

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
TOWNSHIP OF HILLSIDE,

Respondent,

-and-

Docket No. CO-76-42-48

HILLSIDE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 70,

Charging Party.

HILLSIDE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 70,

Respondent,

-and-

Docket No. CE-76-37-69

TOWNSHIP OF HILLSIDE,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, and after an independent review of the official record, the Commission adopts the findings of fact and conclusions of law, contained within the Hearing Examiner's Recommended Report and Decision, that the Township committed an unfair practice by withholding longevity payments due under the 1974 contract between the parties until a successor agreement for 1975 was executed; that the Township also violated the Act by promising a promotion to the PBA President in exchange for his support of the Township's negotiating proposals; that the Township did not commit an unfair practice by passing an ordinance reducing paid sick leave; and that the PBA did not violate the Act by unilaterally terminating a negotiations session without explanation or counter-proposal.

The PBA had excepted to the finding of the Hearing Examiner that no parity agreement existed between the Township and the majority representative of the Township's firefighters. The PBA had submitted that the record established the existence of a parity agreement and that such an agreement whether written or oral, should be held to be illegal. The Commission finds the exception filed by the PBA to be without merit. The Commission, after reviewing the entire record, finds that the PBA failed to meet its burden of proof as to showing the existence of a parity agreement between the Township and the firefighters, and further concludes that the totality of the Township's

negotiations conduct reveals no violation of the duty to negotiate in good faith.

The Commission orders the Township to cease and desist from engaging in similar conduct relating to the withholding of longevity payments and the promising of benefits to its employees in exchange for the support of the Township's negotiating proposals; and affirmatively orders the Township to retroactively restore longevity pay to the affected employees; to post appropriate notices, and to notify the Chairman, in writing, of the steps taken to comply with the Commission's order.

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TOWNSHIP OF HILLSIDE,

Charging Party.

Appearances:

For the Township of Hillside, Gerald L. Dorf, P.A.
(Mr. Gerald L. Dorf, of Counsel; Mr. Richard M.
Salsberg, on the Exceptions and oral argument)

For the Hillside Policemen's Benevolent Association,
Local No. 70, Stamler, Mintzner & Kaczorowski, Esqs.
(Mr. John H. Stamler, of Counsel; at oral argument,
Patrolman Michael T. Galloway and Captain James T.
Silva)

DECISION AND ORDER

The Hillside Policemen's Benevolent Association, Local
No. 70 ("PBA") filed an Unfair Practice Charge on or about
August 15, 1975, which was amended on March 4, 1976, and the Town-
ship of Hillside ("Township") filed an Unfair Practice Charge on
March 2, 1976. The PBA and the Township charged each other with
failure to negotiate in good faith in violation of N.J.S.A. 34:13A-

5.4(a)(5) and (b)(3).^{1/} Additionally, the PBA charged the Township with violations of N.J.S.A. 34:13A-5.4(a)(1) and (3).^{2/}

Hearings were held before Hearing Examiner Robert T. Snyder on March 4, April 23, and April 28, 1976, the Hearing Examiner filed his Recommended Report and Decision on November 24, 1976,^{3/} a copy of which is annexed hereto and made a part hereof, and exceptions were filed by the PBA on January 20, 1977, after receiving an extension of time to file exceptions. Thereafter the Township filed an answer and supplemental answering brief to the PBA's exceptions.^{4/} The case was transferred to the Commission,^{5/} and oral argument on the exceptions was heard on February 17, 1977.

In his Recommended Report and Decision, the Hearing Examiner, based upon his review and analysis of the record, made the following findings of fact and conclusions of law to which no exceptions were taken:

The Township violated §5.4(a)(3) by withholding longevity payments due under the 1974 contract between the parties until a successor agreement for 1975 was entered; the Township violated §5.4(a)(1) by promising a promotion to the PBA President in exchange for his support of the Township's negotiating proposals;

- ^{1/} These subsections respectively prohibit employers, their representatives or agents, and employee organizations, their representatives or agents from refusing to negotiate in good faith regarding terms and conditions of employment.
- ^{2/} These subsections prohibit employers, their representatives or agents from "(1) Interfering with, restraining or coercing employees in the exercise of 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 rights guaranteed to them by this Act."
- ^{3/} H.E. No. 77-8, 2 NJPER _____ (1976).
- ^{4/} N.J.A.C. 19:14-7.3.
- ^{5/} N.J.A.C. 19:14-7.1 et seq.

the Township did not violate either §5.4(a)(1) or (a)(5) by passing an ordinance reducing paid sick leave; the PBA did not violate §5.4(b)(3) by unilaterally terminating a negotiations session without explanation or counter-proposal.

Upon an independent review of the official record, the Commission adopts these findings and conclusions of law substantially for the reasons stated in the Hearing Examiner's Report.

The PBA excepts to the finding of the Hearing Examiner that no parity agreement existed between the Township and the firefighters.^{6/} It is urged that the record establishes the existence of a parity agreement, and that such agreements, whether written or oral, should be held to be illegal as coercing employees in violation of N.J.S.A. 34:13A-5.4(a)(1). In reply, the Township contends that no such agreement existed, and in any event parity agreements are not illegal.

In support of its exception, the PBA refers to statements by the Mayor and Police Commissioner reflecting a promise to the firefighters that the police would not get a higher salary than the firefighters. The Hearing Examiner found that the evidence did not establish the existence of a parity agreement and that even if true, the alleged statements by the Mayor and Police Commissioner did not rise to the level of a parity agreement.

After reviewing the entire record, the Commission finds

^{6/} The Hearing Examiner, finding no parity agreement to exist, declined to rule on the validity of parity agreements. H.E. No. 77-8 at p. 24.

that the PBA has failed to meet its burden of proof^{7/} as to showing the existence of a parity agreement between the Township and the firefighters, and the totality of the Township's bargaining conduct reveals no violation of the duty to bargain in good faith. Consequently, the findings of fact and conclusions of law of the Hearing Examiner on this point are adopted by the Commission.

Having found that no parity agreement has been proved, the Commission declines to rule at this time on the question of whether parity agreements constitute a required, permissive or illegal subject of negotiations.

ORDER

Accordingly, for the reasons set forth above, the Public Employment Relations Commission hereby determines that the Township of Hillside has violated N.J.S.A. 34:13A-5.4(a)(1) and (3) with regard to its conduct in promising a promotion and withholding longevity pay, and IT IS HEREBY ORDERED that the Township of Hillside shall:

1. Cease and desist from:

(a) Withholding longevity payments due employees under the terms of a collective negotiations agreement with Hillside Policemen's Benevolent Association, Local No. 70 until a successor agreement has been executed.

(b) In any manner discriminating in regard to hire

^{7/} N.J.A.C. 19:14-6.8 states in part: "...the charging party... shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."

or tenure of employment or any term or condition of employment to discourage its employees in the exercise of the rights to be represented for the purposes of collective negotiations concerning their terms and conditions of employment by the Hillside Policemen's Benevolent Association, Local No. 70.

(c) Promising benefits to its employees in exchange for support of its negotiating proposals.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Restore retroactively to those of its employees represented by the Hillside Policemen's Benevolent Association, Local No. 70 from whose salary longevity pay has been withheld pending the signing of a collective negotiations agreement for the calendar year 1975, the longevity benefits accrued to them pursuant to the terms of the 1974 agreement between the parties, and, upon execution of a collective negotiations agreement for the year 1975, pay such benefits to those employees in accordance with its terms.

(b) Post at its Police Department Headquarters in Hillside, New Jersey, copies of the attached notice marked "Appendix A". Copies of said notice on forms to be provided by the Chairman of the Public Employment Relations Commission, shall, after being duly signed by Respondent Township's representative, be posted by said Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its

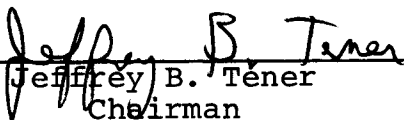
employees are customarily posted. Reasonable steps shall be taken by said Respondent to insure that such notices are not altered, defaced or covered by any other material.

(c) Notify the Chairman, in writing, within twenty (20) days of receipt of this Order what steps the said Respondent Township has taken to comply herewith.^{8/}

IT IS FURTHER ORDERED that the particular sections of the Complaint in Docket No. CO-76-42-48 alleging that the Township of Hillside violated N.J.S.A. 34:13A-5.4(a)(1) and (5) relating to a parity agreement and reducing sick leave are hereby dismissed.

IT IS FURTHER ORDERED that the Complaint in Docket No. CE-76-37-69 is dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hurwitz and Parcels voted for this decision.
Commissioner Hipp was not present.

DATED: Trenton, New Jersey
March 16, 1977
ISSUED: March 17, 1977

^{8/} The Commission has received a letter from the Township indicating compliance, at least in part, with the above provisions of this Order. To the extent that the Order has already been complied with, the Commission deems its Order satisfied.

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 restore retroactively to those of our employees represented for purposes of collective negotiations concerning their terms and conditions of employment by Hillside Policemen's Benevolent Association, Local No. 70 from whose salary longevity pay has been withheld pending the signing of a collective negotiations agreement for calendar year 1975, the longevity benefits previously accrued to them, and, upon execution of said agreement pay such benefits to our employees in accordance with its terms.

WE WILL NOT interfere with the rights of employees to assist the employee organization in collective negotiations by offering promotion or other benefits to employee negotiators to induce them to support our proposals.

TOWNSHIP OF HILLSIDE

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

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

In the Matter of
TOWNSHIP OF HILLSIDE,
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-and-

Docket No. CO-76-42-48

HILLSIDE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 70,
Charging Party.

HILLSIDE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 70,
Respondent,

-and-

Docket No. CE-76-37-69

TOWNSHIP OF HILLSIDE,
Charging Party.

SYNOPSIS

A Commission Hearing Examiner issues his Recommended Report and Decision in an unfair practice proceeding which consolidated two complaints, both of which alleged violations of the Act stemming from conduct occurring during lengthy contract negotiations between the two parties. The Hearing Examiner concluded, after a thorough review of the negotiations history, that neither party had refused to negotiate in good faith. Specifically, he finds, given the totality of the PBA's conduct, that the Township has failed to prove that the PBA had negotiated in violation of the New Jersey Employer-Employee Relations Act when it unilaterally terminated one negotiating session. He also finds, given the totality of the Township's negotiating conduct, that it had not violated the Act when it maintained as its salary proposal throughout the negotiations an offer which would keep the increase in the police base pay equal to the increase recently negotiated in the firemen's base pay. The Hearing Examiner distinguished between a salary offer which takes cognizance of an employer's legitimate and realistic concern for the effect that one negotiated settlement has on the demands and expectations of other employee

groups and a "parity agreement" which automatically establishes without negotiations the terms and conditions of employment for one unit of employees as a result of the agreement negotiated in a different unit.

He further finds that the Township's proposed action reducing sick leave from past practice was a response to a particular emergency which was never implemented and which was withdrawn when the emergency ceased, and was thus not an attempt to interfere with employee rights under the Act.

