

P.E.R.C. NO. 88-97

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PALISADES PARK RECREATION BOARD,

Respondent,

-and-

Docket No. CO-H-87-321

TEAMSTERS LOCAL 97 OF NEW JERSEY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by Teamsters Local 97 of New Jersey against the Palisades Park Recreation Board. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when it denied Local 97's request to commence negotiations and did not rehire, allegedly for political reasons, a swimming pool office manager and a clerk, who had been terminated. The Commission finds that the charging party did not prove the charge's allegations.

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BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Docket No. CO-H-87-321

TEAMSTERS LOCAL 97 OF NEW JERSEY,

Charging Party.

Appearances:

For the Respondent, Edwin C. Eastwood, Jr., Esq.

For the Charging Party, Pat Nardolilli, Business Representative

DECISION AND ORDER

On May 5, 1987, Teamsters Local 97 of New Jersey ("Local 97") filed an unfair practice charge against the Palisades Park Recreation Board ("Board"). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(3), (5) and (7),<sup>1/</sup> when it denied Local 97's request to commence negotiations

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(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; (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."

and did not rehire, allegedly for political reasons, a swimming pool office manager and a clerk, who had been terminated.

On June 3, 1987, a Complaint and Notice of Hearing issued. On June 24, the Board filed its Answer. It admits not rehiring the two employees, but contends it was not obligated to do so because they were not members of the negotiations unit, were seasonal employees and were terminated at the end of their term. It denies the Complaint's remaining allegations.

On June 25, 1987, Hearing Examiner Mark A. Rosenbaum conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally.

On September 29, 1987, the Hearing Examiner issued his report and recommended decision, H.E. No. 88-15, 13 NJPER 784 (¶18299 1987). He said the Borough of Palisades Park ("Borough") and the Palisades Park Recreation Board both refused to negotiate with Local 97 concerning terms and conditions of employment for the pool office manager and clerk. He recommended that the employees be reinstated with back pay and interest.

On October 14, 1987, the Board filed exceptions. It contends the Hearing Examiner erred in not finding the office manager to be a supervisor and that the two employees were terminated because their term of office had expired.

The procedural history is quite complicated and includes a change in employers, a clarification of unit petition and an earlier unfair practice charge. So that the issues may be fully understood, we set forth the following factual findings.

On July 18, 1985, the Commission certified Local 97 as the exclusive representative of "all full-time and permanent part-time clerical employees employed by the Borough of Palisades Park" ("Borough"). This certification was based on the results of a Commission conducted election. Among other employees, Diane Montemurro (Manager-Pool Office) and Andrea Bonaguaro (Clerk-Pool Office) voted. Their names had been supplied by the Borough as being "eligible to vote."

Montemurro was appointed to the position of Swim Pool Office Manager by the Borough in January 1984 for a one-year term pursuant to a Borough ordinance. She was reappointed for another one-year term in January 1985. Bonaguaro was appointed to the position of Swim Pool Office Clerk for the same period.

In January 1986, a new Mayor assumed office. Neither Montemurro nor Bonaguaro was reappointed. The union filed an oral grievance. The Borough responded that their terms had expired. Instead, Zelda Fazio was appointed to be Office Manager and Diane McKinley was appointed Swim Pool Office Clerk, both for one year terms.

On January 2, 1986, Local 97 complained to the Commission that the Pool Office Manager and Clerk had been terminated because of their political activity in violation of the parties' alleged collective agreement. The parties commenced settlement discussions which were unsuccessful.

On January 13, 1986, the Borough abolished the Municipal Pool Commission and created the Palisades Park Recreation Board. It

transferred all the Pool Commission's powers and duties to the Board pursuant to N.J.S.A. 40:12-1 et seq.

On September 15, 1986, Local 97 filed an unfair practice charge against the Borough. The charge alleged that the parties were unable to reach agreement and requested that an earlier letter be processed as an unfair practice charge (CO-87-74-33). The Borough then filed its Answer. It denied that it terminated the employees for political reasons and contended the negotiations unit was inappropriate because it included employees of autonomous bodies, supervisors and confidential employees.

On October 2, 1986, the Borough filed a Clarification of Unit Petition. It sought to exclude the two pool employees from the unit represented by Local 97. A Notice of Hearing issued.

