

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-77-345-26

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL #3 OF NEWARK,

-----Charging Party.-----

CITY OF NEWARK,

Respondent,

-and-

SUPERIOR OFFICERS' ASSOCIATION OF
NEWARK,

Docket No. CO-77-346-27

Charging Party,

-and-

NEWARK FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION,

Intervenor.

SYNOPSIS

The Commission in an unfair practice proceeding finds that the City of Newark violated the Act by enforcing parity clauses included in collective negotiations agreements it had executed. The City of Newark was ordered by the Commission to cease and desist from interfering with, restraining or coercing employees in the exercise of rights protected by the Act and from refusing to negotiate in good faith with the charging party, Superior Officers' Association of Newark, by maintaining or seeking to enforce a parity clause with any other employee organization to the extent that it would alter terms and conditions of employment of the employees in the unit represented by these organizations contingent upon the collective negotiations agreement negotiated by the Superior Officers' Association. The Commission also ordered that the Complaint involving the PBA be dismissed in its entirety inasmuch as the PBA was no longer the majority representative and therefore lacked standing to claim a violation of the City's duty to negotiate in good faith with it.

P.E.R.C. NO. 79-55

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Appearances

For the Respondent, Milton Hollar-Gregory, Esq.

For the Charging Party, Zazzali, Zazzali & Whipple, Esqs.
(Mr. Donald B. Ross, of Counsel)

For the Intervenor, Fox and Fox, Esqs.
(Mr. Richard H. Greenstein, of Counsel)

DECISION AND ORDER

On June 24, 1977, two unfair practice charges were filed with the Public Employment Relations Commission by the Policemen's Benevolent Association, Local #3 of Newark (the "PBA"), Docket No. CO-77-346-26, and one by the Superior Officers' Association of

Newark (the "Association"), Docket No. CO-77-346-27. Both unfair practice charges were filed against the City of Newark (the "City") and allege that the City was violating the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), and specifically N.J.S.A. 34:13A-5.4(a)(1) and (5) by enforcing "parity" clauses with other employee organizations. The charges were processed pursuant to the Commission's rules and it appearing to the Commission's Director of Unfair Practices that the allegations of the charges, if true, might constitute unfair practices within the meaning of the Act, complaints, notices of hearing and an order consolidating cases were issued on September 22, 1977.^{1/} Pursuant thereto, a hearing was held before Commission Hearing Examiner Alan R. Howe on December 6, 1978. On the record of that date the Newark Firemen's Mutual Benevolent Association (the "FMBA") formally intervened in this proceeding.

At the hearing the Hearing Examiner took note of the fact that the PBA was no longer the exclusive majority representative of the police officers of the City of Newark. On May 17, 1978, the Director of Representation issued a decision containing a Certification of Representative. This certified that the Fraternal

^{1/} By letter dated October 27, 1977, the Hearing Examiner was advised by the attorney for the City of Newark that there was agreement to adjourn this matter pending the Hearing Examiner's decision in a case (In re City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130, 1978) involving a similar issue concerning a parity clause.

Order of Police, Newark Lodge #12, was the exclusive majority representative of the unit of policemen previously represented by the PBA.^{2/} The Hearing Examiner gave notice of all proceedings in this matter to the attorney for the FOP. The FOP has failed to respond at all stages of this proceeding. Because it is no longer the majority representative and therefore lacks standing to claim a violation of the City's duty to negotiate in good faith with it, the Commission will dismiss the charge by the PBA, Docket No. CO-77-346-26.^{3/}

At the hearing all parties were afforded an opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. The parties entered into a stipulation of facts for direct submission of this matter to the Commission. The parties agreed to waive a Hearing Examiner's Recommended Report and Decision. All parties were given an opportunity to file a brief. The Association filed its brief on January 17, 1979 and the City replied by letter dated February 1, 1979. The City, in agreement with the charging party, takes the position that the parity clauses are invalid. By letter dated February 9, 1979, the F.M.B.A., while acknowledging that we have found parity clauses to be illegal, went on record as being opposed to our position in order to preserve its rights on appeal. The stipulations are as follows:^{4/}

1. The City of Newark is a public employer within the meaning of the New Jersey Employer-Employee Relations Act.

^{2/} In re City of Newark, D. R. No. 78-43, 4 NJPER 202 (¶4102 1978).

^{3/} N.J.S.A. 34:13A-5.4(a)(5) prohibits an employer from "Refusing to negotiate in good faith with a majority representative of employees... (emphasis added). Likewise for the reasons stated above we find that the PBA has no standing to assert a derivative N.J.S.A. 34:13A-5.4(a)(1) violation either.

^{4/} No stipulations were made on behalf of the PBA in view of the fact it is no longer the collective negotiations representative of the police officers in the City of Newark.

