P.E.R.C. NO. 86-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MATAWAN,

Respondent,

-and-

Docket No. CO-85-20-114

LOCAL UNION 400, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Charging Party.

## SYNOPSIS

The Chairman of the Commission, pursuant to authority delegated by the full Commission, and in agreement with a Commission Hearing Examiner's recommended decision, dismisses a Complaint filed by Local Union 400, International Brotherhood of Electrical Workers, AFL-CIO against the Borough of Matawan. The Complaint alleged that the Borough violated the New Jersey Employer-Employee Relations Act when it refused to negotiate in good faith with Local 400 and refused to sign an agreement negotiated between the parties.

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Charging Party.

Appearances:
For the Respondent, Yacker, Granata & Cleary (James J. Cleary, Of Counsel)

For the Charging Party, Reitman, Parsonnet, Maisel & Duggan (Victor J. Parsonnet, Of Counsel)

DECISION AND ORDER

On July 20, 1984, Local Union 400, International Brotherhood of Electrical Workers, AFL-CIO ("Local 400") filed an unfair practice charge against the Borough of Matawan ("Borough") with the Public Employment Relations Commission. The charge alleged that the Borough violated subsections 5.4(a)(1), (5) and (6)[1/]

1/ 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; and (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to negotiate in good faith with Local 400 and refused to sign an agreement negotiated between the parties.

On April 15, 1985, a Complaint and Notice of Hearing issued. On May 2, 1985, the Borough filed its Answer. The Borough denied that it had reached agreement on the terms proposed by the Association and therefore had no obligation to sign such an agreement. It also denied that it had refused to negotiate in good faith with Local 400.

On May 23, 1985, Commission Hearing Examiner Marc F. Stuart conducted a hearing. The parties examined witnesses, introduced exhibits and filed post-hearing briefs.

On November 21, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-22, 11 NJPER ___ (¶_____ 1985) (copy attached). He recommended dismissal of the Complaint based on his finding that no binding agreement had been reached on the terms alleged by Local 400 and that there was no evidence that the Borough had refused to negotiate in good faith with Local 400.

The Hearing Examiner advised the parties that exceptions to his report were due December 6, 1985. No exceptions have been filed, nor have the parties requested an extension to file exceptions.

I have reviewed the record. The Hearing Examiner's findings of fact (2-9) are accurate. I adopt and incorporate them

here. I agree with the Hearing Examiner that the charging party did not establish, by a preponderence of the evidence, that the Borough of Matawan refused to reduce a negotiated agreement to writing; failed to sign such agreement or refused to negotiate in good faith. Acting under authority delegated to me by the full Commission, I dismiss the Complaint.

ORDER

The Complaint is dismissed.

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
January 21, 1986

H.E. NO. 86-22

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

In the Matter of

BOROUGH OF MATAWAN,

Respondent,

-and-

Docket No. CO-85-20-114

LOCAL UNION 400,
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
AFL-CIO,

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) or (6) of the New Jersey Employer-Employee Relations Act by its alleged refusal to negotiate in good faith and sign an agreement negotiated between the parties. The Hearing Examiner finds that there was no meeting of the minds between the negotiating teams representing the parties; and furthermore, the Respondent's negotiators lacked apparent authority to bind their principal.

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. 86-22

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

In the Matter of

BOROUGH OF MATAWAN,

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LOCAL UNION 400,
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Appearances:

For the Respondent
Yacker, Granata & Cleary
(James J. Cleary of counsel)

For the Charging Party
Reitman, Parsonnet, Maisel & Duggan
(Victor J. Parsonnet of counsel)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

Local Union 400, International Brotherhood of Electrical Workers, AFL-CIO, filed an Unfair Practice Charge with the Public Employement Relations Commission on July 20, 1984, alleging that the Borough of Matawan 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., stating that since on or about April 2, 1984, the Borough has refused to negotiate in good faith

with Local 400, the majority representative of the subject employees, and has refused to sign an agreement negotiated between the parties. Local 400 asserts that this conduct violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) of the Act.[1/]

It appearing that the allegations of the Unfair Practice Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 15, 1985. On May 2, 1985, the Borough filed an Answer to Local 400's Charge, denying the commission of any Unfair Practice. An evidentiary hearing was held on May 23, 1985, at which the parties were given an opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. The Borough filed a post-hearing brief on June 24, 1985. Local 400 filed its post-hearing brief on July 1, 1985. The parties waived reply briefs.

