P.E.R.C. NO. 85-118

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and- Docket No. CO-84-160-8

CITY OF CAMDEN POLICE SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge that the City of Camden Police Superior Officers Association filed against the City of Camden. The charge alleged that the City violated the Act when it refused to negotiate in good faith with the Association over a successor collective negotiations agreement. The Commission, in agreement with a Hearing Examiner's recommendation and based upon the totality of the circumstances, holds that the City's conduct in negotiations did not violate the Act.

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Charging Party.

Appearances:
For the Respondent, Murray & Granello, Esqs. (James P. Granello, of Counsel)

For the Charging Party, Brown, Connery, Kulp, Wille, Purnell & Greene, Esqs. (William M. Tambussi, of Counsel)

DECISION AND ORDER

On December 21, 1983, the City of Camden Police Superior Officers Association ("Association") filed an unfair practice charge against the City of Camden ("City") with the Public Employment Relations Commission. The charge alleged that the City violated subsection 5.4(a)(5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1 et seq., when it allegedly refused to negotiate in good faith with the Association over a successor

1/ This subsection prohibits 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."

collective negotiations agreement. The charge specifically alleged that the City had delayed meeting and refused to make counter proposals.

On July 17, 1984, a Complaint and Notice of Hearing was issued. The City then filed an Answer denying that it had negotiated in bad faith, delayed meeting or refused to make counter proposals. The City also asserted, as separate defenses, that the Association had agreed to submit all issues to interest arbitration, thereby waiving its unfair practice claim, that the City had thrice met and exchanged proposals and that the totality of the circumstances did not evidence either a prima facie or actual violation.

On October 10, 1984, Commission Hearing Examiner Arnold H. Zudick conducted a hearing. At the beginning, the City made a motion to dismiss which the Hearing Examiner denied. The Association's president then testified, and the parties submitted exhibits. The parties argued orally and submitted post-hearing briefs.

On March 14, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-33, 11 NJPER ___ (Para_____ 1985) (copy attached). Finding that, under all the circumstances, the City had not refused to negotiate in good faith, he recommended dismissal of the Complaint.

On April 2, 1985, the Association filed an exception asserting that a negotiations remedy was necessary to effectuate the Act's purposes.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-12) are accurate. We adopt and incorporate them here.[2/].

In order to determine whether an illegal refusal to negotiate has occurred, we must examine the totality of a particular case's circumstances. See, e.g., State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd sub nom. State v. Council of N.J. State College Locals, 141 N.J. Super. 470 (App. Div. 1976); Township of Rockaway, P.E.R.C. No. 82-72, 8 NJPER 117 (Para 13050 1982). We have done so here. Based on our independent review of the record, we agree with the Hearing Examiner's description and assessment of the circumstances and his conclusion that no violation occurred.[3/] Accordingly, we dismiss the Complaint.

2/ We do question the finding (p. 8) that the City made an oral salary proposal of $1500 per employee, per year, for three years. That finding accurately reflects the transcript, but it is probable that the proposal concerns a raise of $1500.

3/ The Association's exception presupposes that we will find a violation. Since we have not, we need not decide what, if any, remedy would have been appropriate, despite the completion of interest arbitration proceedings, had we found a violation.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. Commissioner Graves was opposed.

DATED: Trenton, New Jersey
May 15, 1985
ISSUED: May 16, 1985

H. E. No. 85-33

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

In the Matter of

CITY OF CAMDEN,

Respondent,

-and- Docket No. CO-84-160-8

CITY OF CAMDEN POLICE SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the City of Camden did not violate the New Jersey Employer-Employee Relations Act during its negotiations with the City of Camden Police Superior Officers Association for a new collective agreement. The Hearing Examiner found that based upon the totality of conduct standard the City engaged in good faith negotiations.

