P.E.R.C. NO. 98-129

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF TENAFLY,

Respondent,

-and-

Docket No. CO-H-96-253

TENAFLY PBA LOCAL 180,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Borough of Tenafly violated the New Jersey Employer-Employee by misleading Tenafly PBA Local 180 about whether a memorandum of agreement had been ratified at a Borough Council work session; inducing the PBA to withdraw its interest arbitration petition; presenting the memorandum of agreement to a second work session for consideration rather than a vote at a public meeting; and not having the head of its negotiations team continue to support the agreement after reorganization. The Commission orders the Borough to present the parties' memorandum of agreement to the Borough Council for a vote at its next open public meeting; notify any member of the Council who signed the memorandum of agreement and who is now on the Council that he or she must vote for that agreement; if the Council votes to reject the memorandum of agreement and if the PBA refiles its interest arbitration petition, proceed to interest arbitration under the law in effect when the PBA withdrew its initial petition.

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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In the Matter of

BOROUGH OF TENAFLY,

Respondent,

-and-

Docket No. CO-H-96-253

TENAFLY PBA LOCAL 180,

Charging Party.

Appearances:

For the Respondent, Lesnevich & Marazano-Lesnevich, attorneys (Walter A. Lesnevich, of counsel)

For the Charging Party, Loccke & Correia, attorneys (Leon B. Savetsky, of counsel)

DECISION

On March 4, 1996, Tenafly PBA Local 180 filed an unfair practice charge against the Borough of Tenafly. 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), (5), (6), and (7),[1/] by refusing to sign a negotiated agreement and by

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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. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

inducing the PBA to withdraw its interest arbitration petition. The PBA seeks an order directing the Borough to sign the negotiated agreement and pay attorney fees.

On August 2, 1996, a Complaint and Notice of Hearing issued. On October 29, Hearing Examiner Arnold H. Zudick began a hearing. The employer sought to file an Answer the next day, but the Hearing Examiner did not accept the Answer because it was untimely. The hearing concluded on January 13, 1997. The parties examined witnesses and introduced exhibits.

On July 16, 1997, the Hearing Examiner issued his report and recommendations. H.E. No. 98-2, 23 NJPER 517 (¶28252 1997). He concluded that the employer had not violated 5.4a(6). He found that the Borough Council had unanimously approved the memorandum of agreement at a work session the day after the agreement was reached, but he concluded that the agreement was not binding because the Borough had not formally voted to ratify it at a public meeting.

The Hearing Examiner also concluded that the Borough had violated 5.4a(5) and, derivatively, 5.4a(1) by: failing to present the agreement to the Council for a vote at a public meeting; presenting the agreement to a second work session meeting before it proceeded to a public vote; rescinding its initial consensus approval; and having a member who signed the agreement fail to support Council approval of the agreement.

The Hearing Examiner recommended that the Borough be required to present the agreement for a vote at a public meeting and

that a Council member who had been on the negotiations team be required to support the agreement. If the agreement was then rejected, the recommended order would allow the PBA to refile its interest arbitration petition and have it processed in accordance with L. 1977, c. 85, §3, the interest arbitration law in effect at that time. The Hearing Examiner finally recommended that the PBA be denied attorneys' fees.

On September 12, 1997, the PBA filed two exceptions. It asserts that the Hearing Examiner should not have allowed the Borough to present and rely upon facts not contained in its Answer. It also excepts to the Hearing Examiner's conclusion that the Borough did not violate 5.4a(6), asserting that the Borough approved the agreement and unlawfully failed to sign and implement it. On September 15, the Borough filed an exception asserting that the Hearing Examiner's recommendation that the Borough be found to have violated 5.4a(1) and (5) was inconsistent with finding of fact no. 4 and should not be adopted. The Borough urges that the Complaint be dismissed.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 3-11) with these additions, clarifications and corrections.

We supplement finding 1. The Borough's negotiations team was composed of three Council members, all of whom served on the Borough police committee. As police commissioner, William Saunders was head of that committee. The other two Council members were Martha Kerge and Lenore Saydah.

We modify finding 2. Saunders wanted the memorandum of agreement to indicate that both negotiating committees would "recommend ratification." A provision to that effect was included in the memorandum.

We clarify finding 4. The record contains no evidence showing that before January 1996, the Borough Council had rejected any memorandum of agreement during a work session. Council members testified about proposed actions which did not win a consensus at work sessions, but those proposed actions involved Council business generally, not labor contracts specifically (1T71; 1T88; 1T93-1T94). Although some ratifications may not have been unanimous, no testimony showed that before January 1996, any memorandum of agreement was rejected (1T95-1T96).

We supplement and clarify finding 5. As head of the police committee/negotiations team, Saunders presented the memorandum of agreement to the Council (1T67). The Faulkner Act provides that a Borough's elected officers shall be a mayor and six council members. See N.J.S.A. 40A:60-2. All six Council members were present (1T67).

Immediately after the work session, Council members Saunders and Saydah spoke with the PBA president and Council member Kerge listened. Saunders and Saydah told the president that the Council had ratified the agreement; Kerge did not disagree. The next day another Council member, Patrick Rouse, told a member of the PBA's negotiations team, Hector Olmo, that the agreement had been

ratified. Within a week, a fifth Council member, William Lustig, congratulated the PBA president on the new contract (1T46-1T47; 1T101-1T102).

We add to finding 6. The PBA's attorney, Richard Loccke, sent the Borough's attorney, James Logan, a copy of the letter he sent to the Commission's Director of Arbitration on December 26, 1995. That letter advised the Director that both parties had ratified an agreement and the contract would be signed soon. The Borough's attorney did not respond to this letter. The PBA's interest arbitration petition was withdrawn. We also add that Loccke sent Saunders a copy of the December 26 letter he sent to Logan enclosing a copy of the contract and stating that it had already been ratified.