Upon the entire record the Hearing Examiner makes the following Findings of Fact:

1. The Borough of Matawan is a Public Employer within the meaning of the Act, and is the employer of the employees who are the

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1/ 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. "

subject of this unfair practice proceeding (T-6-7).[2/]

2. Local Union 400, International Brotherhood of Electrical Workers, AFL-CIO is a public employee representative within the meaning of the Act, and is the majority representative of the subject employees (T-7).

3. The parties entered negotiations, during the early part of December, 1983, for a three-year collective negotiations agreement commencing January 1, 1984 and ending December 31, 1986 (T-19). They held five separate negotiations sessions (T-19). Representatives of the Charging Party testified that they believed that both negotiating teams had reached full agreement on all outstanding issues at the February 3, 1984, negotiation session (fourth session)(T-20). Specifically, they believed that the negotiating teams had reached final accord, as follows, on the two issues that had formerly been unresolved: (1) Unused accumulated sick leave would be forfeited by employees upon termination of employment, regardless of reason, except that in the case of death or retirement, the Borough of Matawan would pay the retired employee up to a maximum of $7,500; (2) The Borough of Matawan would pay for hosptial, medical and surgical coverage for all full-time employees who take early retirement, prior to the age of 65, and would pay to supplement Medi-Care for all covered employees until the age of 70

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2/ "T" refers to the Trial Transcript dated May 23, 1985.

(items 14 and 15 on the original list of union demands (R-4)) (T-20-21; J-3).[3/] [4/]

4. At the hearing in this matter, a representative of the Charging Party testified that following the parties' February 3, 1984 negotiations session, they (the Local) prepared a document entitled "Additions and Changes In Matawan Boro Contract" (J-3) in accordance with their understanding of both parties' mutual agreement following that session (T-22; J-3). Charging Party's negotiating representatives testified that they submitted this document to Respondent's negotiating representatives at the April 2, 1985 negotiations session (the final session) (T-22). Charging Party's negotiating representatives testifed that the Borough's representatives agreed to the provisions contained in J-3 at the April 2, 1984 session (T-53). The Local Shop Steward, Alfonso Esposito testified that he retired on July 31, 1984, and as a result, he would benefit substantially if it were determined that the parties agreed to pay $7,500 for accumulated sick leave as

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3/ Exhibit designations are as follows: "C" refers to Commission Exhibits; "J" refers to Joint Exhibits; "CP" refers to Charging Party's Exhibits; and "R" refers to Respondent's Exhibits.

4/ The parties have stipulated that this unfair practice proceeding is both predicated upon and limited to the determination of whether these two issues, which form the basis of this dispute, were finally resolved (T-17-T18).

opposed to 1/2 of that amount[5/] (T-67). Esposito testifed that he was the only retiree who currently would benefit from the proposal to pay a lump sum for accumulated sick leave (T-82). Esposito further admitted, upon cross-examination, that his affadavit (appended to the charge in this matter) and the entire complaint over the Borough's failure to reduce J-3 to writing was predicated upon the misunderstanding that J-3 was submitted to the Local by the Borough at the April 2, 1984 negotiation session; but, that in fact by the time of the hearing in this matter, the Local admitted that J-3 had been prepared by the Local and not the Borough (T-88).[6/]

5. In contrast to the testimony presented by the Local's witnesses, James B. Walker, the Borough's chief negotiator, who also held the position of Councilman with the Borough, testified that there is no dispute that the Borough did agree to recommend some type of post-retirement insurance benefit and some payment for

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5/ The payment of one-half up to a maximum of $7500 appears to have been considered, to some extent, during negotiations.

