

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-82-2-140

LOCAL 153, OFFICE AND PROFES-
SIONAL EMPLOYEES, INTERNATIONAL
UNION, AFL-CIO,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in the absence of Exceptions, adopts a Hearing Examiner's findings of fact, conclusions of law and recommended order in an unfair practice case. The Hearing Examiner had found that the County of Passaic violated the New Jersey Employer-Employee Relations Act, specifically subsections 34:13A-5.4(a)(1) and (5), when it unilaterally removed three titles -- chief clerk purchasing, chief clerk - accounts and control, and payroll supervisors -- from the negotiations unit which Local 153 represents and when it unilaterally granted employees in these three titles a 5% pay increase.

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LOCAL 153, OFFICE AND PROFES-
SIONAL EMPLOYEES, INTERNATIONAL
UNION, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, John Sinsimer, Jr., Director
of Personnel, County of Passaic

For the Charging Party, Schneider, Cohen, Solomon
& DiMarzio, Esqs. (Bruce D. Leder, of Counsel)

DECISION AND ORDER

On July 2, 1981, Local 153, Office and Professional Employees, International Union, AFL-CIO ("Local 153") filed an unfair practice charge against the County of Passaic ("County") with the Public Employment Relations Commission. The charge alleged that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5)^{1/} when it unilaterally removed three titles -- chief clerk purchasing, chief clerk - accounts and control, and payroll supervisors -- from the negotiations unit which Local 153

^{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; 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."

represents and when it unilaterally granted employees in these three titles a 5% pay increase.

On June 17, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing which he served on the parties by certified mail. Return receipts evidence that the County received its copy on June 18, 1982.

The County did not file an Answer, as required by N.J.A.C. 19:14-3.1. On August 16, 1982, Local 153 filed a Motion for Summary Judgment, together with a brief and supporting affidavit, based on the County's failure to file an Answer. I referred this motion to Commission Hearing Examiner Joan Kane Josephson. The County did not file a response.

On August 19, 1982, the Hearing Examiner conducted a hearing on the motion for summary judgment. The County's representative, its Director of Personnel, did not oppose the motion. The Hearing Examiner granted the motion.

On September 1, 1982, the Hearing Examiner issued her report and recommendations, H.E. No. 83-7, 8 NJPER ____ (¶ ____ 1982). She recommended that the Commission order the County to recognize and negotiate with Local 153 as the representative of the three titles and to post a notice of its violation and remedial action taken.

The Hearing Examiner served a copy of her report on the parties. No Exceptions have been filed.

The full Commission has delegated authority to me to decide this matter. I have reviewed the record. Based on this review, and in the absence of Exceptions, I adopt and incorporate

the Hearing Examiner's findings of fact, conclusions of law, and recommended order.

ORDER

A. The County of Passaic is ordered to cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally removing the titles of chief clerk - purchasing, chief clerk - accounts and control, and payroll supervisors from the negotiations unit represented by Local 153, Office and Professional Employees, International Union, AFL-CIO, and by unilaterally granting salary increases to the employees holding those titles.

2. Refusing to negotiate in good faith with Local 153 concerning the terms and conditions of employment of these three titles, particularly by unilaterally granting salary increases to employees in these titles.

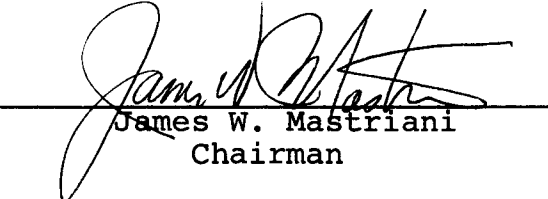
B. The County is ordered to take the following affirmative action:

1. Forthwith advise the Business Representative of Local 153 that the titles of chief clerk - purchasing, chief clerk - accounts and control, and payroll supervisors are included in the negotiations unit represented by Local 153.