We correct, supplement and clarify finding 7. The election for Borough Council occurred in the Fall of 1995, presumably on November 7, the date of the general election. We add that Council member Lustig, who was also an attorney, went to Logan's office in December 1995 to tell him that, after the Council reorganized, Logan would no longer be the Borough attorney. The two lawyers discussed Logan's pending matters to determine which ones the new Borough attorney would take over and which ones Logan would retain (2T9-2T11). Nothing in the record indicates that Lustig told Logan that he no longer had the authority to represent the Borough in

completing its successor contact dealings with the PBA and Saunders continued to work with Logan in this regard. It thus appears that Logan was authorized to represent the Borough when he wrote to PBA attorney Loccke on January 3, 1996. That letter responded to the letter and draft agreement sent to Logan by Loccke on December 26, 1995. Logan's letter did not dispute the statement in the December 26 letter that the agreement had been ratified. Instead, Logan sought to change one word in the contract and wrote that once the change was made, the contract would be signed by the appropriate Borough officials.

Before responding to Loccke's December 26 letter, Logan discussed the letter and contract with Saunders. It was Saunders who called the error in wording to Logan's attention. Saunders knew that Loccke's letter stated that the contract had already been ratified and did not take any steps to change that belief. Saunders further knew that Logan responded to Loccke's letter and informed him that the Borough officials would sign the contract with that one correction (1T84-1T85). Saunders received a copy of Logan's letter and did not dispute its contents.

We supplement finding 8. After the reorganization, four of the six Council members who had approved the memorandum of agreement at the work session remained on the Council. One of these four members was Saunders, the head of the Borough's negotiations team. Saunders, however, did not support the agreement after the

reorganization. Another of these four members was Lustig. He changed his position because he felt that the salary raises were too high and that the increases would be sought by other employees (1T100-1T101).

We modify finding 9. We accept Logan's testimony that he agreed with Loccke that the contract had been ratified (2T12-2T13). That testimony is consistent with the written evidence and both parties' courses of conduct after the work session. Logan was present at the December 12 work session. His January 3, 1996 letter expressed no disagreement with Loccke's statement that the parties had ratified the agreement and stated that once the agreement was corrected and received, Borough officials would sign it. While the Hearing Examiner stated that he did not "credit" this testimony, no credibility determination in the usual sense was involved. Instead, the Hearing Examiner was distinguishing between "approval" at the December 12 work session and "ratification" at a formal Council meeting and was thus conveying his view that Logan's first answer was not dispositive of the legal question of whether ratification had actually occurred. We do not believe the Hearing Examiner was commenting on the veracity of Logan's testimony. By his actions, Logan communicated to the PBA his view that the ratification required by the memorandum of agreement had already occurred.

We do not adopt that portion of finding 9 in which the Hearing Examiner states that since no vote had occurred in a public

meeting, the Borough had not ratified the agreement. That statement is a legal conclusion or a mixed question of law and fact, not solely an issue of fact. Finding 9 accurately states that no public vote was taken after the full Council, at its December 12 work session, unanimously agreed to approve the memorandum of agreement. There does not appear to have been a regular Council meeting scheduled for December.

We modify finding 10. Even when parties have already approved a contract without the necessity of a formal vote, a salary ordinance must still be adopted to implement the new terms. It is not clear that the practice in previous rounds of negotiations required that a memorandum of agreement be submitted to the Council for formal adoption or simply for implementation of the salary provisions of an already adopted contract. We add that both the PBA's attorney and the Borough's attorney agreed that the parties' practice in previous negotiations was to have their negotiators enter into a memorandum of agreement, have the PBA membership and the Council approve the memorandum in private sessions, and then have the contract put into final form for signature (1T115; 2T27-2T29). The Borough's attorney distinguished between approval of the substance of the memorandum of agreement, which occurred in the PBA's membership meeting and the Council's work sessions, and the procedural mechanism for implementing the contract at a public meeting. In this round of negotiations, the attorneys' actions after the work session were consistent with this practice.

We begin with the PBA's contention that the Borough did not file a timely Answer so the factual allegations in the Complaint should be deemed admitted and the Borough should not be permitted to deviate from such facts. We disagree.

The Complaint issued on August 2, 1996. An Answer was due within ten days of service. N.J.A.C. 19:14-3.1. Three additional days are added when a party is required to do some act after service by mail. Since service of the Complaint triggers the requirement to file an Answer, an Answer is due within 13 days of the date the Director of Unfair Practices mails the Complaint.

The Answer was due August 15, 1996. The first day of hearing was October 29, 1996. The employer filed an Answer on October 30. The Hearing Examiner found that the Answer was too late "for admission into evidence." N.J.A.C. 19:14-3.1 provides that:

> All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained 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.

Although the Answer was untimely, the Hearing Examiner found that implementation of the rule was not automatic and the charging party was required to file a motion to have the rule implemented and did not do so. We disagree that a formal motion is necessary to invoke this rule. But we agree that a charging party cannot invoke N.J.A.C. 19:14-3.1 after a hearing. If a charging party permits a respondent to go through the time and expense associated

with defending against an unfair practice charge, there is good cause for denying invocation of a rule that would have obviated the need for much if not all of the testimony and evidence. We add that invocation of N.J.A.C. 19:14-3.1 does not preclude either party from presenting additional evidence. The charging party may present additional evidence to buttress its case, although some evidence might be duplicative in light of the facts deemed admitted to be true. The respondent can put in additional facts as well, so long as those facts do not contradict the facts deemed admitted.

We next consider whether the Borough violated 5.4a(5) by its entire course of conduct after the memorandum of agreement was reached and 5.4a(6) by its refusal to sign that agreement. We hold that the Borough's conduct violated its obligation to negotiate in good faith under 5.4a(5), but we also hold that the Borough was not legally obligated to sign the memorandum of agreement under 5.4a(6).

