

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FAIRFIELD,

Charging Party,

Docket No. CE-79-12-49

-and-

WEST ESSEX PBA LOCAL 81,

Respondent.

SYNOPSIS

An Unfair Practice Charge was filed by the Township of Fairfield alleging that the West Essex PBA Local 81 violated the Commission's Rules in that it initiated negotiations later than the time provided for in those rules. The parties entered into stipulations of fact and waived an evidentiary hearing although they did appear before the Commission to argue orally. As relief, the Township sought a determination by the Commission that the PBA had waived its right to compulsory interest arbitration.

The Commission did find that its rules had been violated. However, in the absence of a demonstration of harm or prejudice to the Township, and noting that the public policy of the legislature is to afford rather than bar the application of interest arbitration procedures to police officers and fire fighters in order to provide harmony, stability and finality in police and fire negotiations, the Commission concluded that the remedy sought by the Township was inappropriate. The Commission ordered the PBA to cease and desist from such future conduct, i.e., late notification of intention to commence negotiations, and affirmatively that in the future the PBA file any intent to negotiate within the time period set forth in the Commission's rules.

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Appearances:

For the Charging Party, Barbaris & Skripek, Esqs.
(Joseph P. Skripek, of Counsel)

For the Respondent, Young & Tarshis, Esqs.
(Gary S. Young, of Counsel)

DECISION AND ORDER

On November 9, 1978, the Township of Fairfield^{1/} (the "Township") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the West Essex PBA Local 81 (the "PBA") had violated N.J.S.A. 34:13A-5.4(b)(5).^{2/} Specifically, the Township alleged that it has been deprived of rights and options under Regulations and Statutes as a result of the fact that the PBA initiated negotiations later than the times provided for in the Commission's rules.

Pursuant to N.J.A.C. 19:14-6.7 the Township and the PBA agreed to waive a Hearing Examiner's Recommended Report and Decision

^{1/} At the time of the filing of the charge the public employer was the Borough of Fairfield; subsequently the public employer has become a Township.

^{2/} This subsection prohibits employee organizations from, "Violating any of the rules and regulations established by the commission."

and to submit the matter directly to the Commission for decision. The parties entered into a stipulation of facts which is attached hereto. The Acting Director of Unfair Practices issued a Complaint on January 9, 1979. On January 16, 1979, the PBA filed an Answer to Complaint and on January 23, 1979 the PBA filed a letter brief. On January 16, 1979, the Township requested oral argument before the Commission and filed a letter brief on January 26, 1979. The Commission granted the Township's request for oral argument and both parties argued this matter before the Commission on March 8, 1979.

As a remedy for the alleged unfair practice, the Township seeks to have the Commission bar the processing of the PBA's Petition Seeking To Initiate Interest Arbitration. The Township has taken the position that the PBA, by way of a late notification of intention to commence negotiations (dated October 11, 1978), has waived its right to compulsory interest arbitration.

In enacting P.L. 1977, Chapter 85 (supplementing the N.J. Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.) the legislature, in the interest of employee morale and the efficient operation of the departments, established a procedure which provides finality in police and fire department collective negotiations. N.J.S.A. 34:13A-14. Under this procedure the parties may seek, through the Commission, impasse procedures and/or terminal procedures to resolve their disputes. The statute provides that the parties may agree upon an acceptable terminal procedure or, failing agreement, the statute sets out a form of final offer arbitration as the terminal procedure. N.J.S.A. 34:13A-16(d). As noted above,

✓ the parties may have access to mediation (N.J.S.A. 34:13A-16(\$)) and/or fact-finding (N.J.S.A. 34:13A-16(b)); it is further noted that the legislature specified that the impasse procedures of mediation and fact-finding need not necessarily be exhausted in order to have an available terminal procedure. N.J.S.A. 34:13A-16(b).

The legislature provided, and the Commission's Rules further reflect, that the procedure for compulsory interest arbitration be related to the employer's budget submission date. See N.J.S.A. 34:13A-5.4(a) and 34:13A-16(b) and (d)(1) and N.J.A.C. 19:16-2.1 and 5.3. The Commission's Rules -- the violation of which is the alleged unfair practice with which we are concerned -- were clearly drawn to reflect the intentions of the legislature. Just as the Commission's Rules reflect the procedures set out by the legislature, the application of those Rules must reflect the public policy of such legislation. The statute specifies that it shall be liberally construed to the end of accomplishing its purpose. N.J.S.A. 34:13A-14. That purpose is, inter alia, to "...afford an alternate, expeditious, effective and binding procedure for the resolution of disputes..." (emphasis added).^{3/} The legislature saw fit to command that its statute be liberally construed; so then shall the Commission's Rules affectuating such statute be so construed.