6/ In a sworn affidavit of Alfonso Esposito, dated July 17, 1984, Esposito, one of charging party's negotiating representatives and the the Local Shop Steward, stated that J-3, was presented by the Borough to the Local at the April 2, 1984 negotiation session as a memorialization of the parties' agreement, and that both parties agreed that these additions and changes were final and binding. Thereafter, at the opening of the hearing the parties entered into a joint stipulation in which it was agreed that J-3 was in fact prepared by the Local and not the Borough, and further, that it was typed on the same typewriter as the second draft of the parties proposed 1984 contract (J-2) (T-10-11). The text of the disputed clauses in J-2 and J-3 are identical and are consistent with the Local's version of what was agreed to.

unused sick leave; however, he stated that no agreement on these issues was ever reached (T-153). Specifically, Walker testified that by the time of the April 2, 1984 negotiation session, and following it, the parties had reached no agreement on these two outstanding issues (T-144-145). Walker stated that in May 1984, he met with Alfonso Esposito, the Local Shop Steward, in order to review the first draft of the proposed 1984 contact (J-1), prepared by the Local (T-146). At this meeting, Walker testified that he advised Esposito that the Borough had substantive problems with certain items proposed by the Local in this draft (T-146). Walker testified that the Borough believed that a cut-off age should be part of any provision for post-retirement insurance coverage, and that it was the Borough Clerk who suggested limiting the medical coverage to early retirees between the ages of 62 and 65 (T-143). Walker testified that Esposito made notes on his copy of the contract in accordance with comments Walker was making to him about the disputed items (T-147). Walker further stated that the first time he saw J-3 was during either the first or second week of July 1, 1984 (T-149).

6. Both J-1 in evidence (the Union's first draft of the parties 1984 contract) and R-3 in evidence (the Borough's work copy of Article XVI "Retirement Benefit", contain a notation adding the number 62[7/] to the language providing that the Borough will pay

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7/ The notations do not appear to indicate the definite inclusion of the number 62, but rather its presence as a posible modification of the printed text. Upon cross-examination the Local Shop Steward admitted that the notation of the number 62 above the text of the language concerning medical coverage to early retirees was written in his own handwriting.

hospital, medical and surgical for all full-time employees who take early retirement prior to the age of 65 (T-148; J-1; R-3). Neither the second draft of the party's 1984 contract (J-2), nor the document entitled "Additions and Changes in Matawan Boro Contract" (J-3), nor the draft containing the Local Counsel's final changes (J-4) contain the addition of the number 62 (J-2; J-3; J-4). Similarly, with regard to the provision for the Borough of Matawan to pay a sum of money to retired employees for unused accumulated sick leave, both the Borough's work copy of this provision (R-1) and J-3 contain language and/or an added notation indicating that the sum paid would be 1/2 of the "accumulative sick pay up to a maximum of $7,500 upon death or retirement" (R-1; J-3). 8/ Neither J-1, J-2, nor J-4 contain any indication that the sum paid would be 1/2 up to a maximum of $7,500 (J-1; J-2; J-4). Additionally, the Borough's witness testifed credibly that the Borough was attempting to resolve the issues in dispute, both for Local 400 and its other employees, by enacting, in certain ordinances, all-encompassing language dealing with these issues (T-139-141; T-142-T-145). The Local was aware of these various proposed ordinances (T-132).

7. Finally, there is no dispute in the record that the Borough's negotiating team did not have the authority to bind the Borough to a contract: Indeed any contract required the formal and

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8/ Again, these additions do not appear to indicate the definite inclusion of the fractional notation, but rather its presence as a possible modification of the printed text. The Borough's witness testified that this was the only option the Borough had considered regarding a lump-sum payment for accumulated sick leave (T-152).

express approval of the Mayor and the Council (T-25; T-55; T-96-T-97; T-122; T-137). Moreover, the record does not indicate that any representatives of the Local ever ascertained whether the Mayor and Council approved the items indicated in J-3 (T-25; T-60 - 61; T-122-123).