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. 85-33

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

In the Matter of

CITY OF CAMDEN,

Respondent

-and- Docket No. CO-84-160-8

CITY OF CAMDEN POLICE SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Murray & Granello, Esqs.
(James P. Granello, of Counsel)

For the Charging Party
Brown, Connery, Kulp, Wille, Purnell & Greene, Esqs.
(William M. Tambussi, of Counsel)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 19, 1983, by the City of Camden Police Superior Officers Association ("Association") alleging that the City of Camden ("City") had engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association alleged that the City refused to negotiate over a new collective agreement which was alleged to be in violation of

N.J.S.A. 34:13A-5.4(a)(5) of the Act.[1/]

The Association alleged that the City acted in bad faith by engaging in delaying tactics in scheduling meetings, by refusing to make counter proposals during negotiation sessions, and by allegedly conditioning further negotiations upon a withdrawal of the instant Charge. The City denied committing any violation of the Act and asserted that it did exchange proposals with the Association and that it agreed to submit all disputed issues to binding interest arbitration.

It appearing that the allegations of the Unfair Practice Charge may constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 17, 1984.A hearing was then held in this matter on October 10, 1984 in Trenton, New Jersey, at which time the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and

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1/ This subsection prohibits 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."

If there is a violation of 5.4(a)(5), it would also be a derivative violation of 5.4(a)(1) which provides as follows:

> Public employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

evidence and argue orally.[2/] At the close of hearing both parties filed post-hearing briefs the last of which was received on January 31, 1985.[3/]

2/ At the commencement of the hearing the City, in reliance upon several prior Commission decisions, made a motion to dismiss the Complaint. After recessing to consider the parties' arguments on the motion and the cases discussed therein, I denied the motion on the record in favor of a hearing on the whole.

3/ By letter dated November 28, 1984 I informed the parties that post-hearing briefs were due on January 4, 1985 and reply briefs due on January 11, 1985. On January 3, 1985 the Association mailed its post-hearing brief which was received on January 7, 1985. Thereafter by letter dated January 9, 1985 the Association advised me that because it had not yet received a brief from the City that it was objecting to my consideration of any untimely brief that might be filed by the City.

On January 11, 1985 the City mailed its reply brief in this matter which was not received until January 21, 1985 because the Commission was relocating its office to 495 West State Street between Jauary 14-16, 1985. Thereafter, on January 16, 1985 the City mailed a letter of explanation and its post-hearing brief which was also received o January 21, 1985. In that letter the City's counsel explained that it had mailed its brief on January 4, but that it, and other items, were lost in the mail. The City included in that package a photocopy of its January 4 cover letter, and a copy of its proof of mailing to the Association attorney.

Thereafter on January 21, 1985 the Association mailed a response/reply brief to the City's brief and letter of January 16, 1985, but which was not received by me until January 31, 1985 because it was mailed to the Commission's former address and was forwarded to the new address. In that letter the Association continued to object to my consideration of the City's brief and reply brief. In response to the Association's January 21 letter, the City on January 25, 1985 mailed a letter to me requesting that I deny the Association's attempts to have

(Footnote continued on next page)

An Unfair Practice Charging having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing, and after consideration of the post-hearing briefs, this matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record I make the following:

Findings of Fact

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

2. The Camden Police Superior Officers Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The parties have been involved in a negotiations relationship for many years, but have not reached a collective agreement in traditional negotiations since their last collective agreement which was effective from 1976-1978. Since that time the

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the City's briefs suppressed. The City's letter was received on January 29, 1985 and was mailed to the Commission's new address.

Although I understand the Association's frustration regarding the briefs, there is no basis to challenge the City's representation that the brief was originally mailed on January 4, but was lost in the mail. It is also apparent that the Commission's change of location during the relevant time period contributed to a delay for the receipt of briefs. Under all of the circumstances the only appropriate finding is to consider all of the briefs filed by both parties as timely filed.

parties have participated in the interest arbitration process to establish terms and conditions of employment.

Article 24 Section 3 of the 1976-1978 agreement provided that:

> ...negotiations for a successor agreement to this contract shall begin no later than July 1, 1978.

The parties then participated in interest arbitration for 1979-1981 and Arbitrator John Pearce issued his award on August 1, 1980. That award did not change the specific language in Article 24 Sec. 3 of the 1976-1978 agreement (Transcript "T" p. 35).