However, the Hearing Examiner does find that the PBA met its burden of proof and established that the Township did discriminate with regard to a term and condition of employment in violation of the Act when it withheld the payment of accrued longevity pay to unit members until a successor agreement was concluded and that the Township did interfere with the exercise of employees' protected rights under the Act when it promised a promotion to the President of the PBA in exchange for his support of certain Township proposals. The Hearing Examiner orders the Township to cease and desist from such conduct, to immediately restore retroactively the longevity pay withheld from unit members, and to post a specified Notice at Police Headquarters which will inform all employees of the action ordered to be taken. He recommended that all other allegations of the two complaints be dismissed.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSIDE, 1/

Respondent,

-and-

Docket No. CO-76-42-48

HILLSIDE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 70, 2/

Charging Party.

HILLSIDE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 70,

Respondent,

-and-

Docket No. CE-76-37-69

TOWNSHIP OF HILLSIDE,

Charging Party.

For the Township of Hillside

Gerald L. Dorf, P.C.

For the Hillside Policemen's Benevolent
Association, Local No. 70

Stamler, Mitzner & Kaczorowski, Esqs.
(John H. Stamler, Esq., of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An amended Unfair Practice Charge having been filed on March 4, 1976 by Hillside Policemen's Benevolent Association, Local No. 70 ("PBA" or "Association") and it appearing to the Executive Director, Jeffrey B. Tener, that the allegations thereof, if true, may constitute unfair practices on the part of the Township of Hillside ("Town" or "Township"), an amended Complaint and Notice of Hearing in Docket No. CO-76-42-48 issued on March 5, 1976. 3/ Another

1/ Motion to correct the names of the parties were granted on consent at the opening of hearing.

2/ See f.n. above.

3/ Prior thereto, an original unfair practice charge filed on August 15, 1975 had resulted in an issuance of Complaint against the Township on November 26, 1975.

Complaint and Notice of Hearing based upon an Unfair Practice Charge filed on March 2, 1976 against the PBA, in Docket No. CE-76-37-69 was issued on the same date, along with an Order consolidating the two cases. Both complaints allege unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1, et seq. (the "Act").

The amended complaint in Docket No. CO-76-42-48 alleges that the Township violated N.J.S.A. 34:13A-5.4(a) (5), (3), and (1), 4/ respectively, during the course of negotiations by refusing to grant a higher base salary to unit employees than to firemen because of an insistence on maintaining parity in base salary between the two services; delaying payment of contractual longevity increases to unit employees until agreement was arrived at on the terms of a successor negotiation agreement; and making promises of a promotion to an employee and threatening to withdraw an existing sick leave benefit to employees in order to influence the PBA's negotiation position, and admitting a commitment to the Fire Department not to give the Police Department employees greater than a 6% salary increase.

The complaint in Docket No. CE-76-37-69 alleges that the PBA violated N.J.S.A. 34:13A-5.4(b) (3) 5/ by unilaterally terminating a negotiation session on February 21, 1976 without explanation or counterproposal in response to the Township's rejection of the PBA's demand for a 35 hour work week, and thereafter continuing to refuse to resume negotiations in good faith.

4/ The cited subsections prohibit 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,..." (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, (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

5/ Apparently through inadvertance the Township's Charge alleges violation of 5.4(b) (4) rather than (3). These subsections prohibit employee organizations, their representatives or agents 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," and "(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement." However, the substance of the Charge alleges a refusal to negotiate under subsection (3) and the evidence introduced at the hearing related to a subsection (3) violation. The PBA did not raise objection at the hearing or in its post hearing brief to the technical defect in the Charge. Accordingly, I have construed the Township Charge herein as alleging a subsection (3) violation. See Hoboken Board of Education and Hoboken Teachers Association, P.E.R.C. No. 77-5.

In their respective answers each of the parties denied commission of the respective unfair practices alleged. Hearing was held before me on March 4, April 23, and April 28, 1976 in Newark, New Jersey at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Thereafter, briefs were filed by the PBA on July 15, 1976 and by the Township on July 22, 1976. Upon the entire record in this case I make the following:

FINDINGS OF FACT

I

RESPONDENT'S STATUS

The Complaints allege, the parties stipulated and I find that the Township of Hillside is a public employer within the meaning of the N.J.S.A. 34:13A-3(c).

II

The complaints allege, the parties stipulated and I find that the Association is an employee representative within the meaning of N.J.S.A. 34:13A-3(e).

III

The Unfair Practices

Background and Existing Agreement

The PBA has been recognized at least for the last eight years by the Township as the exclusive representative for collective negotiations concerning the terms and conditions of employment of all police personnel with the rank of patrolman and detective employed by the Township. Successive collective negotiation agreements have been entered by the Township and PBA covering these employees. The most recent agreement, effective January 1, 1974 extended through December 31, 1974, but provided for its terms to remain in full force and effect thereafter until replaced by a new agreement or to terminate upon the expiration of 30 days written notice of termination by either party. ^{6/}

^{6/} Neither party served written notice of termination upon the other until by letter dated March 1, 1976 directed to John H. Stamler, Esq. on behalf of the PBA, Gerald L. Dorf, P.C., on behalf of the Township terminated the agreement in accordance with its terms.

The 1974 agreement contained a base salary of \$12,810 for patrolmen and \$13,310 for detectives, annual clothing allowance of \$275, annual clothing maintenance allowance of \$100, a work week averaging $37\frac{1}{2}$ hours over the employees' regular cycle with hours worked in excess to be paid at the regular rate (calculated pro rata) or, at the employees' option, compensated by compensatory time off. The agreement provided among other benefits, for educational incentive pay, longevity pay beginning on an employee's fifth anniversary and continuing every fifth year thereafter to the 25th anniversary date at the rate of 2% of "previous years' base salary", and two compensatory days off per calendar year for personnel employed more than one calendar year, with payment of \$35 if not used. The agreement also provided that unresolved grievances involving disciplinary action taken by the Township against a permanent employee not for just cause and those concerning the application of the agreement shall be submitted to the Township for its final binding decision. Finally, a prior practice clause provided that all other rights, benefits and privileges enjoyed by both parties not specifically provided for or abridged in the agreement are protected by the agreement.

The Course of Negotiations, Including the Parity
Issue and Aborted February 21, 1976 Meeting

Negotiations looking toward a successor agreement for the year 1975 commenced with a meeting at the end of February 1975 between the PBA Committee headed by Patrolman Vincent DeMaio, its President, and the Township's Negotiation Committee, which included Mayor Vincent Baldassano, and Police Commissioner Harold Wovsaniker, at which the PBA submitted a three page list of typed proposals. Among them were demands for improvement in salary scale, 1 an increased longevity plan and an increase in clothing allowance and maintenance. PBA President DeMaio admitted "some progress was made in negotiations" by the end of this meeting. The Township agreed on four demands; to wit, promotional examinations would not exclude presently employed personnel for failing to obtain college credit; all officers of the PBA to be excused for PBA meetings while on duty; new personnel to receive compensatory days their first year without having to wait an entire year for them and the Township would continue to supply false arrest insurance in accordance with existing ordinance. Other demands continued open for further discussion and still others, including a demand for third highest salary scale in Union County among Police Departments, were rejected.

1 Uncontested testimony by then Police Commissioner Wovsaniker described the earliest PBA salary demand as one for a $7\frac{1}{2}\%$ increase and a $31\frac{1}{2}$ hour work week.

Meetings continued between the parties on a fairly regular basis. On August 5, 1975 the Town entered a collective negotiation agreement for the calendar year 1975 with the Hillside Public Works Independent Union, the exclusive representative of its Public Works Department blue collar employees, providing a wage increase for unit employees of $6\frac{1}{2}\%$ over and above the wage rate paid to such employees for the year 1974. After August 5, 1975, for the first time, the PBA demanded a $6\frac{1}{2}\%$ salary increase in the base rate for patrolmen and detectives, tying its precise salary demand to the increase granted public works employees. The Township in rejecting this demand also rejected PBA's effort to compare its members with the equipment operators, laborers, mechanics in public works whose salaries were generally substantially less than patrolmen's, a number earning in the neighborhood of \$6,500. The Township noted that the $\frac{1}{2}\%$ above 6% granted to public works reflected its attempt to recognize the necessity for a living wage and overcome the effects of inflation for employees who start at a much lower wage base than do policemen.

During 1975, the Township was also engaged in ongoing negotiations for calendar 1975 with Local No. 35, Firemen's Mutual Benevolent Association ("FMBA") as exclusive representative and bargaining agent for all uniformed fire personnel employed by the Township. At the time the PBA first made its $6\frac{1}{2}\%$ salary demand, the Town had not yet signed an agreement with the FMBA and did not do so until September 25, 1975. There is substantial evidence in the record that while rejecting comparability with public works employees, the Township equated policemen with firemen, at least insofar as their base salaries are concerned. When its demand was first placed on the negotiating table in August or September, 1975, according to PBA President DeMaio, in a conversation held with one of the Township's Committee members, Police Commissioner Wovsaniker, DeMaio was told to the effect that "we could not get the $6\frac{1}{2}\%$ because the firemen had already signed or were in the process of signing a 6% increase." When asked by DeMaio why reference had been made to the firemen, Wovsaniker responded that there would be a snowballing effect if the patrolmen received more than 6%, that the firemen would demand a lot more later and he didn't have the authority to break parity.

Even before September 1975, in negotiation sessions held in the prior spring of that year Mayor Baldassano, on behalf of the Town, indicated that police base pay had to equal fire department base pay. At the May 1975

negotiation session, for example, when the PBA tentatively mentioned a 7% increase figure, according to DeMaio, the Township responded "if it was given to the Police Department it would have to be given to the Fire Department based on historical past procedures that they had been doing in the Township." The Town representatives asked, rhetorically, what were they going to do next year when the firemen came in to negotiate their contract? In the words of DeMaio "They said they would not break parity with the Fire Department" and the Township offered the PBA a 6% increase.

At this same May 1975 meeting the parties also discussed a PBA claim that firemen had received an extra \$75 "shape up bonus" in their 1972 or 1973 contract, not granted policemen. ^{8/} According to DeMaio this extra compensation denied the PBA unit employees was not fair inasmuch as patrolmen actually spend an extra 20 minutes a day preparing reports for which they are not compensated.

The FMBA -- Township agreement covering calendar 1975, signed on September 23, 1975 provided for a 6% salary increase over 1974 base pay. ^{9/}

During the course of continued negotiations in the fall of 1975, the PBA continued to demand a 6¹/₂% increase in base salary and the Town rejected such an increase, relying on the snowballing effect such an increase would have on FMBA demands at the next negotiations for firemen as well as anticipated verbal abuse from firemen and fear of political retaliation by firemen at the next Township elections. During this period, by letter dated September 24, 1975, Police Commissioner Wovsaniker on behalf of the Township made an offer including 6% salary increase, one additional compensatory time day, \$125 weapon maintenance allowance, \$325 annual clothing allowance \$150 clothing and maintenance allowance and reaffirmed prior agreement to permit all police officers to take promotional examinations without completion of college incentive programs.

