

P.E.R.C. NO. 2010-44

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and-

Docket No. CO-2009-038

IAFF LOCALS 305 & 2004,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission grants the IAFF Locals 305 and 2004's motion for summary judgment in an unfair practice case filed against the Township of Irvington. The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, 34:13A-5.4a(1) and (5), when it refused to signed collective negotiations agreements covering the charging parties' units and reflecting the terms of the memorandum of agreement signed by the parties. The Commission holds that the parties' draft agreement clearly and faithfully tracks their memorandum of agreement and orders the Township to execute the contract immediately.

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.

P.E.R.C. NO. 2010-44

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and-

Docket No. CO-2009-038

IAFF LOCALS 305 & 2004,

Charging Parties.

Appearances:

For the Respondent, Scarinci Hollenbeck, attorneys  
(Ramon E. Rivera, of counsel)

For the Charging Parties, Zazzali, Fagella, Nowak,  
Kleinbaum & Friedman, attorneys (Paul L. Kleinbaum, of  
counsel and on the brief; Genevieve M. Murphy-Bradacs,  
on the brief)

DECISION

IAFF Locals 305 and 2004<sup>1/</sup> have moved for summary judgment against the Township of Irvington in this unfair practice case. Because the undisputed facts in the record establish that the Township refused to sign draft contracts calling for the 4% raise required by the parties' Memorandum of Agreement ("MOA"), we grant that motion and order the Township to sign the contracts immediately.

On July 28, 2008, Locals 305 and 2004 filed an unfair practice charge against the Township of Irvington. The charge

---

<sup>1/</sup> IAFF is the abbreviation for International Association of Fire Fighters.

alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),<sup>2/</sup> when it refused to sign collective negotiations agreements covering the units of employees represented by the charging parties and reflecting the terms of the MOA signed by the parties. The charging parties later amended their charge to assert that the Township's refusal to sign the agreements also violated 5.4a(6).<sup>3/</sup>

On February 25, 2009, a Complaint and Notice of Hearing issued. On March 9, the Township filed an Answer denying that it violated the Act.

On July 8, 2009, the charging parties filed a motion for summary judgment, a brief and the certifications of its counsel, Local 305's vice-president, and Local 2004's president. The Township filed a brief opposing summary judgment and the certifications of its counsel and its Business Administrator.

---

2/ 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 . . . (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."

3/ This provision prohibits public employers, their representatives or agents from: "(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

The charging parties filed a reply brief and leave was granted for the parties to file one more round of responses.

Based on the certifications and exhibits, these facts are undisputed.

Local 305 represents the Township's firefighters and Local 2004 represents its fire lieutenants and captains. Locals 305 and 2004 were parties to separate collective negotiations agreements with the Township that expired on June 30, 2007. The agreement covering firefighters contained a multi-step salary guide. The agreement covering lieutenants and captains did not.

The Township and Locals 305 and 2004 participated in joint negotiations for successor agreements. On December 15, 2007, after months of negotiations, the parties executed their MOA. They agreed that the term of the contract would be from July 1, 2007 through June 30, 2012. Paragraph 2 of the MOA modified the salary provision of each predecessor contract and called for a 4% across-the-board increase retroactive to October 1, 2007 as well as salary increases effective in each following July and January until the contracts expired. Paragraph 2 further provided that salaries would be increased immediately upon ratification and retroactive compensation would be paid within 30 days after ratification.

On April 24, 2008, IAFF's counsel sent the Township's counsel draft agreements incorporating the changes required by

the MOA. Article VIII of the draft agreement covering the firefighters specified a 4% salary increase effective October 1, 2007 and included a salary guide setting forth the new base salary as of October 1, 2007 for each step, after a 4% increase was added to the previous base salary as of June 30, 2007 for that step. Article XX of the draft agreement covering lieutenants and captains specified a 4% across-the-board increase retroactive to October 1, 2007, and, like the predecessor contract for that unit, did not contain a salary guide.

