

P.E.R.C. NO. 98-118

STATE OF NEW JERSEY
BEFORE the PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Respondent,

-and-

Docket No. CO-H-96-269

FORT LEE POLICE ADMINISTRATORS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Borough of Fort Lee violated the New Jersey Employer-Employee Relations Act by refusing to negotiate with the Fort Lee Police Administrators. The Commission finds that the Borough has never denied the allegations in the Complaint in the manner required by N.J.A.C. 19:14-3.1; the scheduling difficulties raised by the Borough occurred nearly one year after the FLPA's request to negotiate; and the Borough never indicated that the Complaint was to be held in abeyance pending resolution of a clarification of unit petition. The Commission orders the Borough to immediately commence negotiations with the FLPA and post a notice of its violations.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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FORT LEE POLICE ADMINISTRATORS,

Charging Party.

Appearances:

For the Charging Party, Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

For the Respondent, Savage & Serio, P.A., attorneys
(Thomas J. Savage, on the brief)

DECISION

On March 18, 1996, the Fort Lee Police Administrators (FLPA) filed an unfair practice charge against the Borough of Fort Lee. The charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (5) and (7),^{1/} by refusing

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (5)

to negotiate with it. The charge alleges that the most recent contract between the Borough and the FLPA expired on December 31, 1992; the FLPA agreed to the Borough's request to delay negotiations for a successor contract until negotiations were completed with respect to rank-and-file police officers; and, after the PBA and the Borough signed a contract for 1992-1995, the Borough refused to negotiate with the FLPA despite numerous requests, the last of which was made on December 14, 1995.

On July 24, 1996, a Complaint and Notice of Hearing issued. The Borough did not file an Answer.

On June 2, 1997, after several agreed-upon postponements, Hearing Examiner Susan Wood Osborn convened a hearing. The FLPA moved to have the Complaint's allegations deemed to be true based upon the Borough's failure to file an Answer. Citing N.J.A.C. 19:14-3.1, the Hearing Examiner granted the motion. The FLPA rested and the Borough did not offer any evidence.

On November 6, 1997, the Hearing Examiner issued a report recommending that the Commission find that the Borough had violated 5.4a(5) and, derivatively, 5.4a(1). H.E. No. 98-14, 24

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission.

NJPER 1 (¶29000 1997). She found no evidence to support the 5.4a(2), (3) or (7) allegations and recommended that they be dismissed.

The Borough has filed exceptions. It contends that the Hearing Examiner's finding that the Borough refused to negotiate is arbitrary and capricious and against the weight of the evidence. It maintains that it has always been willing to negotiate but that scheduling difficulties resulted from the police chief's resignation in November 1996, the January 1997 rescission of the appointment of a new chief by the Borough Council, and the subsequent appointment of one and then three deputy chiefs as acting chiefs. It asserts that, at the hearing, it stated that it planned to file a petition for unit clarification with the Commission. The Borough maintains that it understood that this matter would be held in abeyance pending resolution of that petition.

N.J.A.C. 19:14-3.1 provides that if a respondent in an unfair practice proceeding does not file an answer, "all allegations in the complaint ... shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown." We find no grounds to disturb the Hearing Examiner's application of N.J.A.C. 19:14-3.1. The Borough may not, by way of exceptions, allege that the failure to negotiate was a result of scheduling difficulties. It has never denied the allegations in the Complaint in the manner required by

our rules. See N.J.A.C. 19:14-3.1 (answer shall be accompanied by a dated and signed certification). In any case, the alleged scheduling difficulties arose nearly one year after the FLPA's December 1995 request to negotiate. Similarly, the Borough has not pointed to anything in the record to indicate that the Complaint was to be held in abeyance pending the resolution of the unit clarification petition. See N.J.A.C. 19:14-7.3 (each exception shall "identify that part of the report and recommended decision to which objection is made; [and] designate by precise page citation the portions of the record relied on"). Nor has it explained why this matter should be held in abeyance pending resolution of the unit clarification petition.

We accordingly conclude that the Board violated N.J.S.A. 34:13A-5.4a(1) and (5). Absent any exceptions, we adopt the Hearing Examiner's recommendation to dismiss the 5.4a(2), (3) and (7) allegations.

ORDER

The Borough of Fort Lee is ordered to:

A. Cease and desist from interfering with, restraining or coercing police superiors in the exercise of their rights under the Act by refusing to negotiate with the Fort Lee Police Administrators for a successor collective negotiations agreement.

B. Take this action:

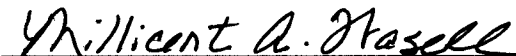
1. Immediately commence negotiations with the Fort Lee Police Administrators over terms and conditions of employment for employees in the negotiations unit.

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

3. Notify the Commission Chair within twenty (20) days of receipt what steps the City has taken to comply with this order.

The 5.4a(2), (3) and (7) allegations are dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: March 26, 1998
Trenton, New Jersey
ISSUED: March 27, 1998



NOTICE TO 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 cease and desist from interfering with, restraining or coercing police superiors in the exercise of the rights under the Act by refusing to negotiate with the Fort Lee Police Administrators for a successor collective negotiations agreement.

WE WILL immediately commence negotiations with the Fort Lee Police Administrators over terms and conditions of employment for employees in the negotiations unit.

