

P.E.R.C. NO. 84-107

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. CO-82-95-96

MORRIS COUNCIL NO. 6, NJCSA,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint alleging that the County of Morris violated the New Jersey Employer-Employee Relations Act when it granted wage increases to an employee in the negotiations unit without prior negotiations with Morris Council No. 6, NJCSA. The Chairman concluded, in agreement with a Commission Hearing Examiner and in the absence of timely exceptions, that Council No. 6 did not prove by a preponderance of the evidence that the County of Morris violated the Act.

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Appearances:

For the Respondent, Harper & Hansbury, Esqs.
(John J. Harper, of Counsel)

For the Charging Party, Morris & Hantman, Esqs.
(Allen Hantman, of Counsel)

DECISION AND ORDER

On November 5, 1981, Morris Council No. 6, NJCSA ("Council No. 6") filed an unfair practice charge with the Public Employment Relations Commission.^{1/} The charge alleges that the County of Morris ("County") violated subsections 5.4(a)(1), (3) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it granted wage increases to an

^{1/} Council No. 6 also filed a charge, Docket No. CO-82-150-97, which was withdrawn on April 12, 1983, pursuant to a settlement agreement.

^{2/} 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; and (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."

employee in the negotiations unit -- Dorothy Rundstadt^{3/} -- without prior negotiations with Council No. 6.

On April 5, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On April 15, 1982, the County filed its Answer. The County admitted it granted a wage increase to Runstadt but asserted that it only did so following good faith negotiations. It denied the remaining allegations of the Complaint.

On April 20, May 5, July 22, August 3, and October 27, 1983, Commission Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On February 9, 1984, the Hearing Examiner issued a report recommending dismissal of the Complaint, H.E. No. 84-42, 10 NJPER ____ (¶ ____ 1984) (copy attached). He found, in part, that the County negotiated until impasse with Council No. 6 concerning Rundstadt's change in job title and salary.

The Hearing Examiner served a copy of his report on all parties and notified them that exceptions, if any, were due on or before February 23, 1984. Council No. 6 did not file its exceptions until March 5, 1984. It did not seek an extension of time. Accordingly, pursuant to N.J.A.C. 19:14-7.3, these exceptions will not be considered.

^{3/} The charge also alleged that the County unilaterally increased the wages of another named employee -- Ruby Malcalm -- and other unnamed employees, but these allegations were later withdrawn.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to review the record and recommended decision in the absence of timely exceptions. I have reviewed the record. The Hearing Examiner's findings of fact are accurate and I adopt and incorporate them here. Based on these findings of fact and all the particular circumstances of this case, I agree with the Hearing Examiner that the alleged unfair practices have not been proved by a preponderance of the evidence. Accordingly, and in the absence of timely exceptions, I adopt his recommendation and dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 7, 1984

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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-and-

Docket No. CO-82-95-96

MORRIS COUNCIL NO. 6, NJCSA,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent County did not violate Subsections 5.4(a) (1), (3) and (5) of the New Jersey Employer-Employee Relations Act when, under circumstances of business necessity, it implemented a title and salary change in June 1981 for Dorothea A. Rundstedt, an employee in the Treasurer's office. The County Director of Labor Relations had over a period of seven or eight months attempted to negotiate with the President of the Charging Party regarding a new title and salary, but such negotiation was frustrated by refusal of the President to enter into meaningful negotiations. The Hearing Examiner found that the employer's action was justified by business necessity and that the Charging Party had waived its right to negotiate by the conduct of its President.

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.

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Appearances:

For the County of Morris
Harper & Hansbury, Esqs.
(John J. Harper, Esq.)

For the Charging Party
Morris & Hantman, Esqs.
(Allen Hantman, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 5, 1981 under Docket No. CO-82-95-96, and amended on January 5, 1982,^{1a/} by Morris Council No. 6, NJCSA (hereinafter the "Charging Party" or the "Council") alleging that the County of Morris (hereinafter the "Respondent" or the "County") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent, during negotiations for a successor collective negotiations agreement, unilaterally granted wage or salary increases to employees within the collective negotiations unit without negotiations with the Charging Party, two of the employees involved being Dorothea A. Rundstedt and Ruby Malcalm,^{2/} there also being a significant number of employees like situated

^{1/} A consolidated Unfair Practice Charge, docketed No. CO-82-150-97, was withdrawn by the Charging Party on April 12, 1983, infra.

