P.E.R.C. NO. 82 -65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY and F.M.B.A.
LOCAL NO. 12,

Respondents,

-and- Docket No. CI-80-50-135

WESLEY SPELL,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that F.M.B.A. Local No. 12 violated its duty of fair representation under the New Jersey Employer-Employee Relations Act when, acting in bad faith, it excluded charging party's position from the final offer on wage increases it submitted to an interest arbitrator.

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CITY OF UNION CITY and F.M.B.A.
LOCAL NO. 12,

Respondents,

-and- Docket No. CI-80-50-135

WESLEY SPELL,

Charging Party.

Appearances:
For the City of Union City, Dorf & Glickman, Esqs.
(Steven S. Glickman, of Counsel)

For F.M.B.A. Local No. 12, Osterweil, Wind & Loccke, Esqs.
(Manuel A. Correia, of Counsel)

For Wesley Spell, Victor P. Mullica, Esquire

DECISION AND ORDER

On June 16, 1980, Wesley Spell ("Spell" or "Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission. The Charge alleged that F.M.B.A. Local #12 (the "Respondent Union" or "Local #12") violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically N.J.S.A. 34:13A-5.4(b)(3) [1/] when its negotiating committee refused to negotiate on Spell's behalf, thus depriving Spell of a salary increase in both 1979 and 1980. Specifically, Local #12 allegedly refused to include Spell's classification, Signal Systems Superintendent, in its final offer

1/ This subsection provides that employee organizations, their representatives or agents are prohibited from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

to an Interest Arbitrator, which offer was selected.

On December 9, 1980, Spell filed an amended charge in which he specifically accused Local #12 of violating N.J.S.A. 34:13A-5.4(b)(1)[2/] when it refused to negotiate salary matters on his behalf in 1979 or 1980. The charge also named the City of Union City ("Respondent Employer" or "City") as a respondent and specifically alleged that the City violated N.J.S.A. 34:13A-5.4(a)(1) and (3)[3/] when it acted in concert with Local #12 to deprive Spell of his rights under the Act.

On April 16, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On April 21, 1981, the City filed an Answer in which it admitted that the classification of Signal Systems Superintendent was within the recognition clause[4/] of its collective agreement with Local #12, that negotiations and legal proceedings over the 1979-1980 collective agreement lasted from September 1978 until February 1980, and that the 1979-1980 agreement did not provide any salary increase for Signal Systems Superintendent, but denied all other allegations directed at it. On April 30, 1981, Local #12 filed an Answer in which it admitted Spell was a member of Local #12 and that the 1979-1980

2/ This subsection provides that employee organizations, 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."

3/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act."

4/ This clause provides that Local #12 represents members of the Signal Division, Mechanics, and members of the Fire Prevention, but excluding Fire Chief.

collective agreement did not provide any salary increases for Spell, but denied all other allegations directed at it and specifically denied that Spell did not receive any salary increase in 1979 and 1980, that it refused to negotiate on Spell's behalf, and that it intended to treat Spell unfairly.

On June 22 and 23 and August 20, 1981, Commission Hearing Examiner Alan R. Howe conducted a hearing and afforded all parties an opportunity to examine witnesses, present evidence, and argue orally. At the conclusion of the Charging Party's case, Respondent Employer moved for and received dismissal of the Complaint against it since the Charging Party had failed to adduce any evidence that it had violated the Act.[5/] The Charging Party and Respondent Union filed post-hearing briefs on September 29, 1981.

On September 30, 1980, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-12, 7 NJPER 620 (¶12278 1981) (copy attached and incorporated). The Hearing Examiner concluded that Local #12 violated its duty of fair representation under N.J.S.A. 34:13A-5.4(b)(1) when, with a complete lack of good faith and honesty of purpose, it refused to include the position of Signal Systems Superintendent in its final offer to the Interest Arbitrator. In fashioning an appropriate remedy, the Hearing Examiner relied on evidence that from 1975 through 1978, a 7.6% salary differential existed between

5/ The Charging Party's attorney agreed with the Hearing Examiner that he had not established a case against the City and has not sought review of the dismissal.

Spell's position and Fire Captain, Spell's salary exceeding the latter. Accordingly, the Hearing Examiner recommended that Spell receive damages calculated by computing the monetary value of the salary actually received by Spell, subtracted from the salary Spell would have received had the 7.6% differential been continued through 1979 and 1980. These calculations resulted in recommended awards of $920 for 1979 and $949 for 1980, for a total of $1,869.00.

Both Local #12 and the Charging Party filed exceptions.

Local #12 excepted to the following conclusions of law: 1) the unfair practice charge was timely filed, 2) Local #12 violated its duty of fair representation, 3) the Charging Party suffered monetary loss, 4) the measure of damages which the Hearing Examiner applied, and 5) the Hearing Examiner's alleged failure to consider whether the doctrine of unclean hands should eliminate or mitigate any damages claims. Local #12 excepted to the following findings of fact: 1) the President of Local #12 informed Spell that the entire negotiating committee made the decision not to negotiate for him, and 2) the efforts of Local #12's president after the issuance of the Interest Arbitration award had little to do with the salary increases Spell subsequently received from the City.

The Charging Party excepted only to the recommended award of damages and asserted that the Hearing Examiner should also have recommended an award of: 1) a sum of money ($456.64 plus interest) reflecting a longevity increment of 10% of base pay, 2) a sum of money ($1308.30) reflecting lost pension payments, 3) a sum of money (unspecified) for counsel fees, and 4) a sum of

money ($365.85) for the cost of transcripts. Local #12 filed an Answer to these exceptions in which it asserted that the Hearing Examiner exceeded his jurisdiction when he recommended an award of more money than the Charging Party requested and that the doctrine of unclean hands barred Spell from recovering any damages.