The stipulated facts establish that the PBA admits that it initiated the formal statutory negotiation and compulsory interest arbitration procedures later than the times provided for in the Commission's Rules. This failure to adhere to the commencement date

for negotiations as set forth

in the Commission's Rules could technically be found to be an unfair practice under N.J.S.A. 34:13A-5.4(b)(5) as alleged. However, in order to support the rather extreme remedy sought, it would be necessary for the Township to show harm or prejudice as a result of the alleged unfair practice. The Township alleges that it has been harmed in that it has not been able to prepare for negotiations, impasse procedures or terminal procedures due to the delay in notice of the intention to commence negotiations. It has also suggested that it has been deprived of rights to the impasse procedures of mediation and/or fact-finding. The facts at hand and the assertions at oral argument do not support the allegations of prejudice or harm. The PBA was certified as an exclusive bargaining representative on July 24, 1973. The parties, however, have negotiated in the past but have never entered into a formal, written contract. At oral argument, counsel for the Township indicated that the failure of notification to commence negotiations in August or September would indicate that the past experience of negotiations in the following spring would ensue, resulting in a salary ordinance. Note that under this timetable the negotiations and salary ordinance take place not only after the budget submission date but after budget adoption. That such a timetable might be acceptable does not support an allegation that the late notification in the proceeding - October - caused undue harm or prejudice to the Township. The record is bare of facts that might show actual harm or prejudice to the Township.

Furthermore, the Township suggests that it has been deprived of a right to the impasse procedures of mediation or fact-

finding. The facts do not necessarily indicate such a conclusion. Nothing prevented the Township from filing for the initiation of such procedures.^{4/} Note again, that the legislature specified that terminal procedures may be had without necessarily exhausting impasse procedures. Furthermore, experience with other jurisdictions indicates that, even given the October 11, 1978 notification date, the Township and PBA could have commenced negotiations, had mediation and still completed compulsory interest arbitration prior to budget adoption. There has been no compulsory interest arbitration to date because the Township has refused to engage in that process. Therefore, the prejudice claimed by the Township has at least in part been self-inflicted.

As noted earlier, it is true that the late notification by the PBA was technically not in compliance with the Commission's Rules. The fact that this is a case of negotiations for a first written contract is a mitigating circumstance in considering the failure to comply. However, even more persuasive to the issues at hand are the public policy direction of the legislature which seeks to afford, not bar, the application of this procedure to provide harmony, stability and finality in police and fire negotiations, and the fact that there has been no appreciable harm or prejudice to the Township. This technical violation of the Rules, although an unfair practice, does not warrant the extraordinary remedy of denying these parties access to binding interest arbitration. This process does not exist only for the benefit of the two parties, but

^{4/} N.J.A.C. 19:16-3.1 provides that either the public employer or the employee representative may request the appointment of a mediator. The Township states that some of the issues which are being negotiated derived from proposals which the Township itself has initiated and that these items are still unresolved.

also exists for the benefit of the citizens of the municipality by providing the period of labor stability offered by a labor agreement.

The Commission must stress that its Rules governing the commencement of the negotiations process are important. Of initial importance is that they set out a framework that should be followed as far as a time sequence for negotiations is concerned. The terminal procedures are indeed related to the budget submission date. Failure to comply to arbitration in a timely manner raises difficult issues for the arbitrator. The arbitrator faced with a "post-budget submission date" proceeding must acknowledge, as Justice Dwyer noted in New Jersey State P.B.A. Local 16 v. City of East Orange, 164 N.J. Super. 436 (1978), that the governing body can be better prepared to plan in regard to a pre-budget adoption award and that the Township may have to cope with exigencies in a post-budget adoption award. This situation is one that can and should be considered by arbitrators in rendering their awards, assuming that public employers make this known to them in those situations where the arbitration takes place after budget adoption. It is obvious that the later in the year an agreement is reached, the less the ability of the employer to adjust to that agreement. This fact makes the employer position more persuasive later in the year than the same position would be early in the year when adjustments in programs, services and personnel can be made.

Therefore, the Commission finds that its rule, specifically N.J.A.C. 19:16-2.1, has been violated. The appropriate remedy given all the facts of this case is that the P.B.A. be ordered to cease and desist such conduct in the future, and that in all future negotiations, the P.B.A. shall comply with the requirements of N.J.A.C. 19:16-2.1.

ORDER

It is hereby ORDERED that the West Essex P.B.A. Local 81, shall:

1. Cease and desist from filing for negotiations later than the time provided by N.J.A.C. 19:16-2.1.

2. Take the following affirmative action:

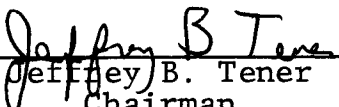
(a) In all future years file an intent to negotiate, if negotiations are desired, within the time period set forth in N.J.A.C. 19:16-2.1.