On December 11, 1995, the parties' negotiations teams reached a memorandum of agreement subject to ratification by both parties. The three Council members on the Borough's team signed the memorandum. The memorandum stated that the Borough's negotiators agreed to recommend ratification to the Borough Council. The Council members informed the PBA's representatives that if they secured the PBA membership's ratification by the next

afternoon, the Council members could seek approval of the agreement at the scheduled Council work session the next evening.

As requested, the PBA membership ratified the agreement the next afternoon. The Council held its work session the same evening. The head of the police committee/negotiation team presented the memorandum of agreement and the full Council reached a consensus to approve it.

Immediately upon leaving the meeting, two Council members who had signed the negotiated agreement spoke with the PBA's president. Both members told him that the Council had unanimously ratified the agreement. One of the Council members gave the president a thumbs up and both Council members shook hands with him. The third Council member who signed the agreement was present and did not disagree that the Council had ratified the agreement. The next day another Council member told an officer on the PBA negotiations team that the agreement had been ratified. Within a week, a fifth Council member congratulated the PBA's president on the new contract.

The attorneys for both parties acted on the basis of the agreement having been ratified. Within two weeks of the work session, the PBA's attorney sent the Borough's attorney two letters stating that the agreement had been ratified and setting forth courses of action based on that understanding. The first letter advised the Director of Arbitration that an agreement had been reached and ratified; thus interest arbitration was no longer

necessary and the PBA's petition was withdrawn. The second letter stated that both parties had ratified the agreement and enclosed a copy of the contract that the PBA's attorney had reduced to writing based on the memorandum of agreement. The Borough's attorney, who had been present at the work session, did not dispute the statement in either letter that the agreement had been ratified. Instead, he let the PBA withdraw its interest arbitration petition and he advised the PBA's attorney that, once a minor error was corrected, the Borough's officials would sign the contract. The Borough's attorney discussed this response with Saunders, the head of the Borough's police committee/negotiations team. Saunders had told the PBA's president that the contract had been ratified and knew that the PBA believed the contract was ratified and only needed to be signed by the appropriate Borough officials.

Before the reorganization, all six Council members had approved the memorandum of agreement at a private work session. After the reorganization four of these six members were still on the Council. Saunders was one of them. He changed his mind and decided to oppose the contract. His refusal to support the memorandum of agreement violated his pledge in that memorandum to do so. Another Council member who had previously congratulated the PBA president on the new contract also changed his mind. If these two Council members had supported the contract, presumably this case would not have arisen.

The Act authorizes a public employer to reach a binding agreement on terms and conditions of employment. Adopting a private sector negotiations model, it authorizes a public employer to delegate to one or more representatives the authority both to negotiate and agree to a contract. N.J.S.A. 34:13A-5.3 provides, in part:

> In addition, 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. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.
>
> 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 supplied]

Thus the Act contemplates that a governing body may be bound at the negotiations table through the actions of its representatives. A public employer, however, may also reserve the right to ratify a memorandum of agreement. That is commonly done.

N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for an employer, its representatives, or agents not to negotiate in good faith with a majority representative. N.J.S.A. 34:13A-5.4a(6) makes it an unfair practice for an employer, its representatives, or agents not to sign a negotiated agreement.

In Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975), we held that the employer violated its duty to negotiate in good faith and to sign a negotiated agreement. That agreement was

reached by the employer's authorized negotiations representatives, including two of the five board of education members, and the employer had not expressly stipulated that the agreement was subject to ratification. We concluded that a party is entitled to rely upon the apparent authority of the other party's negotiators, in the absence of any express qualifying conditions. Given section 5.3's express recognition that an employer's authorized representatives may commit an employer to sign a negotiated agreement, we have also rejected arguments that a public employer cannot be deemed to have bound itself to a memorandum of agreement absent a formal vote. See Long Beach Tp., P.E.R.C. No. 88-102, 14 NJPER 329, 330 (¶19122 1988); East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279, 281 (1976); see also N.J.S.A. 34:13A-14 et seq. (salaries and other terms of a collective negotiations agreement may be established through interest arbitration, without approval by a governing body); cf. N.J.S.A. 10:4-12b(4)(creating an exception to the normal rules for public meetings and authorizing governing bodies to discuss proposed labor agreements in closed session).[2/] We have also distinguished between the authority necessary to enter into a collective negotiations agreement and the need for formal resolutions to implement the salary provisions of an agreement. Denville Tp., P.E.R.C. No. 81-146, 7 NJPER 359 (¶12162 1981).

2/ Even if a governing body could not formally execute a labor agreement in closed session under the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., any action authorized in closed session can subsequently be ratified.

Under all the circumstances of this case, we conclude that the Borough did not satisfy its duty to negotiate in good faith. We object especially to the statements and actions of Council members and their representatives in misleading the PBA into believing that the memorandum of agreement had been ratified and would be signed and that the PBA could safely withdraw its interest arbitration petition. We also object to Saunders' refusal after the Council reorganized to continue to support an agreement he had bound himself to support. We adopt the Hearing Examiner's recommended remedies for curing this violation. We will order the Borough to present the memorandum of agreement to the Borough Council for a vote at its next public session. We specifically reject the Borough's exception on this point. Having approved the memorandum at the December 12 work session, the Council was obligated to present the agreement for a vote at a public meeting. We will also require any Council member who signed the memorandum of agreement to vote for that agreement at the required public meeting. If the Council votes to reject the agreement, the PBA will be entitled to refile its interest arbitration petition under the law in effect at the time it was withdrawn. Finally, a notice of this violation and the remedies ordered must be posted.

Based on all the circumstances, we also conclude that the employer's course of conduct independently violated N.J.S.A. 5.4a(1). We stress that the statements and actions of the Borough's Council members and representatives induced the PBA's attorney to withdraw the petition to initiate interest arbitration.