Although neither party has questioned our jurisdiction to decide claims that an employee representative has violated its duty of fair representation, we feel compelled to address that issue in light of Saginario v. Attorney General, State of New Jersey, 87 N.J. 480 (1981) ("Saginario"). There, our Supreme Court observed that we had accepted jurisdiction of a number of charges alleging breach of the duty of fair representation, but had never rationalized the basis for our jurisdiction (Slip Opinion at p. 19, n. 5).

N.J.S.A. 34:13A-5.3 specifically provides "...[a] majority representative in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership." In Lullo v. Intern. Ass'n of Fire Fighters, 55 N.J. 409, 429 (1970), the Court, in emphasizing that an exclusive majority representative has a fiduciary duty to represent fairly the interests of all employees, stated that a majority representative

> "cannot lawfully refuse to perform or neglect to perform fully and in

> complete good faith the duty, which is inseparable from the power of exclusive representation, to represent the entire membership of the employees in the unit.

N.J.S.A. 34:13A-5.4(c) gives the Commission exclusive jurisdiction to adjudicate and remedy unfair practices as defined in N.J.S.A. 34:13A-5.4(a) and (b). While the Act does not expressly list a breach of the duty of fair representation as an unfair practice, N.J.S.A. 34:13A-5.4(b)(1) prohibits an employee representative from interfering, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act and the right of employees to receive fair and non-discriminatory representation is specifically guaranteed by N.J.S.A. 34:13A-5.3. Further, the Labor-Management Relations Act counterpart of subsection 5.4(b)(1), 29 U.S.C. §158 (b)(1)(A), indisputably encompasses violations of the duty of fair representation. Miranda Fuel Co., 140 NLRB 181, 51 LRRM 1584 (1962), enforcement denied, 326 F.2d 172 (2nd Cir. 1963); Local 485, I.U.E. (Automotive Plating Corp.), 170 NLRB No. 121, 67 LRRM 1609 (1968); Brown Transport Co., 239 NLRB No. 91, 100 LRRM 1016 (1978). See also Kaczmarek v. New Jersey Turnpike Authority, 77 N.J. 329, 344-346 (1978) ("Kaczmarek") (Concurring Opinion of Pashman, J.); Saginario (Concurring and Dissenting Opinion of Clifford, J.) (Slip Opinion at 10, n. 2).

The Supreme Court itself has approved our jurisdiction over claims of a breach of the duty of unfair representation. In Kaczmarek, the Court remanded such a claim to our Commission, which had initially found the claim to be untimely, for further proceedings. The Court did not question our jurisdiction to hear such claims; instead, it noted that the undecided question was

whether state courts had concurrent jurisdiction.[6/] Accordingly, we have jurisdiction over claims alleging a breach of the duty of fair representation.

We now turn to Local #12's specific exceptions. First, Local #12 contends that the instant amended unfair practice charge was filed untimely. We disagree.

N.J.S.A. 34:13A-5.4(c) provides that:

> ...No complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the date he was no longer so prevented.

Here, Spell filed the initial charge within six months of the Interest Arbitrator's award which held that he was not entitled to any raise for either 1979 or 1980. The charge alleged all the facts necessary to ground a claim of breach of the duty of fair representation. While the initial charge erroneously cited subsection 5.4(b)(3) instead of subsection 5.4(b)(1), an error corrected by the filing of an amended charge on December 9, 1980, this technical oversight is not a matter of legal significance. The amendment merely restated the same cause of action -- breach of the duty of fair representation -- as the original charge. At all times after the filing of the original charge, Local #12 knew it would have to defend against that claim, regardless of

6/ We express no opinion on the issue of whether concurrent jurisdiction exists to hear breach of duty of fair representation claims.

the particular subsection cited.

Local 12's second exception encompasses the crux of the case: did Local #12 breach its duty of fair representation?

Initially, we observe that the Hearing Examiner's report contains a thorough discussion of both private sector and New Jersey public sector case law on the standards for establishing a breach of the duty of fair representation. Local #12 does not contest the standards the Hearing Examiner applied, but rather the application of those standards to the facts of this particular case. Accordingly, we will briefly delineate the applicable standards and refer the reader to the Hearing Examiner's report for further discussion.

In Vaca v. Sipes, 386 U.S. 171, 190(1967), the United States Supreme Court held: "A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."[7/] We have consistently embraced the standards of Vaca v. Sipes in adjudicating unfair practice claims. See, e.g., In re Board of Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), appeal pending, App. Div. Docket No. A-1455-80; In re New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). Recently, our Supreme Court in Saginario adopted the standards of

7/ The National Labor Relations Board has interpreted Vaca to mean that proof of union negligence, poor judgment, or even ineptitude standing alone is not enough to make out a breach of the duty of fair representation. See Printing and Graphic Communication Local 4, 249 NLRB No. 23, 104 LRRM 1050 (1980).

Vaca v. Sipes in analyzing and rejecting a breach of the duty of fair representation claim. (Slip Opinion at pp. 22-22, n. 7).

In the specific context of a challenge to a union's representation in negotiating a collective agreement, the United States Supreme Court has stated:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953); see also Humphrey v. Moore, 375 U.S. 335 (1964). We have invoked these standards in considering a challenge to negotiated salary differences among unit members. See In re Hamilton Township Ed. Assn, P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978). The Appellate Division has also utilized these standards in assessing a similar challenge. Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super 486 (1976).

