

P.E.R.C. NO. 88-82

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

P.B.A. LOCAL NO. 273,

Respondent,

-and-

Docket No. CE-H-87-22

BOROUGH OF FLEMINGTON,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that PBA Local 273 violated the New Jersey Employer-Employee Relations Act when it refused to negotiate in good faith with the Borough of Flemington. A Commission Hearing Examiner recommended this conclusion and the Commission adopts it.

P.E.R.C. NO. 88-82

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

P.B.A. LOCAL NO. 273,

Respondent,

-and-

Docket No. CE-H-87-22

BOROUGH OF FLEMINGTON,

Charging Party.

Appearances:

For the Respondent, Travis L. Slaughter, President;
Mark Chipps

For the Charging Party, Alexander F. Keating, Jr., Esq.

DECISION AND ORDER

On July 1 and August 14, 1987, the Borough of Flemington ("Borough") filed an unfair practice charge and amended charge, respectively, against P.B.A. Local No. 273 ("PBA"). The charge, as amended, alleges the PBA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(3) and (5),^{1/} when it: (1) refused to attend scheduled negotiations meetings; (2) secretly tape-recorded conversations with a Borough Councilman and negotiator concerning negotiations issues, and (3) falsely and maliciously accused the Councilman of bribery and extortion based upon the tape recordings.

^{1/} These subsections prohibit employee organizations, their representatives or agents from: (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit and (5) Violating any of the rules and regulations established by the commission."

On September 28, 1987, a Complaint and Notice of Hearing issued. On October 22, the PBA filed its Answer denying the Complaint's allegations. It contends the taped conversation shows that the Borough was interfering with the PBA.

On November 5 and 6, 1987, Hearing Examiner Alan R. Howe conducted hearings. The charging party examined witnesses and introduced exhibits. The respondent introduced exhibits. The parties stipulated to the testimony of one witness. They also filed post-hearing briefs.

On January 6, 1988, the Hearing Examiner issued his report and recommended decision. H.E. No. 88-32, 14 NJPER ____ (¶ ____ 1988). He found that the PBA violated its duty to negotiate in good faith when it: (1) failed to attend scheduled negotiations sessions and changed negotiators; (2) secretly tape-recorded conversations with a Borough negotiator, and (3) accused the Borough's negotiator of extortion and bribery even after the prosecutor advised them that he had not violated the law.

The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before January 21, 1988. Neither party filed exceptions.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-13) are accurate. We adopt and incorporate them here. We also agree with his conclusion that under all the circumstances of this case the PBA refused to negotiate in good faith.

ORDER

PBA Local 273 is ordered to:

A. Cease and desist from:

1. Refusing to negotiate in good faith with the Borough of Flemington, particularly, by engaging in a course of conduct during contract negotiations inimical to good faith negotiations.

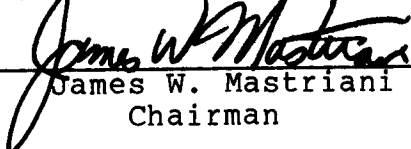
B. Take the following affirmative action:

1. Upon demand, negotiate in good faith with the negotiators of the Borough.

2. 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.

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
March 18, 1988
ISSUED: March 21, 1988

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 cease and desist from refusing to negotiate in good faith with the Borough of Flemington, particularly, by engaging in a course of conduct during contract negotiations inimical to good faith negotiations.

WE WILL, upon demand, negotiate in good faith with the negotiators of the Borough.

Docket No. CE-H-87-22

P.B.A. LOCAL NO. 273

(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.

H.E. NO. 88-32

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

In the Matter of

P.B.A. LOCAL NO. 273,

Respondent,

-and-

Docket No. CE-H-87-22

BOROUGH OF FLEMINGTON,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent PBA violated §5.4(b)(3) of the New Jersey Employer-Employee Relations Act when, during the course of negotiations between January 1987 and August 1987, it failed to appear at scheduled negotiations meetings, surreptitiously recorded telephone conversations with the Borough's chief negotiator and, thereafter, when it was advised that the Borough's negotiator had not violated any criminal statutes, it nevertheless accused him privately and publicly of having committed the crimes of bribery and extortion. In connection with the surreptitious recording of telephone conversations with the Borough's chief negotiator, the Hearing Examiner, finding no Commission precedent, relied on many decisions of the NLRB regarding surveillance.