Given the Hearing Examiner's findings of fact and credibility determinations, we accept his conclusion that 5.4a(6) was not violated. The memorandum was expressly made subject to ratification by both parties and the Hearing Examiner credited the testimony of the Borough's negotiations team members that they understood ratification to require a formal Council vote at an open public meeting. That is the normal understanding of this term. While we have found that the Borough acted in bad faith after the memorandum of agreement and while we are seriously troubled by that misconduct, we will abide by the Hearing Examiner's findings about the requirements of the ratification process.

We affirm the denial of the PBA's request for attorney fees. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982) aff'd 10 NJPER 78 (¶15043 App. Div. 1983). Cf. Balsley v. North Hunterdon Bd. of Ed., 117 N.J. 434 (1990).

ORDER

The Borough of Tenafly shall:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by misleading the PBA about whether the agreement had been ratified at the work session; inducing the PBA to withdraw its interest arbitration petition; presenting the memorandum of agreement to a second work session for consideration rather than a vote at a public meeting; and not having the head of its

negotiations team continue to support the agreement after reorganization; and

2. Refusing to negotiate in good faith with the PBA, particularly by misleading the PBA about whether the agreement had been ratified at the work session; inducing the PBA to withdraw its interest arbitration petition; presenting the memorandum of agreement to a second work session for consideration rather than a vote at a public meeting; and not having the head of its negotiations team continue to support the agreement after reorganization.

B. Take this action::

1. Present the parties' memorandum of agreement to the Borough Council for a vote at its next open public meeting;

2. Notify any member of the Council who signed the memorandum of agreement and who is now on the Council that he or she must vote for that agreement;

3. If the Council votes to reject the memorandum of agreement and if the PBA refiles its interest arbitration petition, proceed to interest arbitration under the law in effect when the PBA withdrew its initial petition.

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

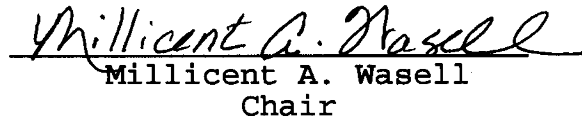
Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials; and

5. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

The PBA's application for attorneys' fees is denied.

The remaining allegations in the Complaint 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 employees in the exercise of the rights guaranteed to them by the Act, particularly by misleading the Tenafly PBA Local 180 about whether the agreement had been ratified at the work session; inducing the PBA to withdraw its interest arbitration petition; presenting the memorandum of agreement to a second work session for consideration rather than a vote at a public meeting; and not having the head of our negotiations team continue to support the agreement after reorganization.

WE WILL cease and desist from refusing to negotiate in good faith with the PBA, particularly by misleading the PBA about whether the agreement had been ratified at the work session; inducing the PBA to withdraw its interest arbitration petition; presenting the memorandum of agreement to a second work session for consideration rather than a vote at a public meeting; and not having the head of our negotiations team continue to support the agreement after reorganization.

WE WILL present the parties' memorandum of agreement to the Borough Council for a vote at its next open public meeting.

WE WILL notify any member of the Council who signed the memorandum of agreement and who is now on the Council that he or she must vote for that agreement.

WE WILL, if the Council votes to reject the memorandum and if the PBA refiles its interest arbitration petition, proceed to interest arbitration under the law in effect when the PBA withdraw its initial petition.

Docket No. CO-H-96-253

BOROUGH OF TENAFLY
(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"

d:\percdocs\notice 10/93

H.E. NO. 98-2

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

In the Matter of

BOROUGH OF TENAFLY,

Respondent,

-and-

Docket No. CO-H-96-253

TENAFLY PBA LOCAL 180,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Borough of Tenafly violated the New Jersey Employer-Employee Relations Act by failing to present a tentative agreement to the Borough Council for a vote on whether to ratify the agreement. The Hearing Examiner also found that the Borough violated the Act by attempting to undo its earlier approval to submit the agreement for a vote, and when a councilmember/negotiator failed to support the agreement he had signed. The Hearing Examiner, however, found that the Borough did not violate the Act by refusing to sign a new collective agreement because the tentative agreement was never ratified.

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. 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
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF TENAFLY,

Respondent,

-and- Docket No. CO-H-96-253

TENAFLY PBA LOCAL 180,

Charging Party.

Appearances:

For the Respondent, Lesnevich & Marazano-Lesnevich, attorneys
(Walter A. Lesnevich, of counsel)

For the Charging Party, Loccke & Correia, attorneys
(Leon B. Savetsky, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On March 4, 1996, Tenafly PBA Local 180 filed an unfair practice charge with the New Jersey Public Employment Relations Commission alleging that the Borough of Tenafly violated subsections 5.4(a)(1), (2), (5), (6) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.[1/]

1/ These subsections 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. (5) Refusing to negotiate in

Footnote Continued on Next Page

The PBA alleged that the Borough violated the Act by refusing to reduce a negotiated agreement to writing, refusing to sign such agreement, repudiating an approved agreement, and refusing to implement negotiated changes. The charge further alleged that the Borough interfered with PBA protected rights because by relying on the Borough's initial approval of a negotiated agreement, it withdrew a previously timely filed interest arbitration petition.

The PBA seeks attorney fees and an order directing the Borough to sign the negotiated agreement and implement its terms.

A Complaint and Notice of Hearing was issued on August 2, 1996. Hearings were held on October 29, 1996 and January 13, 1997.[2/] At hearing on October 29, the PBA withdrew its allegation that the Borough violated subsections 5.4(a)(1), (2) and (7) of the Act (1T21). Both parties filed post-hearing briefs by June 2, 1997.

Based upon the entire record, I make the following:

1/ Footnote Continued From Previous Page

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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

2/ The transcripts will be referred to as 1T and 2T, respectively.

