

P.E.R.C. NO. 81-116

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY PUBLIC LIBRARY,

Respondent,

-and-

Docket No. CO-81-50-56

LOCAL 2265, COUNCIL 52,
AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

The Commission, in an unfair practice case, affirms the Recommended Report and Decision of its Hearing Examiner which determined that the Jersey City Public Library did not unlawfully refuse to negotiate with Local 2265, Council 52, AFSCME, AFL-CIO with respect to maximum salary ranges of Jersey City Public Library employees represented by Local 2265. The Commission found that the Library and Local 2265 had agreed, in negotiations concerning a collective agreement for Library employees, that maximum salary ranges would be developed by the Library with the "input" of Local 2265. Accordingly, the Commission affirms the Hearing Examiners' finding that the Library satisfied its negotiations obligation by meeting with Local 2265 in July 1980 in order to receive such input. The unfair practice charge was ordered dismissed in its entirety.

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Appearances:

For the Respondent, Francis X. Hayes, Esquire

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.
(Barry A. Aisenstock, Esq.)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on September 3, 1980, and amended on September 23, 1980, by Local 2265, Council 52, AFSCME, AFL-CIO (the "Charging Party") alleging that the Jersey City Public Library (the "Respondent" or the "Library") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), in that the Respondent on July 29, 1980, after reaching agreement on minimum salaries, refused to negotiate on maximum salaries, stating that the Charging Party was "there only for consultation," notwithstanding that the Charging Party and the Respondent had previously agreed to negotiate "minimums and maximums of the salary range as a sidebar agreement," all of which was alleged

to be a violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 3, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on February 9, 1981 in Newark, New Jersey, before Hearing Examiner Alan R. Howe, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and waived the filing of post-hearing briefs.

On February 11, 1981, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-27, 7 NJPER _____ (¶ _____ 1981). In his report, the Hearing Examiner concluded that the actions of the library did not violate N.J.S.A. 34:13A-5.4(a)(5) as he found that the parties had agreed, in a "sidebar" memorandum executed when negotiations on a new contract were completed, that the Charging Party would only have "input" into the establishment of maximum salary ranges, and accordingly, the Library which had met with the Charging Party to receive such input, had fulfilled its negotiations obligation. He therefore recommended that the complaint in this case be dismissed.

Exceptions to the Hearing Examiner's report have been

^{1/} This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

filed by the Charging Party and a response thereto was submitted by the Library on March 5, 1981. The matter is properly before the Commission for determination.

The sole issue in this case is what the parties intended when they agreed to keep open the subject of minimum and maximum salaries (and two other issues not involved herein) after concluding an agreement on all other terms and conditions of employment on May 8, 1980. The agreement was memorialized in a May 21, 1980 letter sent to the Charging Party by the Library (Exhibit J-2) which reads in pertinent part:

1) DIABILITY INSURANCE

The Library will negotiate further on the question of disability insurance after determination of the applicability of State disability insurance laws to municipal employees.

2) HOSPITALIZATION AID FOR EMPLOYEES (AND RETIRED EMPLOYEES) OVER SIXTY-FIVE NOT COVERED BY SOCIAL SECURITY.

The Library will consider provision for such assistance following, and depending upon, the information received from the Director of Personnel of the City of Jersey City.

3) SALARY RANGES

The Library will study the entire problem of salary ranges (minimum and maximum salaries) and will request the input of the Union on all aspects of the problem.

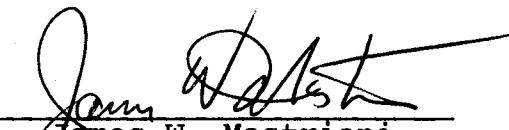
The Hearing Examiner determined that the Charging Party did not either orally or in writing promptly express any disagreement with the terms of the above agreement, nor did its July 8, 1980 telegram, which spoke of a "problem" concerning those employees at the maximum on the pay scale, contradict the above agreement.

Upon review of the entire record in this matter including the exceptions and response thereto filed by the parties, we find that the Hearing Examiner's findings of fact and conclusions of law are supported by substantial evidence and hereby adopt them. We concur with the Hearing Examiner that the parties had agreed in negotiations that the subject of salary ranges would be determined by the Library after input by the Association, as outlined in the May 21, 1980 letter, and that the Library, at the July 29, 1980 meeting with the Charging Party held to take up the unresolved issues, fulfilled its obligations. Although salary is unquestionably a mandatory subject for negotiations, it is well settled that a party may agree to limit or waive its right to negotiate concerning a term and condition of employment. See e.g. In re State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 76 (1977), affirmed App. Div. Docket No. A-2681-76 (6/12/78), and In re Jamesburg Bd. of Ed., P.E.R.C. No. 80-56, 5 NJPER 496 (¶10253 1979), affirmed App. Div. Docket No. A-775-79 (12/8/80). We believe that such a waiver occurred in this case and accordingly will dismiss the unfair practice charge.