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. 88-32

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

In the Matter of

P.B.A. LOCAL NO. 273,

Respondent,

-and-

Docket No. CE-H-87-22

BOROUGH OF FLEMINGTON,

Charging Party.

Appearances:

For the Respondent

Travis L. Slaughter, President, Pro se

Mark Chipps, Pro se

For the Charging Party

Alexander F. Keating, Jr., Esq.

For the Courier-News

(Pursuant to Subpoena of a Reporter)

Richard A. Ragsdale, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 1, 1987, and amended on August 14, 1987, by the Borough of Flemington (hereinafter the "Charging Party" or the "Borough") alleging that P.B.A. Local No. 273 (hereinafter the "Respondent" or the "PBA") 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 last

collective negotiations agreement between the parties expired on December 31, 1986, and, during the course of negotiations in 1987 for a successor agreement, the PBA's negotiating committee without prior notice failed to appear at a session on March 18, 1987, where the Borough's representatives appeared; that again with no prior notice to the Borough, the PBA's negotiating committee failed to appear at an agreed upon session on April 8, 1987, where the Borough's representatives appeared; and, that further, without prior notice to the Borough, the PBA's negotiating committee again failed to appear at a session on April 15, 1987, where the Borough's representatives appeared; that the PBA failed to respond to a letter from the Borough's negotiators, dated April 8, 1987, which had been sent for the purposes scheduling the session for April 15, 1987, supra; that on July 8, 1987, with no prior notice that he was doing so, Mark Chipps, a PBA negotiator, tape recorded a telephone conversation between himself and William M. Reed, a Borough negotiator, regarding issues that had been discussed at a July 1, 1987, negotiating session where both parties were present; that on July 14, 1987, again without notice that he was doing so, Chipps tape recorded a telephone conversation between himself and Reed, regarding issues that had been discussed at the July 1, 1987, negotiating session, supra; that, based upon the foregoing tape recorded conversations, Travis L. Slaughter, the President of the PBA, and Chipps publicly and privately accused Reed of committing the crimes of bribery and extortion; and that, finally, between

July 1, 1987 and July 30, 1987, Slaughter and Chipps attempted to initiate a criminal prosecution of Reed for the crimes of bribery and extortion based upon the above tape recordings; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(b)(3) and (5) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on September 28, 1987. Pursuant to the Complaint and Notice of Hearing, hearings were held on November 5 and November 6, 1987, in Newark, New Jersey, at which the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The Charging Party introduced testimonial and documentary evidence while the Respondent elected to rely on several documents and a brief stipulation as to what a certain unit member would have testified to if called as a witness. Neither Slaughter nor Chipps, who were present on both days of hearing, testified, notwithstanding that each had made an appearance and had cross-examined Charging

^{1/} These subsections prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (5) Violating any of the rules and regulations established by the commission."

Party witnesses.^{2/} The Charging Party argued orally at the conclusion of the hearing and both parties filed post-hearing briefs by December 16, 1987.^{3/}

An Unfair Practice Charge, as amended, 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 oral argument of the Charging Party and 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:

FINDINGS OF FACT

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

^{2/} The explanation offered by Slaughter and Chipps for not testifying in defense of the instant Unfair Practice Charge was that they were relying on the advice of counsel (who did not appear). Slaughter had been terminated in February 1987, and his reinstatement was pending at the time of the hearing (1 Tr 42, 74). Chipps was under investigation for suspension or termination at the time of the hearing (1 Tr 75).

^{3/} On the first day of hearing, November 5, 1987, Richard A. Ragsdale, Esq., appeared for the Courier-News since one of its reporters had been subpoenaed to testify on that date. Counsel for the Courier-News was concerned that the reporter might be placed in the position of having to disclose confidential sources, which he submitted was protected under a decision of the New Jersey Supreme Court in Maressa v. New Jersey Monthly, 89 N.J. 176 (1982). It appearing that the reporter would not have to disclose any confidential sources in this proceeding, the reporter testified and was excused.