Stating the standards is easier than applying them to the facts of a particular case. We stress that all the facts of each case must be scrutinized to determine whether a breach has been proven; there are no bright line tests.

In the instant case, the Hearing Examiner concluded that Local #12's negotiating committee made a deliberate decision not to negotiate on behalf of Spell, a unit member, and that this decision reflected a complete lack of good faith and honesty of

purpose. We believe the facts he found and the record amply support this conclusion. Accordingly, we find a breach of the duty of fair representation.

In 1973, Spell received a raise of about $2,800 while other unit members received raises of about $700. Roger Estabrook, Chairman of the Pay Raise Committee from 1973 through 1975, testified, and the Hearing Examiner found, that Local #12 opposed Spell's raise and refused to incorporate it in the 1973 collective negotiations agreement. In 1974, Robert Gemignani, President of Local #12 the previous year, moved to expel Spell for "sand-bagging several members of the Association" and "interfering with the Pay Raise Committee" by negotiating with the City on his own. Upon the advice of a State F.M.B.A. attorney, this motion was abandoned. However, in 1975, the Pay Raise Committee failed to negotiate a salary increase for Spell because, according to Estabrook, Spell had negotiated "on his own" in 1973 and 1974.

In late 1978, negotiations commenced for the 1979-1980 agreement. Robert Gemignani, resuming office for the first time since his motion to expel Spell, served as Chairman of the Pay Raise Committee. Estabrook also served as a member of the five person committee. Roughly twenty negotiating sessions were held over the course of a year; during these sessions, according to Gemignani, union representatives specifically discussed raises for firemen, captain, and deputy chief, but never mentioned the

Signal Systems Superintendent.

Negotiations resulted in impasse and the initiation of compulsory interest arbitration proceedings pursuant to N.J.A.C. 19:16-5.1, et seq. Local #12's final offer requested increases of $1100 in both 1979 and 1980 for all current membership at all steps and rank in the unit except the Signal Systems Superintendent and the Master Mechanic. By contrast the City's final offer authorized a $1000 increase per year for the Signal Systems Superintendent. The arbitrator, required to choose either Local #12's or the City's economic package,[8/] chose Local #12's package, thus excluding Spell from the receipt of any raise in either 1979 or 1980.

Dissatisfied, Spell asked Gemignani what happened. Gemignani first told Spell it was a "misunderstanding" that would be "straightened out." Gemignani then spoke with the Mayor and the City Commissioner of Public Safety and Finance. On March 26, 1980, Spell received a check in the amount of $221.76 for 1979. Still disgruntled, Spell again met with Gemignani and another member of the negotiating committee; they told him that "they could do nothing" and suggested that he contact the Commissioner of Finance.

Spell met with the Mayor and Commissioner of Finance. The latter told Spell: "...the FMBA didn't negotiate for you...and we don't have to give you nothing." Shortly afterwards, Spell received another check in the amount of $471.56 for a total raise of 2.9% in 1979. In 1980, the City gave him a raise of $1652 (6.8%).

8/ N.J.S.A. 34:13A-16C.

According to Spell, the Commissioner of Finance's comment prompted him to talk with a State FMBA official who told him he had been "screwed" and suggested he talk with the State FMBA's attorney; the attorney concurred and recommended that Spell sue. As he prepared the instant charge, Spell asked Gemignani who made the decision not to negotiate for him. The Hearing Examiner found that Gemignani responded that the "...entire committee made the decision."[9/]

In sum, we agree with the Hearing Examiner that Local #12 violated its duty of fair representation when it deliberately and insidiously refused to propose a raise for Spell's position in its final offer. While a breach of the duty does not rise from mere disparities in wage increases or decreases, see, e.g., Belen v. Woodbridge Board of Education, supra; In re Hamilton Township Ed. Ass'n, supra, a breach does exist when, as here, the exclusive representative makes a deliberate decision in bad faith to cause a unit member economic harm. An employee representative which lacks any reason, besides the desire to punish, for its refusal to seek a compensation increase for a certain position per force operates outside the wide range of reasonableness.

9/ One of Local #12's exceptions challenges this factual finding and in particular the Hearing Examiner's statement that Gemignani did not contradict it. In fact, while claiming in general that Local #12's failure to include Spell in its final offer was an oversight, Gemignani did not specifically deny making this statement. Further, the record fully supports the Hearing Examiner's determination, based in part on credibility assessments which we will not secondguess, that Gemignani and the committee acted deliberately rather than merely carelessly in refusing to negotiate for Spell. It strains credulity too far to believe that Local #12 omitted Spell from its final offer through an oversight when a history of animosity existed between Local #12's most powerful officials and Spell and Local #12 had failed to mention Spell's position once in 20 previous negotiations sessions over the course of a year. Accordingly, we reject this exception.

Local #12's minimal efforts after Spell complained do not excuse the breach of its duty of fair representation. The deliberate exclusion of Spell from the final offer and the issuance of the arbitrator's award put Spell in a most precarious negotiating position: the City no longer had any obligation to negotiate over Spell's compensation and the award had already considerably tightened the City's pursestrings. After securing a minor retroactive payment of $221.76, union officials told Spell they could do nothing more; Spell then became directly involved with City officials and received larger (but still not as large as he would otherwise have received) retroactive raises. Although the City honored its obligation to clear the retroactive raises with Local #12 and Local #12 did not block them, the record does not support Local #12's contention that it, rather than Spell, engineered the post-award raises. Accordingly, we dismiss the exception to the Hearing Examiner's finding that Local #12's efforts had little to do with the raises Spell received.

