

P.E.R.C. NO. 86-151

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LITTLE FERRY,

Respondent,

-and-

Docket No. CO-85-222-129

LITTLE FERRY PBA, LOCAL 102,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by the Little Ferry PBA, Local 102 against the Borough of Little Ferry. The charge alleged the Borough violated the New Jersey Employer-Employee Relations Act when it refused to reduce to writing and sign a negotiated successor agreement. The Commission, in agreement with a Hearing Examiner and in the absence of exceptions, holds that the PBA did not prove their allegations by a preponderance of the evidence.

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LITTLE FERRY PBA, LOCAL 102,

Charging Party.

Appearances:

For the Respondent, DeCotiis, Johnson & Pinto, Esqs.  
(M. Robert DeCotiis, Esq. and James A. Farber, Esq.)

For the Charging Party, Loccke & Correia, Esqs.  
(Richard D. Loccke, Esq.)

DECISION AND ORDER

On February 25, 1985, the Little Ferry PBA, Local 102 ("PBA") filed an unfair practice charge against the Borough of Little Ferry ("Borough"). The charge alleges that the Borough violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a) (1), (5), (6) and (7),<sup>1/</sup> by refusing to reduce to writing and sign a negotiated successor agreement.

<sup>1/</sup> 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; (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."

On May 10, 1985, a Complaint and Notice of Hearing was issued. The Borough then filed an Answer. It admits that the parties negotiated towards a successor contract, but denies that they agreed on the terms of the contract. As separate defenses, the Borough asserts that the governing body must accept a collective negotiations agreement; the PBA fails to state a cause of action; and the PBA should be estopped from bringing this action since it refused to negotiate.

On August 14, 1985, Hearing Examiner Judith E. Mollinger conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs by November 25, 1985. The Borough then filed a reply.

On March 17, 1986, the case was reassigned to Hearing Examiner Alan R. Howe after Hearing Examiner Mollinger resigned from the Commission. On April 22, 1986, the Hearing Examiner recommended dismissal of the Complaint, H.E. 86-53, 12 NJPER \_\_\_\_ (¶ \_\_\_\_ 1986) (copy attached). He concluded that even though the PBA negotiators reached an agreement with the Borough Administrator after three negotiations meetings, the Administrator had no authority to bind the Borough to an agreement. Accordingly, he found that the Borough had not illegally refused to reduce to writing or sign a negotiated agreement. He also recommended dismissal of those aspects of the Complaint alleging violations of subsection 5.4(a) (1), (5) and (7).

The Hearing Examiner served his report on the parties and informed them that exceptions, if any, were due on May 5, 1986. Neither party filed exceptions nor requested an extension of time.

We have reviewed the record. The Hearing Examiner's findings of fact are accurate. We adopt and incorporate them. Under all the circumstances of this case, we agree with the Hearing Examiner that the Borough did not refuse to reduce to writing and sign a negotiated agreement. Accordingly, we dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
June 25, 1986  
ISSUED: June 26, 1986

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

In the Matter of

BOROUGH OF LITTLE FERRY,

Respondent,

-and-

Docket No. CO-85-222-129

LITTLE FERRY PBA, LOCAL 102

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Borough did not violate §§5.4(a)(1), (5), (6) or (7) of the New Jersey Employer-Employee Relations Act when the Mayor and Council refused to approve and ratify the result of collective negotiations conducted by the Borough's Administrator for the 1985-86 collective negotiations successor agreement. Notwithstanding that the four PBA negotiators testified that the Administrator said at the first meeting in negotiations, "I'm it," each negotiator acknowledged that in past negotiations the results had always been submitted to the Mayor and Council for ratification. Although the Borough's Administrator testified that he had sat alone in negotiations on the DPW contract, he testified without contradiction that he recommended ratification of the DPW agreement to the Mayor and Council, who followed his recommendation. Here, however, the Council refused to ratify the results of the negotiations between the PBA negotiators and the Administrator.

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.

H.E. NO. 86-53

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

In the Matter of

BOROUGH OF LITTLE FERRY,

Respondent,

-and-

Docket No. CO-85-222-129

LITTLE FERRY PBA, LOCAL 102

Charging Party.

Appearances:

For the Respondent

DeCotiis, Johnson & Pinto, Esqs.

(M. Robert DeCotiis, Esq. and James A. Farber, Esq.)