On December 12, 1986, the Borough and Local 97 settled several of the matters pending before Hearing Examiner Rosenbaum. They agreed, among other things, that the Pool Office Manager and Office Clerk were employed by the Recreation Board, not the Borough. Therefore, the Clarification of Unit Petition was withdrawn.

This case concerns whether the Borough violated the Act when it did not renew Montemurro or Bonaguaro's employment after it expired December 31, 1985. We conclude it did not.

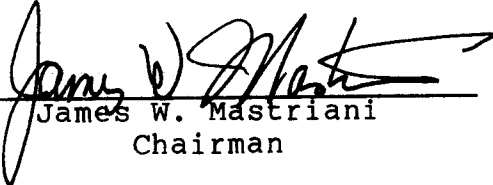
The Hearing Examiner found, and we agree, that the non-renewals were not motivated by the employees' union activity. The Hearing Examiner instead found that the Borough did not

negotiate in good faith with Local 97 concerning these employees and therefore reinstatement was the appropriate remedy. However, nothing in the record establishes a refusal to negotiate. The most Local 97 established was that the employer questioned the appropriateness of including the two employees in the unit. But that does not establish a violation under the circumstances of this case. Indeed, the parties later agreed to exclude these employees. In any event, the Borough had a consistent practice of appointing these and other employees to fixed terms of office. An employer refuses to negotiate when it unilaterally alters the status quo during negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978). But here the employer acted consistent with the status quo.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Wenzler voted in favor of this decision. Commissioner Smith was opposed.

DATED: Trenton, New Jersey  
April 27, 1988  
ISSUED: April 27, 1988

H.E. NO. 88-15

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

In the Matter of

PALISADES PARK RECREATION BOARD,

Respondent,

-and-

Docket No. CO-H-87-321

TEAMSTERS LOCAL 97 OF NEW JERSEY,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Palisades Park Recreation Board violated subsection 5.4(a)(5) of the Act when it refused to negotiate with Teamsters Local 97 over terms, conditions and tenure of employment of the Board's pool office manager and pool office clerk. The Board argued that those employees were casual employees or employees with fixed terms of office and thus were not entitled to protection under the Act. The Hearing Examiner finds that the employees had regular and continuous employment, and that prior limited tenure appointments were mooted by the certification of Local 97 by the Commission to represent the employees. Accordingly, the Hearing Examiner recommends that the Board be ordered to negotiate, upon demand, with Local 97 over terms and conditions of employment for the pool office manager and pool office clerk, that the Board be ordered to offer employment prospectively to the two individuals who held those titles prior to Local 97's certification, and that the Board be ordered to make those two employees whole for those monies which they would have earned, less mitigation and plus interest. The Hearing Examiner also recommended the dismissal of alleged violations of subsections (a)(3) and (a)(7).

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.

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

In the Matter of

PALISADES PARK RECREATION BOARD,

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Docket No. CO-H-87-321

TEAMSTERS LOCAL 97 OF NEW JERSEY,

Charging Party.

Appearances:

For the Respondent  
Edwin C. Eastwood, Jr., Esq.

For the Charging Party  
Pat Nardolilli, Business Representative

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On May 5, 1987, Teamsters Local 97 of New Jersey ("Charging Party" of "Local 97") filed an Unfair Practice Charge against Palisades Park Recreation Board ("Respondent" or "Board" or "Committee"),<sup>1/</sup> alleging that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Charging Party alleged that the Board failed to comply with a

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<sup>1/</sup> While the Charge and Answer refer to the "Board" as the Respondent, exhibits and testimony indicate that the proper technical name is the "Committee." See Finding of Fact Number 6.



request for negotiations and had improperly terminated two employees, in violation of N.J.S.A. 34:13A-5.4(a)(3), (5) and (7).<sup>2/</sup>

On June 3, 1987, the Commission's Director of Unfair Practices issued a Complaint and Notice of Hearing. On June 24, 1987, the Board filed its Answer. It admitted that it did not continue to employ the two employees referenced in the charge, but denied any responsibility to continue their employment or to negotiate concerning those employees, since "they were seasonable employees whose contract ends at the end of the [pool] season, and ... they are not permanent employees."

On June 25, 1987, I conducted a hearing. The parties examined and cross-examined witnesses, presented evidence, argued orally and waived the filing of briefs. The record in the matter closed with the receipt of the transcript on August 6, 1987.