We now turn to the exceptions of both parties concerning the Hearing Examiner's computation of damages.

We are satisfied that Spell suffered an identifiable monetary loss, despite Local #12's exception and contention that any award would be speculative. We will not allow a party which acts in bad faith to avert liability altogether by hiding behind a claim that damages cannot be precisely computed. Here, Spell received exactly 7.6% more than each fire captain in 1975, 1976, 1977, and 1978. Testimony also established that the parties had a system of percentage differentials between various ranks. No

great leap of faith is required to find that had Local #12 acted in good faith, Spell would probably have received 7.6% more than each fire captain in 1979 and 1980. In the absence of any indication in the record to the contrary, we draw that causal conclusion and reject Local #12's exception.[10/]

In its final exception, Local #12 invokes the "clean hands" doctrine and argues that Spell's circumvention of the collective negotiations process in 1973 and his receipt of an inordinate raise then preclude or limit his recovery for raises denied in 1979 and 1980. Besides the light the 1973 events shed on Local #12's motivation in refusing to represent Spell in the 1979-80 negotiations process, we see no connection of significance between the 1973 and 1979-80 events. Accordingly, we dismiss this exception.

10/ Implicit in this conclusion is our rejection of Local #12's exception to the Hearing Examiner's measure of damages. Local #12 argues that damages should have been computed by subtracting the dollar amount of raises Spell actually received in 1979 and 1980 from the dollar amount of raises received by each fire captain; this calculation would not maintain the percentage differential between fire captain and Signal Systems Superintendent which we find existed between 1975-1978 and would probably have continued to exist but for Local #12's bad faith. Also, we approve the award of 8% interest on the amount of money owed to Spell for 1979 and 1980. See Salem County Bd. for Vocational Ed. v. McGonigle, ___ N.J. Super ___ (App. Div. Docket No. A-3717-78, September 29, 1980); In re County of Cape May, P.E.R.C. No. 81-1, 7 NJPER 432 (¶12192 1981). Finally, we reject Local #12's contention that the amount of damages requested is a jurisdictional limit on the amount of damages we may award. In Galloway Towp. Bd. of Ed. v. Galloway Twp. Ed. Ass'n, 78 N.J. 1, 9 (1978), our Supreme Court held that "... the power to order that an employee be made whole is necessarily subsumed within the broad remedial authority the Legislature has entrusted to PERC." The Hearing Examiner adopted a measure which we believe makes the Charging Party whole. In any event, the Hearing Examiner recommended an award of less than the Charging Party requested since be did not include longevity payments, pension payments, transcript costs, or counsel fees in the computation.

The Charging Party contends that the Hearing Examiner erred when he failed to award a longevity increment. We partially agree.

Article XI of the parties' 1979-1980 contract provides:

> Paragraph A. Every Association member shall receive a longevity commitment in addition
>
> . . . .
>
> 15 years service 10% of base pay
>
> Paragraph B. The City shall commence payment of longevity increments to a qualified association member on the pay day immediately following the termination date of the prerequisite time period.
>
> Paragraph C. Longevity increments shall be paid bi-weekly as are salaries.

Under the 1979-1980 agreement as negotiated, Spell was entitled to receive longevity increments of $2063.33 each year; he has made no showing that he did not receive said increments or that a breach of the duty of fair representation prevented him from receiving these increments. Accordingly, we will not award him this portion of the longevity increments due him. However, we have found that if Local #12 had acted in good faith, Spell would have received a base salary of $22,199 in 1977 and $23,765 in 1980 and would have been entitled to respective longevity increments of $2199 and $2376.50. Local #12's bad faith conduct directly deprived Spell of his contractual right to the portion of the longevity increment in 1979 and 1980 exceeding $2063.33. Accordingly, we award Spell an additional longevity increment of $156.66 for 1979 and $313.20 for 1980 plus interest.

The Charging Party next takes exception to the Hearing Examiner's failure to make an award reflecting alleged loss of payments made into the Charging Party's pension fund resulting from his receipt of too few wages for the 1979-1980 period. Assuming arguendo the validity of such an argument, such a remedy is not appropriate or possible in this case. Under the statutory scheme governing the Charging Party's pension, payment of benefits must be based upon certain mathematical calculations applied to the employee's actual salary. N.J.S.A. 43:16A-6(2)(b); N.J.S.A. 43:16A-1(14), (15), (26).[11/] Thus, the Charging Party's pension records and contributions cannot be adjusted without adjusting the actual salary paid to him. Since the employer has not been found to have committed an unfair practice and indeed is no longer a party to this proceeding, we are unable to order an adjustment in salary on behalf of the Charging Party.

Finally, we find no merit in Charging Party's exception which seeks counsel fees and costs of litigation. In this type of action, there is normally no recovery for expenses of litigation, or expenditures for counsel fees unless there is some express statutory or contractual obligation. Jersey City, etc., Auth'y v. Housing, etc., Jersey City, 70 N.J. Super 576, 584 (Law Div. 1961), aff'd 40 N.J. 145 (1963). No such obligation covers this case.

11/ Under the statute an employee's average final compensation used for computing the annual pension is based on an average of the three highest years of service. N.J.S.A. 43:16A-1(15). Based on the record, there is no evidence to establish that the years in question will be utilized in computing the Charging Party's pension. Accordingly, any award reflecting lost pension payments would be overly speculative.

ORDER

A. The Respondent Union is ordered to cease and desist from:

1. Interfering with, restraining or coercing employees, who are members of the collective negotiations unit, in the exercise of the rights guaranteed to them by the Act, particularly, by failing to fairly represent employee Wesley Spell in collective negotiations by neglecting to include him in the "final offer" submitted to an interest arbitrator under the Act.

