P.E.R.C. NO. 95-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and-

Docket No. CO-H-94-351

HOBOKEN SUPERIOR OFFICERS ASSOCIATION,

Charging Party.


SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Hoboken Superior Officer's Association against the City of Hoboken. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act when it repudiated a memorandum of understanding executed by the parties and refused to reduce to writing and sign a complete collective negotiations agreement. In the absence of exceptions, the Commission adopts the Hearing Examiner's recommendation to grant the City's cross-motion for summary judgment. Since the memorandum of understanding expressly required ratification by the principals before there could be a binding agreement and since the City did not ratify the memorandum, the City did not violate the Act when it did not pay a salary increase contained in the memorandum.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 95-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and- Docket No. CO-H-94-351

HOBOKEN SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Murray, Murray & Corrigan, attorneys (Robert E. Murray, of counsel)

For the Charging Party, Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, P.C., attorneys (David S. Solomon, of counsel)

DECISION AND ORDER

On May 25 and September 2, 1994, the Hoboken Superior Officers Association ("SOA") filed an unfair practice charge and amended charge against the City of Hoboken. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(5) and (6),[1/] when it repudiated a memorandum of understanding executed by the parties and refused to reduce to writing and sign a complete collective negotiations agreement.

---

1/ These subsections prohibit public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

On October 5, 1994, a Complaint and Notice of Hearing issued. On November 29 and December 13, respectively, the SOA and the City moved and cross-moved for summary judgment. The motions were referred to Hearing Examiner Stuart Reichman. Neither party responded to the other party's motion.

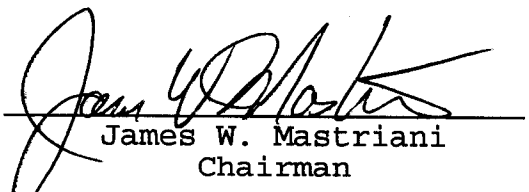
On February 17, 1995, the Hearing Examiner recommended granting the City's cross-motion and dismissing the Complaint. H.E. No. 95-17, 21 NJPER ___ (¶_____ 1995). He found that since the memorandum of understanding expressly required ratification by the principals before there could be a binding agreement and since the City did not ratify the memorandum, the City had not violated the Act when it did not pay a salary increase contained in the memorandum.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 4-7). In the absence of any exceptions, we adopt his recommendation to grant the City's cross-motion and to dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn and Klagholz voted in favor of this decision. None opposed. Commissioners Ricci and Wenzler were not present.

DATED: April 10, 1995
Trenton, New Jersey
ISSUED: April 11, 1995

H.E. NO. 95-17

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

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and-

Docket No. CO-H-94-351

HOBOKEN SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission grant the City of Hoboken's Cross Motion for Summary Judgment and deny the Hoboken Superior Officers Association's Motion for Summary Judgment. The parties entered into a memorandum of agreement which expressly required ratification. Since the City did not ratify the memorandum, there was no agreement. Although the City implemented the terms of the memorandum for six months, it did not violate the Act when it refused to implement a salary increase on January 1, 1994.

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. 95-17

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

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and- Docket No. CO-H-94-351

HOBOKEN SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Murray, Murray & Corrigan
(Robert Murray, of counsel)

For the Charging Party, Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano (David S. Solomon, of counsel)

**HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION ON CHARGING PARTY'S MOTION FOR SUMMARY JUDGMENT AND RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

On May 25, 1994, and by amendment filed September 2, 1994, the Hoboken Superior Officers Association ("SOA" or "Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the City of Hoboken ("City"). The SOA alleges that the City repudiated the memorandum of understanding executed by the parties and, further, refused to reduce to writing and sign a complete collective negotiations

agreement in violation of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-5.4(a)(5) and (6).[1/]

On October 5, 1994, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 29, 1994, the SOA filed a motion for summary judgment pursuant to N.J.A.C. 19:14-4.8. On December 13, 1994, the City filed a cross-motion for summary judgment. On January 5, 1995, the motion and cross-motion were referred to me for disposition. Neither party filed a response to the opposing party's motion.