In 1982 and early 1983 the parties again failed to reach agreement for a new collective agreement resulting in their participation in an interest arbitration hearing on June 2, 1983 before Arbitrator Rodney Dennis to cover the 1982-1983 time period. Then in late June 1983 Association President Lt. Robert Mentz contacted Patrick Keating, the City's Assistant Business Administrator, and informed him that the Association was ready to begin negotiations on Juy 1, 1983 for a 1983-1986 agreement (T p. 38).

Subsequently, on July 19, 1983 Mentz sent a letter (Exhibit CP-1) to Mayor Primas requesting a meeting to set ground rules for negotiations. The City Business Administrator, Thomas Corcoran, did not respond to CP-1 until his letter of August 30, 1983 (Exhibit CP-2) wherein he informed Mentz that the City would schedule

negotiation sessions after Labor Day. Corcoran also advised Mentz that negotiations for the City would be handled by Keating, City Attorney Foster, and the law firm of Murray and Granello. Mentz responded to CP-2 on September 14, 1983 (Exhibit CP-3) at which time he requested that Corcoran contact him to start negotiations.

Thereafter, on October 6, 1983, having received no response to CP-3, Mentz sent another letter to Mayor Primas (Exhibit CP-4) complaining that no date had been set for negotiations with the Association, and he further complained about the City's having begun negotiations with the firemen (hosemen) before it did so with the Association. Mentz requested that the Mayor provide him (Mentz) with a definite date to commence negotiations, and he (Mentz) further requested that the City stop negotiating with the firemen. Mentz said in pertinent part:

> Mayor, the Superior Officers of the Camden Police Department are hereby requesting that you intercede with this problem concerning contract negotiations and also have the negotiations with the hosemen [firemen] stopped until we negotiate our contract first.

Perhaps as a result of CP-4, the first negotiations session between the instant parties was scheduled for October 11, 1983 (T p. 49). Although the parties met on that date allegedly to exchange proposals, they did not exchange proposals apparently because the City wanted to first receive and review the Association's proposals prior to preparing its own proposals. Mentz then threatened to leave the session, but Tom Foster, City Attorney, asked Mentz to

reconsider his decision to leave that session, and the parties then agreed to exchange proposals on October 28, 1983 (T p. 49). The following day, October 12, 1983, Mentz sent Robert Murray, the City's labor counsel, a letter (Exhibit CP-5) confirming the meeting for October 28.

The next day, October 13, 1983, Mentz confirmed in Exhibit CP-6, that even despite the lack of any formal negotiations between the parties up to that time, he and Keating had agreed that the City would immediately pay certain benefits to the employees.

Then on October 28, 1983 the parties held their second meeting and exchanged negotiations proposals. The Association's proposals (Exhibit R-4) were rather detailed and included a salary increase proposal. The City's proposals (Exhibit R-3) consisted of seven items but did not include a specific salary proposal. 4/

4/ The City's proposals were as follows:

1. Except as otherwise set forth in the proposals, the current Collective Bargaining Agreement shall be continued.

2. The term of the new Agreement shall be for three years commencing January 1, 1984 through December 31, 1986.

3. Effective January 1, 1983, the medical

(Footnote continued on next page)

After the exchange of the written proposals on October 28, Murray agreed to offer the Association a salary proposal at a meeting to be scheduled for November 4, 1983. However, Murray subsequently cancelled that meeting and rescheduled the same for November 9, 1983. On that day the City made a verbal salary proposal of $1500 per employee, per year, for three years (T p. 54). Mentz then alleged that the City rejected all of the Association's proposals and refused additional negotiations, and

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insurance program shall provide for a $100.00 deductible for an individual and a $200.00 deductible for a family per annum.

4. The work schedule of Police Superiors shall be established as a management right and the City shall have the right to set the schedule and effectuate any changes in that schedule. The hours of work of the Police Superiors shall not be increased as a result of this proviso.

5. The Association understands and agrees that the staffing of the Camden Police Department and the Table of Organization are strictly a management right and not subject to negotiation.

6. Salaries and other economic benefits shall be negotiable.

7. Consistent with good faith negotiations, the City reserves the right to make new proposals, modify these proposals and prepare appropriate counter-proposals during the negotiations.