B. That the Respondent Union take the following affirmative steps:

1. Forthwith make payment to Wesley Spell in the sum of $1076.66 to make him whole for lost salary and longevity increments for 1979, together with interest at the rate of 8% per annum from January 1, 1980 and the sum of $1262.20 as lost salary and lost longevity increment, together with interest at the rate of 8% per annum from January 1, 1981.

2. Post at all places where notices to employees are customarily posted, copies of the attached Notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon the receipt thereof, and after being signed by the Respondent Union's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereof. Reasonable steps shall be taken by the Respondent Union to make sure that such notices are not altered, defaced or covered by other material.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Union has taken to comply herewith.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp, Newbaker and Suskin voted in favor of this decision. None opposed. Commissioner Graves abstained.

DATED: Trenton, New Jersey
January 12, 1982
ISSUED: January 13, 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 all employees of Union City in the negotiations unit represented by F.M.B.A. Local No. 12 that:

WE WILL NOT interfere with, restrain or coerce employees, who are members of the collective negotiations unit, in the exercise of the rights guaranteed to them by the Act, particularly, by failing to fairly represent employee Wesley Spell in collective negotiations by neglecting to include him in the "final offer" submitted to an interest arbitrator pursuant to the New Jersey Employer-Employee Relations Act.

WE WILL forthwith make payment to Wesley Spell in the sum of $1076.66 to make him whole for lost salary and lost longevity increment for 1979, together with interest at the rate of 8% per annum from January 1, 1980 and the sum of $1262.20 as lost salary and lost longevity increment for 1980, together with interest at the rate of 8% per annum from January 1, 1981.

F.M.B.A. LOCAL NO. 12

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.

H. E. No. 82-12

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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F.M.B.A. LOCAL No. 12

Respondents,

-and-

Docket No. CI-80-50-135

WESLEY SPELL,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that Local No. 12 violated Subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act when it failed to include the job title of Wesley Spell along with other job titles in the "final offer" submitted to an Interest Arbitrator for the years 1979 and 1980, as a result of which Spell did not receive a salary increase for 1979 and 1980 (except as partly provided by a City salary ordinance for 1979 and 1980). The Hearing Examiner found that Local No. 12 breached its duty of fair representation to Spell by having failed to include him in the "final offer" to the Interest Arbitrator. Since the City in its "final offer" to the Interest Arbitrator had included Spell's job title for a salary increase for 1979 and 1980 the Hearing Examiner granted a motion by the City to dismiss charges of unfair practices against the City.

By way of remedy, the Hearing Examiner recommended that Spell be compensated $920 in lost salary for 1979 and $949 in lost salary for 1980. These sums were based upon a formula which measured the percentage of salary increases that Spell had received in past years against the percentage of salary increase that Spell should have received in 1979 and 1980 plus the salary he received under the City's salary ordinance for 1979 and 1980. Also, the Hearing Examiner recommended that interest at the rate of 8% per annum be added to the amounts due for 1979 and 1980.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case in 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. 82-12

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For Wesley Spell
Victor P. Mullica, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 16, 1980, and amended on December 9, 1980, by Wesley Spell (hereinafter the "Charging Party" or "Spell") alleging that the City of Union City (hereinafter the "Respondent Employer" or the "City") and F.M.B.A. Local No. 12 (hereinafter the "Respondent Union" or the "Local") 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. (hereinafter the "Act"), in that the Respondent Union violated its "duty of fair representation" to the Charging Party in the negotiations for the 1979-80 collective negotiations agreement by specifically omitting from its final offer to an Interest Arbitrator the classification of the Charging Party, Signal System Superintendent, as a result of which the Charging Party received no salary increase for 1979 and 1980;

and that as to the Respondent Employer, the Charging Party alleges concerted action by the Respondent Employer and the Respondent Union in so depriving the Charging Party of a salary increase for 1979 and 1980, all of which was alleged to be a violation by the Respondent Employer of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act[1/] and by the Respondent Union of N.J.S.A. 34:13A-5.4(b)(1) of the Act.[2/]

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 16, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 22 & 23 and August 20, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence[3/] and argue orally. The Charging Party and the Respondent Union filed post-hearing briefs by September 29, 1981.

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

Upon the entire record, the Hearing Examiner makes the following material:

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.
"(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act."

2/ This Subsection prohibits public employee organizations, their representatives or agents from:
"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

3/ The Respondent Employer moved to dismiss the Unfair Practice Charge filed against it at the conclusion of the Charging Party's case. The Hearing Examiner granted the said motion to dismiss on the ground that there was no evidence whatever adduced by the Charging Party indicating that the Respondent Employer had violated the Act as alleged.

FINDINGS OF FACT

1. The City of Union City is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. F.M.B.A. Local No. 12 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. Wesley Spell is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

4. Spell has been employed in the City's Fire Department since June 24, 1947 and has been a member of the Local and in the collective negotiations unit represented by the Local since that date. Since August, 1954 Spell's job title has been Police & Fire Signal Systems Superintendent (hereinafter "S/S/S"). Spell's job duties as S/S/S at the time of the hearing were the maintenance of the City's traffic signals, the maintenance of the fire alarm boxes and the supervising of the painting of poles. Spell is considered as holding a technical rank in the Fire Department as opposed to being a line officer. Spell's immediate supervisor is the Chief of the Fire Department.

