

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Respondent,

-and-

Docket No. CO-83-111-57

UNION CITY FMBA, LOCAL 12,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge the Union City FMBA, Local 12 filed against the City of Union City. The charge had alleged that the City violated the New Jersey Employer-Employee Relations Act by refusing to supply Local 12 with certain financial information, including its budget work sheets. The Commission held, under all the circumstances of this case, that Local 12 had not proved its charge by a preponderance of the evidence.

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Appearances:

For the Respondent, Dorf and Glickman, Esqs.
(Steven S. Glickman, of Counsel)

For the Charging Party, Loccke and Correia, Esqs.
(Manuel A. Correia, of Counsel)

DECISION AND ORDER

On November 1, 1982, the Union City FMBA, Local #12 ("Local 12") filed an unfair practice charge against the City of Union ("City") with the Public Employment Relations Commission. The charge alleged that the City violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ^{1/} ("Act"), specifically subsections 5.4(a)(1), (2), (5), and (7), when it refused to supply Local 12 with certain financial information, including its 1982 budget "work sheets," during the period in which the parties were negotiating a successor agreement.

^{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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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 (7) Violating any of the rules and regulations established by the commission."

On January 6, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On February 3, 1983, the City filed an Answer. The City asserts that it has supplied Local 12 with much of the requested information and denies that it had any obligation to provide the remaining information, including the work sheets.

On March 3, 1983, Hearing Examiner Alan R. Howe conducted a hearing. The parties entered stipulations of fact and submitted exhibits. These stipulations and exhibits show that Local 12 had requested the following information in connection with negotiations over a successor contract: (1) a copy of the 1982 municipal budget; (2) the names, status (temporary, permanent, Civil Service), date of hire, and the amount of salary budgeted for each employee; (3) the amount of overtime allocated and the number of new employees budgeted for; (4) the salary and overtime allocated for each fire fighter; (5) the amount spent for each fire fighter; (6) appropriation and expense cards demonstrating the amounts allocated for each line item as well as the amount spent to date; (7) the date of hire, salary and job status for 30 named employees as well as their respective departments; and (8) work sheets with respect to appropriations in each line item for salaries, wages, and other expenses within the 1982 municipal budget. The City agreed to supply all the information, including the 1982 budget and payroll records, called for in the first seven requests. It refused to supply the work sheets as well, claiming that it had already supplied

all relevant financial information by responding to the first seven requests and that the work sheets were preliminary, confidential, and privileged work products not subject to disclosure. The Association claimed that the work sheets would be relevant to litigating the question of the City's ability to pay in an interest arbitration, but no such proceedings have been instituted.

On April 4, 1983, the Hearing Examiner issued his report and recommendations, H.E. No. 83-34, 9 NJPER ____ (¶ ____ 1983) (copy attached). He found that Local 12 had not proved by a preponderance of the evidence that the City, which had already supplied Local 12 with its budget, payroll records, and all other requested financial information, had refused to negotiate in good faith or otherwise violated the Act when it did not supply its budget work sheets as well. He recommended dismissal of the Complaint.

A copy of the Hearing Examiner's report was served on both parties. Neither party has filed Exceptions.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-3) are supported by substantial evidence. We adopt and incorporate them here. We also adopt his recommendation that we dismiss the Complaint. Under all the circumstances of this case, we specifically agree that Local 12 did not prove by a preponderance of the evidence that the City refused to negotiate in good faith when, after supplying its budget, payroll records and all other requested financial

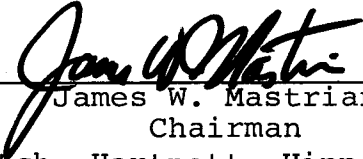
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information, it did not also supply the work sheets.^{2/4.}

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp,
Newbaker and Suskin voted in favor of this decision.
Commissioner Graves voted against the decision.

DATED: Trenton, New Jersey
June 24, 1983
ISSUED: June 27, 1983

^{2/} We are not ruling that budget work sheets need never be produced. We will review such requests on a case-by-case basis to determine whether a failure to produce constitutes a refusal to negotiate in good faith.

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SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent City did not violate Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it refused the Charging Party's request to produce the work sheets utilized by the City in preparation of its municipal budget for 1982. The "work sheets" are prepared by the City's Department Heads in the preliminary stages of budget preparation. The Hearing Examiner, relying on Federal and New Jersey precedent in connection with demands for data involving issues of relevance, burden and privilege, concluded that the City had acted in good faith when it made available to the Charging Party the 1982 municipal budget document. The Hearing Examiner was of the view that the "work sheets" were either confidential or privileged as the "work product" of the City in the budget preparation process.

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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For the City of Union City
Dorf & Glickman, Esqs.
(Steven S. Glickman, Esq.)

For the Charging Party
Loccke & Correia, Esqs.
(Manuel A. Correia, 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 1, 1982 by the Union City FMBA, Local 12 (hereinafter the "Charging Party" or the "FMBA") alleging that the City of Union City (hereinafter the "Respondent" or the "City") 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 the Respondent has refused the Charging Party's request of September 30, 1982 for certain information concerning fiscal matters from the Commissioner of Revenue and Finance, to which the Charging Party claims that it is entitled for the purpose for collective

negotiations, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4 (a)(1), (2), (5) and (7) of the Act.^{1/}

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 January 6, 1983. Pursuant to the Complaint and Notice of Hearing, a hearing was held on March 3, 1983 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The essential facts were stipulated to by counsel for the parties. Oral argument was waived and the parties filed post-hearing briefs by March 28, 1982.