It is well settled law that in considering a motion for summary judgment, all inferences are drawn against the moving party and in favor of the party opposing the motion. No credibility determinations may be made, and the motion must be denied if material factual issues exist.[2/]

---

1/ These subsections prohibit public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

2/ N.J.A.C. 19:14-4.8(d) explains that summary judgment may be granted only if there are no material facts in dispute. That rule provides:

> (d) If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

A motion for summary judgment should only be granted with extreme caution; the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 117 N.J.Super. 182 (App. Div. 1981); Essex County Educational Services Commission, P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); New Jersey Dept. of Human Services, P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

The New Jersey Supreme Court established in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1974) that where the party opposing the motion does not submit any affidavits or documentation contradicting the moving party's affidavits or documents, the moving party's facts may be considered as true, and there would be no material factual issue to adjudicate, unless it was raised in the movant's pleadings. See also In re City of Atlantic City, H.E. No. 86-36, 12 NJPER 160 (¶17064 1986), adopted P.E.R.C. No. 86-121, 12 NJPER 376 (¶17145 1986); AFT Local 481 (Jackson), H.E. No. 87-9, 12 NJPER 628 (¶17237 1986) adopted P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986); In re CWA Local 1037, AFL-CIO, H.E. No. 86-10, 11 NJPER 621 (¶16217 1985), adopted P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 1985). The Court in Judson held that:

> ...if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature...he will not be heard to complain if the court grants summary judgment, taking as true the statements of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue

of material fact. [Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. at 75.]

Upon application of the standards set forth above, and in reliance upon the record papers filed by the parties in this proceeding to date, I make the following:

## FINDINGS OF FACT

1. The parties entered into collective negotiations for a successor agreement to commence on January 1, 1992. The parties were unable to arrive at a negotiated settlement and the dispute was ultimately submitted to binding interest arbitration pursuant to N.J.S.A. 34:13A-16 et seq.

2. The interest arbitrator conducted two mediation sessions. With the interest arbitrator's assistance, the parties were able to arrive at a tentative agreement covering all of the terms and conditions of employment for negotiations unit members. The agreement was memorialized in a memorandum of agreement dated June 25, 1993, and signed by Edwin J. Chius, City Business Administrator, and John Ferrante, SOA President. The memorandum of agreement set terms and conditions of employment covering the period January 1, 1992 through December 31, 1994. The memorandum expressly stated that it was subject to ratification by the SOA and City Council.

3. At the close of business, June 30, 1993, the Mayor, business administrator and other City officers left their respective offices. The last City Council meeting which took place under the administration which negotiated the memorandum of agreement with the SOA occurred on June 23, 1993, two days before the memorandum was executed. The City Council did not ratify the SOA's memorandum of agreement on June 23, 1993, or anytime thereafter. On July 1, 1993, newly elected officials were sworn into office and new officers were appointed.[3/]

4. The City gave effect to the elements of the memorandum of agreement. Specifically, on or about July 7, 1993, SOA members received a salary increase of 4% retroactive to January 1, 1992, and a salary increase of 4.5% retroactive to January 1, 1993. The July 7, 1993 paychecks reflected the pay period which ended on June 30, 1993. Additionally, the longevity provisions contained in the memorandum of agreement were likewise implemented. These actions were taken notwithstanding the fact that the City Council had not ratified the memorandum of agreement.

---

3/ Paragraph 3 of George Crimmins' certification states that the mayor, business administrator and other officers left their offices on June 30, 1994. Paragraph 5 of Crimmins' certification states that the last City Council meeting conducted prior to the change of administration occurred on June 23, 1993. Paragraph 4 of the certification states that the newly elected officers and appointees were sworn in on July 1, 1993. Consequently, I find that the reference to June 30, 1994 in Crimmins' certification at Paragraph 3 is a typographical error and should read June 30, 1993.

5. The City's payroll supervisor informed Business Director Crimmins that she received verbal authorization to issue the SOA salary increases just prior to June 30, 1993, and that such authorization did not come from the City Council.

6. At some undefined date after July 1, 1993 and prior to January 1, 1994, the Council Public Safety Subcommittee reviewed the memorandum of agreement and rejected it. The memorandum of agreement was never presented to the full Council, because the subcommittee must first approve it before it could be presented to the full Council for a vote. During this same time frame, the City advised the SOA that it did not ratify the memorandum of agreement, and it did not recognize the existence of a collective agreement between the City and the SOA. Thereafter, the parties engaged in additional negotiations.