2. PBA Local No. 273 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The last collective negotiations agreement between the parties expired on December 31, 1986 (1 Tr 25).

4. In the past, the parties have experienced some difficulty in reaching a collectively negotiated successor agreement as indicated by the fact that once the parties resorted to interest arbitration, namely, in 1980 or 1981, and that they have in three instances sought the assistance of a Commission mediator (1 Tr 29, 83).

5. Further indication of the parties' problems in their collective negotiations relationship is the fact that the PBA instituted a lawsuit against the Borough in September 1986, which involved the promotion of William K. Faber from patrolman to sergeant in the Borough's Police Department (1 Tr 30-34). The decision of the Superior Court judge in that case was to set aside the promotion of Faber but, at the same time, the Court confirmed the Borough's testing procedure, following which Faber was reappointed to sergeant in either June 1987 or July 1987 (1 Tr 34-36; CP-8 & CP-9).

6. The Borough's negotiating committee for the successor agreement to that which expired December 31, 1986, was organized in the latter part of 1986 (1 Tr 24). The committee consisted of Councilman William M. Reed, who has also been the Police

Commissioner since August 1977, Councilman George Wilson and Councilman George Sirusas, who ultimately resigned in May 1987 (1 Tr 25, 26). The PBA negotiators have always been Travis L. Slaughter, the President of the PBA, and other PBA members (1 Tr 29). In December 1986, the Borough's negotiators sent the PBA a letter requesting negotiations (1 Tr 37).

7. Slaughter sent the Borough a letter advising it that the PBA negotiating team would be comprised of members other than the Borough's Police Department, namely, three members of the Raritan Township Police Department, who were also members of Local No. 273 of the PBA (1 Tr 38, 39). Reed testified that his reaction was positive and that at a first meeting in mid-January 1987 there was a "good rapport" (1 Tr 39).

8. A further meeting, which was scheduled for two weeks later did not occur because of disagreement within the PBA as to how the negotiations should proceed (1 Tr 39, 40). Ultimately, the three members of the Raritan Township unit of the PBA resigned and did not participate further in negotiations (1 Tr 40). Thereafter, on February 17, 1987, Reed was advised by Slaughter that he would be assuming responsibility for the conduct of negotiations on behalf of the PBA (R-1).

9. A negotiations meeting between the parties next took place on February 24, 1987, but there was no progress and the next meeting was scheduled for March 18, 1987 (1 Tr 42, 43). On March 18th the PBA did not appear, although the Borough's representatives

did, and on the same date the Borough Clerk, Robert B. Hauck, sent a letter to Slaughter, advising him of the failure of the PBA to appear on that date and suggesting a meeting for March 25, 1987 (1 Tr 43, 44; CP-3). On the same date, March 18th, Slaughter sent a letter to Reed, confirming the next meeting date of March 25, 1987, and apologizing for the failure of the PBA to appear on this date, March 18th (CP-4).

10. On March 25, 1987, the parties met in collective negotiations and agreed on the setting of a further meeting on April 8th (1 Tr 45). The PBA did not appear on April 8th although the Borough's representatives did.^{4/}

11. On April 8, 1987, Reed sent a letter to Slaughter, which recited that the PBA had again failed to attend the negotiations meeting on April 8th, which was set in Slaughter's presence on March 25, 1987 (CP-5). The same letter from Reed to Slaughter requested a meeting of the parties on April 15th.

12. Again, on April 15, 1987, the PBA negotiators failed to appear at the scheduled meeting and Reed, on that date, wrote to Slaughter, stating that since the PBA had missed three scheduled meetings, two consecutively, the Borough was concluding that the PBA

^{4/} It was stipulated that a negotiator for the PBA, Jeffrey Crine, if had he appeared, would have testified that there was no agreement of the parties to meet on April 8, 1987 (2 Tr 29-31). The Hearing Examiner, having heard the live testimony of Reed, as opposed to the stipulated testimony of Crine, credits the testimony of Reed that there was an agreement of the parties to meet for negotiations on April 8, 1987, where the PBA failed to appear.

was "...refusing to negotiate..." (CP-6). No response or explanation was ever received by Reed from Slaughter or anyone else on behalf of the PBA (1 Tr 48).

