

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF EAST NEWARK

Respondent

and

Docket No. CE-13

PATROLMEN'S BENEVOLENT ASSOCIATION
KEARNY LOCAL 21

Complainant

DECISION AND ORDER

Pursuant to a Notice of Hearing to resolve a question concerning a charge alleging violations of the Act, a hearing was held before Hearing Officer Theodore A. Winard on January 9, 1970. The Hearing Officer's Report and Recommendation was served on the parties January 29, 1970. No exceptions were filed to his Report and Recommendation. The Commission has considered the record and the Hearing Officer's Report and Recommendation and, on the facts in this case, finds:

1. The Borough of East Newark is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Patrolmen's Benevolent Association, Kearny Local 21 is an employee representative within the meaning of the Act.
3. Charges having been filed with the Commission alleging violations of the Act by the public employer under the Act, a question concerning alleged violations of Section 7 of the Act exists and this matter is

appropriately before the Commission for determination and order.

4. In the absence of Exceptions to the Hearing Officer's Report and Recommendation, attached hereto and made a part hereof, the Commission adopts the Hearing Officer's Report and Recommendation pro forma.^{1/}
5. Accordingly, the following Order is hereby issued:

ORDER

Pursuant to the Act, the Commission hereby orders that the respondent, Borough of East Newark, its officers and agents shall:

1. Cease and desist from:

(a) Refusing to negotiate collectively with PBA, Kearny Local 21 as the exclusive collective negotiating representative of the employees in the following unit: "Police Department of the Borough of East Newark, County of Hudson, State of New Jersey."

(b) Interfering with the efforts of said employee organization to negotiate for or represent employees as such exclusive collective negotiating representative.

2. Take the following affirmative action, which will effectuate the policies of the Act:

Upon request negotiate collectively with PBA, Kearny Local 21 as the exclusive representative of all employees in the unit with respect to grievances and terms and conditions of employment.

BY ORDER OF THE COMMISSION


WILLIAM L. KIRCHNER, JR.
ACTING CHAIRMAN

DATED: March 11, 1970
Trenton, New Jersey

^{1/}Although we adopt the Hearing Officer's Report we do not deem it necessary, under the facts in this case, to require the posting of a notice.

In the Matter of

BOROUGH OF EAST NEWARK

Respondent

and

Docket No. GE-13

PATROLMEN'S BENEVOLENT ASSOCIATION
KEARNY LOCAL 21

Complainant

HEARING OFFICER'S REPORT AND RECOMMENDATION

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission, a hearing was held on January 9, 1970, before the undersigned Hearing Officer of the Commission to resolve questions concerning a charge alleging violations of the Act. The Hearing Officer has considered the entire record and finds:

1. The Borough of East Newark is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

2. The Patrolmen's Benevolent Association, Kearny Local 21 is an employee representative within the meaning of the Act.

3. Charges having been filed with the Commission alleging unfair labor practices and a refusal by the public employer to negotiate in good faith under the Act, a question concerning alleged violations of Section 7 of the Act exists and this matter is appropriately before the undersigned for Report and Recommendations.

4. The record indicates that by a resolution of the Borough of East Newark, dated June 24, 1969, the governing body recognized the PBA, Kearny Local 21 as the sole bargaining agent for the Police

Department of the Borough of East Newark. On July 1, 1969 Jerome J. LaPenna, counsel to the complainant in a letter to Wilbert Hotaling, Mayor, requested the commencement of negotiations and the available dates for the actual negotiation sessions. The request for collective negotiations was renewed on July 21, 1969. In a response dated July 23, 1969 by Borough Attorney, Joseph McCarthy, Esquire, to counsel for the complainant, it was indicated that the East Newark group had accepted salary increases which were granted in an amended salary ordinance passed June retroactive to January 1, 1969, and that in future negotiations, the Mayor and Councilmen would act as the bargaining committee. The request for the commencement of actual negotiations was renewed on July 23, 1969 by counsel to the complainant and he indicated that a committee composed of the President of PBA Local 21 and other members of the bargaining committee of the local would constitute the bargaining committee for the employee representative. On July 29, 1969 the Borough Attorney advised that the Mayor and Council were not interested in collective bargaining at this point and no demand had been made upon them by the employees represented by PBA, Local 21. In any event, it was indicated the earliest date negotiations would commence would be January 15, 1970.

5. It is argued by the public employer that an employee of the East Newark Police Department must be a member of the employee representative bargaining committee as a condition precedent to the conduct of actual negotiations under the Act.

A representative is defined by Section 4(e) of the Act to include any organization, agency or person authorized or designated by a group of public employees to act on its behalf and represent it or them. The representative designated or selected by public employees shall be the exclusive representative for collective negotiations and the public employer shall meet with the exclusive representative and negotiate in

good faith with respect to grievances and the terms and conditions of employment, NJSA 34:13A-5.3. Accordingly, a public employer must accept those representatives selected by the employees to represent them in collective negotiations. The public employer may not question the qualifications of personnel chosen by the employees to negotiate on their behalf, nor does the fact the representative is not an employee of the employer relieve him of his duty to negotiate. The respondent is not at liberty to insist an employee of the Borough of East Newark be a member of the negotiating committee of the employee representative.

6. On the basis of the record before the undersigned, the public employer since on or about July 1, 1969, though requested by the duly recognized employee representative to negotiate, has refused and is continuing to refuse to negotiate collectively with the PBA, Kearny Local 21 as such representative. By thus refusing to negotiate collectively, the public employer has engaged in unfair labor practices in violation of Section 7 of the Act and Section 19:13-2(a)5 of the Commission's Rules and Regulations and Statement of Procedure; and has interfered with, restrained and coerced its employees in violation of Section 7 of the Act and Section 19:13-2(a)1 of the Commission's Rules and Regulations and Statement of Procedure. Based upon the foregoing, I recommend the Commission issue the following:

ORDER

The respondent, Borough of East Newark, its officers and agents shall:

1. Cease and desist from:


(a) Refusing to negotiate collectively with PBA, Kearny Local 21 as the exclusive collective negotiating representative of the employees in the following unit: Police Department of the Borough of East Newark, County of Hudson, State of New Jersey.

(b) Interfering with the efforts of said employee organization to negotiate for or represent employees as such exclusive collective-negotiating representative.

2. Take the following affirmative actions, which will effectuate the policies of the Act:

(a) Upon request negotiate collectively with PBA, Kearny Local 21 as the exclusive representative of all employees in the unit with respect to grievances and terms and conditions of employment.

(b) Post in appropriate places in the Borough of East Newark Police Department, copies of the attached notice marked "appendix".



Theodore A. Winard
Hearing Officer

NOTICE TO ALL EMPLOYEES

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, 1968

we hereby notify our employees that:

WE WILL NOT refuse to negotiate collectively with Patrolmen's Benevolent Association, Kearny Local 21 as the exclusive collective negotiating representative of the Police Department of the Borough of East Newark.

WE WILL NOT interfere with the efforts of the employee organization to negotiate for or represent employees as exclusive collective negotiating representative.

WE WILL negotiate collectively with the employee organization as the exclusive collective negotiating representative of the Police Department of the Borough of East Newark.

(Public Employer)

DATED _____

BY _____

(Title)