FINDINGS OF FACT

1. The PBA and Borough were parties to a collective agreement effective January 1, 1993 through December 31, 1995 (CP-1). In anticipation of contract expiration, the parties began negotiations for a new collective agreement in the fall of 1995 (C-1A, C-1B). The PBA's negotiating committee included Detective Daniel Siegel, President of Local 180; Sgt. Peter Mezey; and Patrol Officers Timothy O'Reilly and Hector Olmo. The Borough's negotiating committee included three Borough Council members, William Saunders, Borough Police Commissioner; and Martha Kerge and Lenore Saydah (1T38, 1T61). Negotiations were held on September 27, November 2 and 16, 1995 (1T38). On November 27, 1995, the PBA filed a petition with the Commission to initiate compulsory interest arbitration, Docket No. IA-96-60 (C-1C).

2. The last negotiations session between the parties was held on December 11, 1995. The PBA's attorney, Richard Loccke, and Borough attorney, James Logan, attended the session with their respective teams (1T39). After several hours, the parties appeared to be at impasse and Mr. Logan left the meeting. Nevertheless, later that evening the parties reached an agreement which was memorialized in a Memorandum of Agreement (C-1D) and signed by every member of both teams.

Paragraph 5 of the Memorandum provided:

> 5) This Memorandum is subject to ratification by both parties. Both negotiating committee's agree to recommend ratification.

Saunders had wanted the Memorandum to read "recommended ratification" because he could not guarantee the Council would ratify the agreement (1T85-1T86).

3. After C-1D was signed, the Borough's team informed the PBA's team that they would bring the Memorandum to the Council and recommend its approval at its work session scheduled for the following day if the PBA had it approved by its membership first (1T66). In the afternoon of December 12, 1995, the PBA ratified C-1D by a unanimous formal vote of the membership (1T43, 1T55, 1T120-1T121).

4. The Borough's contract ratification procedure with the PBA and other unions since the 1980's has included several steps. After the negotiating committees reached agreement the union would ratify first. Then the Borough negotiating committee would recommend the "agreement" to the full Borough Council in a closed work session meeting. That meeting does not result in a vote. Rather, the Council reaches a consensus to either approve the agreement, or reject it. If the consensus is to reject the agreement it is not normally presented to the Council for a vote in an open public meeting.

If the consensus is to approve the agreement, a contract must be drafted, signed by the union, and then presented to the Council at an open public meeting for discussion. A salary and wage ordinance, and a resolution authorizing the signing of the contract will normally be prepared at that meeting and placed on the agenda

for a formal vote at the next open public meeting two weeks later. A formal ratification vote will be taken on the ordinance and resolution at the next meeting. If the vote approves the ordinance and resolution, the Borough's ratification process is completed (1T71-1T74, 1T80-1T82, 1T86, 1T93-1T96; 2T23, 2T27-2T30).

5. After the PBA ratified the new agreement in the afternoon of December 12, the Borough Council considered the agreement during a closed work session later that evening and reached a unanimous consensus to approve the agreement (1T67, 1T82). The consensus was reached without taking a vote (1T67, 1T97).

Immediately upon leaving that meeting, Council members informed PBA President Siegel that the Council had unanimously approved the agreement (1T45-1T47). Siegel testified that both Saydah and Saunders told him it was a "unanimous ratification" (1T45). Neither Saydah nor Saunders believed they said "ratification". Saydah testified she thought she said "approval", but both Saydah and Saunders also testified it was possible they used the word "ratification" (1T68, 1T82).

Since they could not deny they used the word "ratification", I credit Siegel's testimony that Saydah and Saunders said there was a unanimous ratification. Similarly, on December 13, 1995, Borough Councilman Patrick Rouse congratulated Officer Olmo on the new contract, and told him it had been "ratified" the previous evening (1T57-1T59).

Although Saydah, Saunders and Rouse used the word "ratification" or "ratify" in referring to what the Council did at its December 12 work session, I find that their use of those words did not constitute the Borough's ratification of C-1D. Both Saydah and Saunders testified that they understood ratification to be done by vote at an open public meeting, and that only approvals are done at the closed session meetings (1T71-1T73; 1T81). I credit their testimony. Councilman Lustig corroborated their testimony (1T93-1T96), and there was no evidence that Saydah, Saunders or Kerge understood the word ratification as used in C-1D to merely be an approval without a formal Council vote. In fact, Saydah testified there was no discussion about the meaning of the word "ratification" when C-1D was signed (1T69). I credit her testimony. There was no contrary evidence.

6. On December 26, 1995, PBA attorney Richard Loccke sent two letters regarding the Tenafly negotiations. One letter, C-1E, was sent to then Borough attorney, James Logan, enclosing a draft of the new agreement (CP-2). In his letter, Loccke referred to the settlement as having been ratified by the parties. He said in pertinent part:

> Please find enclosed a contract draft which has been prepared consistent with the recent settlement now ratified by the parties in the above captioned matter.

That same day Loccke sent a letter to Timothy Hundley, the Commission's Acting Director of Arbitration (C-1G) notifying him that the parties had reached a settlement, and that it had been

ratified by both parties and was expected to be signed. He wrote in pertinent part:

> We are pleased to advise that the parties have recently reached a voluntary settlement which has been ratified by both sides.

That letter served as a withdrawal of the petition in IA-96-60, and that case was closed that day. Loccke withdrew the petition because he believed the contract had been completed and there was no further need of Commission action (1T116).

7. As a result of the fall 1996 elections, the Borough Council was reorganized on or about January 1, 1996. There were two new Council members, Councilwomen Kerge and Saydah were no longer on the Council (but Saydah came back on the Council within two months) and there was a new Mayor (1T74, 1T98). At its reorganization meeting the Council also replaced Mr. Logan as the Borough attorney (1T98-1T99). Logan knew he was replaced as Borough attorney, effective January 1, 1996, but believed he was authorized to continue to represent the Borough to complete the PBA negotiations (2T9-2T12).