13. The parties next met on June 25th, where the Borough was represented by Reed and Wilson and the PBA was represented by Chipps, who had a letter authorizing him to act as chief negotiator (1 Tr 48, 49; R-2). Chipps handed Reed a PBA proposal for wage increases of 9-1/2% for 1987 and 9% for 1988 (1 Tr 49, 50). Reed indicated that this proposal was several percentage points above the figure that the Borough thought realistic but that it was "not impossible" (1 Tr 50). Reed stated to Chipps that the morale in the Police Department had been rising through June 1987 and, that, therefore, the Borough might be willing to give a larger increase, indicating that the PBA's request for 9-1/2% and 9% for two years might be met (1 Tr 50-52).

14. On July 10, 1987, Reed learned from Faber that Chipps had filed internal PBA charges against Faber because of his having, inter alia, testified against Slaughter before the Borough Council (1 Tr 52, 53).

15. Prior to the Borough Council meeting on July 13th, Reed received a telephone call from Chipps, in which Chipps inquired about the effect of his charges against Faber on the ability of Reed to advocate the 9-1/2% and 9% wage increases demanded by the PBA (1 Tr 53, 54). Reed's reply was that it would be difficult for him to advocate to the Council the granting of the requested increases unless Chipps abandoned the charges against Faber (1 Tr 54, 55).

16. By agreement of the parties a transcript of the above telephone conversation, which Chipps had recorded without the knowledge of Reed,^{5/} was received in evidence as Exhibit R-4. The transcript of the July 13th conversation, supra, confirms Reed's testimony that he did not think the PBA was "...going to see much agreement on the part of the Council as long as that kind of action (the charges against Faber) is under way..." (R-4, p. 1). Near the conclusion of this conversation Chipps asked Reed if the bottom line was that if Chipps and the PBA "...drop the charges and we get the contract then or what?..." (R-4, p. 3). Reed's response was that he thought that the dropping of the charges was "...the minimum..." together with some indication that the charges would not be brought up again (R-4, p. 3).

17. On July 14, 1987, at about 8:40 a.m., Chipps telephoned the Borough Clerk Hauck.^{6/} Chipps asked Hauck what happened at the Council meeting on July 13th regarding the contract. Hauck stated that the Council went into closed session and that nothing was voted upon and that the best course was for Chipps to speak to Reed.

^{5/} Reed did not learn that the July 13th conversation and another telephone conversation with Chipps on July 14th were recorded until a negotiations meeting on July 29, 1987, infra (1 Tr 55, 59, 62-64).

^{6/} This telephone conversation was also surreptitiously recorded by Chipps (R-4, pp. 4, 5).

18. On the same date, July 14th, at about 9:10 a.m., Chipps telephoned Reed and again surreptitiously recorded the conversation (1 Tr 58, 59). Chipps told Reed that he had talked to Hauck and then asked him what had happened the previous evening so far as the contract went (R-4, pp. 6-8). Reed stated to Chipps that the Council was in "general acceptance" of the PBA's contract proposal on wages "at this moment." However, Reed added that when the subject of the PBA's charges against Faber emerged, the Council's "...sentiments...kind of evaporated and I have to tell you I really don't know where it stands right now..." (R-4, p. 6). The conversation concluded with Reed stating "...If you can see your way clear to make those concessions (obviously referring to the charges against Faber), I think you can count the money..." (R-4, p. 8).

19. On July 20, 1987, Chipps telephoned Neil Cooper, the First Assistant County Prosecutor. Chipps stated that he was seeking a legal opinion regarding extortion or bribery and Cooper asked Chipps to come into the Prosecutor's office. [2 Tr 3].