By October 1975, in an effort to overcome the stalemate on salary, the PBA offered to accept the Township's offer of 6% provided the Township

^{8/} Uncontroverted PBA testimony showed the firemen "bonus" was granted by the Township in 1972 or 1973 out of pique after the PBA turned down unanimously a Township package offer for a new contract.

^{9/} The FMBA had negotiated a two year agreement but the final agreement deleted any reference to salary for calendar 1976 and corrected the typed termination date of the agreement from December 31, 1976 to December 31, 1975. These changes were signed and initialed by the signatories, Mayor Vincent Baldassano and FMBA President William Groeger, presumably on September 23, 1975 when they each executed the agreement. On that date, the PBA agreement for 1975 still remained unresolved.

consider or try a 35 hour work week, a plan recommended at an early October meeting by Police Chief George Shelbourne for its economy and to reduce excessive overtime. The Township rejected a specific offer to reduce the then 37½ hour week to 35 for November and December on a trial basis. A later meeting was held in October after the PBA submitted revised proposals through its counsel, John Stamler, Esq. Stamler for the PBA and Alexander Menza, Esq. for the Township appeared at this meeting held October 25, 1975. On this occasion, the Township acceded to PBA proposals for \$75 increases in uniform maintenance and allowance, one additional funeral day for death of relative other than an immediate relative, a continued work schedule of 37½ hours per week, the absence of any contract clause, rule or ordinance which would make promotional examinations contingent upon college level courses or degree, and payment of longevity raises within one month after qualifying anniversary date. Other PBA proposals for a joint committee to review Police Department rules and regulations and the establishment of a procedure for taking affidavits from complainants charging misconduct by police officers were reviewed favorably but were taken under advisement for further review by the Police Chief and the Township Commissioner Welsh, respectively, not present at the meeting. The Township again rejected the PBA's demand for a 6½% increase, among others. In addition, at this October 25 meeting, a weapon maintenance allowance of \$125 which the Township had proposed as early as May, 1975 was agreed to by the PBA.

In spite of these individual agreements, the continued differences on the size of a salary increase prevented overall agreement. In addition, the Township's continued failure to make payment of certain longevity increases demanded by the PBA under the 1974 agreement and a Township proposal to reduce annual paid sick days, subjects to be separately discussed in later sections of this Report, contributed to an inability of the parties to arrive at a settlement and delayed further progress in resolving their differences.

Commencing as early as May 1975, the Township had made counter offers in the areas of uniform allowance, uniform maintenance and newly introduced weapon maintenance allowance, which, together with its proposal for a 6% base salary increase, comprised a total financial package of \$1,049 for each unit employee. For its part, the PBA was prepared to forego the uniform and weapon allowances so long as its members received a 6½% salary increase, a financial increase over the prior 1974 contract of \$842 per unit employee.

The apparent net loss in benefits for 1975, of \$207 per employee thereby incurred on adoption of the PBA salary demand is not an accurate reflection of the hidden costs to the Township which would result from its granting the $\frac{1}{2}\%$ increase in base salary above 6% without any increases in uniform or grant of a new weapons allowance. Thus, in addition to its reflection in salary, the $\frac{1}{2}\%$ would be built into pension costs, overtime salary costs -- an item which particularly troubled the Township as it considered the PBA's revised 35 hour work week proposal -- vacation and holiday pay and salaries for superior officers, tied by a percentage ratio to salaries of rank and file patrolmen.

One witness for the PBA, Patrolman Michael Galloway, testified on direct examination that sometime prior to December 1975, in a side discussion he had with Mayor Baldassano, the Mayor reflected the Township's concern that an additional $\frac{1}{2}\%$ increase in salary would have a pyramiding effect on other salary derived or related costs. The Mayor and Police Commissioner Wovsaniker both emphasized during their testimony these additional cost factors as major inducements for the Township's rejection of the PBA's salary demand.

During the course of negotiations the PBA continually claimed that differences in duties, responsibilities and training between policemen and firemen warranted the pay differential it sought. ^{10/} While the PBA amended Charge and the Complaint assert at page 7, that the Township refused "to discuss or even consider [these] qualitative differences..." the PBA witnesses, particularly PBA President DeMaio, reiterated that these matters were brought up and discussed at a succession of negotiation meetings. It is apparent, however, that these discussions did not prove fruitful. Thus, while Police Commissioner Wovsaniker admitted his awareness of certain of these differences between the uniformed forces as raised by the PBA at the meetings, in particular the greater mileage driven, more calls made and more responses by police over

^{10/} These asserted differences included the requirement that patrolmen earn certain minimum college credits for appointment and promotion, that police uniforms require dry cleaning, that patrolmen must respond at all hours to emergency calls, that police patrol vehicles log substantially greater mileage annually, that police officers attend formal, off-the-job training courses within the first year of their appointment, that police officers must undergo psychological or psychiatric testing prior to appointment, and that police officers are regularly required to work alone, to submit individual reports, to make decisions on their own without recourse to a superior officer and are much more subject to citizen complaints than are firemen.

given periods of time, the Township remained unwilling to grant any greater salary increase to policemen than to firemen.

According to PBA witness DeMaio, by November 25, 1975, the Township had requested the appointment of a mediator to assist the parties in their negotiations. ^{11/} Apparently, the PBA was unwilling to agree to the appointment of a mediator at that time. In any event, no mediator was assigned by the Commission.

No meetings were held in December 1975, but meetings did resume in January 1976. By this time the Township had retained Gerald L. Dorf, P.C. as its labor counsel to conduct negotiations and represent it in the unfair practice proceeding before the Commission. A revised written list of negotiating demands dated January 15, 1976 were furnished to the Township at a January 19, 1976 meeting held at Dorf's office attended by PBA counsel Stamler, DeMaio, Alexander J. Menza, Esq., general Township attorney and Dorf. The PBA at this time revised its earlier salary demand and now sought a two year agreement with a 6% increase in base salary in the first year retroactive to January 1, 1975 (as offered by the Town on September 25, 1975), and an increase of 6% for calendar year 1976 coupled with a 35 hour work week based on five days on and five days off. The PBA revised proposal also included 9 other demands for benefits and improvements in calendar 1975 and 31 other such items for 1976.

Discussion was held on January 19, 1976 relative to a number of the PBA demands, although the Township attorney had insufficient time to respond to the full range of demands presented. Mr. Menza noted that he could see no way the Town could agree to the PBA's demand for an extra $\frac{1}{2}$ % increase above 6%. However, offers were made by the Township to certain PBA submissions. Mr. Stamler by letter dated January 26, 1976 forwarded to Dorf a revised set of counter proposals "to the offers made by the Township Committee." The PBA's counter proposals included agreement to the Township's offer of 6%

^{11/} N.J.S.A. 34:13A-6(b) provides in pertinent part: "(b) Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke fact-finding with recommendation for settlement..."

increase for 1975, on the unstated condition, separately discussed by telephone between DeMaio, Dorf and Stamler, of a 35 hour work week (in place of the existing $37\frac{1}{2}$ week) to be instituted on a trial basis in the second year. 12/

Stamler's letter also noted various PBA agreements to Township offers, including for calendar 1975, one additional compensatory day (to be received in 1976); \$60 weapon maintenance allowance; one additional funeral day for a relative other than immediate relatives; immediate payment of longevity benefits due under 1974 contract to be computed on 1975 salary as determined in accordance with existing contractual criteria; and a past practice clause acceptable to both sides. With respect to its 1976 demands, aside from reasserting its demand for 6% increase in salary and rejecting the Town's offer of \$550 across the board, Stamler's letter of January 26, 1976, evidenced agreement on some, an agreement to discuss others further, a moderation of certain additional demands which the Town had rejected at the January meeting, as well as an amendment of others and clarification of still others, all in an effort to obtain ultimate agreement on terms of the second year of a new two year agreement.

A subsequent meeting was scheduled for Saturday morning, February 21, 1976 at which the PBA expected to discuss the contents of the PBA's counter proposals and 35 hour work week demand, among other items.

According to uncontested testimony of Police Commissioner Wovsaniker the Township gave serious consideration to the proposal for a 35 hour work week.^{13/} However, after examining the matter, it had become convinced that a serious overtime problem for police would not be alleviated by the shortened work week, devised to include a work schedule of 10 hour shifts for five consecutive days followed by five days off, since overtime was attributable primarily to court appearances by unit members, a factor not dealt with in the PBA proposal. The Township was concerned, as well, with having adequate police coverage with fewer work hours.^{14/}

12/ The 35 hour demand had not been included in the January 26, 1976 Stamler letter according to witness DeMaio because the PBA was waiting for a decision from Mr. Dorf as to whether the Township would look favorably on the shortened work week.

13/ While the Township had earlier rejected in October 1975, a 35 hour work week proposal for immediate institution on a trial basis in November and December, its renewal in January 1976 for trial implementation in 1976 coupled with PBA agreement to 6% increases in both years apparently caused the Township to take another closer look at the demand.

14/ According to Police Chief Shelbourne, no police department in Union County, in which the Town is located, has a 35 hour work week and, with the possible exception of Harrison, neither does any police department in the State.

At the outset of the February 21, 1976 meeting, Dorf advised Stamler that the Township was no longer interested in scheduling or continuing discussions on a 35 hour week. At this point Stamler and the PBA Committee left the meeting without explanation. According to witness Wovsaniker this scheduled meeting had been arranged during a lengthy telephone conversation between Dorf and Stamler a few days prior as a follow up to Stamler's January 26 letter submission of numerous revised proposals for 1975 and 1976 in which Stamler had asked Dorf to contact him as to the progress made with the Township Committee apparently as to the Town's willingness to agree to the PBA's counter offers. With respect to the issue of salary, that counter offer was that based on a two year package, the PBA would accept the Town's offer of 6% increase each year only if the Town would agree to implementation of a 35 hour work week on a trial basis in the second year. While Wovsaniker testified it was his understanding of the conversation that Dorf advised Stamler that the Town would discuss other items but not a 35 hour week on February 21, neither Mr. Dorf nor Mr. Stamler testified at the hearing. Under these circumstances, I am unable to give weight to a non-participant's understanding. Based upon the evidence in the record of the PBA's reaction to Dorf's announcement at the outset of the meeting, I infer that Stamler had concluded from his conversations with Dorf that either the Township was agreeable to a 35 hour week on a trial basis in 1976 or, at least, was willing to continue to consider it. This was not the case as the Township would not discuss the matter at the February 21 meeting and had apparently concluded by that time after due consideration that such a work week was not in its best interests.