ORDER

It is hereby ORDERED that the Complaint in this matter be dismissed in its entirety.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey

April 16, 1980

ISSUED: April 20, 1980

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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- and -

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LOCAL 2265, COUNCIL 52, AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Library did not violate Subsection 5.4 (a)(5) of the New Jersey Employer-Employee Relations Act when it refused to negotiate the issue of maximum salary ranges with the Charging Party on or after the execution of the current collective negotiations agreement on June 13, 1980. The Hearing Examiner credited the witness for the Library that the Library had only agreed that the Union could make "input" into the subject matter of minimum and maximum salary ranges. The Library did not agree to "negotiate" further on the subject matter after the execution of the agreement on June 13, 1980. The Library indicated clearly in a "sidebar" letter on May 21, 1980 that it was only willing to consider the Charging Party's "input" on the issue of minimum and maximum salary ranges.

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.

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Appearances:

For the Jersey City Public Library
Francis X. Hayes, Esq.

For Local 2265, Council 52, AFSCME, AFL-CIO
Rothbard, Harris & Oxfeld, Esqs.
(Barry A. Aisenstock, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 3, 1980, and amended on September 23, 1980, by Local 2265, Council 52, AFSCME, AFL-CIO (hereinafter the "Charging Party") alleging that the Jersey City Public Library (hereinafter the "Respondent" or the "Library") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent on July 29, 1980, after reaching agreement on minimum salaries, refused to negotiate on maximum salaries, stating that the Charging Party was "there only for consultation," notwithstanding that the Charging Party and the Respondent had previously agreed

to negotiate "minimums and maximums of the salary ranges as a sidebar agreement," all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act. ^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 3, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on February 9, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and waived the filing of post-hearing briefs.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing and after consideration of the oral argument of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

FINDINGS OF FACT

1. The Jersey City Public Library is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. Local 2265, Council 52, AFSCME, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provision.
3. The Charging Party and the Respondent have had a collective negotiations relationship since at least 1974 and have entered into several collective negotiations

^{1/} This Subsection prohibits public employers, their representative or agents from:
"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

agreements since that time. The most recent collective negotiations agreement is effective from January 1, 1980 through December 31, 1981 and was executed by the parties on June 13, 1980 (J-1).

4. The negotiations for J-1 commenced on December 5, 1979 and concluded on May 8, 1980. There were approximately six or seven negotiations meetings during that period.

5. At a negotiations meeting either on April 9 or April 21, 1980 the subject matter of minimum and maximum salaries was first discussed. At the final meeting on May 8, 1980 a "sidebar" agreement was reached wherein certain issues were held open in order that the agreement not be delayed further so that covered employees could receive retroactive salary increases as of January 1, 1980. The reservations in the "sidebar" agreement included the issues of disability insurance, hospitalization for retired employees over age 65 who are not covered by social security, and salary ranges. Also, according to the Charging Party, there remained the issue of the receipt of a weekly pay check. ^{2/}

6. As to the key issue left open, that of minimum and maximum salary ranges, the negotiator for the Charging Party, Doreen Lilore, testified that Ben Grimm, the negotiator for the Library, said in negotiations that salary was governed by ordinance and had nothing to do with the "union." Lilore responded that it was a mandatory subject of negotiations, as to which Grimm allegedly made no response. Grimm testified credibly that the term "input" was the key word used in negotiations and that the terms "discuss" as opposed to "negotiations" were not utilized by the parties. ^{3/} Grimm further testified credibly that in past

^{2/} According to the Respondent only the first three issues were left open and this was confirmed in a letter by the Respondent to the Charging Party dated May 21, 1980 (J-2).

^{3/} It was stipulated by the parties that the issued to be resolved of the Hearing Examiner was whether or not the parties agreed to "negotiate" as opposed to "discuss" the issue of minimum and maximum salary ranges.

negotiations the Library had made adjustments to minimum and maximum salaries after the completion of negotiations.

7. As previously found, Grimm wrote a letter to Lilore under date of May 21, 1980, in which he memorialized the "sidebar" matters, which were held open at the conclusion of negotiations (J-2). Paragraph 3 of J-2 states: "The Library will study the entire problem of salary ranges (minimum and maximum salaries) and will request the input of the Union on all aspects of the problem." (Emphasis supplied).

8. The Charging Party never responded in writing to J-2. Instead, the Charging Party by Lilore made telephone calls during a 30-day period thereafter to Francis X. Hayes, the attorney for the Library, and when Hayes did not respond, Lilore sent a telegram to Hayes under date of July 8, 1980 with reference to the "problem" at the Library regarding employees now at maximum on the pay scale (J-4).