8. Based upon the above, I find that by the time of the final negotiations session (April 2, 1984) and afterward, and despite apparent good faith attempts by both sides to resolve the issues in dispute, there was, in fact, no final resolution of them. I am persuaded of this by evidence in the record establishing Local 400's error in believing that J-3 was prepared by the Borough and presented to the Local as a memorialization of the parties' agreement; by evidence establishing that one of Local 400's witnesses was in a position to benefit materially and immediately if the facts were found to be consistent with the Local's position, all of which tends to bear upon the credibility of the Local's recitation of the facts; by evidence establishing that representatives of the Local were aware of the Borough's attempts to deal with these issues through provisions contained in proposed ordinances, as late as August, 1984, which provisions differed materially from the Local's statement of what the parties agreed to (T-140); by evidence establishing that the Local was aware that any agreement required the express approval of the Mayor and Council; and to a lesser extent, by evidence of notations and additions to the texts of the two proposed provisions in various documents in

evidence, which suggest that there was no final agreement, consistent with the Local's recollection, during the time frame in question. 9/ Thus, I credit the Borough's version of whether these items were settled as of either the February 3, 1984 or the April 2, 1984 negotiations session, or thereafter.

## LEGAL ANALYSIS

The Charging Party alleges that the Borough of Matawan violated §§(a)(1), (5) and (6) of the Act by the Borough's refusal, since April 2, 1984, to negotiate in good faith with the Local and the Borough's refusal to sign an agreement negotiated between the parties. Specifically, §(5) deals with the refusal to negotiate in good faith, while §(6) deals with the refusal to reduce a negotiated agreement to writing and to sign such an agreement. Here, the Charging Party bases its allegations upon its assertion that there was a fully negotiated agreement in place from April 2, 1984 on, which the Borough continually refused to reduce to writing.

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9/ I specifically decline to make a credibility determination with regard to the testimony from the Borough's witness at T-152 in which he stated that the full payment for accumulated sick leave up to a maximum of $7,500 was never an issue in negotiations between the parties; or, with regard to testimony from several of the Local's witnesses in which they denied that one or both of the two disputed issues ever existed as a topic of negotiations (T-27; T-32; T-38; T-64; T-93-94). Neither is necessary to my determination of whether the parties had a binding agreement consistent with the Local's recollection of the disputed terms and conditions in this matter.

Additionally, I note that the Local provided some evidence to explain the presence of the above-referenced notations and

(Footnote continued on next page)

Numerous cases involving similar allegations and analogous factual patterns have been decided. In almost all cases, they raise, at least, one of two major issues: (1) Whether the negotiators had apparent authority to bind their principals; and (2) Whether there was an actual meeting of the minds between the parties. Throughout the line of cases dealing with apparent authority, the Commission has repeatedly held that where the facts indicate that a negotiator has apparent authority to bind his principal, and if the agreement reached contains no conditions precedent, that agreement is binding on the principal regardless of the principal's understanding. In re Camden Fire Department, H.E. No. 82-34, 8 NJPER 181 (¶13078 1982); aff'd P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982); In re South Amboy School Board, P.E.R.C. No. 82-10, 7 NJPER 448 (¶12200 1981); In re Borough of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (¶12066 1981); In re East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), mot. for recon. den. P.E.R.C. No. 77-26, 3 NJPER 16 (1977); In re Bergenfield Board of Education, P.E.R.C. No.

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(Footnote continued from previous page)
additions in certain documents. This evidence suggests that the notations were merely restated from the Borough's ordinance proposals which attempted to deal with these issues; and, were not written as a result of any active negotiations over these issues. Again, I specifically decline to make a credibility determination, as I believe this to be a peripheral issue, not necessary to my conclusions and recommendations. I merely note that the presence of these additions and notations, even crediting the Local's explanation of their presence, should have provided notice to the Local that the Borough had not approved the Local's proposals.