Thereafter, a Notice of Impasse was filed by the Township with the Commission on March 1, 1976, a mediator was assigned on March 2 and two mediation sessions followed, on March 22 and on or about April 2, 1976, with both parties in attendance. As testified to by PBA President DeMaio, during those sessions "a whole host of different package proposals were made...different packages of proposals were made by the PBA to the Township and by the Township to the PBA".

The first negotiation session with the mediator lasted three and a half to four hours. During it, there was some discussion between the parties of increasing the number of weekly work hours as a way of providing the employees with a higher salary increase, rather than decreasing hours, as had previously been discussed in January and February, and then rejected by the Town by February 21.

Later, on March 22, after the first mediation session, Wovsaniker and DeMaio met accidentally at a store where DeMaio was employed part-time. DeMaio had a question as to the manner of computing the employees' hourly rate of pay which had been discussed at the session as the figure to be used for computing pay for one additional hour of work a week above the then work week of $37\frac{1}{2}$ hours. Wovsaniker satisfied DeMaio that the rate was accurately derived by multiplying the annual base salary of \$12,810 for patrolmen by 6% for 1975 and 6% for 1976 and then dividing by annual work hours at the rate of $37\frac{1}{2}$ per week. According to DeMaio, the proposal discussed would provide for employees in 1975 an additional sum derived by multiplying the computed hourly rate of \$7.38 by 26 or half the weeks in the year. ^{15/} Further, according to DeMaio, the PBA negotiating committee was prepared to accept such a figure, to be characterized as "shape up" pay, in addition to 6% salary increases for each of 1975 and 1976, by recommending it to the membership and the Township, as a satisfactory means of resolving the salary dispute.

The April 1 or 2 mediation session did not resolve the parties' differences, either in accordance with the extra hour proposal or otherwise. Shortly thereafter, the Commission invoked fact-finding and by letter dated April 13, 1976, the PBA received notice from the fact-finder, Jack Tillem, of his appointment although by April 28, the last hearing day, the Township labor counsel Dorf had not yet received such a notice. By close of hearing no meetings with the fact-finder had yet been held. However, by letter dated April 14, 1976, Dorf placed in writing the Township's position on each unresolved contract issue. Dorf advised that "I have reviewed the Township's position on each [difference between the parties] with the members of the Governing Body and I am noting below our current position on each item (most of which you are already aware of) and, in addition, including a suggestion at the end which may assist in making a settlement."

The Township's 1975 offers reaffirmed or modified its previous offers on salary (6%); compensatory days off (one additional to be taken in 1976); \$60 weapon maintenance allowance; clothing allowance (up \$25 to \$300); clothing maintenance (up \$25 to \$125); added one funeral leave day for relative other than immediate relative; accepted, as previously agreed, promotion language, immediate payment of longevity computed on salary then being received,

^{15/} There was no testimony as to how the extra hour's pay per week was to be computed for 1976.

with an adjustment to be made upon execution of a contract containing increased salary for 1975, and a past practices clause continuing all benefits enjoyed under the 1974 agreement. The 1976 positions included a 6% salary increase; increase of \$65 in weapon allowance; an increase from 5 to 7 days funeral leave for death of spouse or child (PBA sought 10 days); longevity to be paid within 60 days of anniversary date (PBA had sought one month and 8% interest on delinquent payments thereafter); overtime payments computed monthly and paid quarterly, within 45 days of its close (PBA had sought 30 days); and modified acceptance of a few other PBA proposals and rejected (through failure to respond) a larger group of other PBA counters. Dorf's suggestion was to agree to submit a referendum to Township voters in November the resolution: "Should a patrolman receive a higher base pay than a fireman?"

The Longevity Issue

As earlier noted the parties' 1974 agreement provided for longevity pay. Article X "LONGEVITY" provided in pertinent part, as follows:

"All employees of the Hillside Police Department covered by this agreement shall be entitled to and be paid longevity pay. Longevity pay shall begin on the members 5th anniversary date at the rate of 2% of his previous years' base salary. Subsequent five year periods of continuous service shall increase the employee's longevity pay an additional 2% until a maximum of 10% is realized..."

The 1974 agreement, including Article X, continued in full force and effect until on or about March 31, 1976 when 30 days had expired from Dorf's written notice of termination of the agreement. ^{16/} On January 1, 1975 two patrolmen, including PBA President DeMaio, achieved their fifth year anniversary of employment. Thereafter and during 1975, a number of other patrolmen as well as a number of sergeants and Police Captain achieved either their fifth, tenth or, in one case, twentieth anniversary date.

The Township failed to make any longevity payments on and after January 1, 1975 to any of these employees who first achieved initial eligibility or who first became eligible for increased longevity benefits on achieving a subsequent contractually designated anniversary date by mid December 1974. ^{17/}

^{16/} See f.n. 6, infra.

^{17/} Apparently the Township's failure to pay longevity also included one patrolman who had achieved his fifth year anniversary date on August 28, 1974.

After January 1, 1975, the Township did continue to make longevity payments based upon existing salaries to those employees who had already achieved eligibility and were receiving such payments prior to January 1, 1975.

In February 1975 PBA President DeMaio approached Police Chief Shelbourne about the Town's failure to pay the initial or increased longevity payment due newly eligible police officers under the contract. The Chief advised him to write out a grievance about the matter and DeMaio did so. On March 25, 1975 Chief Shelbourne forwarded DeMaio's grievance to Police Commissioner Wovsaniker, noting in a covering letter, a copy of which he forwarded to DeMaio, that the failure to pay the longevity payments to police officers when they become due "is an apparent violation of the existing contract and or longevity ordinance." ^{20/} The Chief also noted his belief that the dispute

20/ A revised Township Ordinance adopted April 29, 1971 and still in effect contains a subsection entitled "Longevity Pay Program" which reads in pertinent part, as follows:

"5-5.6 Longevity Pay Program

a. There shall be established for the officers and employees of the township alongevity pay program in the manner prescribed in this subsection.

b. The base salary of each officer and employee for purposes of calculating his longevity pay shall be fixed and determined by ordinance or resolution adopted by the township committee, such base salary to be effective January 1, of each year.

c. The service status of each officer and employee with respect to his longevity pay shall be determined by his anniversary date of appointment as an employee of the township.

d. [e.f.g.h.] Each officer and employee who, on the determining date, has had more than five [ten-15, 15-20, 20-25, 25] years but less than ten [15, 20, 25, more than 25] years of continuous employment in a full-time capacity shall be entitled to a longevity pay of two [four, six, eight, ten] percent of his base salary as of the determining date.

* * *

i. In the event of a change of base salary during the calendar year as may be fixed and determined by the township committee, the new base salary shall be used for purposes of calculating the longevity pay from the effective date of the base salary change.

* * *

k. Such salaries shall be paid in equal biweekly installments to the officers and employees of the township as of the effective date of eligibility under the longevity pay program."

* * *

could only be settled by the Township Committee. DeMaio also contacted Miss Bertha Brooks, the Township Treasurer, who advised that longevity would not be paid unless and until a new contract had been signed.

Some time between March 25, 1975 and October 25, 1975, DeMaio approached Mayor Baldassano directly about the problem after DeMaio had not heard from the Township with respect to a final step grievance meeting he had requested. According to DeMaio, Baldassano told him that payment would not be made unless the PBA signed the contract for 1975. DeMaio stated he then pointed out and showed Baldassano the contract language that payment was based on previous years' salary and had nothing to do with having a contract signed or not. According to DeMaio, Baldassano then said "they gave me the excuse that it was too much paper work for the treasury to complete the longevity benefit on the '75 salary and then compute it again once the contract is signed".

DeMaio testified he also took up the longevity problem with Wovsaniker who replied he could see no problem paying it.

In its October 24, 1975 written proposals the PBA made demand for payment of longevity raises within one month after the anniversary date which vests such raise, adding "In violation of the 1974 contract ^{19/} the Township has not paid longevity raises to many officers who were entitled to them. The Township has indicated it will not pay such raises until the 1975 contract is signed and the new salaries computed. This is inherently unfair..."

By January 15, 1976, the PBA proposals included demand for immediate payment of longevity benefits due under 1974 contract, to be computed on 1975 salary as determined by paragraph 1 (in which demand was made for a salary increase of 6%, retroactive to January 1, 1975 for the first year of a new two year agreement).

Sometime in December 1975, after the Town had continued to refuse to make any longevity payments to newly eligible employees until a new contract had been signed, those employees in the unit affected signed complaints against Mayor Baldassano and each of the four other Commissioners and the Town Treasurer

^{19/} That contract, in its grievance article, as earlier noted, provides for resolution of grievances by binding decision of the Township Committee.

in the Hillside Municipal Court alleging violations of N.J.S.A. 2A-170-90.2.^{20/} Thereafter, because of apparent conflicts of interest, the matters were transferred for hearing before a Judge of the County Court. On April 9, 1976 upon application of John Stampler, Esq. for the complainants, Judge Filmore Wood of the Union County Court entered an Order upon consent of Alexander Menza, Esq., attorney for the defendants dismissing the complaints with prejudice "it further appearing that the defendants have agreed to make payment to the complainants of those sums to which the complainants are entitled under a 1974 contract..." At the hearing before the undersigned on April 28, 1976 counsel stipulated that an agreement had been entered by the parties that longevity payments will be paid shortly. As earlier noted the parties' agreement contemplated payments to be made in accordance with the then existing salary with the understanding that once new salary had been agreed to an adjusted retro-active payment would be made.

According to Mayor Baldassano, a dispute as to the date to determine eligibility for longevity benefits, whether to use the employee's anniversary date or the contract date had been resolved in favor of the anniversary date back in 1974. Then, in 1975 when policemen became eligible for benefits or increased benefits the Township still withheld payment. Baldassano showed some confusion as to the reason. He first indicated that a conflict as to the basis of computation - whether to use previous years salary as specified in the contract or present salary as required by the ordinance ^{21/} caused delay in making payment. On cross-examination, Baldassano first indicated the dispute in 1975 was about anniversary date, later agreed that dispute had been resolved in 1974, and then stated that because of the pending criminal action against the

20/ That statute provides in pertinent part as follows: Title 2A:170-90.2: "In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement made with a collective bargaining agent or with an individual employee which requires the payment of wages or of benefits, or contributions for the support of a fund out of which benefits may be paid, or other payments in connection with the employment of any employee or employees and who knowingly and willfully fails or refuses to make such payments within 30 days after such payments are required by said agreement to be made, ... is a disorderly person. If such employer is a corporation, the officer or employee responsible for such willful failure or refusal is a disorderly person. Upon conviction such employer, officer or employee shall be punished by a fine not to exceed \$500,000 or by imprisonment for not more than one year or by both such fine and imprisonment."

21/ As noted the ordinance speaks in terms of "base salary as of the determining date."