#### FINDINGS OF FACT

1. On April 24, 1985, Teamsters Local 97 filed a Petition for Certification of Representative with the Commission seeking to

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<sup>2/</sup> These subsections prohibit public employers, their representatives or agents from: "(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; (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."

represent clerical employees of the Borough of Palisades Park. On May 30, 1985, the Borough consented to an election with Local 97 in a unit which included the titles Office Clerk and Office Manager. On June 13, 1985, the Borough sent the Commission and Local 97 a list of all employees, together with their titles, who were eligible to vote in the election. The list included Andrea Bonaguaro (Clerk--pool office) and Diane Montemurro (Manager--pool office). Commission records indicate that both Bonaguaro and Montemurro voted in the election, which was held on June 25, 1985.

2. Local 97 won the election and on July 18, 1985, the Commission's Director of Representation issued a Certification of Representative (Docket Number RO-85-139).

3. In January 1986, Local 97 contacted the Commission concerning the certified unit. The parties were unable to agree upon the proper unit structure; the Borough maintained that the Library Board and the Board of Health were separate employers and should have separate bargaining units of employees represented by Local 97. In addition, the Borough contested the representation of certain other employees including the swim pool office employees now in dispute. The matter was referred to the Commission's Litigation Alternative Program (Docket Number LAP 86-10). The parties were not able to resolve the matter and in August 1986, Local 97 requested the formal processing of unfair practice charges. In September 1986, charges were redocketed as CO-87-74-33. In addition, the Borough filed a Clarification of Unit Petition on October 2, 1986,

seeking to remove the employees of the "Palisades Park Swimming Pool" from the certified negotiations unit.

4. On December 12, 1986, the parties met in Commission offices and reached certain agreements which were recorded on the record (Transcript of December 12, 1986, hereafter "T1"). The parties agreed that the Library Board of the Borough of Palisades Park is a separate employer and would bargain separately with Teamsters Local 97 for Library Board employees other than that board's director. The parties also agreed that the Secretary of the Board of Health would be represented by Local 97 in its unit of Palisades Park Borough employees and that the Director of the Welfare Board would not be included in that unit. Local 97 and the Board further agreed that three clerks in the Clerk's office would be represented by Local 97 in the unit of Borough employees as would the bus driver employed by the Borough. Finally, the parties agreed on the employment status of two individuals employed in the Court Clerk's office. As a result of these agreements, the Board withdrew the Clarification of Unit Petition and Local 97 retained the right to proceed to hearing on the Unfair Practice Charges concerning the pool office employees. (T1 at pp. 5-14)

5. The agreements of the parties at the December 12, 1986 meeting were implemented, and the parties were unable to resolve the dispute concerning two employees of the Recreation Committee who were allegedly "fired for political affiliations in 1986." On May 5, 1987, Local 97 filed an additional unfair practice charge,

listing the public employer as "Palisades Park Recreation Board," alleging that it failed to comply with a request to commence negotiations and refused to rehire the two employees who were fired in 1986.

6. The Palisades Park Recreation Committee was created by the Borough of Palisades Park on January 13, 1986, in Ordinance No. 1033 (Exh. J-1). The ordinance also repealed a prior ordinance establishing the Municipal Pool Commission. Ordinance No. 1033 states: "All powers granted or delegated by the Borough of Palisades Park to the Municipal Pool Commission containing Ordinance No. 924 are hereby transferred to the Palisades Park Recreation Committee which was created pursuant to N.J.S.A 40:12-1 et seq."

8. Diane Montemurro and Andrea Bonaguaro were employed by the Municipal Pool Commission in 1985. Montemurro testified that she had been appointed to the position of Swim Pool Office Manager in January 1984 by the Mayor and Council of Palisades Park Borough and was reappointed by the same body on January 1, 1985 for a term expiring on December 31, 1985. Bonaguaro's appointment was for the same time period. Montemurro testified that the Mayor and Council who had appointed her were Democrats, and that shortly after a Republican mayor was elected in November of 1985, he informed her that she would not be reappointed. (Exh. J-2; T2 pp. 16-19 and 76).