2. Upon demand negotiate in good faith with Local 153 concerning the terms and conditions of employment for the titles of chief clerk - purchasing, chief clerk - accounts and control, and payroll supervisors.

3. Post in 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 thereof, and, after being signed by the County's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the County to insure 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 County has taken to comply herewith.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
October 27, 1982

"APPENDIX A"
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 interfere with, restrain or coerce our employees in the rights guaranteed to them by the Act, particularly, by unilaterally removing the titles of chief clerk - purchasing, chief clerk - account and control, and payroll supervisors from the negotiations unit represented by Local 153, Office and Professional Employees International Union, AFL-CIO, and by unilaterally granting salary increases to the employees holding these titles.

WE WILL NOT refuse to negotiate in good faith with Local 153, Office and Professional Employees International Union, AFL-CIO regarding terms and conditions of employment of these employees.

WE WILL forthwith advise Local 153, Office and Professional Employees International Union, AFL-CIO that the titles of chief clerk - purchasing, chief clerk - accounts and control, and payroll supervisors are included in the negotiations unit represented by Local 153, Office and Professional Employees International Union, AFL-CIO.

WE WILL forthwith, upon demand negotiate in good faith with Local 153, Office and Professional Employees International Union, AFL-CIO, concerning terms and conditions of employment for the titles of chief clerk - purchasing, chief clerk - accounts and control, and payroll supervisors.

COUNTY OF PASSAIC

(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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. C0-82-2-140

LOCAL 153, OFFICE & PROFESSIONAL
EMPLOYEES, INTERNATIONAL UNION,
AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner grants the Charging Party's Motion for Summary Judgment on a charge of unfair practices, which alleged that the Respondent violated subsections (a)(1) and (5) of the New Jersey Employer-Employee Relations Act when the employer unilaterally granted salary increases to certain unit employees and unilaterally removed those employees from the negotiations unit. The Respondent filed no answer to the charge and no responsive pleadings to the Motion for Summary Judgment. The Respondent consented to granting of the Summary Judgment Motion. The Hearing Examiner found that since there were no disputed facts the Charging Party was entitled to a Summary Judgment as a matter of law based on In re Passaic County Regional High School District No. 1, Board of Education, P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

The Hearing Examiner recommends that the Commission grant the remedy requested by the Charging Party that the Charging Party be notified that the titles are in the negotiations unit and that the employer negotiate on demand terms and conditions of employment for these employees.

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. 83-7

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

In the Matter of
COUNTY OF PASSAIC,

Respondent,

-and-

DOCKET NO. CO-82-2-140

LOCAL 153, OFFICE & PROFESSIONAL
EMPLOYEES, INTERNATIONAL UNION,
AFL-CIO,

Charging Party.

Appearances:

For the Respondent
John J. Sinsimer, Jr., Director
Department of Personnel Relations
County of Passaic

For the Charging Party
Schneider, Cohen, Solomon & DiMarzio, Esqs.
(Bruce D. Leder of counsel)

DECISION AND ORDER ON CHARGING
PARTY'S MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on July 2, 1981 by Local 153, Office & Professional Employees, International Union, AFL-CIO ("Charging Party" or "Local 153, OPEIU") alleging that the County of Passaic ("Respondent" or "County") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), in that the County unilaterally and without negotiations granted pay

increases to certain employees represented by the Charging Party, and also unilaterally removed their titles from the negotiations unit. These actions are alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). ^{1/}

It appearing that the allegations of the unfair practices, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 17, 1982 and served by certified mail on the parties. ^{2/} No Answer has been filed by the County. On August 16, 1982, the Charging Party filed a Notice of Motion for Summary Judgment returnable on August 19, 1982 together with a brief and supporting affidavit. The Charging Party argued that summary judgment should be granted because the Respondent failed to file an Answer to the Complaint of June 17, 1982 as required under N.J.A.C. 19:14-3.1. Pursuant to N.J.A.C. 19:14-4.8, the Chairman of the Commission referred the Charging Party's Motion for Summary Judgment to the undersigned. A prehearing conference had previously been scheduled

^{1/} These subsections provide that public employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of their 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."