On July 25, 2008, the Township's counsel sent IAFF's counsel a copy of the Local 305 draft agreement with the Township's redlined revisions. An accompanying e-mail asked IAFF's counsel to: "Review the salary and wages section wherein we revised the salary schedule based upon miscalculations of the retro payment. Please advise if the changes are acceptable and please withdraw your Unfair Practice Charge." The Township did not revise the part of Article XIII calling for a 4% increase effective October 1, 2007, but it did revise the figures set forth in the accompanying salary guide. Its figures reflect a 3% increase at each step. The Business Administrator's certification asserts that Local 305's calculations were erroneous and explains how the Township calculated its figures:

Specifically, in Section 2, Article VIII-Salary of the MOA, it states "Retroactive to October 1, 2007-4.0% across the board increase." Clearly under this provision, the parties agreed that the

retroactive payment would be calculated from October 1, 2007, instead of July 1, 2007. Thus, the retroactive payment was not intended to be applied to the first three (3) months of salary of the initial year of the MOA (July, August, and September 2007). In effect, the parties agreed that the 4.0% salary increase would be applied to the nine (9) remaining months of the first year of the CBAs (October 2007 to June 2008), or to only 75% of the annual salary for each member. The Unions have misconstrued this provision and instead applied the 4% increase to the entire twelve (12) months of salary for the first year; thereby nullifying the provision as indicated in the MOA."<sup>4/</sup>

It does not appear that this explanation was given to Local 305 at any time before the Township submitted this certification in response to the motion for summary judgment. Further, the Township Administrator does not assert in his certification that the parties discussed or specifically agreed to such an approach in negotiations. The Township did not respond at all to the draft agreement covering the employees represented by Local 2004.

On August 4, 2008, IAFF's counsel advised the Township's counsel that the redlined draft covering the employees

---

<sup>4/</sup> The Township's brief at 6-7 gives this example of how the parties' calculations differ. As of June 30, 2007, the base salary for step one of the salary guide was \$37,246.40. The Township began its calculations by reducing that figure by 25% to \$27,934.80. It then multiplied that lower base salary by 4% to reach an additional dollar amount of \$1117.39 which it then added to the previous base salary of \$37,246.40 to reach a new base salary of \$38,363.79. Local 305 began and ended its calculations by multiplying the previous base salary by 4% and adding the resulting dollar amount of \$1489.86 to the old base salary to reach a new base salary of \$38,736.26.

represented by Local 305 was incorrect and that the Township's counsel had not sent a response to the draft covering the employees represented by Local 2004.

On August 8, 2008, the Township's counsel responded to this letter. His written response referred to a telephone conversation with the IAFF's counsel on August 5 in which he took the position that the salary calculations in the redlined draft were correct based upon the Township's interpretation of the MOA. The letter further stated that the Township would not sign any agreements between the parties until the salary issue was resolved.

The Township has implemented the pay increases set forth in paragraph 2 of the MOA. All the employees represented by Locals 305 and 2004 have received the correct salaries based upon the MOA's agreed-upon percentages. Thus, the firefighters have been and are being compensated in accordance with the salary guide in the draft agreement submitted by Local 305, not the salary guide in the Township's redlined version. And the lieutenants and captains have received salaries 4% higher than their salaries under the predecessor contract. Nevertheless, the Township refused to sign either draft agreement. Locals 305 and 2004 therefore filed this charge followed by its motion for summary judgment.

N.J.A.C. 19:14-4.8(e) sets forth the standards for granting a summary judgment motion:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

Summary judgment is to be granted with extreme caution and the moving papers must be considered in the light most favorable to the respondent, with all inferences and doubts resolved against the movant. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

N.J.S.A. 34:13A-5.4a(6) makes it an unfair practice for a public employer to refuse "to reduce a negotiated agreement to writing and to sign such an agreement." Such a refusal also violates N.J.S.A. 34:13A-5.4a(5), prohibiting a refusal to negotiate in good faith, and N.J.S.A. 34:13A-5.4a(1), prohibiting interference with employees exercising their rights under the Act. Summary judgment is properly granted in a case alleging a violation of 5.4a(6) if the material facts of record establish without any genuine dispute that the parties have reached an agreement and that the respondent has refused to sign that agreement. See, e.g., Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C.