Docket No. CO-H-96-269

BOROUGH OF FORT LEE
(Public Employer)

Date: _____

By: _____

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

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

In the Matter of

BOROUGH OF FORT LEE,

Respondent,

-and-

Docket No. CO-H-96-269

FORT LEE POLICE ADMINISTRATORS,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission deems the allegations in the charge as true pursuant to N.J.A.C. 19:14-3.1, based upon the Respondent's failure to file an Answer to the Complaint. Based upon the facts in the charge, the Hearing Examiner recommends that the Commission find that the Borough of Fort Lee violated the New Jersey Employer-Employee Relations Act by refusing to meet and negotiate in good faith with the majority representative.

A Hearing Examiner's 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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

STATE OF NEW JERSEY
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BOROUGH OF FORT LEE,

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Docket No. CO-H-96-269

FORT LEE POLICE ADMINISTRATORS,

Charging Party.

Appearances:

For the Respondent, Savage and Serio, attorneys
(Beverly M. Wurth, of counsel)

For the Charging Party, Loccke and Correia, attorneys
(Richard D. Loccke, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 18, 1996, the Fort Lee Police Administrators filed an unfair practice charge with the New Jersey Public Employment Relations Commission alleging that the Borough of Fort Lee violated subsections 5.4a(1), (2), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} FLPA

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (2) Dominating or interfering with the formation, existence or administration

asserts in its charge that the most recent written contract between the Borough and FLPA expired on December 31, 1992. At the Borough's request, FLPA delayed negotiations for a successor contract until the PBA completed its negotiations for the rank-and-file unit. The PBA did so, and signed a contract for 1992-95. FLPA further alleges that, on numerous occasions since then, it has asked the Borough to negotiate a successor collective agreement. FLPA's most recent request was made by letter of December 14, 1995 from FLPA counsel Richard Loccke.^{2/} FLPA alleges that the Borough never responded to the letter and that the Borough refuses to negotiate with it.

On July 24, 1996, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the charge (C-1). In part, the Complaint provides that,

N.J.A.C. 19:14-3.2 required an original and nine(9) copies of the Answer be filed with the Hearing Examiner, together with proof of service of a copy thereof upon all other parties. Your attention is directed to N.J.A.C. 19:14-3.1, as well as to the statement contained in the Complaint, which provides:

^{1/} Footnote Continued From Previous Page

of any employee organization. (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. (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. (7) Violating any of the rules and regulations established by the commission."

^{2/} The December 14, 1995 letter is attached to the charge as exhibit A.

All allegations in the Complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the Respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

The accompanying cover letter repeats the same statement to the parties. The Borough failed to file an Answer in this matter.

After several agreed-upon postponements, the hearing opened on June 2, 1997. FLPA, after making an opening statement, moved to have the allegations in the Complaint deemed to be true based upon the Borough's failure to file an Answer to the Complaint.

Based upon N.J.A.C. 19:14-3.1, I deemed the allegations in the charge to be true. FLPA rested, and the Borough declined to offer any affirmative defense.

Based upon the record in this matter, which consists entirely of the facts as set forth in the Complaint, and the attachments thereto, I find the following:

FINDINGS OF FACT

The most recent written contract between the Borough and FLPA expired on December 31, 1992. At the Borough's request, FLPA delayed negotiations for a successor contract until the PBA completed its negotiations for the rank-and-file police. After the PBA signed a contract for 1992-95, FLPA sought to resume negotiations for its successor contract. It has since asked the

Borough on numerous occasions to negotiate a successor contract. FLPA's most recent request to negotiate was made by letter of December 14, 1995 from FLPA counsel Richard Loccke. The Borough never responded to the letter. The Borough refuses to negotiate with FLPA.

DISCUSSION

N.J.S.A. 34:13A-5.3 provides that,

Representatives designated or selected by public employees for the purposes of collective negotiation...shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit...

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit...the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative. (emphasis added).

N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for the employer to refuse to negotiate with the majority representative.

In addition, the amendments to the Police and Fire Arbitration Act require that "negotiations shall be conducted" between the public employer and the majority representative of police or fire employees, and further, that if the negotiations reach an impasse, the Commission may appoint a mediator, the parties

may agree upon a terminal procedure to resolve the dispute, or the dispute will be submitted to the statutorily prescribed binding arbitration process. N.J.S.A. 34:13A-16.

I find that the Borough refused to negotiate in good faith with the majority representative, Fort Lee Police Administrators, a per se violation of 5.4a(5) and derivatively, 5.4a(1) of the Act. I find that there are no facts presented to support a violation of 5.4a(2), (3) or (7) of the Act. Accordingly, I recommend that the Commission ORDER:

A. That the Borough of Fort Lee cease:

Interfering with, restraining or coercing police superiors in the exercise of their rights under the Act by refusing to negotiate in good faith with the Police Administrators for a successor collective agreement.

B. That the Borough of Fort Lee take the following affirmative action:

1. Immediately commence negotiations with the Fort Lee Police Administrators over terms and conditions of employment for employees in the contractual negotiations unit.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Borough's authorized representative, shall be maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Acting Chair of the Commission within twenty (20) days of receipt what steps the City has taken to comply with this order.

C. That the remaining allegations be dismissed.

Susan W. Osborn

Susan Wood Osborn
Hearing Examiner

Dated: November 6, 1997
Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of their rights under the Act by refusing to negotiate in good faith with the Fort Lee Police Administrators for a successor collective agreement.

WE WILL immediately commence negotiations with the Fort Lee Police Administrators over terms and conditions of employment for employees in the contractual negotiations unit.

Docket No. CO-H-96-269

Borough of Fort Lee
(Public Employer)

Date: _____

By: _____

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

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APPENDIX "A"