^{1a/} This amendment was withdrawn on December 2, 1983.

^{2/} At the commencement of the hearing on April 20, 1983 the Charging Party stated that it was not proceeding on the Unfair Practice Charge with respect to Ruby Malcalm.

since June 1981, ^{2a/} all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4
(a)(1), (3) and (5) of the Act. ^{3/}

An Unfair Practice Charge was also filed with the Commission by the Charging Party on December 30, 1981 under Docket No. CO-82-150-97, alleging that the Respondent had engaged in unfair practices within the meaning of the Act, which Charge was withdrawn on April 12, 1983, supra.

It appearing that the allegations of the Unfair Practice Charges, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing, and an Order of Consolidation, were issued on April 5, 1982. Pursuant to the Complaint and Notice of Hearing, hearings were held on April 20, May 5, July 22, August 3 and October 27, 1983 ^{4/} 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 January 25, 1984.

The remaining Unfair Practice Charge 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 post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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

2a/ This latter allegation was withdrawn on December 2, 1983, supra, leaving only the issue of Rundstedt's salary increase.

3/ 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.

"(3) Discriminating in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage 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."

4/ The delay in the commencement of the hearing was due to discovery and extensive efforts to narrow the issues to be heard.

FINDINGS OF FACT

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

2. Morris Council No. 6, NJCSA is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

Findings As To Rundstedt

3. Dorothea A. Rundstedt is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

4. The collective negotiations agreement between the parties, effective January 1, 1978 through December 31, 1980 (J-1), provides in Article 1, Section 3, as follows:

"Any position title established on or after January 1, 1978 and during the term of this agreement shall be discussed with the Association and its unit placement negotiated between these parties. In the event that the parties cannot agree on the unit placement of a position title, either party is free to file a Clarification of Unit Petition to determine the status of the position title under this agreement." (J-1, pp. 2, 3).

Further, Article 18, Section 3 of J-1 provides that "Employees promoted to a position in a higher salary grade will receive a five percent increase or the minimum of the new grade whichever is higher." (J-1, p. 16).

5. Rundstedt was hired in the County's Surrogate office in September 1971 where she worked until August 1978. In August 1978 she transferred laterally to the Treasurer's office as a Principal Clerk Bookkeeper, the same title she had held in the Surrogate's office (R-1, R-2 and R-3). Rundstedt was provisionally reclassified to an Administrative Clerk in the Treasurer's office as of April 26, 1979 (R-4). This appointment to Administrative Clerk became permanent on June 5, 1980 (R-5).

6. Sometime in June 1980 Rundstedt had a conversation with the Treasurer, Robert T. Natoli, regarding Rundstedt's taking over the responsibility for investments. Natoli stated that he would attempt to obtain a salary increase and a new title for Rundstedt. Natoli also mentioned a "desk audit" by the Civil Service Commission. It was contemplated that Rundstedt would take over these additional duties in August

of 1980, following the anticipated resignation of Leonard Albanese, an Accounting Assistant, in July 1980.

7. In July 1980 Natoli spoke to Anthony J. Larice of Civil Service regarding the creation of a new job title for Rundstedt. Larice was succeeded by Judy Gottlieb and on November 7, 1980 Natoli wrote to Gottlieb, outlining the expanded duties and responsibilities of Rundstedt as Administrative Clerk in the Treasurer's office particularly with respect to investments (R-7). On December 22, 1980 Herman Hoopes, the County's Director of Personnel, wrote to Gottlieb requesting a "desk audit" for Rundstedt (R-9).