No. 87-117, 13 NJPER 282 (¶18118 1987); Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983).

We begin with the draft agreement submitted to the Township by Local 2004. That agreement embodied the 4% salary increase effective October 1, 2007 set forth in the MOA. There is no salary guide in Local 2004's contract so the Township's argument concerning Local 305's draft agreement does not apply. The Township has offered no other justification for refusing to sign Local 2004's draft agreement and does not dispute that it has paid salaries consistent with that draft. Since the MOA and the draft agreement are identical, we hold that the Township violated N.J.S.A. 34:13A-5.4a(1), (5), and (6) by refusing to sign the draft agreement submitted by Local 2004. Moorestown Tp. Bd. of Ed., P.E.R.C. No. 94-120, 20 NJPER 280 (¶25142 1994). We will order the Township to execute the contract immediately.

We next consider the draft agreement submitted to the Township by Local 305. That agreement also embodied the 4% salary increase effective October 1, 2007 set forth in the MOA. Because the predecessor contract contained a salary guide, it was necessary to apply the 4% salary increase to each step of the guide to determine the new base salaries as of October 1, 2007. Local 305's draft agreement did so correctly and in clear accordance with the MOA's terms. The Township itself does not

dispute that it has paid and continues to pay the firefighters in accordance with the salary guide drafted by Local 305.

Because the draft agreement clearly and faithfully tracks the MOA and establishes the parties' intent, there is no genuine issue of material fact and the Township was obligated to sign it. Moorestown Tp.; Jersey City. Contrast Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 83-61, 9 NJPER 14 (¶14005 1982) (board legally refused to sign association's draft contract calling for long-term substitute teachers to be paid on the same salary guide as regular teachers where the past practice was not to put them on the salary guide and the association never proposed changing that practice in negotiations). The Township's after-the-fact and strained explanation for its 3% rather than 4% salary guide increases is unsupported by either the text of the MOA or any evidence that it advanced its current position in negotiations and secured Local 305's approval of it.

Moreover, the Township's explanation makes no labor relations sense and has no basis in labor relations practice. Negotiators commonly reach agreements calling for delayed start dates for salary increases, as the parties did in this case. By making the 4% salary increases retroactive to October 1, 2007 rather than the expiration date of the predecessor contracts three months before, the parties agreed to continue the previous base salaries until October 1, 2007 and thus to lower the dollar

payout by the employer during the first year of the contract. But they also agreed to increase base salaries by 4% as of October 1, 2007, thereby ensuring that employees would get the benefit of the negotiated percentage increase for the purpose of calculating their future salary increases during the remaining years of the contract. The "retroactive" provision also ensured that employees would receive the negotiated increase as of the specified date, as opposed to the date months later when the MOA was signed or some other date. As Local 305 argues (reply brief at 3), the Township's position, if accepted, would subject employees to a "double hit" since they would receive only 75% of their raise and their future increases would be calculated upon a base salary that reflects only a 3% increase. The agreed-upon 4% increase for the first year would become a nullity. If the parties had intended such an odd result, they would have negotiated contract language calling for it rather than the MOA's unvarnished language calling for a 4% across the board increase. For these reasons, we hold that the Township violated N.J.S.A. 34:13A-5.4a(1), (5), and (6) by refusing to sign the draft agreement submitted by Local 305. We will order the Township to execute the contract immediately.

ORDER

The Township of Irvington is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

2. 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, particularly by refusing to execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

3. Refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by refusing to execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

B. Take this action:

1. Immediately execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

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 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.

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

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Fuller recused herself.

ISSUED: December 17, 2009

Trenton, New Jersey

**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 refusing to execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

WE WILL cease and desist from 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, particularly by refusing to execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

WE WILL cease and desist from refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by refusing to execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

WE WILL immediately execute the draft agreements submitted to it by IAFF Locals 305 and 2004.

Docket No. CO-2009-038

TOWNSHIP OF IRVINGTON  
(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