Town officials, not instituted until December 1975, payments which accrued commencing January 1975 were withheld for employees newly eligible for benefits or increased benefits. When Baldassano's confusion was brought to his attention, Baldassano then relied on the absence of 1975 contract figures as the reason for withholding payments. When pressed as to why payments were still withheld into the summer of 1975 when it was apparent the contract negotiations would be protracted, Baldassano admitted the Township gave no consideration to payment because of a hope and an assumption that every new meeting would result in contract agreement. This response was almost immediately followed by the statement that he didn't think anyone ever assumed it would be an easy matter to settle a new contract. Baldassano did not deny DeMaio's testimony as to their conversation about the withholding of longevity.

Wovsaniker did not specifically dispute DeMaio's testimony that he advised DeMaio sometime in 1975 he could see no problem in paying longevity. Wovsaniker also evidenced some confusion as to dates, first stating that after recognizing a conflict between "preceding years' salary" and "current years' salary" he checked with Treasurer Brooks and learned that payment in the past had been made on the basis of current years' salary. According to Brooks, the 1974 contract was settled early and signed on March 19, 1974. Longevity was then paid for employees who first qualified for new or increased benefits after December 1973, some receiving early payment if they did not qualify until later in 1974 and others receiving late payment if they qualified before March 19. Wovsaniker later acknowledged that the Township's recognition of a conflict between contract and ordinance did not arise until after the complaints were filed in Hillside Municipal Court in December 1975 when the Township attorneys discovered the discrepancy. Wovsaniker finally stated that after checking on past practice, he responded to DeMaio's inquiry at the next negotiation meeting by asking why the parties shouldn't follow the same past practice, and as soon as we sign the contract, the Township will pay longevity as it has been done in the past. Wovsaniker later admitted during the cross-examination that he never told the PBA during 1975 that the reasons the Township would not pay longevity benefits was because of any conflict between the contract and Township Ordinance in computing base pay. That defense to payment, according to Wovsaniker, was only raised after the Municipal Court complaints were filed in December 1975.

Promise of Promotion, Threat to Withdraw
Sick Leave Benefit and Commitment to
Fire Department

According to witness DeMaio, sometime in the spring of 1975, after negotiations had been underway, he received a telephone call at his home from Mayor Baldassano. As DeMaio related it, the Mayor asked him if he had thought about the terms of the 6% salary offer by the Town in response to the PBA's 6 $\frac{1}{2}$ % demand. ^{22/} DeMaio responded that the PBA demand remained at 6 $\frac{1}{2}$ %. At this point, DeMaio testified that the Mayor said that he had knowledge of a test coming up for promotion and suggested that if DeMaio as PBA President could sell the package or give it a favorable recommendation, no matter where he came out on the test, he, DeMaio, would be made sergeant. DeMaio expressed disbelief, to which Baldassano responded he couldn't see a break in parity, there would be a political issue if we did break parity. DeMaio told Baldassano he would think about the matter and the conversation ended.

Thereafter, DeMaio testified, he received a call that the Mayor wanted to speak to him in regard to the contract. DeMaio, then in uniform and on duty, went to the Mayor's home. The Mayor told him if he could give a favorable recommendation to the PBA to accept the Township's offer of a two year package containing a 6% salary increase in each year, ^{23/} no matter where he came out on the sergeant's test, he, DeMaio, would be made sergeant.

According to Baldassano, he recalled two conversations in which the subject of a promotion was discussed. As to the first conversation, the parties were still negotiating, and were about a $\frac{1}{2}$ % apart, and DeMaio had suggested to him that the PBA's previous negotiator had sold out the PBA and was now sitting in the Juvenile Division of the Hillside Police Department. The Mayor testified he then jokingly responded saying, "Hell Vinnie, you can do better than that. If you settle at 6% I will make you captain." According to the Mayor, it was unfortunate Mr. DeMaio didn't have a sense of humor, but added that he thought

^{22/} While DeMaio placed this call in the spring of 1975, in earlier testimony not disputed by the Township DeMaio placed the date of the PBA's first demand for a 6 $\frac{1}{2}$ % salary increase in August or September 1975, after the public works employees settled for a 6 $\frac{1}{2}$ % increase on August 5, 1975.

^{23/} According to the record, the Township first proposed PBA acceptance of a two year package, containing 6% increases in each year, in April, 1976, in attorney Dorf's letter proposal of April 14, although such a proposal may have been discussed informally in February 1976 or earlier.

DeMaio laughed too, and kind of grinned about it. Mayor Baldassano noted that promotions can only be made by a three member Township Committee majority and that regardless of the test results the three highest scores on the test are the ones who ultimately will become sergeant and this is generally understood among unit employees. 24/

As to the second conversation, the Mayor further testified he made a similar comment in the conference room with PBA members present, when he more or less punched DeMaio in the shoulder and said, "Come on Vinnie, I will make you a captain if you move in this session, and everybody had a laugh about it."

Baldassano did not deny DeMaio's testimony regarding the conversations held between them by telephone and, later, at Baldassano's home.

The second allegation of Township conduct in violation of subsection (1) concerns a threatened withdrawal of a sick leave benefit. Since 1958, and up to 1975, under Township practice and procedure, a policeman was entitled to up to one year sick leave with full pay depending upon the illness or injury and with the consent of the Township. No ordinance covered this practice 25/ and the existing negotiation agreement is silent as to the specific matter of sick leave but does contain a provision protecting all other rights, benefits and privileges enjoyed by both parties which are not specifically abridged in the agreement.

On or about October 22, 1975, following the Township's rejection of the PBA's offer to accept a 6% increase if coupled with a trial weekly work schedule of 35 hours for the balance of the year, an unusually high number of police officers called in sick. 26/

24/ In later testimony, the Mayor clarified that promotions to higher positions are made by the Township Committee through the recommendation of the Police Chief, and that the Township Committee by law may select without explanation any one among the top three qualified candidates.

25/ Written Police Departmental rules and regulations do require a doctor's slip for absences due to illness or injury exceeding three days. Also, the outstanding ordinance apparently provides up to 15 days sick leave for police officers.

26/ PBA President DeMaio did not dispute that on one occasion 14 patrolmen were absent the same day on grounds of illness. On another occasion during the course of negotiations, a number of police officers, including PBA negotiating committee members, appeared at William Paterson College where Mayor Baldassano was employed as Assistant Professor in the Department of Urban Studies and Community Affairs, to picket the Mayor carrying placards with legends stating among other things, that he was unfair to labor and not negotiating fairly with the PBA by tying their benefits to firemen.

In its revised contract demands contained in Stamler's October 24, 1975 letter to the Township, the PBA sought "The immediate rescission or withdrawal of the Order of the Police Chief dated October 22, 1975, and entitled 'Sick Report Procedure.'" ^{27/} The letter continued, "The Township Committee directed the Police Chief to issue that Order based upon a set of circumstances or conditions existing on that date. It is submitted that the set of circumstances or conditions which led to the issuance of the Order have been removed, permitting the use of the procedure theretofore followed for sick officers." Officer DeMaio explained the Chief's Order as based upon his feeling that at one time the Police Department was in an emergency situation due to the amount of men out sick.

According to DeMaio, Mayor Baldassano stated, at the time, in late October, 1975, that he would take away the employees' unlimited sick leave of up to a year including pay and enforce a fifteen day per year sick leave.

During the course of the negotiation session of October 25, 1976, Township attorney Menza handed DeMaio a copy of a letter on Menza's letterhead dated October 22, 1975, marked confidential, which he had addressed to the Township Committee. In the letter Menza noted that it had been called to his attention that there was no ordinance of the Township granting a leave of absence with pay to a member of the Police or Fire Department for a period of one year. Menza then cited a repealed and an existing statutory provision ^{28/} authorizing the governing body of any municipality, by ordinance, to grant its paid firemen and police officers such a leave with pay not exceeding one year provided the injury, illness or disability is certified by the examining physician. In the letter Menza went on to note that no ordinance had been adopted by the Township on authority of the statute, recited the long standing Township practice of providing one year paid leave of absence for illness and injury, and closed by noting that the statute is quite clear and suggesting immediate appropriate action be taken by the Township Committee.

^{27/} That Order rescinded the existing one year sick leave practice and substituted a 15 day annual sick leave benefit, in accordance with the outstanding ordinance.

^{28/} Menza circled the existing statute, N.J.S.A. 40A:14-16 in DeMaio's presence.

Following Mr. Menza's letter the Township had a proposed ordinance drawn to the effect it would allow 15 days paid sick leave a year for police officers which could be accumulated over a number of years. According to Police Chief Shelbourne the ordinance was to be effective for police officers hired after its adoption. Passed at its first reading, the proposed ordinance was then withdrawn and never adopted.

The third alleged act of coercion by the Township concerned a conversation held between Wovsaniker and Township Police Captain, James T. Silva. Silva attended almost all PBA Township negotiation sessions in the capacity of advisor to the PBA Negotiating Committee. At a dance held at the College Inn on the evening of September 27, 1975 Captain Silva engaged Wovsaniker in a private conversation. Silva urged Wovsaniker to meet the PBA's salary demand by agreeing to the $\frac{1}{2}\%$ increase above 6% in base pay, or, in lieu thereof, to agree to a 35 hour work week. Silva testified Wovsaniker replied that he couldn't do anything for the police because he gave his word to the Fire Department that we wouldn't get more than they got.

ANALYSIS AND DISCUSSION

The Alleged Refusal to Negotiate in Good Faith by the Township

In its amended charge the Association placed primary emphasis upon the Township's insistence on maintaining parity in base salary with the Fire Department as establishing evidence of a closed mind and unwillingness to settle the salary issue on its merits. After hearing the testimony and considering the history of the parties' negotiations over a period of a year and one-half I conclude that the standard against which to judge the Township's conduct must be more broadly viewed than the Association would allow. The parity question cannot be viewed in isolation but, rather, the Township's position on parity must be weighed and analyzed in the context of its overall negotiating conduct in light of the applicable governing law.

The leading case in this area is In the Matter of The State of New Jersey and Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO, E.D. No. 79, 1 NJPER 39, aff'd., State of New Jersey v. Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO, 141 N.J. Super. 470 (App. Div. 1976). In that case, the Commission's Executive Director refused to issue a complaint after investigation of a charge alleging that the State's failure to acquiesce

during negotiations on salaries and fringe benefits under a contract reopener clause constituted "bad faith bargaining." The Executive Director, drawing upon established principles of labor law in both the private and public sectors found "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... 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." State of New Jersey, Id. at page 7. The Director went on to note as follows:

"it is well established that the duty to negotiate in good faith is not inconsistent with a firm position on a given subject. 'Hard bargaining' is not necessarily inconsistent with a sincere desire to reach an agreement. An adamant position that limits wage proposals to existing levels is not necessarily a failure to negotiate in good faith. Were the State to have been inflexible on the salary issue, which it appears not to have been, a refusal to negotiate in good faith would not be found without an evaluation of its conduct throughout the negotiations on all issues." Id. at pages 9 and 10.

The Director concluded on the stipulated facts before him that while the state had been adamant on a major issue - salaries - it had given its reasons for its position, and he could find no indication of a desire or intention not to reach an agreement on the part of the state, nor of any other conduct which might constitute a refusal to negotiate in good faith.