20. The next day, July 21st, Chipps had a half-hour meeting with Cooper and Capt. Nicholas Susalis, the latter being the person who is primarily responsible for handling criminal investigations in the Prosecutor's office. Chipps had with him a file and a cassette tape. Chipps proceeded to describe existing problems with respect to salary in the PBA's negotiations and stated that he had taped several conversations with Reed. Chipps said that he had two concerns at that point, one being whether or not there

was a criminal violation regarding Reed's conduct^{7/} and the other was whether or not Chipps had violated the law in recording telephone conversations with Reed. Cooper, after some research, advised Chipps that he was not in criminal violation by having recorded conversations with Reed. Cooper made copies of documents that Chipps had with him and made a copy of the tape. Thereafter, Cooper stated that he would get back to Chipps concerning his inquiry as to whether or not Reed had committed a violation of the law concerning extortion or bribery. [2 Tr 4, 5].

21. Following the meeting with Chipps on July 21st, Cooper met with the Prosecutor, Roger Mahon, who reached the conclusion that there had been no violation of the law by Reed and Susalis was directed to report this fact to Chipps and to ask Chipps if he wished to speak to Mahon.

22. On July 29, 1987, a negotiations meeting was held at about 7:30 a.m. Present for the Borough were Reed and Wilson and for the PBA Slaughter and Crine. When Reed asked where Chipps was,^{8/} Slaughter responded by asking Reed if he would like to hear what he (Reed) had said at prior meetings (1 Tr 62). Reed then

^{7/} Susalis, in a written memorandum of the July 21st meeting with Chipps, noted that Chipps said that Reed was attempting to "...extort the P.B.A....by stating that their contract would be settled if P.B.A. charges against...Faber were dropped..." (CP-7).

^{8/} The reason for this inquiry was that on June 25, 1987, five members of the PBA unit signed a writing authorizing Chipps to negotiate the contract, the alternate negotiators being designated as Slaughter, Crine and Jeffrey Austin (R-2).

asked Slaughter if Chipps had been wearing a microphone, to which Slaughter responded, "Well, there have been some recordings made" (1 Tr 62). When asked by Slaughter if he would like to hear the recordings, Reed said that he would. Chipps was then summoned and about five minutes later he arrived with a tape recorder. When the tape was played, Slaughter said to Reed (jabbing his finger toward him) that, "You had better be concerned about extortion and bribery" (1 Tr 63). Slaughter then asked Reed if he had read "Title 2C recently?" (1 Tr 63). The entire tape was then played with Reed and Wilson listening to the recording of Chipps' conversations with Reed on July 13th and 14th and the conversation between Chipps and Hauck on July 13th (1 Tr 63, 64; R-4, supra). When Reed asked at the conclusion of the meeting whether there were other copies of the tape in existence, Chipps replied that there were and that they were at the Prosecutor's office.^{9/} At that point a copy of the tape was made for Reed (1 Tr 65, 66).

23. Later in the day on July 29, 1987, Reed spoke with Prosecutor Mahon, who advised Reed that no crime had been committed

^{9/} Exhibit CP-7 indicates that on the date of Chipps' meeting with Cooper, July 21st, supra, he was advised by Susalis that the Prosecutor had concluded that there was no criminal violation on the part of Reed. Thus, Chipps, and necessarily Slaughter, knew on July 29th, when the tape threat was made by Slaughter that the Prosecutor had determined that Reed had done nothing wrong.

by him, i.e. there was no extortion or bribery involved in any conduct of Reed (1 Tr 67, 68).^{10/}

24. Sometime shortly after the July 29th negotiations meeting, supra, Chipps returned to the Prosecutor's office and again spoke with Cooper.^{11/} Nothing particularly happened at this second meeting but Cooper did testify that he told Chipps that he thought that his conduct as a police officer was "less than appropriate" and that whoever gave him advice as to the taping of these conversations was giving "poor advice" (2 Tr 13).

25. Regina DePeri, a reporter for the Courier-News testified that she interviewed Slaughter and Chipps and thereafter wrote an article in the August 4, 1987 issue of the paper (CP-1). In that article DePeri quoted Chipps and Slaughter as stating that Reed's comments (in the July 13 and July 14, 1987 taped conversations, supra) were "extortion" and "bribery." Further, in a second article on the next day, August 5th, DePeri quoted Chipps in a Courier-News article (CP-2) as having "...labeled the statements (of Reed) 'bribery' and 'extortion.'..."