9. During the intervening period from May 21 through July 8, 1980, the Charging Party on June 13, 1980 executed the current agreement (J-1) with both the President, Thelma Williams, and Lilore signing the agreement. Exhibit J-1 provides in Article XXVI, Section A. 3., "Maximum Salaries" that

"Any compensation due under Paragraph A. 1. which exceeds the maximum salary established for the employee's position shall be considered a 'wage apportionment bonus' to be paid to the employee on the last pay-day of the year, provided the employee is still employed on that day." (J-1, p. 37).

The foregoing provision has been in the parties' collective negotiations agreements since 1975 without change. Grimm testified credibly that the Library saved some expense by this clause but added that it distorted the principle of salary ranges.

10. The parties met on July 29, 1980 to discuss the matters held open by the "sidebar" letter of May 21, 1980 (J-2). Grimm testified credibly that

the purpose of the meeting was to get the union's "input." He further testified credibly that the parties were close to agreement on "minimums" but that when they got to the issue of "maximums" the Charging Party wanted the maximums to be increased so that all employees would receive the maximum negotiated salary increase. Grimm objected, stating that this would negate the agreed upon provision of Article XXVI, Section A. 3. on "maximum salaries," supra. No resolution of the issue of maximum salary was reached at this meeting.

11. Thereafter nothing transpired until December 1980 when Grimm gave Williams a copy of "Proposed Salary Ranges," " both minimum and maximum, which were to be presented to the Board of Trustees of the Library (CP-1). This document had been prepared by Grimm, based on "input" from the Charging Party, and was Grimm's recommendation to the Board of Trustees via the Board's Personnel Committee.

12. At the December meeting of the Board of Trustees, the attorney for the Respondent, Hayes, in connection with CP-1, recommended that the Library defer acting on CP-1 pending the resolution by the Commission of the instant Unfair Practice Charge.

13. The current collective negotiations agreement contains in Article XXIX a "fully bargained" provision, which provides that. "This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations." (J-1, p. 40).

THE ISSUE

Whether the Respondent agreed to "negotiate" the issue of minimum and maximum salary ranges or whether the Respondent only agreed to "discuss" the subject matter.

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsection
(a)(5) Of The Act By Its Conduct Herein
Inasmuch As It Agreed Only to "Discuss"
The Issue of Minimum and Maximum Salary Ranges

The Hearing Examiner finds and concludes that the Respondent Library

by its conduct herein has not violated Subsection (a)(5) of the Act. The Charging Party has failed to prove by a preponderance of the evidence that the Respondent agreed to "negotiate," as distinct from "discuss," the subject matter of minimum and maximum salary ranges.

In so finding and concluding, the Hearing Examiner has credited the testimony of the Library Director, Ben Grimm, that the negotiations on salary ranges allowed only for Charging Party "input," i.e., "discussion" on the subject matter of minimum, and particular, maximum salary ranges. Support for this conclusion is found principally in Exhibit J-2, the so-called "sidebar" letter wherein Grimm stated that the Library would study the entire problem of salary ranges and would request "the input of the Union on all aspects of the problem."

The Charging Party failed in a timely fashion to object in writing to Grimm's choice of phrasing of the "sidebar" agreement reached regarding "salary ranges." The mere fact that Lilore attempted to call Hayes, the attorney for the Library, over a period of one month in no way alters the conclusion of the Hearing Examiner that the Charging Party was derelict in not having responded in writing in opposition to Grimm's statement of the "sidebar" agreement on "salary ranges." ^{4/} The Hearing Examiner has also credited Grimm's testimony that the Charging Party at the July 29, 1980 meeting of the parties was attempting to negate the terms of Article XXVI, Section A. 3. by its insistence that the maximum salary range be increased so that all employees in the unit could receive the maximum negotiated salary increase.

Finally, it is noted, as contended by the Respondent, that the agreement (J-1), contains a "zipper clause," which "incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were

^{4/} The sending of the telegram (J-4) on July 8, 1980 is of no aid to the Charging Party's proof since it inquires only "about the problem" of employees at "maximum". It is in no way a response to J-2.

or could have been the subject of negotiations." The Charging Party representatives knowingly executed J-1 with both Article XXVI and Article XXIX contained therein. Thus, the Charging Party is foreclosed from complaining by the instant charge of unfair practices that the Respondent Library has refused to negotiate the subject matter of maximum salary ranges. Accordingly, the Hearing Examiner must recommend dismissal of the Complaint alleging that the Respondent Library violated Subsection (a)(5) of the Act.

* * * *


CONCLUSIONS OF LAW

The Respondent Library did not violate N.J.S.A. 34:13A-5.4(a)(5) when it refused to negotiate with the Charging Party the subject matter of minimum and of maximum salary ranges on and after the date of execution of the parties' collective negotiations agreement on June 13, 1980.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

Dated: February 11, 1981
Trenton, New Jersey



Alan R. Howe
Hearing Examiner