Applying these principles to the instant facts, I am equally convinced here that an examination of the totality of the parties' conduct over the course of negotiations does not warrant a finding of violation of the negotiating duty on the part of the Township. I conclude that the Association has failed to establish by a preponderance of the evidence that the Township has engaged in a refusal to negotiate in violation of the Act as charged.

Apparently within a few months of the commencement of the negotiations the PBA was made aware of the Township's desire to retain parity in basic annual salary between the Police and Fire Departments. The motivation for this response to the PBA's demand for a salary increase was expressed on a number of different

occasions in terms of anticipated matching demands by the FMBA on the next round of negotiations and the political vulnerability of the Town's Committee members as a result of adverse reaction from firemen. On at least one occasion, admitted by Patrolman Michael Galloway, the Township in rejecting the PBA demand for one-half percent salary increase relied upon the multiplier effect such an increase would have on other salary-related benefits such as pension and other salary items in the PBA contract. Furthermore, both Mayor Baldassano and Police Commissioner Wovsaniker testified at length as to the underlying concerns of the Township Committee with respect to the PBA's salary demand. Both Committee members testified to their concern that an increase in base salary would have a pyramiding effect on other salary benefits including pensions, overtime pay, ^{29/} vacation and holiday pay and the salary rates and pay increases for superior officers, whose salaries are tied by a percentage ratio to patrolmen.

With respect to its expression of concern for the so called snowballing effect upon further demands by the FMBA in the firemen's unit, the Township's response to the PBA cannot be viewed in a vacuum. Employers in the public sector are naturally guided in negotiations by the relative inflexibility of their budgets coupled with the multiple units with which they must deal. These factors make the Township's concern for the impact the actual cost of settlement in one unit will have on its negotiations with other units a very real one in terms of its practical consequences. As stated by a sister State Commission in a case involving a related issue of the validity of a parity agreement:

"Such [parity] agreements are not rare or limited to police and fire settlements and do, as the [WAPPA] urges affect the calculations of a municipal employer in its subsequent negotiations with other labor organizations. However even in the absence of such agreements, employers...calculate the effects of proposed settlements with other groups of employees....This is a 'fact of life' in collective bargaining. The [WAPPA] realizes this, but distinguishes the present case on the basis of the existence of a formal agreement...We hold that this distinction is artificial and not to be adopted herein." West Allis Professional Policemen's Association v. City of West Allis, WERC Case XX, No. 17300, MP-294, Decision No. 17206 (May 17, 1974), summarized at GERR No. 563, pps. B-7 and B-8.

^{29/} As earlier noted, the extensive overtime accumulation by policemen in court appearances constituted one of the main if not the decisive reason that the Township ultimately rejected the PBA's later proposal to reduce regular weekly hours from 37½ to 35 without loss of pay.

The issues before the Wisconsin Employment Relations Commission in City of West Allis and those dealt with by such other jurisdictions as Connecticut ^{30/} and New York ^{31/} encompassed whether the existence, enforcement or demand for a parity clause in a collective negotiation agreement between a public employer and employee organization necessarily restrains and coerces representatives of employees in other negotiating units in future negotiations because of its inhibiting effect on such negotiations. The argument which proved effective in Connecticut and New York, (but not in Wisconsin) is that the guarantee in such a clause, that mandates automatic wage increases to employees covered by the clause equal to those obtained thereafter in negotiations by employees in another negotiating unit, necessarily restricts the negotiations in the other unit by imposing equality for the future upon the negotiating representative in such units who had no opportunity to negotiate the clause itself.

Such a restriction and such a clause - often described as a "me-too" clause - is not present in the instant proceeding. ^{32/} There is no evidence in the record that such an agreement exists between the Township and FMBA or that the Township relied upon such an agreement in rejecting the PBA's demand for a 6 $\frac{1}{2}$ % salary increase. This report therefore will not determine or weigh the validity of parity agreements.

With respect to the Township's conduct in relying, at least in part, upon considerations of the effects upon other employees of a wage settlement with one group of employees, even the frank and open expression of such concern

^{30/} City of New London v. New London Police Union Local #724, Council 15, AFSCME, AFL-CIO, Conn. S.B.L.R. Case Nos. MPP-2268 and 2343, Decision No. 1128 (March 21, 1973) GERR No. 505, P.F.J., enf'd Local Union No. 1522, IAFF v. Conn. S.B.L.R., 31 Conn. Sep. 15,319, A. 2d 511: The Borough of Naugatuck (Fire) and Local 1219, IAFF, Conn. S.B.L.R. Case No. MPP-2574, Decision No. 1228 (May 23, 1974), enf'd, Local Union #1522, IAFF v. Conn. S.B.L.R., Conn. Sup. (Docket No. 108994, Court of Common Pleas, Oct. 23, 1973), enf'd Conn., 93 LRRM 2098 (1976).

^{31/} City of Albany and Albany Permanent Professional Firefighters Association, Local 2007, AFL-CIO, 7 PERB 3142, 3146.

^{32/} Wovsaniker's alleged statement of commitment to the Fire Department, even if true, is not a parity agreement. It is not incorporated in the FMBA agreement and it does not give rise to an automatic increase for firemen to equal the amount received by the PBA upon a Township settlement with the PBA. At most, the statement manifests the strength of the Township's motive to maintain equivalent annual salaries for its public safety forces.

by the Township's representatives during the course of negotiation, in response to the PBA's salary demands, I do not find to evidence an unwillingness to negotiate and conclude a collective agreement even as to the matter of salary for policemen, particularly in light of the totality of the Township's and PBA's negotiating conduct.

Thus, the Township early in the negotiations offered additional fringe benefits in the form of a new weapon maintenance allowance and an increase in clothing and clothing maintenance allowances not tied to salaries, in an effort to arrive at a settlement. Thus, when the basic salary issue continued deadlocked after a series of meetings, and the PBA sought to increase salary by decreasing work hours, the Township seriously considered and weighed its proposal before finally rejecting it. Thus, during the mediation sessions the Township and PBA explored an increase in salary tied to an increased hourly rate after adding percentage increases applied to an additional hour to be worked per week which the parties characterized as shape-up-time.

While the basic salary of the police and fire personnel was the same under the 1974 agreement and the Township was adamant in insisting upon continuing that parity, in fact patrolmen and detectives clearly enjoyed a substantially higher rate of pay than firemen of \$.71 per hour by virtue of the fact that the regular work week of policemen was $4\frac{1}{2}$ hours less than that of firemen. ^{33/} This difference in hourly rate coupled with the substantially greater overtime hours worked by the police establishes that the employees in the unit represented by the PBA enjoyed a significantly greater salary than that enjoyed by firemen. Viewed from such a perspective, the Township's insistence on retaining parity in basic salaries may reasonably be viewed as an effort on its part to sustain a publicly perceived parity in annual salary between policemen and firemen while at the same time permitting differences in actual take home pay between them which recognizes the different functions and responsibilities of the two services.

The PBA's emphasis on the Township's parity position is not without some irony. As earlier indicated, the PBA sought to capitalize on the settlement of the Township's 1975 contract with its blue-collar employees in August as a trigger for its own demand for a similar $6\frac{1}{2}\%$ salary increase. ^{34/} The PBA also claimed a \$75 shape-up to equal the sum provided the firemen in a 1972-73 FMBA agreement. The PBA thus has not been shy about making use of

^{33/} As noted by PBA attorney Stamler in his October 28, 1975 letter to the Township "Parity has already been broken in hours worked and in many benefits -- to the benefit of the PBA."

^{34/} The Township's response that the average salary of blue-collar workers was at least \$4,000 below that of policemen is another aspect of the Town's good faith responses on the salary issue.

benefits provided employees in other units as a tactic in its own negotiations with the Township.

Apart from the salary issue the Township's response to PBA demands in other areas evidenced the normal give and take of the negotiations process. PBA witness DeMaio admitted to some progress following the first negotiation session. Further areas of agreement and consideration of PBA demands by the Township resulted from the second October 1975 meeting. Again, according to PBA President DeMaio, each side presented modified packages during the course of mediation efforts after January 1976.

Finally, the last PBA written counter proposal made by its attorney as late as January 26, 1976, a year after negotiations had commenced, establishes that the PBA was willing to forego the extra $\frac{1}{2}$ % salary increase provided the Township agreed to a two year contract for 1975 and 1976 with a 6% salary increase for each year among other items and the introduction of a 35 hour week, on a trial basis in accordance with the PBA's proposed work schedule.

Based upon the foregoing and all of the evidence introduced at the hearing, I conclude that by the close of the hearing, as the parties awaited further meetings with a fact-finder appointed by the Commission, the Township's overall conduct could not be said to have evidenced a closed mind on salary issues or other matters and did not constitute a refusal to negotiate under the Act.

The Alleged Discriminatory Delay
in Longevity Pay

The Township's consistent position during the course of negotiations was that those employees who first became eligible for longevity pay or increased longevity pay by December 1974 based upon their years of service would not receive such pay until the PBA had agreed to a collective negotiation agreement for calendar 1975. The Township took this position in spite of the fact that the 1974 contract requiring the longevity payments by its terms continued in force during all of 1975 and the first three months in 1976 until the Township's belated notice of termination. Early in the dispute in this matter Police Chief Shelbourne admitted that the Township's action violated the existing contract and/or its longevity ordinance. The Respondent did not question the Chief with respect to his admission, binding upon the Township, Board of Education, Englewood

and Englewood Administrator's Association, P.E.R.C. No. 76-18. Furthermore, Mayor Baldassano did not dispute Patrolmen DeMaio's testimony that when confronted by DeMaio's claim that payment under the contract was based on previous year's salary and had nothing to do with signing a new contract he failed to respond and instead attempted to excuse non-payment on the ground of extra paper work in computing first on 1974 salary and later on a new 1975 salary rate. Neither did then Police Commissioner Wovsaniker dispute DeMaio's testimony that when confronted on the matter by DeMaio he responded he could see no problem in paying longevity.

During their direct testimony, both Baldassano and Wovsaniker evidenced considerable confusion as to the reasons the Township withheld the longevity payment at various periods of time over the more than a year and a half after the benefit had first accrued for some employees. See pages 16 and 17, infra. Wovsaniker, in particular, appeared to rely on an alleged past practice consistent with the Township's conduct in withholding longevity pay until new salary rates were settled. However, the only practice to which he testified shows that longevity pay earned in January and February 1974 was not paid until the following month, March 1974, when the 1974 contract was signed. Such a limited history fails to establish a past practice in this area. Of greater significance, the history of timing of longevity payments in 1974 does not establish a practice of delaying longevity benefits for more than 18 months for some employees and at least a year for others.