Mentz then indicated to Muray that the Association would not accept the City's proposals (T p. 55). Mentz testified that at that point in the negotiations he said, "We both agreed we were at an impasse." (T p. 55).

As a result of the impasse, Murray, on November 17, 1983, sent the Association's attorney, Steven Wolschina, a letter (Exhibit R-5) and a copy of a petition for interest arbitration seeking his agreement to file a joint petition. Wolchina responded on December 13, 1983 (Exhibit R-6) and refused to submit a joint petition and alleged that the City engaged in bad faith negotiations.

Then on December 16, 1983 Mentz wrote to Keating (Exhibit CP-7) and suggested continued negotiations before the beginning of the interest arbitration for 1984-1986. However, no additional negotiations were conducted, and on December 19, 1983 the City mailed the Petition for interest arbitration (Exhibit R-2) and the Association filed the instant Charge (Exhibit C-1).[5/] Shortly thereafter, on December 31, 1983, Arbitrator Dennis issued the interest arbitration award for 1981-1983 (Exhibit R-1) which, for the first time, established the salaries for unit employees for 1983.

On January 9, 1984 (Exhibit CP-8) Mentz advised the City's new business administrator, Richard Cummings, of CP-2, and then

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5/ Although the Petition for interest arbitration was mailed on December 19, 1983, it was not marked as "filed" with the Commission until December 22, 1983 (T p. 15). However, the Charge was "filed" on December 19, 1983.

requested that the parties continue to negotiate to resolve some differences prior to interest arbitration, but there was no response to that inquiry (T pp. 56, 61). Consequently on January 12, 1984, Mentz wrote to Police Chief Holmes (Exhibt CP-9) asking for his assistance in scheduling a negotiations session with the City. No additional negotiations were held, however, and Arbitrator Robert Light was appointed as interest arbitrator on February 8, 1984 for the 1984-1986 time period.

Unrelated to the arbitration, the City, on March 29, 1984, adopted its municipal budget (Exhibit CP-12) which included figures covering salaries for 1984.

On June 20, 1984 the parties had their first session with Arbitrator Light who attempted to mediate a new collective agreement for the parties. As a result of that meeting the Association' attorney, William Tambussi, wrote to Murray on June 22, 1984 (Exhibit CP-10) and requested that the parties continue to negotiate. Presumably, he meant face to face negotiations. Murray responded on June 27, 1984 (Exhibit CP-11) and indicated that the parties were still going to proceed to interest arbitration, but that he hoped the instant Charge would be withdrawn. Murray in CP-11 then asked Tambussi to advise him (Murray) of the status of the Charge prior to his (Murray) deciding whether to agree to any other negotiations. Subsequently, no additional negotiations were held, and Arbitrator Light conducted a hearing on August 14, 1984.

The parties had until October 3, 1984 to submit any briefs or position statements to the Arbitrator. On December 18, 1984 Arbitrator Light issued his award accepting the City's final offer.6/

4. Although Mentz sought to negotiate with the City beginning in July 1983, he admitted that Article 24 Sec. 3 of the 1976-1978 agreement was not changed by either Arbitrator Pearce or Dennis to require that negotiations begin no later than July 1, 1981 or July 1, 1983 respectively (T pp. 35, 80). He further admitted that the Association had no agreement which would have required the City to first negotiate with--and reach an agreement with--the Superior Officers Association before engaging in negotiations with any other labor organization representing City employees (T p. 78). Mentz further admitted that it was the Association's goal to be the first labor organization to negotiate and conclude an agreement with the City for 1984-1986 (T pp. 79, 83), and that he wanted the City to stop the negotiations with the firemen and deal with the superior

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6/ In its post-hearing brief and reply brief the Association alleged that Arbitrator Light imposed a "pattern of settlement" on the Association, and that he accepted additional materials from the City after the final close of the arbitration proceeding. I note that the instant hearing was not intended to be the forum to litigate the conduct of the arbitration hearing and I will not consider any challenge to the arbitration hearing in this proceeding.

officers first (T p. 111).[7/] Finally, Mentz admitted that after receiving the City's proposals on October 28, 1983 he asked for clarification of several items and Murray complied with that request (T pp. 88-89).