8. Early in February 1981 Natoli received a telephone call from Gottlieb, in which she stated that "Administrative Clerk" was the proper title for Rundstedt. On February 9, 1981 Natoli wrote to John Collins, the Office Manager of the Civil Service Commission, in which he took issue with Gottlieb's statement that Administrative Clerk was the proper title for Rundstedt, and argued that Rundstedt's additional duties with respect to investment warranted a new title (R-10).

9. On February 11, 1981 Gottlieb advised Hoopes of Personnel that Civil Service had approved the title of "Administrative Clerk, Treasurer's" for Rundstedt and that this was a lateral transfer. Gottlieb attached a job description. (R-11). The Personnel Department filed an appeal of the Civil Service action, supra, under date of February 19, 1981 (R-12). Civil Service denied the appeal on March 16, 1981 (R-13).

10. Natoli had first spoken to Edward R. Horan, the County's Director of Labor Relations, about Rundstedt in October or November 1980. At that time Natoli had already spoken to Larice of Civil Service. Natoli asked Horan to do something "equitable" for Rundstedt and if necessary to use the "Freeholders list," which includes those employees who were not part of an existing collective negotiations unit. Horan stated that he would discuss the matter with Betty Lisovsky, the President of the Council. Shortly thereafter Horan spoke to Lisovsky and told her

that Rundstedt's job was upgraded and within the collective negotiations unit. Horan offered to negotiate a new salary with Lisovsky. Horan and Lisovsky next spoke in mid-December 1980 where Lisovsky stated that she would not agree to an increase for Rundstedt on the ground that it was "not proper." Horan met with Natoli in mid-January 1981 but said nothing regarding his conversation with Lisovsky. Natoli and Horan met again in late February 1981 where Horan said that he was "still working on it" and had met again with Lisovsky.

11. In March 1981 Horan again met with Lisovsky, stating that he had more material on Rundstedt's duties but Lisovsky was unwilling to agree to a salary increase for Rundstedt, stating that she did not believe that Rundstedt "does all this stuff."

12. At the end of May 1981 Natoli and Horan met. Natoli questioned the delay. Natoli decided to put through a Personnel Requisition increasing Rundstedt's salary from \$12,059 to \$13,250 (R-14). This Personnel Requisition was approved by Hoopes on June 2, 1981^{5/} and by Horan on June 30, 1981,^{6/} with Horan stating "This salary increase have (sic) resulted in impasse" (R-14).^{7/} A Civil Service Personnel Action (CS-6) indicates that Civil Service gave its approval on July 22, 1981 (CP-2).

13. The parties were engaged in ongoing collective negotiations during 1980 and 1981 for a successor agreement. At no time did the County ever make a proposal across the table to create and include in the agreement a new title for Rundstedt. The negotiations, which resulted in the collective agreement for 1981 and 1982,

5/ On June 22, 1981 Rundstedt tendered a resignation letter, effective July 17, 1981(R-15).

6/ At the end of June 1981, after Rundstedt had submitted her resignation on June 22nd, Horan met with Lisovsky and said that he wanted to negotiate a salary for Rundstedt because of her threatened resignation. Lisovsky stated that she was not going to negotiate since she had tried to get salary increases for other employees without success. Lisovsky added that she did not believe that Rundstedt was going to "quit." Horan said that while he was trying to negotiate, the salary increase would have to be put through since he, Horan, was not taking the responsibility for Rundstedt's quitting, to which Lisovsky stated that he would have to do what he had to do and "we'll do what we have to do."

7/ Horan testified that he was following Article 1, Section 3 of J-1 (Finding of Fact No. 4, supra,) since the change for Rundstedt was a new title and not a promotion.

included across-the-board increases of 9% for each year. Rundstedt received this increase for 1981 together with the 9.9% increase she received as a result of the new job title when she was increased from \$12,059 to \$13,250 per annum.

14. At a meeting between Horan and Lisovsky, immediately after Rundstedt's salary increase was implemented in July 1981, Lisovsky stated that she was going to file an Unfair Practice Charge with the Commission. At that point Horan stated that she should do what she had to do. The Charge was docketed November 5, 1981.