It was not until December 1975, at the earliest, that the Township first asserted and sought to justify its non-payment because of a discrepancy between the 1974 contract and the Township ordinance with respect to the salary basis used in computing longevity. Even with respect to the alleged discrepancy the wording of the ordinance does not support the claim asserted by Wovsaniker at the hearing and the Township in its brief. The ordinance fixes base salary as of the "determining date". Where, as in the instant case, salary for 1975 had not been finally negotiated, salary as of the determining date could just as reasonably be interpreted to mean currently received salary, i.e., previous years (1974) salary as 1975 salary ultimately determined through negotiations -- the interpretation claimed by the Township. Furthermore, even after the alleged discrepancy was discovered and asserted, nothing prevented the Township from making the payment under the old salary rate and resolving the conflict at the negotiating table.

In fact, the Township did just that when in settlement of the court complaints it finally agreed to pay longevity based on 1974 salary and then to adjust the benefit when 1975 salary agreement was reached.

The Township's defenses for the first year during which it failed to make the payment - that extra paper work would be required and that the Township anticipated an early settlement resolving the salary rate - both appear to me to be disingenuous and not justified under the circumstances of the legitimate contractual claim. As to the paper work only a relatively small number of employees out of the total complement of policemen were involved and the Township ultimately agreed in April 1976 to make the computations when sufficiently pressed. As to the anticipation of an early settlement, surely by the summer of 1975, when the dispute particularly regarding salary, continued without resolution the Township could not reasonably have further delayed contractually required longevity payments accrued as early as December 1974. During the period of lengthy delay the Township was well aware that the grievance procedure under which DeMaio pressed the PBA's claim for payment culminated in its own final and binding determination rather than a determination by a neutral third party.

With respect to longevity, the PBA claims that the Township was unlawfully motivated to withhold payments because of the exercise by the employees of their rights protected by N.J.S.A. 34:13A-5.3 ^{35/} to assist the PBA in the course of the negotiations. It is true that the employee whose longevity pay was withheld since January 1, 1975 and whose grievance raised the issue and who continued to press the matter with the Township officials was the President of the PBA and its chief negotiator, Vincent DeMaio. However, I have found that the Township evidenced good faith in the collective negotiations with the PBA led by DeMaio. Also, during 1975 it arranged for earlier payment of accrued overtime which prior thereto had been held in abeyance, accumulated and paid the following year. On the record before me, including the absence of any evidence of hostility to the PBA, ^{36/} I am not persuaded that the Township's failure to make

^{35/} N.J.S.A. 34:13A-5.3 provides in pertinent part: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity."

^{36/} I am not unmindful that Mayor Baldassano did not deny promising a promotion to DeMaio in exchange for recommending PBA approval of the Township's negotiating package and that DeMaio's failure to accede to the Mayor's proposal may have contributed to the Township's continued refusal to pay longevity after August 1975. I believe such an inference, however, to be too tenuous to form the basis for finding of discriminatory motivation.

longevity payments until it agreed to do so in settlement of the various employees' municipal court complaints was motivated either in whole or in part by a desire to discourage any employee in the exercise of the rights guaranteed to him by the Act - a standard against which the Township's conduct may be measured to determine whether it violated subsection (3). ^{37/}

I am persuaded, however, that the Township's conduct in withholding the longevity pay until a new collective negotiation agreement was executed was so "inherently destructive of important employee rights" ^{38/} that even in the absence of specific motivation to discourage the exercise of protected rights under the Act the Township has thereby engaged in conduct violative of N.J.S.A. 34:13A-5.4(a) (3). I find that the refusal to pay longevity until execution of a successor agreement had the natural, foreseeable consequence which the Township must be presumed to have intended of discouraging the PBA and the unit employees from exercising fully their rights to negotiate. Only by withdrawing their salary and other demands and agreeing to the Township's terms could the employees affected hope to receive their contractual longevity benefit. The nature of the negotiations was such that the Township's signal that agreement on a successor contract would bring the withheld longevity payments constituted illegitimate pressure upon the PBA to agree to Township terms on salary and other items contrary to its own deeply held negotiating positions. The Township must be held accountable for these natural consequences of its conduct.

Even if it is argued that the discriminatory effect of the withholding of the longevity payments is "comparatively slight," the Township has failed to show that it had legitimate and substantial business justifications for its conduct. Thus, the absence of a specific discriminatory motivation is not fatal to the

^{37/} See Iullo v. I.A.F.F., 55 N.J. 409, 424 (1970); Kenosha Teachers Union v. WEIRC, 67 LRRM 2237 (Wisc. Cir. Ct. 1967), aff'd 158 N.W. 2d 914 (1968); Township of Halifax, Mass., L.R.C. Dec. No. MUP-2059, 1 MLC 1486 (1975); Little Neighbor Centers, 7 Pennsylvania PFER 27 (1976); In the Matter of Phyllis Cate, Iowa, PERB Case No. 354 (1975).

^{38/} NLRB v. Great Dane Trailers, 388 US 26, 34 (1967); See also NLRB v. Erie Resistor, 373 US 221 (1963); Meyer v. Lane County Board of Commissioners, 68 LRRM 2685 (Ore. Cir. Ct. 1968); In the Matter of Phyllis Cate, Iowa, PERB Case No. 354.

allegation^{39/} and I, accordingly, sustain it. ^{40/}

The Promise to Promote

As earlier noted, Mayor Baldassano did not deny DeMaio's testimony regarding the two conversations, during which DeMaio attributed to him offers of promotion to sergeant in exchange for his support within the PBA for the Township's salary and other contract proposals. The Mayor recalled two conversations held in person but at no time did he deny DeMaio's characterizations of remarks made by him during a telephone call he had made to DeMaio and in a conversation held at his residence. At most, the Mayor implied, since he did not answer directly his attorney's question as to his recollection of either conversation testified to by DeMaio, that he did not recall them. He did so by prefacing his answer with the comment, "Well, the first conversation that I recall..." ^{41/} and proceeding to describe a face-to-face meeting with DeMaio and a second discussion held in a conference room at a negotiating session. Thus, the Mayor's recollections do not exclude the likelihood based upon DeMaio's testimony alone, that he and DeMaio discussed a promotion for DeMaio on two other occasions during the course of the negotiations. In the absence of any specific denial by Baldassano, DeMaio's testimony stands uncontroverted and, normally, would be credited. However, as the Township, at least through the Mayor's subsequent testimony (but not in its brief) sought to discredit DeMaio by asserting his testimony to be inherently improbable, I will now undertake an examination of the Mayor's claims in this regard.

In evaluating the nature of the conversations I find it significant that the Mayor actively sought out DeMaio to make the promotional offer, first by telephoning him and then by requesting him while on duty to come to his home. Such circumstances support DeMaio's evaluation of the offers as having been made seriously.

^{39/} NLRB v. Great Dane Trailers, 388 US 26 (1967).

^{40/} The PBA has not alleged that the Township's unilateral withholding of longevity pay constitutes a violation of its negotiating duty under subsection (5) to refrain from unilateral changes in terms and conditions of employment during negotiations for a successor agreement. See Piscataway Township Board of Education and Piscataway Township Education Association, P.E.R.C. No. 91, appeal dismissed as moot, Docket No. A-8-75 Super. Ct. App. Div., (June 1976). Accordingly, the undersigned has not dealt with the Township's subsection (5) obligations with respect to longevity.

^{41/} Page 278, line 18 of the Transcript.

The Mayor attempted to demonstrate that his lack of authority and the limitations imposed by Civil Service regulation upon the Township's discretion in making promotional appointments made his ability to fulfill his promise highly unlikely. I am not persuaded. The Township failed to adduce any evidence which would tend to show that the Mayor did not enjoy the support of at least two other Committee members in fulfilling his promise to DeMaio. On many, if not all negotiating positions the three Township members who participated in negotiations from time to time appeared to present a united front. Absent evidence to the contrary, there is no reason to believe that Baldassano's plan to improve DeMaio's position did not enjoy like majority support.

Furthermore, in a municipality such as Hillside where Civil Service is in effect (see N.J.S.A. 11:19-1 et seq.) the Township Committee retains some degree of flexibility in making appointments from among eligibles on a promotional list. ^{42/} The Township may also seek authorization to fill a vacant position of sergeant by provisional appointment which, if it exceeds six months must be reported to the Civil Service Commission. ^{43/}

I conclude that the Township had the capacity to fulfill its Mayor's promise to DeMaio. Accordingly, I determine on the basis of creditable testimony the Township's then Mayor offered a promotional opportunity to PBA President DeMaio to influence the PBA's negotiating position and that this conduct interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them by the Act in violation of N.J.S.A. 34:13A-5.4(a) (1).

The Alleged Threat to Withdraw
Sick Leave Benefits

The preponderance of the evidence in the record, summarized at pages 19-21 of the Report, infra, warrants the conclusion that the Township's consideration of a revised sick leave ordinance reducing the existing sick leave benefits constituted a legitimate response to the occasion in October 1975 when 14 patrolmen called in ill. None of the evidence adduced by the PBA establishes that the Township considered passage of such an ordinance in order

^{42/} See N.J.A.C. 4:1-8.6 (Qualifications for promotional examinations); N.J.A.C. 4:1-9.3 (Rating education and experience); N.J.A.C. 4:1-12.1 et seq. (Certification and appointment). See also, e.g., Swede v. City of Clifton, 39 N.J. Super 366, 121 A 2d 43 (1956).

^{43/} See N.J.A.C. 4:1-14.1.

to punish employees because of their exercise of rights guaranteed them in the Act. The PBA does not claim that the 14 employees involved were exercising protected rights of protest. ^{44/} Neither does the PBA contend that the Township did not confront an emergency shortage of manpower when the 14 failed to appear for work. On the contrary, both the PBA attorney and President recognized that valid circumstances existed for the initial issuance by Police Chief Shelbourne of his October 22, 1975 Order rescinding the one year sick leave practice. Attorney Stamler in his October 24, 1975 letter argued that the conditions which led to the issuance of the order had since been removed and DeMaio stated that in his view the Police Chief's Order was based upon a belief that the Police Department was in an emergency situation when the 14 policemen failed to appear for duty.

Clearly, the Police Chief's Order was in response to the high number of absences for illness on one particular occasion. The main evidence of coercive pressure upon which the PBA relies - the occasion at the negotiations session of October 25, 1975 when attorney Menza handed DeMaio a copy of his confidential communication to the Township - fails to establish any coercion. On the contrary, Menza's conduct appears to imply that the Township would be well advised to adopt an ordinance providing a one year paid leave of absence for illness or injury in accordance with statutory authority. Nowhere in the letter does Menza recommend a reduction of the existing one year practice. Nothing in this action supports the claim asserted in the PBA's brief that Menza's intent was to let the PBA know that unless a contract was reached, the Township would continue to enforce a 15 day sick leave limit

The alleged threat which DeMaio attributed to Mayor Baldassano appears in the record unrelated to the exercise by employees of any guaranteed rights. The "threat" which DeMaio relates appears akin to a statement to withdraw existing sick leave in response to the emergency condition which induced the Police Chief to adopt his Order and the Township to consider an ordinance reducing sick days. The characterization of the Mayor's remarks as a "threat" without explication as to its circumstances or the precise language used accordingly fails because of a lack of probative evidence as to its meaning and intent.