For the Charging Party

Loccke & Correia, Esqs.

(Richard D. Loccke, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 25, 1985, by the Little Ferry PBA, Local 102 (hereinafter the "Charging Party" or the "PBA") alleging that the Borough of Little Ferry (hereinafter the "Respondent" or the "Borough") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that during the year 1984, the parties had a series of negotiating meetings, which resulted in a

complete agreement on the terms of a successor agreement, the term of which was to be January 1, 1985 through December 31, 1986; the Borough has wrongfully refused to reduce the negotiated agreement to writing and to sign the agreement; this decision of the Borough was made known to the Charging Party during January 1985; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (5), (6) and (7) of the Act.<sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 10, 1985. Pursuant to the Complaint and Notice of Hearing, a hearing was held on August 14, 1985, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by December 2, 1985.

An Unfair Practice Charging having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the

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<sup>1/</sup> 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; (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; and (7) Violating any of the rules and regulations established by the commission."

post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner<sup>2/</sup>. for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Borough of Little Ferry is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Little Ferry PBA, Local 102 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The prior collective negotiations agreement between the parties was effective during the term January 1, 1983 through December 31, 1984 (J-1).

4. Sometime after Labor Day, 1984, the PBA formed its negotiations committee for the successor agreement to J-1, supra, which committee consisted of four members: Walter Dyer, Vincent Pellecchia, James Fitzpatrick and Michael Derwin (1 Tr 10). Pellecchia, Dyer and Derwin had negotiated previous agreements, Pellecchia and Derwin having participated in the negotiation of

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<sup>2/</sup> On March 17, 1986, the undersigned Hearing Examiner advised the parties that this case had been reassigned to him for decision, Judith Mollinger having recently resigned from the Commission.



three previous agreements (1 Tr 31, 52, 97). Dyer was in charge of the negotiations for the PBA for the successor agreement to J-1 (1 Tr 11).

5. The first negotiations meeting took place late in September 1984, with the four members of the PBA's negotiating committee present (1 Tr 19, 54). The Borough was represented at this first meeting and at all meetings thereafter by Spencer A. Tafuri, who had been the Borough's Administrator for three or four years (1 Tr 12, 14, 19).

6. Pellecchia testified that Tafuri stated at the first meeting in September, 1984, that he had the authority to bargain a contract, that he negotiated the DPW contract and that he said "I'm it," indicating to Pellecchia that he had "...the power to negotiate and settle" (1 Tr 20, 21, 33, 34). Dyer testified to the same effect (1 Tr 61). Pellecchia also testified that during the course of 13 years when he negotiated agreements with the Borough whoever was at the table for the Borough had the "...right to settle with finality..." (1 Tr 37). However, in these negotiations Pellecchia testified that had never negotiated with a Borough Administrator alone (1 Tr 48, 49).

7. During the course of the first negotiations meeting and at two meetings thereafter in October 1984, the parties reached a "full agreement," according to Pellecchia, who added that Tafuri said that they would get their money in January 1985 (1 Tr 23-29, 57, 61).

8. Tafuri, testifying for the Respondent, spoke to Dyer in the Summer of 1984, and asked him if the parties could "sit down" without attorneys and reach an agreement (2 Tr 3, 4). Tafuri spoke to the Mayor, Charles DiPaolo, and Councilman John Serrao. They authorized Tafuri to sit down, discuss, negotiate and bring back a recommendation, which Tafuri interpreted to mean a recommendation to the Police Committee and the Mayor and Council (2 Tr 6). Tafuri testified that he told the PBA representatives at the first meeting at the end of September 1984, that any agreement had to be "...fair and equitable and would have to be recommended to the governing body..." (2 Tr 8). Tafuri also testified that he never stated to the PBA representatives that he had the authority to settle the contract without Council approval nor did he ever hold himself out as having had such authority (2 Tr 17-19). Tafuri confirmed that he sat alone in the negotiations on the DPW contract and made his recommendation to the Mayor and Council who ratified the agreement (2 Tr 48, 49). Finally, Tafuri acknowledged that an agreement was reached after three negotiations meetings in September and October 1984, and that he took the agreement back to the Police Committee and strongly recommended its approval (2 Tr 10, 11, 13).<sup>3/</sup>

9. The complete agreement, which was reached at the third meeting at the end of October 1984, was reflected in handwritten