^{10/} The Prosecutor gratuitously advised Reed on July 29, 1987, that Reed's conduct in negotiations were worthy of compliment and that Chipps's actions "...were rather poorly advised..." (1 Tr 68, 69).

^{11/} Cooper testified that this meeting took place after the tape had been played to Reed (2 Tr 15).

DISCUSSION AND ANALYSIS

The Respondent PBA Violated §5.4(b)(3)
Of The Act By The Totality Of Its
Conduct In Collective Negotiations For
A Successor Agreement To That Which
Expired December 31, 1986.^{12/}

From time in memoriam the Commission has held that the standard for determining whether a party has refused to negotiate in good faith is dependent upon an analysis of the overall conduct and/or attitude of the party charged (here the PBA). Thus, the Commission stated in State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976) that the object of the analysis of the overall conduct of the party charged: "...is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement..." (1 NJPER at 40). See also, Hamilton Township Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986) and N.J. Dept. of Human Services, P.E.R.C. No. 82-83, 8 NJPER 209, 215 (fn. 31)[¶13088 1982].

It is clear to the Hearing Examiner that the PBA's totality of conduct, infra, in its negotiations for a successor agreement to that which expired on December 31, 1986, demonstrates "...a

^{12/} The Charging Party failed to adduce any evidence that the Respondent violated §5.4(b)(5) of the Act and, therefore, the Hearing Examiner will recommend dismissal of this allegation in the Complaint.

pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement..." (State of New Jersey, supra, 1 NJPER at 40). In so concluding, the Hearing Examiner is mindful that the Commission also stated in State of New Jersey, supra, that "...the duty to negotiate in good faith is not inconsistent with a firm position on a given subject. 'Hard bargaining' is not necessarily inconsistent with a sincere desire to reach an agreement..." (1 NJPER at 40).^{13/}

The PBA, during the first six months of negotiations, between January and June 1987, manifested an on-again, off-again course of conduct by first mutually scheduling negotiations meetings and then failing to appear at the scheduled meetings (see Findings of Fact Nos. 9-12, supra). Further, the PBA added to the overall difficulty in the conduct of mutual negotiations with the Borough by the several changes in the composition of its negotiating committee. For example, Slaughter advised the Borough in or around January 1987, that the negotiating team for the PBA would be comprised of three members other than the Borough's Police Department, namely, three members of the Raritan Township Police Department, who were also members of PBA Local No. 273 (see Finding of Fact No. 7, supra). Shortly after one negotiations meeting was

^{13/} For cases where the Commission has found that "hard bargaining" was involved and, thus, that it was consistent with good faith negotiations, see: Downe Township Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3, 7, 8 (¶17002 1985); Ocean Cty. College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984); and Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983).

held in mid-January 1987, with the Raritan Township PBA members serving as negotiators, these individuals resigned and Reed was advised by Slaughter that he would be assuming responsibility for the conduct of negotiations (see Finding of Fact No. 8, supra). After the PBA missed several of the scheduled meetings between January and June 1987, Chipps appeared as the chief negotiator for the PBA (see R-2 and Finding of Fact No. 13, supra).

Clearly, the changing of negotiators is an impediment to the reaching of a collective negotiations agreement since when personnel changes occur the course of negotiations is hampered by new faces appearing, who have to be brought up to date as to what has happened at prior negotiations meetings. Thus, a change in negotiators on the part of either party necessarily makes the reaching of an agreement more difficult and clearly extends the time frame for the consummation of a successor agreement. Hence, the Hearing Examiner concludes that the conduct of the PBA's officers and negotiators between January and June 1987 was inconsistent with bringing to the negotiating table "...an open mind and a sincere desire to reach an agreement..." Additionally, it appears to the Hearing Examiner that there were no substantive negotiations conducted through representatives of the PBA in the six-month period referred to above.