90, 1 NJPER 1 (1975); In re Mount Olive Township Board of Education, H.E. No. 78-6, 3 NJPER 284 (1977); aff'd P.E.R.C. No. 78-25, 3 NJPER 382 (1977); In re Hanover Township Board of Education, H.E. No. 76-10, 2 NJPER 160 (1976); In re Hoboken Board of Education, H.E. No. 76-9, 2 NJPER 150 (1976), aff'd P.E.R.C. No. 77-5, 2 NJPER 267 (1976), aff'd App. Div. No. A-4624-75 (6/29/77), mot. for leave to appeal to Sup. Ct. den. ____ N.J. ____ (1977). Here, however, the record indicates that the Borough's negotiators did not have apparent authority to bind the Borough. In fact, nearly every one of the Local's witnesses testified that they were aware that any agreement required the express approval of the Mayor and Council; and, none of the Local's witnesses testified that they even knew or attempted to ascertain whether this approval had been given (See ¶7, Findings of Fact), despite that the record appears to indicate that such would necessarily have been part of an open-session public meeting agenda (T-95) and, thus, readily ascertainable. Admittedly, the Borough's negotiators were also Council members, and so had a certain standing by virtue of their position; however, the Local did not present any evidence indicating that their actions had been binding upon the Borough in past negotiations. Thus, I conclude that the Local failed to establish, by a preponderance of the evidence, that the Borough's negotiators had apparent authority to bind the Borough.

Turning to the second major issue inherent in cases of this nature, i.e. whether there was any meeting of minds between the

parties, the decisions have again consistently held that where it can be shown that there has been no meeting of the minds, it is impossible to find an (a)(5) or (6) violation. In re Union County Regional High School District No. 1, P.E.R.C. No. 85-23, 10 NJPER 536 (¶15218 1984); In re Mount Olive Board of Education, P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983); In re Jersey City Board of Education, H.E. No. 84-21, 9 NJPER 638 (¶14273 1983), aff'd P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983); In re Carlstadt Board of Education, H.E. No. 83-1, 8 NJPER 465 (¶13219 1982). Here, the record amply demonstrates and I have found that there was no final agreement on either of the two outstanding issues that the parties stipulated form the basis of this controversy: (1) payment for unused accumulated sick leave; and (2) health insurance upon retirement (see ¶8, Findings of Fact). Moreover, I conclude that neither the Borough negotiators' actions between April 2, 1984 and the filing of the charge in this matter on July 20, 1984, nor the mere fact of the length of this period of time, nor even the combination of the two factors, could have been sufficient to establish, by a preponderance of the evidence, that the Local was mislead by the Borough into believing that they had an agreement consistent with their (the Local's) version of the facts. Thus, having previously found a lack of apparent authority on the part of the Borough's negotiators to bind its principal, and no demonstrated meeting of the minds between the parties, I conclude that under the

case law cited above, the Local has failed to establish an (a)(5) or (6) violation by a preponderance of the evidence.

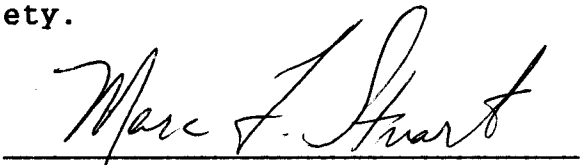
In its Charge, the Local alleges a §(a)(1) violation as well. However, the Local has not asserted any facts which would support an independent §(a)(1) violation. Thus, I assume that the §(a)(1) allegation is meant to be interpreted as a derivative §(a)(1) violation. Since I have concluded that the Local has failed to establish either an (a)(5) or (a)(6) violation, I also conclude that there has been no derivative §(a)(1) violation.

## CONCLUSION OF LAW

The Borough did not violate N.J.S.A. 34:13A-5.4(a)(1), (5) or (6) by its conduct in negotiations since on or about April 2, 1984.

## RECOMMENDED ORDER

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



Marc F. Stuart
Hearing Examiner

Dated: November 21, 1985
Trenton, New Jersey