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<sup>3/</sup> The PBA has no requirement that its members ratify the results of negotiations (1 Tr 32).

notes and Dyer prepared a typewritten version of the agreement as set forth on J-8 (1 Tr 58-62). Dyer then prepared a Memorandum of Agreement (J-3), which was to become a part of the prior agreement (J-1)[1 Tr 62, 63]. Dyer testified that he made copies of J-3 and J-8 for Tafuri and personally handed them to him a few weeks after the third negotiations meeting in October 1984 (1 Tr 62, 63). Dyer also testified that he never asked Tafuri to initial or execute J-8 or J-3 (2 Tr 11, 12) and that he knew that Tafuri did not have the authority to execute a contract himself (2 Tr 54, 55). An examination of the fourth page of J-3, the Memorandum of Agreement, indicates a provision for "acceptance" by Mayor Charles DiPaolo on behalf of the Borough with Tafuri "attesting" as the Borough's Administrator.

10. On cross-examination Pellecchia was asked why the Memorandum of Agreement (J-3) provided for acceptance by the Mayor and not Tafuri as Administrator, to which Pellecchia replied, "This is the way all the prior agreements had been drawn up" (1 Tr 35). Pellecchia had testified earlier on cross-examination that it had always been the prior practice for the Mayor and Council to ratify any negotiated contract (1 Tr 31-33). Thereafter, also on cross-examination, Pellecchia acknowledged that the results of negotiations still had to go to the governing body for some action (1 Tr 42). In a similar vein, Dyer testified on cross-examination that in his experience the Mayor could not act without the Council and that the Mayor, and not Tafuri, had the authority to sign the

Memorandum of Agreement, which was why Dyer prepared the Memorandum of Agreement to provide for execution by the May (1 Tr 71). Derwin also testified on cross-examination that he agreed that the contract had to be signed by the Mayor and presented to the Council (1 Tr 102).

11. Sometime prior to mid-January 1985, the attorney for the Borough prepared a complete proposed agreement for the years 1985-86 at the direction of Tafuri (2 Tr 33, 34). Dyer saw a copy of the proposed agreement (J-2, supra) in the Clerk's office in mid-January 1985 (1 Tr 63). It was stipulated that the proposed agreement (J-2) incorporated all of the results of negotiations as set forth in J-8 (1 Tr 64). Thereafter Dyer prepared J-6, which he headed, "Below is differences between proposed agreement and existing agreement," a copy of which he gave to Tafuri (1 Tr 67-69).

12. The ratification of the 1985-86 agreement was placed on the agenda of the Council meeting held on January 16, 1985, but was "pulled until the next meeting" due to a "...discrepancy of the figures appearing on Appendix A," which sets forth the wage increases over the life of the agreement (J-4). At the next Council meeting on February 5, 1985, the ratification of the agreement was again on the agenda and the result was a vote to table with a direction to "renegotiate" (J-5).

13. Thereafter on February 25, 1985, the PBA filed the instant Unfair Practice Charge.

DISCUSSION AND ANALYSIS

The Respondent Borough Did Not Violate The Act By The Conduct Of Its Administrator In Negotiations And The Subsequent Failure Of the Mayor And Council To Approve The Negotiated Agreement.

Basically, the subsection of the Act herein involved is the §5.4(a)(6), which deals with the refusal of a public employer to sign the negotiated agreement. The first part of §5.4(a)(6) involves the refusal of a public employer to reduce a negotiated agreement in writing, which is not implicated herein since there was an agreement reduced to writing. The problem raised by the PBA is the failure of the Borough to sign the agreement.

However, before the PBA can succeed in its proofs that the Borough has illegally refused to sign the agreement (J-2 or J-3), certain legal requirements, arising from Commission decisions on the subject, must be satisfactorily met.

The Commission found a violation of §5.4(a)(6) in several early decisions and the execution of an agreement was ordered: Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975); East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976); and Long Branch Bd. of Ed., P.E.R.C. No. 77-70, 3 NJPER 300 (1977). In these cases a violation of §5.4(a)(6) was found because the negotiators for the public employer were clothed with apparent authority under principles of agency law to bind the public employer as principal. In Bergenfield the Commission found that the parties were entitled to conduct their relationship through representatives, and be bound thereby, where the representatives were "duly

organized" and worked within the "general guidelines" set forth by the principal. Further, the Commission noted in Bergenfield that the representatives had reached an agreement and that the memorandum of agreement contained no conditions precedent. Thus, execution of a formal writing reflecting the memorandum of agreement was ordered. In other words, the Charging Party in Bergenfield was entitled to rely upon the apparent authority of the Board's negotiators, in the absence of any express qualifying conditions.