^{2/} The return receipt accompanying the certified mail was received in the Respondent's office on June 18, 1982, and in the Charging Party's office on June 21, 1982. The return receipts were received back at the Commission's office on June 21 and June 22, 1982 respectively.

for August 19, 1982 and the parties were advised by telephone by the undersigned that I would consider the Charging Party's Motion for Summary Judgment at that time. The County advised the undersigned that responsive pleadings would be filed at that time. On the morning of the prehearing conference and return date of the motion, the County's representative John J. Sinsimer, advised me that a Passaic County Assistant County Counsel would represent the Respondent County. On or about 10:30 a.m., a representative of the County Counsel's office advised me by telephone that the County Counsel assigned the case had had car problems and would not be present. Mr. Sinsimer discussed the case at that time with the representative of the County Counsel's office. Mr. Sinsimer thereafter advised me that he would represent the Respondent County and that neither an Answer to the charge nor responsive pleadings to the motion would be filed. Further, Mr. Sinsimer advised me that the Respondent County would consent to the granting of the summary judgment motion by the Hearing Examiner.

N.J.A.C. 19:14-4.8 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.

Pursuant to N.J.A.C. 19:14-3.1, if no Answer to the Complaint is filed, any allegation not specifically denied or

explained is deemed to be admitted as true. ^{3/} Therefore, I make the following:

UNDISPUTED FINDINGS OF FACT

1. The County of Passaic is a public employer within the meaning of the Act and is subject to its provisions.

2. Local 153, Office & Professional Employees, International Union, AFL-CIO is a public employee representative within the meaning of the Act and is subject to its provisions.

3. Included in the certification of this unit are the titles chief clerk - purchasing, chief clerk - accounts and control, and payroll supervisors.

4. In May of 1981, the County unilaterally and without negotiations granted a 5% pay increase to the above mentioned three titles.

5. On May 21, 1981, the County administrator wrote to

3/ N.J.A.C. 19:14-3.1 provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The hearing examiner, upon proper cause shown, may extend the time within which the answer shall be filed. The respondent shall specifically admit, deny or explain each of the charging party's allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. The answer should normally include a specific detailed statement of any affirmative defenses....

(Emphasis added)

Tom Havriluk, business representative of Local 153, advising that those three titles would be deleted from the unit.

DISCUSSION

Based on the pleadings in this case, since there are no issues of fact in dispute, the summary judgment should be granted and the requested relief ordered if the Charging Party is entitled to the relief as a matter of law.

The public employer in this matter unilaterally removed employees from the negotiations unit represented by the Charging Party and unilaterally, without negotiations with the majority representative, granted salary increases to those employees. The Commission has previously dealt with this issue in In re Passaic County Reg. H/S Dist. No. 1, Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976) wherein the employer unilaterally removed an employee from a negotiations unit. The respondent employer in that case interposed an affirmative defense that the employee was a confidential employee within the meaning of N.J.S.A. 34:13A-3(g) who did not belong in the negotiating unit. The Commission found the employee to be a confidential employee, based on evidence adduced at the hearing, and held that the employer did not violate the Act by refusing to negotiate with the majority representative concerning terms and conditions of employment of that confidential employee. The Commission noted that confidential employees are not entitled to the protections of the Act regarding the right to be represented by an exclusive negotiations representative in an

appropriate unit for the purpose of collective negotiations. The Commission pointed out in that decision however:

It should be noted that a public employer's refusal to negotiate with the majority representative of a public employee in a collective negotiations unit is an act that a public employer takes at his peril. The legality of this action is wholly dependent upon the propriety of the public employer's judgment that the employee in question is not entitled to the protections of the Act. In the event that the public employer's judgment proves faulty in this regard he will have committed a violation of the Act, regardless of any good faith belief that the action was justifiable. Any such violation of the Act may be fully remedied by the filing of an unfair practice charge on the issuance of a Decision and Order by the Commission, pursuant to its broad remedial authority.