Analysis

Having considered all of the circumstances regarding the instant Charge, as well as the law, I find that the City did not violate the Act herein. In arguing that the City violated the Act the Association may have failed to consider all of the circumstances that preceded the declaration of impasse on November 9, 1983. For example, the City's ability to negotiate for a 1984-1986 agreement was adversely affected by the lack of an arbitrator's award for 1982-1983, and by Mentz's remarks in CP-4 demanding that the City cease negotiations with another unit. In addition, it appears that the Association misunderstood the intent and effect of the interest arbitration amendments to the Act, N.J.S.A. 34:13A-16 et seq. when it consistently insisted on face to face negotiations with the City after the declaration of impasse. After impasse is declared the Legislature intended that parties engage in interest arbitration with no further requirement to continue face to face negotiations.

7/ In its reply brief the Association admitted that it did not have an absolute right to be the first unit to bargain with the City, and further admitted that it was only entitled to fair treatment in the commencement and conduct of the negotiations process.

The standard for determining whether a party has refused to negotiate in good faith was established by the Commission in In re State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. (App. Div. 1976) wherein it held that:

> It is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred....A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and/or attitude of the party charged. The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement. [Id. at 40, footnotes omitted].

The Commission has applied that "totality of conduct" standard in a variety of cases. In In re Township of Rockaway, P.E.R.C. No. 82-72, 8 NJPER 117 (para. 13050 1982), and In re New Jersey State Board of Higher Education, P.E.R.C. No. 84-69, 10 NJPER 27 (para. 15016 1983), the Commission, in reliance upon the discretion attributed to it by the Supreme Court in Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25, 39 (1978) to determine the appropriate remedy under the circumstances of a particular case, refused to adopt hearing examiners' findings of (a)(5) violations. In Rockaway, supra, the Commission dismissed the Complaint as being moot because the employer did eventually fulfill its obligation to submit an agreement to the union for ratification. In State Board

of Higher Education, supra, the Commission dismissed the complaint because it found that the parties subsequently reached a new agreement which included a clause covering the subject matter of the original dispute. The Commission held that

> ...we do not believe that further adjudication of this case is warranted since the parties' contract settlement has essentially resolved this dispute. 10 NJPER at 27.

Similarly, in the case most like the instant matter, In re Borough of Oradell, P.E.R.C. No. 84-26, 9 NJPER 595 (para. 14251 1983), the Commission again refused to adopt a hearing examiner's finding of an (a)(5) violation and dismissed the complaint. The Commission therein found that the proposal that the Borough had refused to negotiate was eventually submitted to interest arbitration and decided by the arbitrator. The Commission therefore concluded that the matter was resolved and that further proceedings therein would not effectuate the purposes and policies of the Act.

In addition to a review of the employer's conduct, the totality of conduct standard also encompasses a review of the union's conduct in relationship to that of the employer during the negotiations process. Where a union's conduct or tactics are inappropriate, it may provide a justification for the employer's action. See In re Morris County, P.E.R.C. No. 84-107, 10 NJPER 206 (para. 15101 1984); In re Phillipsburg Board of Education, P.E.R.C. No. 83-34, 8 NJPER 569 (para. 13262 1982).

In its post-hearing brief the Association argued that the decisions in Township of Rockway, State Board of Higher Education, and Borough of Oradell were distinguishable from the instant matter because the Commission found that the issues underlying those matters were not likely to recur. The Association further argued that the allegedly unlawful actions committed by the City herein would be likely to recur unless the Commission found a violation.

Although the Association's analysis of the above-cited decisions is correct to a certain extent, its analysis of Oradell does not go far enough. In that case the employer clearly failed or refused to negotiate over a particular item during the "face to face" phase of their "negotiations process." However, since the item in dispute was subsequently submitted to an arbitrator in the "binding arbitration" phase of the "negotiations process" then no violation was committed. Theoretically, the Commission could have found the employer's failure to engage in face to face negotiations over the issue to be a violation but ordered no remedy since it was eventually submitted to arbitration. But it did not issue such a finding because the interest arbitration processes was intended, at least in part, to resolve rather than initiate problems, and it was intended to finalize collective negotiations for police and fire employees. Thus, the Commission in Oradell did not find a violation because the issue in dispute was submitted to arbitration which would have been the same situation even if the parties had negotiated over that issue and then reached impasse.