7. The City has continued to pay SOA unit members in accordance with the salary rate contained in the memorandum of agreement through December 31, 1993. While the salary increases effected on or about July 7, 1993 remain in effect, the City has refused to implement the remaining 4% salary increase that the memorandum of agreement provided would be implemented on January 1, 1994.

8. Ferrante's certification states that the membership ratified the memorandum of agreement and so notified the City. Crimmins' certification states that he has been advised by some SOA members that the membership has not ratified the memorandum of

agreement. In the context of this unfair practice charge, I find that whether or not the SOA has ratified the memorandum of agreement does not constitute a material fact in the resolution of this unfair practice charge.

9. Crimmins' certification states that SOA president Ferrante contacted him to continue contract negotiations and attaches a copy of an October 7, 1994 letter from Petrillo to Crimmins in support. A plain reading of the October 7, 1994 letter shows that the letter relates to the SOA's interest in proceeding with successor negotiations for a 1995 contract and is irrelevant to the instant unfair practice charge. Crimmins' October 11, 1994 response letter to Petrillo is likewise irrelevant. Crimmins also certifies that he has received three separate written proposals from the SOA regarding contract terms. One dated August 16, 1994, another dated October 21, 1994 and a third which is undated. The August 16 and the October 21, 1994 letters, on their face, pertain to proposals for a successor agreement beginning January 1, 1995, and, consequently, are irrelevant to the instant proceeding. The undated proposal appended to Crimmins' certification in support of his statement, states "page 13" in the upper right hand corner. On the bottom of the page it is signed Joseph Petrillo, President, P.S.O.A. Thus, it appears that this undated page is merely one sheet of a larger document. I find this document to be too unreliable to be meaningful. Moreover, I find the document is not material to the resolution of these motions.

**ANALYSIS**

The memorandum of agreement expressly requires both the SOA and the City Council to ratify the memorandum's terms as a condition precedent to effectuation of a legally binding agreement. The SOA argues that the City is bound by the memorandum, because the City implemented the terms of the memorandum. The SOA points out that the City has fully complied with the memorandum including the implementation of a 4% salary increase retroactive to January 1, 1992, a 4.5% salary increase retroactive to January 1, 1993 and the longevity provisions.

The City contends that the ratification element of the memorandum must be satisfied if the memorandum is to have any binding effect. The City points out that the City Council has not ratified the memorandum of agreement. The City argues that absent the satisfaction of the express qualifying condition, there is no agreement to be reduced to writing and, consequently, no violation of the Act.

The Commission has previously addressed the SOA's argument. In Lower Township Board of Education, H.E. No. 78-8, 4 NJPER 45 (¶4022 1977) adopted P.E.R.C. No. 78-32, 4 NJPER 24 (¶4013 1977), the Board and the Association, pursuant to a salary reopener, reached a tentative agreement to increase salary guides by 8% for the 1976-1977 school year. The parties agreed to use the 1975-1976 salary guides as the model for the 1976-1977 guides, including the

computation formulae at the top of each guide. The formulae explained how the salary figures were derived. The memorandum of agreement was dated October 22, 1976 and expressly required ratification by both sides. In or about March, 1977, the Board implemented payments to unit employees in accordance with the newly adjusted salary guides. The narrow dispute which arose between the parties was whether, at the top of each salary guide, the formulae which specify the amount by which each particular guide was increased should appear. The Hearing Examiner concluded that the Board had effectively ratified the memorandum of understanding when it commenced the payment of salaries as set forth in the salary guides prepared by the Association, which included the computation formulae at the top of each guide.