By letter of January 3, 1996 (C-1F), Logan responded to Loccke's December 26th letter, C-1E (2T9). In C-1F, Logan wrote that he reviewed the draft contract, and made one correction; but he did not refer to Loccke's use of the phrase, "now ratified" in C-1E. Logan's letter reads in pertinent part:

> I have reviewed the Contract between the Borough of Tenafly and the P.B.A. Local 180 Policemen's Benevolent Association of New Jersey which appears to be satisfactory except for on Page 36,

> in Article XX, Section 2, (last line) the word "four years" should be amended to "five years".
>
> After the Contract has been amended, please have the same signed by the P.B.A. and return four copies to me at your earliest convenience for signature by the appropriate Municipal Officers.

An issue arose over whether Logan had authority when he issued C-1F. I need not resolve that issue in this hearing. For analysis purposes I will assume Logan had authority when he sent C-1F.

8. Despite the Council's work session approval of the Memorandum in December 1995, neither the Memorandum (C-1D) nor draft contract (CP-2) were presented to the Council in an open public meeting for discussion or a ratification vote. No salary ordinance or resolution approving or disapproving the agreement was ever voted upon in an open public meeting (1T86; 2T30).

In January 1996, after the reorganization meeting, the new Council met in closed work session, and considered C-1D. The Council reached a consensus rejecting the agreement (1T97-1T98). As a result, the memorandum/agreement was never placed on the open public meeting agenda for a formal vote (1T86-1T88). Council member Saunders apparently changed his mind and did not support the agreement at the January work session meeting (1T86).

9. While reviewing C-1F during his direct testimony, Logan was asked if he agreed with Loccke's statement in C-1E that the recent settlement had been ratified (i.e., as of December 12) and he (Logan) testified, "yes" (2T12-2T13). I do not credit that response in light of Logan's subsequent testimony, and other evidence.

Upon further examination, Logan testified that under the procedure of the Open Public Meeting's Act, once the Council reaches a consensus at a work session meeting the agreement had to be approved in a public meeting and a salary ordinance had to be adopted (2T23, 2T27-2T28). After explaining the procedure, Logan was again asked if he considered the Council's earlier consensus approval to have been a ratification. This time he drew a distinction between the parties reaching a meeting of minds and procedurally approving what they had agreed upon. He testified that the agreement had to be approved in a public meeting which meant the Council had to take a vote (2T29).

Logan further testified that he was unaware whether the Council conducted a formal ratification vote, and he agreed with Councilwoman Saydah that the consensus reached at the work session in December was not a vote, and that a public vote had to follow the work session (2T30). I credit Logan's latter testimony. It was obviously more comprehensive than his earlier one word response, and it corroborated Saydah's and Saunders earlier testimonies.

Consequently, I find that the Borough's ratification procedure required a formal vote on the agreement and/or on a resolution approving payment of the salaries in the agreement, in an open public meeting. Since no such vote was conducted regarding the memorandum, the Borough had not ratified the agreement.

10. Loccke dictated the language used in the memorandum of agreement (1T109). He testified that although he used the word

"ratification", he did not intend a formal ratification process (1T112). He considered the Council's verbal approval reached at the December work session meeting to constitute ratification (1T114-1T115). He withdrew IA-96-60 by C-1G, and referred to the settlement as having been ratified in C-1E only because he believed the Council's December 12th approval was its ratification (1T114-1T116). PBA President Siegel also thought that the Borough's approval was its ratification (1T47-1T48).

I credit Loccke's and Siegel's testimony. Loccke believed that the Council's approval was its ratification - otherwise, he would not have withdrawn IA-96-60. I find, however, that Loccke (and Siegel's) belief of what constituted Council ratification was inconsistent with the Council's established ratification practice which required a vote at an open public meeting.

Finally, Loccke was asked if he considered the Council's December 12 verbal approval to be ratification as he said in C-1E, and he testified:

> My answer is yes. And this is the way we had done business in Tenafly for many years and many contracts (1T115).

While I credit the witnesses' belief, I do not credit that testimony to mean the Borough had a practice whereby the Council's closed session verbal approval constituted ratification. Rather, I find that the statement, "this is the way we had done business in Tenafly..." refers merely to the consistency of the Council's favorable consensus on tentative agreements leading to favorable

formal votes at public sessions and the passing of salary ordinances. While the PBA may have believed that the Council's mere verbal consensus constituted its ratification, it offered no evidence to dispute Saydah, Saunders and Lustig that the Council had to ratify agreements by adopting salary ordinances with a vote at a formal public meeting.

ANALYSIS

This case presents several issues for consideration. Did the parties reach a meeting of the minds regarding the meaning of the word "ratification" in their memorandum of agreement; what was the Borough's ratification procedure; and, did the Borough complete that procedure? In its post hearing brief the PBA also argued that since the Borough's answer did not dispute the facts alleged in the charge, those allegations must be deemed admitted and that no deviating facts be permitted.

The Answer

The PBA's attempt to deem the facts alleged in its charge admitted, and to keep any deviating evidence from being admitted, lacks merit. N.J.A.C. 19:14-3.1 provides in pertinent part that if no answer is filed all allegations in the complaint shall be deemed to be admitted to be true unless good cause to the contrary is shown. Although the PBA referred to the Borough's answer, no answer has, in fact, been received into this record. The Borough did

submit a document purported to be an answer which was received by the Commission on October 30, 1996, one day after the start of this hearing, too late for admission into evidence.

The lack of an answer, however, did not automatically result in the implementation of N.J.A.C. 19:14-3.1. The practice before the Commission is for a charging party to move for the implementation of that rule. The PBA made no such motion. Instead, it chose to augment its case by the presentation of evidence which produced a number of facts not alleged in its charge. The Borough then presented its case in opposition, which produced a number of facts at variance with-and in addition to-the facts alleged in the charge.