5. There were received in evidence as Joint Exhibits a series of City salary ordinances for the years 1967, 1969 through 1974 and 1980 (J-4 through J-9 and J-12). There were also received in evidence as Joint Exhibits the collective negotiations agreements for the years 1974, 1975, 1977-78 and 1979-80 (J-1, J-2, J-10 and J-11). In the calendar year 1976 it was stipulated that there was a wage freeze and therefore there exists no salary ordinance or collective negotiations agreement for that year.

6. The salary structure in the Fire Department is hierarchical and in order the job positions rank as follows: Fire Chief, Deputy Fire Chiefs, Battalion Fire Chiefs, Mechanic & S/S/S, Fire Captains and Firemen. Further, the salary structure for line officers (Deputy Fire Chief, Battalion Fire Chief and Fire Captain) is based upon a specified percentage above the maximum received by the 4th year

Firemen. Thus, the Fire Captain is approximately 32% above Firemen, the Battalion Fire Chief is 15% above Fire Captain and the Deputy Fire Chief is 15% above Battalion Fire Chief.

7. The Mechanic and Spell as S/S/S were in 1967 paid the same salary as Fire Captain (J-4). In 1969 the Mechanic and Spell as S/S/S received $300 more per year than the Fire Captains (J-6 and J-7).

8. In 1973 a dramatic change took place in Spell's salary as S/S/S. Roger A. Estabrook, who was Chairman of the Pay Raise Committee of the Local from 1973 through 1975, testified credibly that the City, over the Local's objection, gave Spell as S/S/S a raise, which brought him to the same level as the Battalion Fire Chiefs. This raise placed Spell 15% above Fire Captain (J-8). Estabrook further testified credibly that, based upon the advice of the Local's State attorney, Spell's 1973 salary was not incorporated into the collective negotiations agreement. The Mechanic continued to receive the same $300 differential above Fire Captain.

9. In 1974 there were two (2) salary increases in the Fire Department and Spell as S/S/S received increases, which continued the differential of 15% above Fire Captain (J-9B, J-9C). The 1974 collective negotiations agreement omitted Spell's job title (J-10, p.11). The Mechanic continued to receive $300 above Fire Captain.

10. Also, in 1974 there was an effort to expel Spell from the Local on the ground that he had interfered with the Local's Pay Raise Committee, which action by the Local was subsequently reversed on the advice of the local's State attorney (see CP-2, CP-3 and CP-4).

11. In 1975 Spell received no salary increase as S/S/S because, according to Estabrook, Spell had negotiated "on his own" in 1973 and 1974 (2 Tr. 64-66; see also, J-11, p.12). Spell's failure to receive a salary increase placed him 7.6% above the Fire Captains, who received their normal salary increase in 1975 (J-11, p.12). In 1977 and 1978 Spell received negotiated salary increases as S/S/S, which continued

to maintain the 7.6% differential above Fire Captain (J-2, pp.10,11).

12. The collective agreement between the Local and the City for the years 1979 and 1980 resulted from an Interest Arbitration Award (J-3). As reference to the Award indicates, the "final offer" of the Local, which was adopted by the Interest Arbitrator, excluded Spell as S/S/S along with the Mechanic from the requested across-the-board salary increase "...for all current membership in all steps and ranks inclusive in the bargaining unit..." for 1979 and 1980 (J-3, pp.2,3). The collective agreement for 1979-80 accordingly reflects that Spell and the Mechanic received no salary increase for 1979 and 1980 and both remained at the 1978 salary level (J-1, p.12).4/

13. Robert J. Gemignani, a past President, Vice President and Recording Secretary of the Local, has been Chairman of the Negotiations Committee since 1978. Estabrook was on the Negotiations Committee for 1979 and 1980. Despite repeated questioning at the hearing neither Gemignani nor Estabrook could provide any convincing justification, reason or explanation why Spell as S/S/S was excluded from the "final offer" submitted to the Interest Arbitrator for 1979-80. Accordingly, the Hearing Examiner accepts the uncontradicted testimony of Spell that Gemignani told him that the "...entire Committee made the decision ...not to negotiate for me" (1 Tr. 56).

14. Spell first learned that he had been omitted from the Local's "final offer" when the Interest Arbitration Award was issued on January 3, 1980. When Spell approached Gemignani shortly thereafter and questioned him about the matter Gemignani replied that it was a "misunderstanding" and that it would "all be straightened out" (1 Tr. 48). Thereafter, Gemignani spoked to Arthur Weichert, the City's Commissioner of Public of Safety, C. Harrison Hultman, the Commissioner of Finance and Mayor William Musto, the first two of whom responded that the

4/ The mechanic is not involved in the instant proceeding. As will be apparent subsequently, Spell did receive some salary increase pursuant to a salary ordinance adopted on October 7, 1980 (J-12).

Local had not negotiated for Spell and that nothing could be done, with Musto alone indicating that he had talked to Spell and that Spell "left satisfied." (3 Tr.12). According to Spell he subsequently received $692 in retroactive pay for 1979 and $1,652 for 1980.[5/]

THE ISSUE

Did the Local breach its duty of fair representation with respect to Wesley Spell in the 1979-80 negotiations in violation of Subsection(b)(1) of the Act? If so, what shall the remedy be?

DISCUSSION AND ANALYSIS

The Local Violated Subsection(b)(1) Of The Act By Breaching Its Duty Of Fair Representation To Wesley Spell By Failing To Include Him Within The "Final Offer" Submitted To The Interest Arbitrator In The 1979-80 Negotiations

The Hearing Examiner finds and concludes that the Local violated Subsection (b)(1) of the Act when it breached its duty of fair representation to Wesley Spell by inexcusably failing to include his job title in the "final offer" submitted to the Interest Arbitrator in the 1979-80 negotiations. Accordingly, an appropriate remedy will be recommended.

