A." Copies of such notices on forms to be provided by the Commission shall be posted immediately upon receipt

8/ See Grand Union Co., 122 NLRB No. 68, 43 LRRM 1165; International Ladies Garment Workers Union v. NLRB, 280 F.2d 260 (CADC 1960), 46 LRRM 2223.

9/ Reasonable time should not be judged on the basis of a fixed time period. Rather, it must be judged on the negotiations between the parties. The Sewerage Authority must demonstrate a willingness to negotiate in good faith in accordance with the provisions of the Act.

thereof and after being signed by the Respondent's authorized representative, shall be maintained by the Respondent for a period of at least sixty consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other material. The Respondent shall notify the Chairman of the Commission within twenty days of the receipt of the notice what steps the Respondent has taken to comply thereto.

Edmund G. Gerber
Hearing Examiner

DATED: October 21, 1980
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 refuse to negotiate in good faith for a reasonable period of time with the labor, custodial, operational, electrical and mechanical units of Local 473, International Brotherhood of Firemen and Oilers, the designated majority representative.

ATLANTIC COUNTY SEWERAGE AUTHORITY
(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780