The result in the instant matter must be the same. Assuming, arguendo that the City was inappropriately delaying negotiations, or that it failed to engage in substantial "give and take" in reviewing proposals, it did, nevertheless, quickly initiate the interest arbitration process and submit its proposals to the arbitrator after impasse was reached. In fact, the City even engaged in a mediation process with the arbitrator's assistance in an effort to reach an agreement.

In addition, the Association's argument that the City's alleged delaying tactics resulted in the late scheduling of an arbitration which in turn lead to an arbitration award based upon an alleged "pattern of settlement," is without merit. That argument is speculative at best. Even if the parties began negotiations in July 1983, it is certainly possible that those negotiations could have continued into November 1983, or beyond, and still reached impasse. Then, of course, the parties would still have entered into interest arbitration in 1984 which could still have resulted in an arbitrator's award issued in December 1984 which might still have been based upon a so-called "pattern of settlement."

In applying all of the above cases to the instant matter, it is clear that the "totality of conduct" standard established by the Commission requires a consideration of the entire series of events surrounding the negotiations process occuring both before and after the filing of the Charge, and not just specific elements of

the Charge. The series of events in this case show that the parties had a strained relationship even prior to the start of the negotiations for 1984. The parties had not been able to reach a new agreement since the expiration of the 1976-1978 agreement, and they had participated in the interest arbitration process twice since 1978 with the last arbitration hearing occurring in June 1983 which was only a few weeks before the Association demanded a new round of negotiations.

Additionally, several other factors contributed to the strain on the parties' negotiations relationship in the Fall of 1983. First, the Association in July 1983 incorrectly assumed that it had a contractual right to demand negotiations on July 1, 1983. However, none of the arbitrators ever specifically provided for such an award. Second, the Association may have violated the Act itself by demanding that the City cease negotiations with the firemen and first negotiate with--and reach an agreement with--the Superior Officers. Such action can have a chilling effect on the negotiations process. Third, since the Dennis Arbitration Award covering 1982 and 1983 did not issue until December 31, 1983, it was difficult, if not impossible, for the City in October and November of 1983, to make viable detailed language and salary proposals for 1984, since it was unaware at that time as to what language and salaries would be awarded for 1983.

The Association's allegations can be analyzed in several segments. The Association first alleged a violation over the timing

of the negotiations. It alleged that the City's failure to start negotiations in July or August 1983, and Murray's late arrival to the sessions that were held violated the Act. However, given the overall circumstances prior to negotiations, and the fact that there was no specific requirement to begin negotiations on July 1, 1983, it was not illegal for the City to begin negotiations in October, and Murray's late arrival was of minimal consequence.

The Association next alleged that the City's failure to exchange proposals on October 11, the alleged insufficiency of its written proposals submitted on October 28, and its failure to make a written salary proposal violated the Act. Those allegations, particularly in view of the City's totality of conduct regarding negotiations, are without merit. The City had no obligation to exchange proposals with the Association on the same day, nevertheless it did, in fact, exchange proposals on October 28. Moreover, given the lack of an arbitration award for 1983, the City's proposals for 1984 were adequate. Finally, it was not a violation for the City to give a written rather than an oral salary proposal. The Association did not deny that such a salary proposal was made, and there is no statute or law requiring a written proposal.

The Association relied upon cases from the private sector to support its argument herein. In NLRB v. Billion Motors, Inc., 700 F.2d 454, 112 LRRM 2873, 2874 (8th Cir. 1983), the court found a

violation based upon pre-negotiation hostility towards the union, as well as the lack of preparation by the employer's negotiator, the premature announcement of impasse, and the making of a frivolous wage proposal--without justification. In Hartford Fire Ins. Co. v. NLRB, 456 F.2d 201, 79 LRRM 3007, 3008 (8th Cir. 1972), the court found a violation at least in part because there was no realistic counter-proposal from the employer.