9. In January 1986, Zelda Fazio was appointed by the Mayor and Council to be Swim Pool Office Manager for a term ending 12/31/86. In the same set of appointments, Diane McGinley was

appointed Swim Pool Office Clerk for a term ending 12/31/86. Fazio testified that she was first appointed to the position in 1980 and had been replaced by Montemurro in 1984. Fazio was reappointed in 1987.

10. Both Montemurro and Fazio worked twelve months a year, 9 a.m. to 4 p.m. The swim pool clerk also worked 9 a.m. to 4 p.m. for a six-to-eight month period; the number of months depended on funding and workload. (T2 pp. 78-82)

11. Meryle Fowlie is a bookkeeper in the Borough Clerk's office of the Borough of Palisades Park and is a shop steward for Local 97. Fowlie testified that she sought to negotiate with the Pool Commission and its successor Recreation Committee after Local 97 was certified. Fowlie further testified that she learned that Montemurro was not to be reemployed in 1986 immediately after Montemurro was so informed by the Mayor. Fowlie testified that she made a oral complaint regarding Montemurro and Bonaguaro and was told that these were annual appointments. (T2 pp. 39-41 and 47-48)

12. Lorraine Madorran is Co-Chairman of the Recreation Committee and was appointed to the Committee by the Mayor and Council in 1986 and 1987. She testified that the present pool office clerk and pool office manager are both appointed for one-year terms by the Mayor and Council, and that the Mayor and Council, together with the advice of the Recreation Committee, establishes the duties and salaries for those positions. She further testified that the Recreation Committee's attorney, Guy Lanza, reported to the

Committee on letters from Local 97 seeking negotiations with the Committee. She testified that Lanza did not advise nor did the Committee discuss the subject of negotiations with Local 97 concerning Committee employees. She further testified that the Committee recommended to the Mayor and Council that raises be given to Committee employees, that the Mayor and Council gave those employees raises and that Lanza never advised the committee that the Local 97 had to consent to such raises. (T2 pp. 83-85 and 89-93)

#### ANALYSIS

##### I. Section 5.4(a)(5) Allegations

The record established that Local 97 sought to negotiate first with the Borough of Palisades Park and later, with Palisades Park Recreation Committee concerning terms and conditions of employment for the pool office manager and the pool office clerk. In addition, Local 97 repeatedly sought the rehiring of pool office manager Montemurro and pool office clerk Bonaguaro, both through oral complaint and through a number of filings before the Commission. (See Findings of Fact Numbers 3, 4, 11 and 12).

The Recreation Committee has not substantively responded to these requests.<sup>3/</sup> The Committee maintains that the disputed

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<sup>3/</sup> For purposes of this decision, the Recreation Committee must be viewed as the employer of the pool office manager and the pool office clerk; the parties have accepted this fact on the record (see T1 at 5-7). However, I note that while the Recreation Committee makes recommendations as to hiring,

employees are "seasonal employees" and/or "non-permanent employees" and/or have "no continuing employment relationship" with the Committee. The record does not support these arguments. Instead, the pool office manager is a 12-month employee, works 9 to 4 and the pool office clerk also works a 9 a.m. to 4 p.m. for six to eight months depending upon funding and workload. (See Finding of Fact Number 10 .) They are regular and continuous employees who qualify for full rights under the Act. See, generally, Rutgers, The State University, P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'g E.D. No. 76-35, 2 NJPER 176 (1976), D.R. No. 77-5, 3 NJPER 12 (1976)(dismissing election objections), aff'd App. Div. Docket No. A-1652-76 (1977), cert. den. 76 N.J. 243 (1978). Also, see Borough of Seaside, P.E.R.C. No. 81-18, 6 NJPER 392 (¶11203 1980)(lifeguards are employees within the meaning of the Act).