An 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 stipulated record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The City of Union City is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Union City FMBA, Local 12 is a public employee representative within meaning of the Act, as amended, and is subject to its provisions.
3. The Respondent will provide the FMBA with a copy of the 1982 municipal budget for the City of Union City.

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.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

"(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.

"(7) Violating any of the rules and regulations established by the commission."

4. The Respondent will provide the FMBA with the necessary payroll records to identify the names of those employees in which the FMBA is interested for purposes of negotiations and will also provide the Civil Service status and the budgeted salary for the said employees. After the FMBA has identified the names of the employees, the Respondent will provide the FMBA with dates of their hire.

5. Regarding a request by the FMBA for the amount of overtime allocated in 1982 and the number of new employees budgeted for, the City represents that no new employee slots were budgeted for in 1982 and that the overtime amounts appear in the City's municipal budget for 1982.

6. The Respondent will not provide the FMBA with the 1982 budget "work sheets," which are prepared by its Department Heads as part of the City's budget process. These "work sheets" include salaries, wages and other expenses, including equipment expenses for the Department.

THE ISSUE

Did the Respondent violate Subsections(a)(1) and (5) of the Act^{2/} when it refused to provide the FMBA with the "work sheets" prepared by the Department Heads as part of the City's 1982 budget process?

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsections
(a)(1) And (5) Of The Act When It Refused
To Provide The FMBA With The "Work Sheets"
Prepared By The Department Heads In The
City's 1982 Budget Process

The Charging Party argues its request for the "work sheets" from the standpoint of an Interest Arbitrator, functioning under Chapter 85, N.J.S.A. 34:13A-14 et seq. However, in the opinion of the Hearing Examiner, Chapter 85 has no bearing on the issue to be resolved herein. Rather, resort will be made to Federal and New Jersey precedent in connection with demands for data where the issues of relevance, burden and privilege have been involved.

^{2/} It does not appear to the Hearing Examiner that the Respondent's conduct as alleged constitutes a violation of Subsections(a)(2) and (7) of the Act. Accordingly, the Hearing Examiner will recommend dismissal of these allegations.

The Respondent cites only Cincinnati Steel Castings Co., 86 NLRB No. 83, 24 LRRM 1657 (1949), a case involving a request for data in connection with collective negotiations. In Cincinnati the union requested a written list of the names of the employees in the unit with their classifications and wage rates. The employer's response was to offer to furnish the information orally. There were 98 employees in the unit and the union had the names of all of the employees. The union, in referring to its list of employees, inquired of the employer regarding the classifications and wage rates of approximately 70 percent of the employees in the unit. The employer furnished all of the information requested orally.

The Board, after noting that it had frequently held that an employer's refusal to furnish necessary information to the union during bargaining negotiations constituted a lack of good faith, and a violation of Section 8(a)(5) of the National Labor Relations Act, then stated:

"...However, we have not held, nor do we now hold, that the employer is obligated to furnish such information in the exact form requested by the representative. It is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining." (24 LRRM at 1658) Emphasis supplied).

Clearly, the Cincinnati decision is relevant to the disposition of the case at bar.

It is noted that the United States Supreme Court has affirmed the NLRB in decisions involving the request of a union for relevant data for use in collective negotiations. Thus, in NLRB v. Truitt Mfg. Co., 351 U.S. 149, 38 LRRM 2042 (1956) the Court enforced a Board order that an employer provide a union with data substantiating an alleged inability to grant an economic increase. However, the Supreme Court has reversed the Board when it ordered the production of employee aptitude test scores where there was involved an issue of confidentiality or privacy: Detroit Edison Co. v. NLRB, 440 U.S. 301, 100 LRRM 2728 (1979).

In a non-labor context the United States Supreme Court has held that the "work product" of an attorney is privileged and need not be produced in discovery

proceedings or at trial: Hickman v. Taylor, 329 U.S. 495 (1947). The Hickman case was cited by the Law Division of the Superior Court in Stephan v. LaCorte, 77 N.J. Super. 443 (1962), which involved the request of the plaintiff for an order to inspect the written statement of the defendant, which had been given to the defendant's insurance carrier. The Court said that there was no overriding injustice or undue hardship in denying the plaintiff's request. The written statement had only been used by the defendant to refresh his recollection in preparation for an oral deposition. Cf., State v. Hunt, 25 N.J. 514 (1958).

Turning now to the case at bar, the Hearing Examiner finds and concludes that the request of the FMBA for the "work sheets" used by the City in the preparation of its municipal budget are not relevant to the needs of the FMBA in collective negotiations. The municipal budget for 1982 should suffice: Cincinnati Steel Castings Co., supra. Further, the "work sheets" are, in the opinion of the Hearing Examiner, confidential and privileged as "work product" of the City in connection with the preparation of its budget. Given the fact that the FMBA has been given access to the 1982 municipal budget there is plainly no overriding injustice or undue hardship visited upon the FMBA by the City's refusal to provide the "work sheets" as requested: Stephan v. LaCorte, supra.

For all of the foregoing reasons the Hearing Examiner will recommend dismissal of the Complaint.

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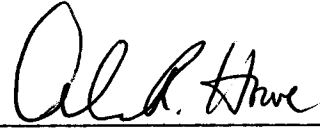
Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (7) when it refused to provide the Charging Party with "work sheets" prepared by the Department Heads as part of the City's 1982 budget process.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: April 4, 1983
Trenton, New Jersey