The PBA cannot have it both ways. It could have moved that allegations in its charge be deemed true and rested its case, but it didn't.[3/] It cannot then present and rely on additional facts while denying that same opportunity to the Borough. Under these circumstances, the PBA's attempt to invoke N.J.A.C. 19:14-3.1 is denied.

The Borough's Ratification Procedure

The language in paragraph 5 of C-1D requiring ratification is a condition precedent to the reaching of a collective agreement. If one party fails to ratify, the tentative agreement does not

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3/ There is no guarantee the PBA would have been successful even if such a motion was filed.

become binding. See City of Hoboken, P.E.R.C. No. 95-91, 21 NJPER 184 (¶26117 1995); Oakland Bd. Ed., H.E. No. 84-62, 10 NJPER 378 (¶15176 1984).

The theory to the PBA's case is that the Council's verbal consensus approval on December 12, 1995 constituted its ratification of the memorandum of agreement. The PBA relied upon at least four elements to support that theory. First, the testimony of its own witnesses that they thought the Council's consensus approval was its ratification. Second, that Council members Saydah, Saunders and Rouse used the word "ratification" in reference to the Council's actions on December 12. Third, that Logan did not challenge Loccke's use of the word "ratified" in C-1E; and fourth, its argument in its post-hearing brief that the word "ratification" means approval.

The record as a whole, however, does not support that theory. I believe that on its face, the ratification language in paragraph 5 of the memorandum of agreement required a formal vote by both parties. In public sector labor relations, the term "ratification" typically requires a vote of the union membership and of the governing body. The PBA, in fact, ratified the memorandum through a formal vote, yet argues the Borough is not entitled to the same opportunity.

If the PBA believed the use of the word "ratification" in the memorandum of agreement was to mean something other than a formal vote by the Borough, it should have included clear and

unequivocal language in the memorandum waiving the Borough's right to vote. Compare, Phillipsburg Bd. Ed., P.E.R.C. No. 90-35, 15 NJPER 623 (¶20260 1989); Old Bridge M.U.A., P.E.R.C. No. 84-116, 10 NJPER 261 (¶15162 1984). No such waiver language was included in C-1D.

Since, in my opinion, the language in item 5 of C-1D was clear on its face, I could have excluded the introduction of parol evidence. See County of Morris, D.U.P. No. 94-27, 20 NJPER 118 (¶25063 1994). That means, I could have excluded Loccke's and Siegels testimony about what they thought the word "ratification" meant, and excluded testimony from Borough witnesses on what constituted their ratification process, and simply found that absent the Council's formal vote it did not ratify the agreement. I was troubled, however, by the PBA's withdrawal of IA-96-60. The PBA would not have withdrawn that petition unless it felt certain the agreement had been finalized. Therefore, I permitted the introduction of parol evidence to help determine the meaning of the word "ratification" with respect to the Borough's obligation. See Casriel v. King, 2 N.J. 45 (1949); Compare, Delaware Valley Reg. Bd. Ed., P.E.R.C. No. 81-77, 7 NJPER 34 (¶12014 1980).

Having considered all of that evidence, I find the word "ratification" meant to the Borough more than a mere verbal approval. These parties did not have a meeting of the minds over what "ratification" meant. The PBA witnesses only testified about what they thought "ratification" meant. They did not suggest the

Borough's negotiators had agreed with that interpretation. In fact, the parties did not discuss the meaning of the word "ratification". Saydah, Saunders, Lustig, and even Logan, explained that the Borough's ratification procedure required a vote at a public meeting. The PBA did not rebutt their testimony.

The Council members' use of the word "ratification" in reference to their December 12 closed session meeting, and Logan's failure to react to the use of the word "ratified" in C-1E did not convert the consensus approval into a "ratification". The PBA cannot obtain through some Council members' careless use of a word, or through its attorney's non-reaction to a word, a result which it failed to clearly and unequivocally obtain through the negotiations process.

These facts and the result are not unlike those in <u>City of Hoboken</u>. In <u>Hoboken</u> the City began paying salary increases called for in its tentative agreement pending the City Council's ratification vote. Those payments did not negate the need-or substitute-for a Council vote, nor create an obligation to continue paying those increases subsequent to the Council's rejection of the agreement.

Finally, the PBA's rationale that "ratification" simply means approval misses the point. No one disputes that the words "ratify" or "ratification" can be defined as an approval. But the issue here is not how the Borough's conduct measures up to the dictionary definition of "ratification"; the issue is what

ratification means for the Borough in light of its experience in the negotiations process.

Since the evidence shows the Borough believed its ratification meant a formal vote, and the PBA believed the Borough's ratification meant a mere consensus approval, the parties did not reach a meeting of the minds over whether a final agreement was reached. Compare, North Caldwell Bd. of Ed., P.E.R.C. No. 90-92, 16 NJPER 261 (¶21110 1990); Trenton Bd. of Ed., P.E.R.C. No. 88-49, 13 NJPER 848 (¶18327 1987); Long Branch Bd. of Ed., P.E.R.C. No. 86-97, 12 NJPER 204 (¶17080 1986).

Having reached that result, and since the Borough did not submit the agreement to a formal Council vote, I conclude it did not ratify C-1D and, therefore, was not obligated to sign the collective agreement. Consequently, the 5.4(a)(6) allegation, and the 5.4(a)(5) allegation to the extent it alleged the Borough engaged in bad faith by denying it ratified the agreement should, therefore, be dismissed. See City of Hoboken.

The Borough's Compliance With Its Ratification Procedure

The above discussion, however, does not end the analysis of this case. The Borough violated subsection 5.4(a)(5) of the Act by failing to take C-1D through its ratification process. The Borough specifically violated subsection 5.4(a)(5) by presenting C-1D to a second work session meeting before first submitting it to the Council at a public meeting for a vote on a salary ordinance; by

Saunders not supporting C-1D at the second work session; and by withdrawing or rescinding its initial consensus approval.