The Committee sought to establish at hearing supervisory status of the pool office manager. Preliminarily, I note that this position is inconsistent with the original inclusion of pool office

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3/ Footnote Continued From Previous Page

discipline, terms and conditions of employment and duties of those employees, all such decisions are ultimately made by the Mayor and Council of Palisades Park Borough. Indeed Recreation Committee members are themselves appointed by the Borough Mayor and Council for one year terms (J-3 and Finding and Fact No. 12). Since the hearing in this matter occurred in the unfair practice forum, I do not recommend that the parties be compelled to establish the Borough as the employer of the disputed employees; however, the parties may wish to consider such action in the future to accurately reflect the actual employment setting.

manager Montemurro on the voter eligibility list in Docket Number RO-85-139. Further, the issue of supervisory status was not included in the Answer and position of the Respondent (Exh. A-2). In accordance with N.J.A.C. 19:124-3.1, an Answer to an Unfair Practice Complaint "should normally include a specific detailed statement of any affirmative defenses." I find that, having failed to raise a supervisory employee defense in its answer, the Committee waived its right to later assert this position absent any representation of changed circumstances. No claim of changed circumstances was made or can be established here, since the answer was filed June 22, 1987, and the testimony covered primarily matters occurring in 1985 and 1986, without reference to any changes made in 1987.<sup>4/</sup>

The Committee also argues that it had no obligation to negotiate with Local 97 concerning the two employees because they were appointed for one-year terms. While Exhibits J-3 and 4 and various testimony establishes the annual appointment process, the

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<sup>4/</sup> Since no objection was presented at hearing, the record contains some testimony concerning the hiring and discipline of employees of the committee. In view of the above ruling, and since the matter was not fully and fairly litigated (cf. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/82), I have not included any of this testimony in the Findings of Fact. However, relevant testimony suggests that the pool office manager's authority as to the hiring, discharge and discipline of employees is too attenuated to rise to the level of supervisory status, since she only makes recommendations to the Committee who can only make recommendations to the Mayor and Council (see Finding of Fact Number 12).



certification of Local 97 to represent these employees renders that history moot. Once Local 97 was certified, the employer had an obligation to negotiate with Local 97 upon demand for all employees included in the certification. While the Borough and Local 97 had agreed to sever these employees from the original certified unit, Local 97 still retained the right to negotiate on the employees' behalf, albeit in a separate negotiations unit of Committee employees. When the Committee refused to negotiate, by ignoring negotiations requests and later by asserting in this matter that it had no obligation to negotiate, it proceeded at its peril. If its reasons for refusing to negotiate were found lawful, the Committee would not have committed an unfair practice; however, should those reasons not prevail before the Commission, the Committee risked a finding of a violation of its obligation to negotiate in good faith, along with appropriate remedies for the violation(s). See Passaic Valley Reg. H.S. Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

Having refused to negotiate over terms and conditions of employees whom it had included in the collective negotiations unit by consent (see Docket Number RO-85-139 and Finding of Fact Number 1), the Borough, and the Committee in its stead, cannot rely on the historical annual appointments of the two titles, since there were no employee representatives and no negotiated terms and conditions of employment for employees. Further, as found above, the other defenses asserted by the Committee (i.e. that the employees are casual and not entitled to rights under the Act, and that the pool

office manager is a supervisor under the Act and thus cannot be represented in the same unit as the pool office clerk) are rejected. Accordingly, I find that the Committee violated N.J.S.A. 34:13A-5.4(a)(5) when it refused the request to negotiate with Local 97 concerning the pool office manager and the pool office clerk.

This violation continued when the Committee refused to respond to Local 97's attempts to secure the rehiring of Montemurro and Bonaguaro. The Committee took this position consistent with its belief that these employees were "seasonal" (i.e., without a continuing employment relationship); when it proceeded under this assumption it again operated at its peril. In the context of both the oral request and repeated filings before the Commission seeking the rehiring of these employees, the Committee knew or should have known that its failure to prevail on the employee status issue could result in an order requiring an offer of reemployment to these employees as well as an order to make those employees whole from those losses which resulted from the failure to rehire them. Accordingly, I recommend that the Commission order that the Borough offer employment to Diane Montemurro as pool office manager and Andrea Bonaguaro as pool office clerk prospectively, and to make both employees whole for those monies which they would have earned,

less mitigation for monies earned or received through unemployment compensation for 1986<sup>5/</sup> and 1987.<sup>6/</sup>

To rule otherwise would render Commission procedures for elections and certification meaningless. Once a majority representative is certified, it is entitled to negotiate with the public employer for all employees covered in the certification. An employer who refuses to so negotiate operates at its peril and runs a significant risk that it engages in unfair practices. See Passaic Valley Reg. H.S. Bd. of Ed. When an employer goes so far as to fail to rehire employees in positions covered by certifications and then rehires other employees, the risks are extensive.<sup>7/</sup>

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<sup>5/</sup> While a finding and remedy for 1986 may appear untimely, the procedural history of this case (see Finding of Facts Numbers 1 through 5) resulted in delays which were caused by both parties. Recognizing this, and the original timely filings, Counsel for the Committee waived any timeliness defense on the record (T2, pp. 3-4).