44/ Even if the PBA had claimed, or the facts showed that the 14 absent policemen were indeed engaged in a "job action" in support of PBA demands, assuring arguendo, such conduct remained protected under the Act, the Township's responsive conduct regarding sick leave may reasonably be viewed as a tactical response which did not rise to the level of interference with protected rights warranting a finding of violation under the Act.

The PBA did not offer any evidence that as a result of the Police Chief's Order, ^{45/} any police officers suffered a loss of sick leave benefit ^{46/} or that the Chief's Order imposing a 15 day rather than one year limit remained in effect after the emergency caused by the absence of 14 patrolmen in one day had abated.

In the absence of compelling evidence that the Township sought to withdraw an existing benefit for other than legitimate and immediate reasons of Township management and public safety, I conclude that neither the Police Chief's Order nor attorney Menza's conduct nor the Township's adoption at first reading only of a reduced sick leave ordinance for new employees interfered with, restrained or coerced employees in the exercise of rights guaranteed them by the Act and I will therefore recommend its dismissal.

The Police Commissioner's Statement
of Commitment to the Fire Department

The Township's conduct during the course of negotiations, in particular with respect to its commitment to maintenance of parity on basic salary between police and firemen, has already been discussed at length. I have earlier indicated that Wovsaniker's statement to Captain Silva on the evening of September 27, 1975 that he had given his word to the Fire Department that the policemen would get no more than firemen in basic salary principally shows the depth of the Township's commitment to its salary position. It constitutes neither a promise of benefit nor a threat of reprisal, nor an act otherwise interfering with any employee rights under the Act. As I have already found that the Township's negotiating position with respect to parity taken in the context of its overall conduct did not violate its negotiating duty, I also find here that the statement of commitment to the maintenance of parity likewise has not violated the Township's obligation to refrain from conduct interfering with the exercise of employee rights under the Act in violation of N.J.S.A. 34:13A-5.4(a) (1).

The Alleged Refusal to Negotiate in
Good Faith by the PBA

I have previously reviewed the events leading up to the meeting of February 21, 1976, and the conduct of the parties at that meeting. Based upon

^{45/} As noted, a proposed ordinance designed to reduce paid sick days for employees hired after its effective date was later withdrawn by the Township.

^{46/} The PBA has not charged a unilateral change in terms and conditions of employment in violation of N.J.S.A. 34:13A-5.4(a) (5). See f.n. 40, infra.

the evidence and the inferences I have already drawn I am not persuaded that the PBA's summary termination of the meeting constitutes a refusal to negotiate in violation of subsection (b) (3). I have concluded that PBA attorney Stamler had reasonably anticipated that the subject of a 35 hour work week on a trial basis would be discussed at the meeting. When he learned otherwise from Mr. Dorf he and the PBA Negotiating Committee abruptly left. The Township has failed to adduce any probative evidence (I have discounted Wovsaniker's understanding of conversations between the two attorneys leading up to the meeting) that the PBA Committee was unreasonable in believing that the subject matter would be discussed. I am further persuaded that in the context of the tense atmosphere of the ongoing negotiations which had continued for a year without a resolution of basic underlying issues the PBA's isolated conduct on this occasion was insufficient to manifest evidence of an unwillingness to reach agreement on the terms of a successor contract. ^{47/} Its participation at length in two succeeding negotiating sessions held with the assistance of a mediator assigned by the Commission negates the Township's further claim that the PBA unlawfully refused to resume negotiations. I conclude that the Township has failed to prove by a preponderance of the evidence that the PBA unilaterally terminated the February 21, 1976 session without explanation and continued to refuse to negotiate in good faith in violation of N.J.S.A. 34:13A-5.4(b) (3).

CONCLUSION AND FINDINGS

I find and conclude, based upon the foregoing analysis and conclusions reached on each of the issues presented for determination that the Respondent Township has discriminated in regard to hire or tenure of employment or any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act by failing to pay and continuing to withhold payment of longevity benefits to certain of its employees, and thereby violated and is violating N.J.S.A. 34:13A-5.4(a) (3).

I further find and conclude that the Respondent Township has interfered with, restrained and coerced employees in the exercise of the rights guaranteed to them by the Act by a promise of a promotional opportunity to employee Vincent

^{47/} Contrast, e.g., the conduct of the Respondent in Board of Education, Englewood Public Schools and Englewood Administrators Association, P.E.R.C. No. 76-18, where its failures to meet, unreasonable delays in meeting, lack of preparation for meetings and failure to make contract proposals formed a pattern of conduct warranting a finding of violation of the duty to negotiate under the Act.

DeMaio in order to influence and modify the PBA's negotiating positions and has, thereby violated, and is violating, N.J.S.A. 34:13A-5.4(a)(1). In all other respects I recommend that the allegations of violation by the Respondent Township of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act, and by the Respondent PBA of N.J.S.A. 34:13A-5.4(b)(3) and therefore the Complaint in Docket No. CE-76-37-69 be dismissed because of failure of proof.

IV

The Remedy

Having found that the Respondent Township has engaged in, and is engaging in, unfair practices within the meaning of N.J.S.A. 34:13A-5.4 (a) (3) and (1) of the Act, I find that it is necessary that the said Respondent be ordered to cease and desist from the unfair practices and to take certain affirmative action designed to effectuate the policies of the Act. Respondent Township having withheld the payment of longevity benefits to certain employees until a successor collective negotiations agreement had been executed, for affirmative relief I will order said Respondent to pay to those of its employees whose longevity payments were withheld sums of money representing the appropriate longevity pay due them under the 1974 collective negotiations agreement between the parties, and, if a successor collective negotiations agreement for the year 1975 has been executed, or is subsequently executed, to continue to make payment of longevity benefits to these employees in accordance with its terms. I will also order that the Respondent Township post an appropriate notice to the employees in the form hereto annexed.

All of the foregoing I find to be necessary to neutralize the effects of the said Respondent's unfair practices and to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and the entered record in this case, I make the following:

CONCLUSIONS OF LAW

1. The Respondent Township of Hillside is a public employer within the meaning of N.J.S.A. 34:13A-3(c).
2. Hillside Policemen's Benevolent Association, Local No. 70 is an employee organization and majority representative of employees within the meaning of N.J.S.A. 34:13A-3(e) and 5.3.

3. Respondent Township at all times since on or about February 1, 1975, has withheld longevity payments due under the terms of the 1974 contract between the Township and PBA until a successor 1975 contract had been entered, and has thereby engaged in, and is engaging in, unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(3).

4. At all times since August 1975 the Respondent Township has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them by the Act by promising a promotion to the President of the PBA in exchange for his support of the Township's negotiating proposals, thereby discouraging the exercise by its employees of the rights to assist the PBA and to freely engage in collective negotiations, and has thereby engaged in, and is engaging in, unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1).

5. Respondent Township by insisting on maintaining parity in base salary between firemen and policemen in the negotiations with the PBA and by considering and passing at first reading a proposed Township ordinance reducing paid sick leave, and by voicing a commitment to the Fire Department that policemen would not receive a higher base salary than firemen, has not violated either N.J.S.A. 34:13A-5.4(a)(5) or (a)(1).

6. Respondent PBA by unilaterally terminating a negotiation session with the Township on February 21, 1976 without explanation or counterproposal in response to the Township's rejection of the PBA's demand for a 35 hour work week and by thereafter attending and negotiating at two subsequent meetings held with a mediator in March and April, 1976, has not violated N.J.S.A. 34:13A-5.4(b)(3).

Upon the foregoing findings of fact, conclusions of law and the entire record, and pursuant to N.J.S.A. 34:13A-5.4(c) and Section 19:14-7.1 of the Commission's Rules and Regulations, I hereby issue the following recommended:

ORDER

Respondent, Township of Hillside, shall:

1. Cease and desist from;

(a) Withholding longevity payments due employees under the terms of a collective negotiation agreement with Hillside Policemen's Benev-

olent Association, Local No. 70 until a successor agreement has been executed.

(b) In any manner discriminating in regard to hire or tenure of employment or any term or condition of employment to discourage its employees in the exercise of the rights to be represented for the purposes of collective negotiations concerning their terms and conditions of employment by the Hillside Policemen's Benevolent Association, Local No. 70.

(c) Promising benefits to its employees in exchange for support of its negotiating proposals.

(d) Interfering with, restraining or coercing its employees in the exercise of any of the rights guaranteed to them by the Act.

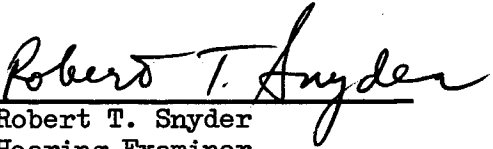
2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Restore retroactively to those of its employees represented by the Hillside Policemen's Benevolent Association, Local No. 70 from whose salary longevity pay has been withheld pending the signing of a collective negotiations agreement for the calendar year 1975, the longevity benefits accrued to them pursuant to the terms of the 1974 agreement between the parties, and, upon execution of a collective negotiations agreement for the year 1975, pay such benefits to those employees in accordance with its terms.^{48/}

(b) Post at its Police Department Headquarters in Hillside, New Jersey, copies of the attached notice marked "Appendix A." Copies of said notice on forms to be provided by the Chairman of the Public Employment Relations Commission, shall, after being duly signed by Respondent Township's representative, be posted by said Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by said Respondent to insure that such notices are not altered, defaced or covered by any other material.

^{48/} To the extent the parties may have already consummated an agreement concerning payment of longevity pay accrued to employees since December 1974, or even earlier, compliance with this paragraph might have been achieved. See Burlington City Board of Education and Burlington City Education Association, P.E.R.C. No. 77-4.

(c) Notify the Commission, in writing, within twenty (20) days of receipt of this Order what steps the said Respondent Township has taken to comply herewith.


Robert T. Snyder
Hearing Examiner

DATED: Trenton, New Jersey
November 24, 1976

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,

we hereby notify our employees that:

WE WILL NOT discriminate in regard to hire or tenure of employment or any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly the right to assist their employee organization in collective negotiations concerning the terms and conditions of their employment.

WE WILL NOT in any manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act.

WE WILL restore retroactively to those of our employees represented for purposes of collective negotiations concerning their terms and conditions of employment by Hillside Policemen's Benevolent Association, Local No. 70 from whose salary longevity pay has been withheld pending the signing of a collective negotiations agreement for calendar year 1975, the longevity benefits previously accrued to them, and, upon execution of said agreement pay such benefits to our employees in accordance with its terms.

TOWNSHIP OF HILLSIDE

(Public Employer)

Dated _____

By _____ (Title)

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Chairman of the Public Employment Relations Commission, Labor & Industry Bldg., P.O. Box 2209, Trenton, N.J. 08625 Telephone (609) 292-6780