Once its authorized negotiators signed C-1D, the Borough was obligated to allow the memorandum to proceed through its ratification process without a substantial deviation. In the first step of that process, the Council could have rejected the memorandum in its work session and its ratification process would have been completed-with the memorandum having been rejected. But the Council did not reject the memorandum. Having given its consensus approval on December 12, 1995, the Borough was obligated to present the memorandum to the Council in an open public meeting for a vote on a salary ordinance. The Council would have had the opportunity to formally reject the agreement at that point. But the Borough did not have the right to rescind its original consensus approval, particularly by one of its negotiators withdrawing his support for the agreement. Negotiating team members who sign a memorandum of agreement and agree to recommend ratification are obligated to continue supporting the agreement throughout the ratification process. Borough of Sayreville, P.E.R.C. No. 93-35, 19 NJPER 1 (¶24000 1992); Lower Twp. Bd. of Ed., P.E.R.C. No. 78-32, 4 NJPER 24 (¶4013 1977).

Accordingly, based upon the above facts and analysis, I make the following:

CONCLUSIONS OF LAW

1. The Borough did not violate subsection 5.4(a)(6) of the Act by refusing to sign a new collective agreement (CP-2).

2. The Borough violated subsection 5.4(a)(5) and derivatively 5.4(a)(1) of the Act by failing to present the tentative agreement to the Borough Council for a vote in a public session meeting; presenting the agreement to a second work session meeting before it proceeded to a public vote; rescinding its initial consensus approval; and, by its negotiator failing to support the agreement.

Remedy

I recommend that the Borough Council be required to consider the tentative agreement in an open public meeting and vote whether to approve or reject a salary ordinance implementing the terms of the agreement. Since, Councilwoman Saydah signed C-1D and is still on the Council, she is required to continue to support the agreement.

I further recommend that in the event the Borough rejects the agreement/salary ordinance, the Borough be required - if the PBA so requests - to proceed with the processing of IA-96-60 upon its reactivation by the Director of Arbitration, thereby allowing the PBA to pursue its interest arbitration petition pursuant to N.J.S.A. 34:13A-16 et seq; L. 1977, c. 85, §3, eff. May 10, 1977; the law that was in effect when the petition was filed. The PBA withdrew IA-96-60 in December 1995 in a good faith belief that the agreement

had been ratified by the Borough. Had the PBA known that C-1D was not ratified by the Borough on December 12 it would not have withdrawn the petition. If the Borough rejects the agreement, fundamental fairness necessitates that the PBA be allowed to resume the processing of the petition as it would have if the petition was not mistakenly withdrawn.

The PBA's request for attorney fees is denied. Commercial Tp. Bd. of Ed. and Commercial Tp. Support Staff Ass'n and Collingswood, P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982) aff'd 10 NJPER 78 (¶15043 App. Div. 1983).

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Borough of Tenafly cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to present the Borough/PBA tentative agreement to the Borough Council for a vote in a public session meeting; presenting the agreement to a second work session meeting before it proceeded to a public vote; rescinding its initial consensus approval; and, by its negotiator failing to support the agreement.

2. Refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of unit employees, particularly by failing to present the Borough/PBA tentative

agreement to the Borough Council for a vote in a public session meeting; presenting the agreement to a second work session meeting before it proceeded to a public vote; rescinding its initial consensus approval; and, by its negotiator failing to support the agreement.

B. That the Borough take the following action:

1. Present the Borough/PBA tentative agreement to the Borough Council for a vote at an open public meeting to approve or reject the agreement.

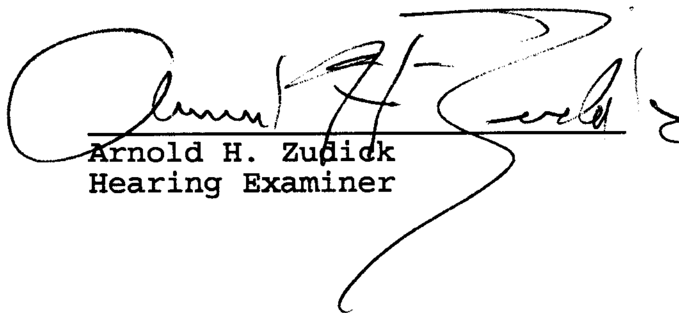
2. Notify Councilwoman Saydah (and any other sitting councilperson who signed the tentative agreement) she is required to support the agreement with her vote at the public meeting.

3. Proceed to interest arbitration under IA-96-60, at the PBA's request, if the Borough Council rejects the agreement.

4. 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 Respondent'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.

4. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

C. That the 5.4(a)(6) allegation be dismissed.



Arnold H. Zudick
Hearing Examiner

Dated: July 16, 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 cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to present the Borough/PBA tentative agreement to the Borough Council for a vote in a public session meeting; presenting the agreement to a second work session meeting before it proceeded to a public vote; rescinding its initial consensus approval; and, by its negotiator failing to support the agreement.

WE WILL cease and desist from refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of unit employees, particularly by failing to present the Borough/PBA tentative agreement to the Borough Council for a vote in a public session meeting; presenting the agreement to a second work session meeting before it proceeded to a public vote; rescinding its initial consensus approval; and, by its negotiator failing to support the agreement.

WE WILL present the Borough/PBA tentative agreement to the Borough Council for a vote at an open public meeting to approve or reject the agreement.

WE WILL notify Councilwoman Saydah (and any other sitting councilperson who signed the tentative agreement) she is required to support the agreement with her vote at the public meeting.

WE WILL proceed to interest arbitration under IA-96-60, at the PBA's request, if the Borough Council rejects the agreement.

Docket No. CO-H-96-253 Borough of Tenafly

(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, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

d:\percdocs\notice 10/93