In support of his finding and conclusion that the Local breached its duty of fair representation to Wesley Spell and thereby violated Subsection(b)(1) of the Act, the Hearing Examiner has drawn upon the precedent of the courts, the National Labor Relations Board (NLRB) and the Commission.[6/] The Hearing Examiner turns first

5/ The Hearing Examiner will not rely on the testimony of Spell as to the monies he received for 1979 and 1980 in fashioning a remedy hereinafter. The Hearing Examiner will instead rely upon the 1979-80 salary ordinance (J-12), which provided a salary increase for Spell as S/S/S for the years 1979 and 1980.

6/ The Commission had decided at least four (4) cases involving the alleged breach of the duty of fair representation, but has never found a violation. Three decisions involved the settlement of a grievance before arbitration (Council No. 1, AFL-CIO, P.E.R.C. No 79-28, 5 NJPER 21) and the failure to process a grievance to arbitration (N.J. Turnpike Employees Union Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 and Middlesex Council No. 7, NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555). One case involved the conduct of an employee representative in negotiations (Hamilton Township Education Association, P.E.R.C. No. 79-20, 4 NJPER 476).

to the pertinent pronouncements of the United States Supreme Court.

In Ford Motor Co. v. Huffman, 345 U.S. 330, 31 LRRM 2548 (1953) the Supreme Court, in a case involving collective bargaining over seniority, which resulted in an adverse impact upon one group of unit members relative to others, said: "...Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented...A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." (345 U.S. at 337-38, 31 LRRM at 2551) (Emphasis supplied).

In Humphrey v. Moore, 375 U.S. 335, 55 LRRM 2031 (1964) the Supreme Court, in sustaining the union's right to have made a seniority dovetailing decision, stated that the union had the right to take a position favoring one group of employees over another, but must do so "...honestly in good faith and without hostility or arbitrary discrimination." (375 U.S. at 350, 55 LRRM at 2038) (Emphasis supplied).

The Supreme Court further considered the duty of fair representation in what has become the leading subject case: Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), a case involving the refusal of a union to process a grievance to arbitration. At one point in its decision, the Supreme Court noted that the duty of fair representation "...includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." 386 U.S. at 177, 64 LRRM at 2371). In its decision the Supreme Court also said: "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or

or in bad faith..." (386 U.S. at 190, 64 LRRM at 2376) (Emphasis supplied).

The National Labor Relations Board has held in many cases, beginning with Miranda Fuel Co., 140 NLRB 181, 51 LRRM 1584, 1587 (1962), that a union violates Section 8(b)(1)(A) of the National Labor Relations Act when it breaches its duty of fair representation. See also, Local 485, I.U.E. (Automotive Plating Corp.), 170 NLRB No. 121, 67 LRRM 1609 (1968); United Steelworkers of America (Inter-Royal Corp.), 223 NLRB No. 177, 92 LRRM 1108 (1976); and Brown Transport Corp., 239 NLRB No. 91, 100 LRRM 1016 (1978).

The Appellate Division in Belen v. Woodbridge Township Board of Education, 142 N.J. Super. 486 (App. Div. 1976) decided a case involving six (6) psychologists, members of a negotiating unit represented by the Federation of Teachers, who brought suit claiming a violation of N.J.S.A. 34:13A-5.4, claiming that the Federation of Teachers had "...failed to fulfill its duty of representing plaintiffs fairly and without discrimination..." (142 N.J. Super. at 488). The failure in the duty of representation allegedly occurred when the Federation of Teachers failed to keep the psychologists informed of the status of negotiations and intentionally misled them with respect thereto. Further, it was alleged that the Federation of Teachers had reached an agreement with the Board of Education, which had actually reduced the plaintiffs' salaries and increased their working hours. The Appellate Division, citing Vaca v. Sipes, Ford Motor Company v. Huffman, and Humphrey v. Moore, supra, found that despite the fact that plaintiffs were the only unit members to suffer a reduction in pay, and that the defendant Federation of Teachers had refused plaintiffs' request to be informed of the status of negotiations, and that the defendant Federation of Teachers had rejected plaintiffs' request to present their own case to the negotiators for the Board of Education, the foregoing actions of the Federation fell far short of being deceptive, discriminatory, arbitrary or misleading, and that there was no requirement under the law that plaintiffs be allowed to present their own proposals to the employer. (See 142 N.J.

Super. at 492). The Court also stressed that to have permitted the psychologists to discuss their own interests and goals with the Board would have placed too heavy a burden on the negotiations process and was "...at odds with the policy of achieving harmonious employer-employee relations through collective bargaining conducted by democratically selected bargaining agents..." (142 N.J. Super. at 492).

The Commission in Hamilton Township Education Association, supra, held that the Association did not breach its duty of fair representation in its representation of certain Social Workers in collective negotiations, notwithstanding the contention of the Social Workers that the Association should have further pressed the Board so that the Social Workers would have achieved parity in pay with the psychologists. The Association subsequently accepted a proposal by the Board that the Social Workers be moved to a higher position on the salary guide and they also received the same across-the-board increase negotiated for all members of the negotiations unit. The Commission, citing Belen, supra, from among other leading cases on the subject of fair representation, concluded that there was: "...nothing in the record to indicate that the Association acted discriminatorily or in bad faith concerning Social Workers. The Association more than adequately represented the interests of the Social Workers within the framework of the overall negotiations with the Board concerning all the members of the unit..." (4 NJPER at 478).

