

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

-and- Respondent,

Docket No. CO-80-234-86

ESSEX COUNTY HOSPITAL MENTAL  
HEALTH PERSONNEL ASSOCIATION,  
LOCAL 1247, AFSCME, Council 52,

Charging Party.

SYNOPSIS

In a decision on a motion to strike Respondent's brief or reopen the hearing, the Commission concludes that new evidence was presented in the Respondent's brief which went beyond the stipulated facts and necessitated a reopening of the hearing. The Commission concluded that in a stipulated record it would not accept affidavits raising new facts from individuals subject to cross-examination. Commission Rules and the Administrative Procedure Act give any party the right to examine and cross-examine witnesses. The matter was remanded to the original Hearing Examiner for further hearings.

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LOCAL 1247, AFSCME, Council 52,

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Appearances:

For the Respondent, Grotta, Glassman & Hoffman, Esqs.  
(Thomas J. Savage, of Counsel and Dolores Capetola,  
on the Brief)

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.  
(Barry A. Aisenstock, of Counsel and Nancy Iris Oxfeld,  
on the Brief)

DECISION ON MOTION

An unfair practice charge was filed with the Public Employment Relations Commission on February 8, 1980 by the Essex County Hospital Mental Health Personnel Association, Local 1247, AFSCME, Council 52, (the "Association") alleging violations of the New Jersey Employer-Employee Relations Act (the "Act") by the County of Essex (the "County"). A hearing was held before Commission Hearing Examiner Alan R. Howe on June 19, 1980, at which time the parties stipulated the facts in this matter on the record and agreed to waive a Hearing Examiner's Recommended Report and Decision. In addition to the charge, the Complaint the answer, and the stipulated record, both parties filed briefs and reply briefs in this matter, the last of which was received on November 13, 1980.

The underlying issue herein concerns the County's alleged failure and refusal to pay a salary increment effective January 1, 1980.

The Association has filed a motion which takes exception to the material submitted and arguments made in the County's brief to the Commission. The Association alleges that two affidavits which were attached to the County's brief raise facts not otherwise addressed. The Association alleged that the County's brief and affidavits were inappropriately filed with the Commission because they raised facts that had not been subject to cross-examination nor addressed by the stipulations. The Association moved to strike the County's brief and affidavits, or, in the alternative, to reopen the hearing and require the affiants to appear and testify subject to cross-examination with regard to the facts raised in their affidavits.

The Commission, at its December 10, 1980 meeting, delegated to the undersigned the authority to act on this motion pursuant to N.J.S.A. 34:13A-6(f).

N.J.A.C. 19:14-6.3 provides that a Hearing Examiner shall hear fully the facts as to whether the respondent has engaged in unfair practices, and N.J.A.C. 19:14-6.5 gives any party the right to examine and cross-examine witnesses. With the presentation of affidavits with its brief, the County raised additional facts by individuals who were not subject to cross-examination. Although the rules of evidence are not strictly applied in Commission proceedings, N.J.A.C. 19:14-6.6, to permit the introduction of these affidavits would violate the rights provided in N.J.A.C. 19:14-6.5 and the provisions

of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. which are applicable to unfair practice proceedings. See N.J.S.A. 34:13A-5.3(c). The County's submission does appear to go beyond the stipulations by attempting to present new facts and arguments based on those facts. The Association does appear justified in protesting the County's action.

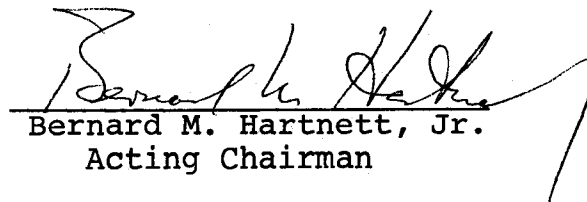
However, the additional facts do raise questions concerning the County's defense to the instant charges. It would appear to be inappropriate to merely strike the affidavits and consider the issue on what may now be inadequate stipulations. To decide the case on the stipulations as they exist might result in a decision which does not correctly reflect facts which have now been brought to the Commission's attention. Consequently, pursuant to N.J.A.C. 19:14-8.1 the Commission orders the reopening of the instant record and remands the motion to the Hearing Examiner for hearing. Any other issues raised by the parties shall be addressed to the Hearing Examiner.

#### ORDER

Based upon the above discussion, the Charging Party's Motion to Reopen the Hearing is sustained, and this matter is

remanded to the Hearing Examiner for further proceedings not inconsistent with this decision.

BY ORDER OF THE COMMISSION

  
Bernard M. Hartnett, Jr.  
Acting Chairman

DATED: Trenton, New Jersey  
December 10, 1980  
ISSUED: December 11, 1980