2. The Superior Officers' Association is a public employee representative within the meaning of the Act.

3. The Newark Firemen's Mutual Benevolent Association is a public employee representative within the meaning of the Act.

4. The City of Newark is a public employer and has presently collective negotiations agreements with unions representing some fifteen (15) collective negotiations units.

5. The Charging Party, Superior Officers' Association, has had a collective negotiations agreement with the Respondent, the City of Newark, since at least 1968 or 1969 and the collective negotiations agreement between the Superior Officers and the City of Newark has never contained a parity clause.

6. The Firemen's Mutual Benevolent Association has had a collective negotiations agreement with the City of Newark since at least 1968 and has had a parity clause in the agreement since at least 1969.

7. The City of Newark, in five of its collective negotiations agreements, has parity clauses. These five agreements cover the Firemen's Mutual Benevolent Association as indicated above, the professional fire officers which have had a parity clause since at least 1969, the Essex Council No. 1 of the Civil Service Association, which has had a parity clause just recently negotiated in the 1976-78 agreement, and two other small collective negotiations units, the names of which are not material but it should be noted that these two negotiations units have, like the Essex Council No. 1, only in the current agreement 1976-1978,

obtained a parity clause.

8. The City of Newark and the Firemen's Mutual Benevolent Association and the professional fire officers have collective negotiations agreements containing a parity clause, the language of which is as follows:

The City agrees to maintain the existing parity in pay between all current ranks in the fire and police departments. Any adjustments of pay for any rank will be applied on a parity basis to all other ranks.

The language in the parity clauses for the other three negotiations units, namely, Essex Council No. 1 in particular, and the other two smaller units most recently negotiated in 1976 contain slightly different language, but in terms of the effect, -it is identical.

The Commission has now addressed the issue of parity twice.^{5/} We have determined that parity clauses are illegal subjects of negotiations because they unlawfully limit the right of an employee organization to negotiate fully its own terms and conditions. We stated in Plainfield:

The mere existence of the clause is sufficient to chill the free exchange between a public employer and an employee organization by permitting a third employee organization not a party to negotiations to have an effect on those negotiations.

The above-quoted clause is clearly a parity clause. It mandates an automatic conferral of an adjustment in pay in the event any

^{5/} In re City of Plainfield, supra, and In re Township of Weehawken, P.E.R.C. No. 79-39, 4 NJPER ___ (¶ ___ 1979).

any rank of the fire or police department receives a pay adjustment which would bring parity with the other ranks of the police and fire departments. We do not reach the question of whether the City has used the existence of the parity clause in negotiations because the Association has not offered evidence regarding that issue. Nevertheless, we find the existence of the clause to be illegal. As stated in Plainfield, "The parity clause has a natural and unavoidable coercive effect." In re City of Plainfield, 4 NJPER at p. 256.

Once again, the Commission recognizes that a public employer may consider the traditional patterns or similarity of terms and conditions of employment of employees in different units. But this consideration cannot be based upon the existence of a parity clause in a collective negotiations agreement because reliance upon such a clause precludes free, unfettered collective negotiations. See In re Township of Weehawken, supra.

ORDER

Accordingly, for the reasons set forth, IT IS HEREBY ORDERED that:

1. The Complaint filed by the PBA docketed as CO-77-346-26 be dismissed in its entirety.

IT IS FURTHER ORDERED that the City of Newark

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of rights protected by the New Jersey Employer-Employee Relations Act and from refusing to negotiate in good faith with the Superior Officers' Association

of Newark by maintaining, complying with, enforcing or seeking to enforce a parity clause with any other employee organization to the extent that it would alter terms and conditions of employment of the employees in the unit represented by these organizations contingent upon the collective negotiations agreement negotiated by the Superior Officers' Association of Newark.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post immediately, in plain sight, at the headquarters of the Police Department of the City of Newark and at the location or locations where sworn personnel employed by the City Police Department report for duty or daily assignment, copies of the attached notice marked "Appendix A". Copies of said notice on forms to be provided by the Public Employment Relations Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of at least sixty (60) consecutive days thereafter including places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices will not be altered, defaced or covered by any other material.

(b) Notify the Chairman, in writing, within twenty

(20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hipp, Newbaker and Parcells voted for this decision. Commissioner Hartnett voted against this decision.

DATED: Trenton, New Jersey
March 8, 1979
ISSUED: March 9, 1979

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 interfering with, restraining or coercing employees in the exercise of rights protected by the New Jersey Employer-Employee Relations Act and from refusing to negotiate in good faith with the Superior Officers' Association of Newark by maintaining, complying with, enforcing or seeking to enforce a parity clause with any other employee organization to the extent that it would increase benefits to the employees in the unit represented by these organizations contingent upon the collective negotiations agreement negotiated by the Superior Officers' Association of Newark.

CITY OF NEWARK

(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.