One of the specific issues addressed by the Commission was whether the memorandum of understanding, which was expressly subject to ratification by the Board and Association, was in fact ratified and adopted by the Board when it commenced paying salaries in accordance with the salary guides prepared by the Association pursuant to the memorandum. In rejecting the Hearing Examiner's recommendation, the Commission stated the following:

> The Commission, in In re Bergenfield Board of Education, [P.E.R.C. No. 90, 1 NJPER 44 (1975)] and In re East Brunswick Board of Education, [H.E. No. 76-13, 2 NJPER 204 (1976) adopted P.E.R.C. No. 77-6, 2 NJPER 279 (1976), appeal dismissed as moot, dkt. no. A-250-767 (December 2, 1977)], held that, absent expressed qualifying conditions, an association may justifiably presume that a Board's negotiating representatives possess apparent authority to

> conclude a binding agreement. The determining fact, which distinguishes the present situation from Bergenfield and East Brunswick, is that here the memorandum of understanding specifically states that it is a tentative agreement subject to ratification by the negotiating representatives' respective principles. [Footnote omitted.] Therefore, even though the negotiators reached an agreement among themselves under the memorandum of understanding, there could be no binding agreement without subsequent Board ratification or approval. The question then is whether the Board, through its conduct, impliedly ratified the memorandum. Lower Township, 4 NJPER at 27.]

The Commission concluded that since the memorandum of understanding expressly required ratification by the principles before there could be a binding agreement, there was no complete and final agreement between the parties even though the Board had implemented payments to unit employees. Therefore, the Board did not refuse to sign the agreement in violation of Section 5.4(a)(6). Id.

Likewise, in this case, the City did nothing more than rely upon and act in accordance with the express terms of the memorandum of agreement, notwithstanding the passage of six months. See, New Jersey Sports and Exposition Authority, H.E. No. 87-71, 13 NJPER 543 (¶18201 1987) adopted P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987). The memorandum of agreement expressly requires ratification by City Council. The City Council Public Safety Subcommittee

rejected the memorandum of agreement and so advised the SOA.[4/] The subcommittee's rejection of the memorandum caused there to be no agreement between the parties and, thus, no agreement to reduce to writing and sign, and no obligation to pay the 4% provided for in the memorandum for January 1, 1994.

In the instant matter, it is also important to closely note who was involved at various points in time. The memorandum of agreement was dated June 25, 1993. On July 1, 1993, a new mayor, business administrator and other appointed officers were sworn into office. Clearly, the memorandum of agreement was negotiated by the former administration. It was also the former administration that gave the payroll supervisor verbal authorization to pay the salary increases reflected in the memorandum. The July 7, 1993 payroll checks received by SOA members containing the pay increases reflected the pay period ending June 30, 1993, which was prior to the commencement of the new administration's term. Thus, by the time the new administration took office, the retroactive salary increases already had been effected by the old administration, with the SOA's acquiescence. Consequently, the first opportunity which the new administration had to impact upon SOA terms and conditions of employment was January 1, 1994, the date when the next salary increase was due to take effect. Had the new administration

---

4/ A party's decision not to ratify a tentative agreement does not violate Section 5.4(a)(5) of the Act. See, Borough of Somerville, H.E. No. 93-10, 18 NJPER 486 (¶23222 1992) adopted P.E.R.C. No. 93-35, 19 NJPER 1 (¶24000 1992).

modified the existing conditions of employment in any manner other than by not implementing the January 1, 1994 increase, it might have risked the commitment of an unfair practice. See, Hunterdon County and CWA, P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1986), P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987), aff'd NJPER Supp.2d 189 (¶168 1988), 116 N.J. 322 (1989).

On the basis of the particular facts in this matter, I make the following:

## CONCLUSIONS OF LAW

1. The City of Hoboken did not violate N.J.S.A. 34:13A-5.4(a)(5) and (6) by not paying SOA members on January 1, 1994 a 4% salary increase contained in the January 25, 1993 memorandum of agreement.

2. The Charging Party's motion for summary judgment is denied.

3. The Respondent's cross-motion for summary judgment is granted.

**RECOMMENDED ORDER**

I recommend that the Commission **ORDER** that the complaint be dismissed.[5/]

Stuart Reichman
Hearing Examiner

DATED: February 17, 1995
Trenton, New Jersey

---

5/ Pursuant to N.J.A.C. 19:14-4.8(e), a decision on a motion for summary judgment which resolves the complaint in its entirety may be appealed to the Commission in accordance with N.J.A.C. 19:14-7.3(a).