Applying the foregoing authorities on the law of the duty of fair representation to the facts in the instant case it is clear that the Local herein violated the Act. To the extent that the Local was invested with discretion in formulating negotiations proposals with respect to salary increases, presented first to the City and then to the Interest Arbitrator, the Local clearly abused its discretion by failing to seek a salary increase for Spell in 1979 and 1980. No plausible explanation or reason whatever was suggested in the testimony of Estabrook and Gemegnani, the two members of the Local's Negotiating Committee, who testified for the Local. Thus,

the Hearing Examiner can only conclude that there was a total lack of "...complete good faith and honesty of purpose..." on the part of the Local toward Spell, which was undertaken arbitrarily, discriminatorily and in bad faith.[7/]

Based on all the foregoing, it is clear that the Local violated Subsection(b)(1) of the Act by its conduct herein and an appropriate remedy will be recommended.

THE APPROPRIATE REMEDY

The Hearing Examiner has considered the formula for a remedy proposed by the Charging Party, but elects to fashion his own formula based upon an analysis of the Joint Exhibits hereinbefore referred to.

It will be recalled that differential between Spell's job title as S/S/S and that of Fire Captain was 7.6% from 1975 through 1978 (see Finding of Fact No. 12, supra). The comparison of actual annual salaries received by Spell as S/S/S and the Fire Captain for these years indicates the following:

	1975	1977	1978
Fire Captain:	$16,531	$17,192 17,858	$18,515 19,176
S/S/S (Spell):	$17,794	$18,499 19,215	$19,922 20,633
% Differential Over Fire Capt.:	7.6%	7.6%	7.6%

It is first noted that Spell was earning $20,633 through the end of 1978. Because of the Local's action herein Spell did not receive a wage increase for 1979 and 1980 and thus remained at $20,633. On the other hand, the Fire Captain job title was increased to $20,631 in 1979 and $22,086 in 1980 as result of the Interest Arbitration Award (J-3).

7/ In having concluded on the instant record that the Local breached its duty of fair representation the Hearing Examiner does not intend to suggest that a breach of such duty necessarily occurs when, as result of collective negotiations, a unit member does not receive a wage increase or receives a lesser increase than other unit members: See, for example, Belen v. Woodbridge Board of Education, 142 N.J. Super. at 492; Ford Motor Co. v. Huffman 345 U.S. at 337-38, 31 LRRM at 2551; Township of Springfield et al., D.U.P. No. 79-13, 5 NJPER 15 (1978); and West Windsor-Plainsboro Ed. Association, D.U.P. No. 80-21, 6 NJPER 174 (1980).

The Hearing Examiner determines that, but for the Local's misconduct herein, Spell would have received a salary increase for 1979 and 1980, which would have been 7.6% above that of Fire Captain. Thus, Spell should have received $22,199 in 1979 and $23,765 in 1980.

The Hearing Examiner now refers to the salary ordinance for 1980 (J-12), which indicates that Spell as Signal System Superintendent was paid $21,794 (including $515 in overtime) for 1979 and $23,331 (including $515 in overtime) for 1980. After subtracting the $515 in overtime for each year it is apparent that Spell was paid a base salary of $21,279 for 1979 and $22,816 for 1980. Now, substracting these latter figures from the annual salary that Spell should have received for each year, based upon 7.6% above Fire Captain, the amounts due Spell are as follows: $920.00 is due for 1979 and $949.00 is due for 1980; the grand total being $1,869.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Union violated N.J.S.A. 34:13A-5.4(b)(1) when without justification or explanation it omitted the job title of Signal System Superintendent held by Wesley Spell from its "final offer" submitted to the Interest Arbitrator for the years 1979 and 1980, as a result of which Spell received no salary increase in 1979 and 1980.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Union cease and desist from:

1. Interfering with, restraining or coercing employees, who are members of the collective negotiations unit, in the exercise of the rights guaranteed to them by the Act, particularly, by failing to fairly represent employees such as Wesley Spell in collective negotiations by neglecting to include them in the "final

offer" submitted to an arbitrator pursuant to interest arbitration under the Act.

B. That the Respondent Union take the following affirmative action:

1. Forthwith make payment to Wesley Spell the sum of $920 to make him whole for lost salary for 1979, together with interest at the rate of 8% per annum from January 1, 1980 [8/] and the sum $949 as lost salary for 1980, together with interest at the rate of 8% per annum from January 1, 1981.

2. Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon the receipt thereof, and after being signed by the Respondent Union'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 Union to insure that such notices are not altered, defaced or covered by other material.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Union has taken to comply herewith.

Alan R. Howe
Hearing Examiner

Dated: September 30, 1981
Trenton, New Jersey

8/ See Salem County Bd. for Vocational Ed. v. McGonigle, App. Div. Docket No. A-3417-78 (9/29/80) and County of Cape May, P.E.R.C. 82-2, 7 NJPER 432 (1981).

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 employees, who are members of the F.M.B.A. Local No. 12 collective negotiation unit, in the exercise of the rights guaranteed by the Act, particularly, by failing to fairly represent employees such as Wesley Spell in collective negotiations by neglecting to include them in the "final offer" submitted to an interest arbitrator pursuant to interest arbitration under the Act.

WE WILL forthwith make payment to Wesley Spell the sum of $920 to make him whole for lost salary for 1979, together with interest at the rate of 8% per annum from January 1, 1980 and the sum of $949 as lost salary for 1980, together with interest at the rate of 8% per annum from January 1, 1981.

F.M.B.A. Local No. 12

Public Employee Representative

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 Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780