THE ISSUE

Did the Respondent County violate Subsections(a)(1), (3)^{8/} and (5) of the Act when it gave to Dorothea A. Rundstedt the title of Administrative Clerk/Treasurer's in June 1981 and increased her salary from \$12,059 to \$13,250?

DISCUSSION AND ANALYSIS

The Respondent County Did Not Violate Subsections(a)(1) And (5) Of The Act When It Gave To Rundstedt The Title Of Administrative Clerk/Treasurer's And Increased Her Salary Accordingly

The Hearing Examiner finds and concludes that when the conduct of the County is analyzed in its totality it does not constitute an illegal refusal to negotiate in good faith with the Council regarding a new job title and salary for Rundstedt: See State of New Jersey v. Council of New Jersey State College Locals, E.D. No. 79, 1 NJPER 39 (1975), aff'd. 141 N.J. Super. 470 (1976).

This case does not involve an employer who has sought to deal individually with an employee such as Rundstedt on the matter of job title and salary. Had this been the case then, plainly, the County would have been guilty of a violation of the Act: NLRB v. Exchange Parts Co., 375 U.S. 405 (1964) and Cal-Pacific Poultry, Inc., 163 NLRB 716, 64 LRRM 1462 (1967). At all times herein the County sought to negotiate with the Council on the matter of Rundstedt's job title and salary.

8/ The Charging Party adduced no evidence upon which the Hearing Examiner can make a finding that the Respondent violated Subsection(a)(3) of the Act and, accordingly, it will be recommended that this allegation be dismissed.

The County makes the point that although it failed to file an unfair practice charge against the Council, alleging a violation of Subsection(b)(3) of the Act, it was Lisovsky who was intransigent and created one obstacle after another in frustrating an agreement between the County and the Council on Rundstedt. There were four meetings between Horan and Lisovsky beginning in October or November 1980 and continuing through June 1981. Lisovsky's initial position was that the granting of an increase for Rundstedt was "not proper." In March 1981, at a third meeting, Lisovsky's opposition was based upon her belief that Rundstedt does not do "all this stuff." Finally, in June 1981, after Rundstedt had submitted her threat to resign, Lisovsky stated that she was not going to negotiate since she had tried to get salary increases for other employees without success, adding that she did not believe that Rundstedt was going to "quit."

Based on the foregoing, the Hearing Examiner is of the firm view that Lisovsky, on behalf of the Council, never manifested a genuine interest in reaching an agreement with Horan on the matter of the title and salary for Rundstedt. In so concluding, the Hearing Examiner has given no weight to the County's argument in its Brief that Lisovsky might have been biased against Rundstedt based on the past history of relations between Lisovsky and Rundstedt (Respondent's Brief, p. 15).

The Hearing Examiner, in concluding that the County did not violate the Act by its conduct herein, notes that an exception to prohibited unilateral employer action, in addition to impasse, may be found in necessity^{9/} or waiver.^{10/} In the instant case the Hearing Examiner finds that the employer was motivated by compelling business necessity in seeking to retain Rundstedt after her threatened resignation in June 1981, and further, that the Council waived any right to negotiate

^{9/} See Duvin, The Duty To Bargain, 64 Colum. L. Rev. 248, 278-9 (1964).

^{10/} A case involving waiver by a union is United States Lingerie Corp., 170 NLRB 750, 67 LRRM 1482, 1484 (1968) where it was held that when a union was put on notice of a proposed plant removal, and did not thereafter seek to bargain over it, the union waived its right to bargain, and no charge would lie thereafter against the employer.

regarding Rundstedt by the conduct of Lisovsky as found above.

Based upon all of the foregoing, the Hearing Examiner will recommend that alleged violation by the County of Subsections(a)(1) and (5) of the Act be dismissed.

* * * *

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

CONCLUSION OF LAW

The Respondent County did not violate N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) when it gave to Dorothea A. Rundstedt the title of Administrative Clerk/Treasurer's in June 1981 and increased her salary from \$12,059 to \$13,250.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated : February 9, 1984
Trenton, New Jersey