<sup>6/</sup> The record contains some information, but not a thorough recording of facts which would significantly mitigate the monetary award in this matter. Should the Commission order the recommended action, and the parties fail to agree on the monetary award, the Commission would resolve that issue through either further hearings or enforcement proceedings.

<sup>7/</sup> Local 97 argued that the individuals who were not rehired and those who were appointed in 1986 and 1987 to the positions of pool office manager and pool office clerk were victims or beneficiaries of political maneuvering. In view of the findings above, I do not feel that the Commission needs to reach that allegation. However, I note that the Committee and the current pool office manager denied that the appointments were political. Moreover, even if the Committee had asserted its right to make such appointments on the basis of political

II. Alleged Violation Of §5.4(a)(3)

While Local 97 alleged that the Committee violated §5.4(a)(3), Local 97 failed to establish a prima facie case that the Committee was substantially motivated by anti-union animus in its decision to not rehire Montemurro and Bonaguaro. See In re Bridgewater Tp., 95 N.J. 235 (1984). There is no evidence that the two employees were active in union activities, that the employer had any knowledge of such activities or any other evidence that would infer anti-union animus on behalf of the Committee. Accordingly, I recommend that the Commission dismiss that portion of the Complaint which alleges a violation of §5.4(a)(3).

III. Alleged Violation Of §5.4(a)(7)

Local 97 failed to cite any specific rule or regulation of the Commission which was violated by the Committee. Accordingly, I recommend the Commission order that that allegation also be dismissed.

RECOMMENDED ORDER

I recommend that the Commission ORDER that:

A. The Palisades Park Recreation Committee cease and desist from:

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7/ Footnote Continued From Previous Page

patronage, that defense would fail as a matter of public policy, since the pool office manager and pool office clerk are clearly not policy making or confidential positions, and the effective performance of such employees is not compromised by any difference in political commitments. See Battaglia v. Union County Welfare Board, 88 N.J. 48 (1981), cert. den. 456 U.S. 965 (1982).

1. Refusing to negotiate in good faith with Teamsters Local 97 concerning terms and conditions of employment of the pool office manager and pool office clerk employed by the Committee; and

2. Refusing to negotiate with Teamsters Local 97 concerning the Committee's failure to rehire Diane Montemurro and Andrea Bonaguaro in 1986 and 1987 as pool office manager and pool office clerk, respectively.

B. That the Committee take the following affirmative action:

1. Negotiate in good faith, upon demand, with Local 97 concerning terms and conditions of employment for the pool office manager and the pool office clerk.

2. Offer employment prospectively to Diane Montemurro and Andrea Bonaguaro as pool office manager and pool office clerk, respectively.

3. Make Diane Montemurro and Andrea Bonaguaro whole for lost wages and other benefits less income that should be credited in mitigation plus interest at the rate authorized by R.4:42-11.

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized

representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

5. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

C. The Complaints' remaining allegations are dismissed.



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Mark A. Rosenbaum  
Hearing Examiner

Dated: September 29, 1987  
Trenton, New Jersey

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT refuse to negotiate in good faith with Teamsters Local 97 concerning terms and conditions of employment of the pool office manager and pool office clerk employed by the Committee.

WE WILL NOT refuse to negotiate with Teamsters Local 97 concerning the Committee's failure to rehire Diane Montemurro and Andrea Bonaguaro in 1986 and 1987 as pool office manager and pool office clerk, respectively.

WE WILL negotiate in good faith, upon demand, with Local 97 concerning terms and conditions of employment for the pool office manager and the pool office clerk.

WE WILL offer employment prospectively to Diane Montemurro and Andrea Bonaguaro as pool office manager and pool office clerk, respectively.

WE WILL make Diane Montemurro and Andrea Bonaguaro whole for lost wages and other benefits less income that should be credited in mitigation plus interest at the rate authorized by R.4:42-11.

Docket No. CO-H-87-321

PALISADES PARK RECREATION BOARD

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.