The Respondent has had more than adequate notice to come forward to raise a defense to the unilateral removal of the titles of chief clerk - purchasing, chief clerk - accounts and control and payroll supervisors from the Charging Party's negotiations unit and has not done so.

Therefore, I am satisfied that the Charging Party is entitled to a summary judgment as a matter of law. As noted above, the Respondent has consented to the granting of this motion.

By way of remedy the Charging Party has requested that the Commission order the Respondent to negotiate in good faith concerning these employees and be required to post a notice that the Respondent has violated N.J.S.A. 34:13A-5.4(a)(1) and (5).

Upon the foregoing, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Charging Party's Motion for Summary Judgment is granted.
2. The Respondent, by its conduct herein, has violated N.J.S.A. 34:13A-5.4(a)(1) and (5).

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission
ORDER:

- A. That the Respondent cease and desist from:
 1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally removing the titles of chief clerk - purchasing, chief clerk - accounts and control and payroll supervisors from the negotiations unit represented by the Charging Party and by unilaterally and without negotiations, granting salary increases to the employees holding those titles.
 2. Refusing to negotiate in good faith with Local 153, OPEIU concerning terms and conditions of employment, particularly by unilaterally and without negotiations granting salary increases to employees they improperly removed from the negotiations unit represented by Local 153, OPEIU.
- B. That the Respondent County take the following affirmative action:

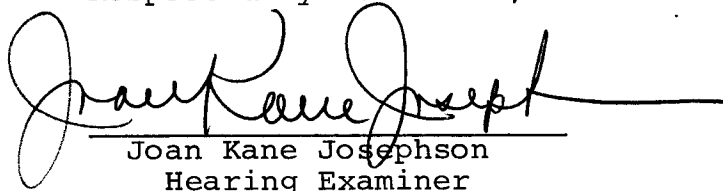
1. Forthwith advise the Business Representative of Local 153, OPEIU that the titles of chief clerk - purchasing, chief clerk - accounts and control and payroll supervisors are included in the negotiations unit represented by Local 153, OPEIU.

2. Upon demand negotiate in good faith with Local 153, OPEIU concerning terms and conditions of employment for the titles of chief clerk - purchasing, chief clerk - accounts and control and payroll supervisors.

3. Post in 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 thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent County to insure 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 County has taken to comply herewith.

Respectfully submitted,


Joan Kane Josephson
Hearing Examiner

DATED: September 1, 1982
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 interfere with, restrain or coerce our employees in the rights guaranteed to them by the Act, particularly, by unilaterally removing the titles of chief clerk - purchasing, chief clerk - accounts and control and payroll supervisors from the negotiations unit represented by Local 153, Office & Professional Employees International Union, AFL-CIO, and by unilaterally and without negotiations granting salary increases to the employees holding these titles.

WE WILL NOT refuse to negotiate in good faith with Local 153, Office & Professional Employees International Union, AFL-CIO regarding terms and conditions of employment of these employees.

WE WILL forthwith advise Local 153, Office & Professional Employees International Union, AFL-CIO that the titles of chief clerk - purchasing, chief clerk - accounts and control and payroll supervisors are included in the negotiations unit represented by Local 153, Office & Professional Employees International Union, AFL-CIO.

WE WILL forthwith, upon demand negotiate in good faith with Local 153, Office & Professional Employees International Union, AFL-CIO, concerning terms and conditions of employment for the titles of chief clerk - purchasing, chief clerk - accounts and control and payroll supervisors.

COUNTY OF PASSAIC

(Public Employer)

Dated _____

By _____

(Title)

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If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.