(b) Post at the Municipal Building in Fairfield, New Jersey and at all other locations where notices to police employees are normally posted 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 the Charging Party's representative, be posted by Charging Party 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 the Charging Party to insure

that such notices will not be altered, defaced or covered over by any other material.

(c) Notify the Chairman, in writing, within twenty (20) days of receipt of this ORDER what steps the Charging Party has taken to comply herewith.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp, Newbaker and Parcels voted for this decision. None opposed.

DATED: Trenton, New Jersey
April 26, 1979
ISSUED: May 1, 1979

P.B.A. LOCAL 81

-and-

BOROUGH OF FAIRFIELD
DOCKET NO. CE-79-12

STIPULATIONS OF FACTS

The parties stipulate to the following facts relevant to the above-titled Unfair Practice Charge:

1. The Borough of Fairfield (the "Borough") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") N.J.S.A. 34:13A-1 et seq., is the employer of the employees involved herein, and is subject to the provisions of the Act.
2. The Policemen's Benevolent Association, Local 81 (the "PBA") is an employee representative within the meaning of Act, is subject to the provisions of the Act, and represents, for the purpose of collective negotiations, all patrolmen and superior officers employed by the Borough.
3. Pursuant to N.J.A.C. 19:14-6.7 the Borough and the PBA agree to waive a Hearing Examiner's Recommended Report and Decision and to submit this matter, Docket No. CE-79-12, directly to the Public Employment Relations Commission (the "Commission") for its decision. The parties agree that the record herein shall consist of these stipulations of fact, the unfair practice charge and its attachment, the complaint and answer in this matter, and all briefs to be submitted to the Commission.
4. The Commission on July 24, 1973, certified the PBA as majority representative for patrolmen, sergeants and captains employed by the Borough. The PBA has continued to represent this unit since that time but did not seek a written collective negotiations agreement until its request for negotiations was filed with the Borough on October 11, 1978. Thus, a written

collective negotiations agreement has never been entered into by the parties.

5. The Borough alleges that the PBA has violated N.J.S.A. 34:13A-5.4(b)(5) by failing to follow several Commission rules including: N.J.A.C. 19:16-2.1; 19:16-3.1; 19:16-4.1; and, 19:16-5.2. The parties agree that the instant Unfair Practice Charge, and complaint, is limited to these allegations.

6. By letter dated October 11, 1978, and attached to the Charge, the PBA requested for the first time that the Borough enter into formal contract negotiations concerning patrolmen within two weeks. The parties first negotiations session was held on November 9, 1978.

7. The Borough's budget submission date within the meaning of Commission rules is January 15, 1979.

8. Neither the PBA nor the Borough notified the Director of Conciliation of the existence of any impasse pursuant to N.J.A.C. 19:16-3.1. Neither party requested the invocation of fact finding pursuant to N.J.A.C. 19:16-4.1. In a letter to the Director of Arbitration dated December 19, 1978, the PBA requested compulsory interest arbitration.

9. The PBA admits that it initiated the formal statutory negotiation and compulsory interest arbitration procedures later than the times provided in Commission rules. The PBA stated that it did so because this was the first time such a formal request was made by the PBA, and because informal negotiations with the Borough had always been satisfactory in the past. The PBA believes that the Borough was not and has not been damaged by the delay, for reasons to be set forth in a brief, and further, N.J.A.C. 19:16-7.1 provides that any failure of notification shall not prevent compulsory interest arbitration.

10. The Borough states that the Commission rules concerning notification must be complied with, and that the PBA has waived its right to compulsory interest arbitration. The Borough believes that it has been prejudiced by the PBA's delay for reasons to be set forth in a brief. The Borough seeks a determination by the Commission outlining any and all rights inuring to the Borough because of the PBA's failure to comply with the

rules, and an interpretation of the rules including N.J.A.C. 19:16-7.1.

11. The Borough and the PBA agree to continue informal negotiations during the processing of the instant matter.

12. The parties agree to the following timetable for submission of briefs to the Commission.

- a. An original and 9 copies of briefs are due in the Commission's Trenton office by the close of business January 26, 1979. All material shall be sent directly to the Chairman of the Commission, Jeffrey B. Tener. The parties shall serve copies on each other.
- b. Reply briefs (and 9 copies) by either party are due in the Commission's Trenton office by the close of business February 2, 1979.
- c. Any requests for extension of time for the filing of briefs shall be made directly to the Chairman of the Commission.

/s/ Joseph P. Skripek
Borough of Fairfield

/a/ Gary S. Young
P.B.A. Local 81

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 cease and desist from filing for negotiations later than the time provided by N.J.A.C. 19:16-2.1.

WE WILL file an intent to negotiate, if negotiations are desired, within the time period set forth in N.J.A.C. 19:16-2.1.

WEST ESSEX PBA LOCAL 81

(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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.