The Commission reached a like result in East Brunswick, supra, finding that one of the Board's negotiators was "experienced" and had at one time in his career worked for a management consulting firm. This individual was in charge of all labor relations for the Board and the record revealed that no qualifications were ever placed upon the authority of the Board team to conclude an agreement. No member of the Board's negotiating team ever indicated to any representative of the Charging Party that the Board's negotiators could not conclude a binding agreement. Thus, the Commission held in East Brunswick that the Charging Party was justified in presuming that the Board's negotiators "...possessed the authority to conclude an agreement..." (2 NJPER at 282).

It is apparent that the PBA's proofs in the instant record do not satisfy the requisites laid down by the Commission in Bergenfield and East Brunswick, supra. Tafuri was not "duly authorized" by the Borough nor did he work within "general guidelines" set forth by the Borough to reach an agreement binding

upon it. Notwithstanding that the PBA witnesses testified that Tafuri at the first meeting at the end of September 1984 said "I'm it," the overall testimony of the PBA negotiators supports the contrary testimony of Tafuri that when he spoke to the Mayor and Councilman Serrao he, Tafuri, was told that he could sit down, discuss, negotiate and bring back a recommendation to the Mayor and Council (2 Tr 6, 7). This is supported by the testimony of Pellecchia that in his three contract negotiations it was always up to the Mayor and Council to ratify (1 Tr 31-33) and that he realized that the current contract needed to go to the governing body for "some action" (1 Tr 42). Similarly, although Dyer testified that Tafuri said that he had the authority to settle the contract negotiations, Dyer testified on cross-examination that J-3, the memorandum of agreement, was not submitted to Tafuri because he had no authority to execute, that being with the Mayor (1 Tr 61, 71, 77). Finally, Derwin testified that J-3 had to be signed by the Mayor and presented to the Council (1 Tr 102).

It is noted that Tafuri testified without contradiction that he never said that he had the authority to reach a final agreement nor did he hold out such authority (2 Tr 17-19). What we have then on this record is a negotiated agreement as to all terms and conditions, which was reached by the four PBA negotiators and Tafuri, but which, on the Borough's side, required ratification by the Council and execution by the Mayor. Clearly, Tafuri was not clothed with apparent authority to reach a final and binding

agreement within the meaning of the agency principles enunciated by the Commission in Bergenfield and East Brunswick, supra. See, also, Long Branch, supra. Although the PBA negotiators may have gleaned something from Tafuri's having stated at the outset of negotiations "I'm it," crediting their testimony in this regard, they all knew from past experience that it resided with the Mayor and Council to approve and ratify the results of negotiations by the Borough's negotiators, whoever they were.<sup>4/</sup>

Accordingly, the Hearing Examiner must, on the instant record, find and conclude that the PBA has failed to prove by a preponderance of the evidence that the Borough clothed Tafuri with apparent authority to negotiate a final and binding agreement for the years 1985-86: see Borough of Wood-Ridge, H.E. No. 81-21, 7 NJPER 10 (¶12004 1980), aff'd P.E.R.C. No. 81-105, 7 NJPER 149 (¶12066 1981).

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Upon the foregoing, and upon the entire record in this case, the Hearing makes the following:

CONCLUSION OF LAW

The Respondent Borough did not violate N.J.S.A. 34:13A-5.4(a)(1), (5), (6) or (7) when it refused to approve and ratify the

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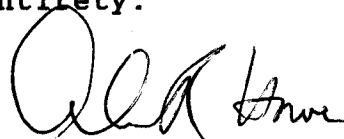
<sup>4/</sup> Note is taken of the fact that although Tafuri referred to having negotiated the contract for the DPW, he also testified that although he had sat alone, his recommendation was made to the Mayor and Council to ratify (2 Tr 48, 49).



result of collective negotiations conducted by its Administrator, Spencer A. Tafuri, who was not clothed with apparent authority to reach an agreement binding upon the Borough in the absence of ratification by the Borough's Council.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



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Alan R. Howe  
Hearing Examiner

Dated: April 22, 1986  
Trenton, New Jersey