These cases are distinguishable from the instant matter. First, given the lack of an arbitration award for 1983 at the time the parties began negotiating for 1984, I find that the City's counter-proposals were adequate. Second, if the City engaged in pre-negotiations hostility then certainly Mentz's letter to the Mayor demanding that the City cease negotiations with the firemen (CP-4) can be characterized as hostile. Third, given the facts preceding November 9, 1983, the declaration of impasse was not premature, and the mere filing of the notice of impasse was not a violation of the Act. In re Hamilton Twp. Bd.Ed., D.U.P. No. 80-26, 6 NJPER 275 (para. 11130 1980).

Finally, Billion Motors and Hartford are distinguishable because they concern the private sector where a declaration of impasse essentially ends the negotiations process. Thus, the NLRB and the Courts must strictly enforce the need for detailed negotiations to avoid strikes. In New Jersey public sector, however, impasse does not end the "negotiations process"

particularly for police and fire employees who are required by law to engage in binding interest arbitration. Although public sector employers cannot avoid good faith face to face negotiations because of the eventual availability of interest arbitration, the rights of the labor organization to good faith negotiations must be balanced against the successful completion of interest arbitration and the overall affect continued labor strife may have upon the public health and safety. Bd.Ed. Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed.Assn., 81 N.J. 582 (1980).

In this case, given the apparent pre-negotiations hostility on both sides, the Association was not denied its right to good faith negotiations. In addition, it appears that both parties fully participated in the interest arbitration process which, resulted in the issuance of an arbitration award which in itself, afforded the Association its rights under the Act.

In addition to the above events, the Association raised some question as to whether the parties reached impasse in their negotiations. I believe that based upon all of the circumstances herein the parties did reach impasse on November 9, 1983. The Association's refusal to file the impasse papers as a joint petition does not alter that conclusion.

Finally, the Association alleged that the City's failure to continue face to face negotiations after the impasse petition was filed, and that the City's request that the instant Charge be

withdrawn prior to it (the City) deciding whether to engage in any further face to face negotiations after impasse was declared and the interest arbitrator appointed, was a violation of the Act. I do not agree. Once the impasse petition was filed the City was not obligated to continue face to face negotiations with the Association. The City was, at that point, only required to participate in the interest arbitration process in good faith, and the facts show that the City fulfilled that requirement.

Similarly, it was not a violation for the City to request that the instant Charge be withdrawn prior to it deciding, after impasse, whether to again engage in face to face negotiations. The City was not obligated to engage in such negotiations after impasse, and it specifically told the Association in CP-11 that it was going forward with interest arbitration. The City's request that the Association consider withdrawing the Charge was not a precondition to the City engaging in the interest arbitration process, but was only an offer to re-engage in face to face negotiations which it was not otherwise required to do at that time, and therefore, it was not a violation of the Act in the context of this case.

The Association on that issue relied upon General Motors Acceptance Corp. v. NLRB, 476 F.2d 850, 82 LRRM 3093, 3097 (1st Cir. 1973), where the court held that an employer violated the act (National Labor Relations Act) when it conditioned future negotiations on the union's withdrawal of a pending unfair labor

practice charge. However, that case is not applicable to the instant matter because here the parties were required by law to engage in the interest arbitration process and were not further required to engage in face to face negotiations.

Finally, in addition to the above findings, since the instant parties, like those in Borough of Oradell, submitted all outstanding issues to interest arbitration, no other negotiations remedy herein would further effectuate the purposes and policies of the Act.

Accordingly, based upon the entire record, and in application of the totality of conduct standard, I make the following:

Conclusion of Law

The City did not violate N.J.S.A. 34:13A-5.4(a)(5) by its actions in negotiating for a new collective agreement.

Recommended Order

I recommend that the Commission ORDER that the Complaint be dismissed in its entirety.

Arnold H. Zudick
Hearing Examiner

Dated: March 14, 1985
Trenton, New Jersey