Even assuming arguendo that the PBA's conduct by its negotiators between January and June 1987, was not subject to a finding of bad faith on the part of the PBA, we now proceed to examine the surreptitious taping of telephone conversations by

Chipps on July 13 and July 14, 1987. In order to evaluate the legality of this conduct vis-a-vis good faith negotiating, the Hearing Examiner resorts to decisions of the National Labor Relations Board on the matter of surveillance.^{14/}

The National Labor Relations Board in many decisions has held unlawful the surveillance of an employee or employees by an employer through the use of secret recording devices.^{15/} For example, an employer violated the National Labor Relations Act by giving employees the impression that it was recording telephone conversations regarding their protected activities: Heights Funeral Home, Inc., 159 NLRB 723, 62 LRRM 1415 (1966); Flite Chief, Inc., 220 NLRB No. 176, 90 LRRM 1616 (1975); Blanchard Construction Co., 234 NLRB 1035, 97 LRRM 1389 (1978); and Danzansky-Goldberg Memorial Chapels, Inc., 264 NLRB 840, 112 LRRM 1108 (1982). The NLRB also decided that an employer had unlawfully solicited an employee to sneak a recording device into a union meeting where it was secretly recorded and what was said was given to the employer: Lifetime Doors, Inc., 233 NLRB 829, 97 LRRM 1134 (1977). Based on the

^{14/} There can be no question but that the surreptitious taping of telephone conversations by Chipps in conversations with Reed and Hauck on July 13 and July 14, 1987, constituted surveillance as that term has been used by the NLRB in its decisions, infra.

^{15/} Diligent research of Commission precedent discloses no instance where the surreptitious use of a tape recorder was involved.

foregoing NLRB precedent,^{16/} the Hearing Examiner has no difficulty in concluding that when Chipps surreptitiously recorded telephone conversations twice with Reed on July 13 and July 14, 1987, and once with Hauck on July 14th, the PBA by the conduct of Chipps violated the Act.

The unlawful course of conduct by the PBA was compounded by the actions of Slaughter at the negotiations session on July 29, 1987. Recall here that Chipps had gone to the Prosecutor's office on July 21st where he raised the question of whether or not Reed had violated the criminal statutes as to bribery and extortion. Chipps, either on July 21st or shortly thereafter, learned from the Prosecutor that Reed had not violated the law. Thus, it is clear from the record that Chipps learned of the Prosecutor's opinion in this regard prior to the July 29th negotiations meeting. Nevertheless, at this meeting, Slaughter asked Reed if he would like to hear what he (Reed) had said at prior meetings, indicating that some recordings had been made (see Finding of Fact No. 22, supra). Shortly after Chipps arrived at the meeting with a tape recorder, Slaughter said to Reed that he had better be concerned about bribery and extortion under Title 2C. The tape was then played at the meeting and the three recorded telephone conversations between Chipps, Reed and Hauck were revealed. When Reed asked whether there

^{16/} Even in the absence of Commission precedent, NLRB decisions may be used as a guide for public sector determinations: Lullo v. IAFF, Local 1066, 55 N.J. 409 (1970).

were other copies of the tape in existence Chipps told him that one was in the Prosecutor's office.

It is abundantly clear from the record, supra, that the PBA was attempting to "sandbag" the Borough in the collective negotiations between the parties. Any doubt that the PBA was engaged in bad faith negotiations with the Borough was removed when Slaughter and Chipps provided a story to the Courier-News on August 4 and August 5, 1987 (CP-1 & CP-2, supra). It is clear beyond peradventure of doubt that Slaughter and Chipps well knew by August 4th that Reed was in no way involved in any violation of the criminal statutes of bribery and extortion. Nevertheless, Slaughter and Chipps were quoted accurately in the August 4th and August 5th edition of the Courier-News as having called the comments of Reed of "extortion" and "bribery." The Courier-News' reporter, whose byline appeared on the stories, testified at the hearing that these exact statements were made to her by Slaughter and Chipps.

Notwithstanding that Slaughter and Chipps did not testify on advice of their counsel, there can be no doubt whatsoever but that Cooper's testimony, regarding what transpired between him and Chipps on July 21st, together with Reed's testimony as to what happened at the negotiations meeting on July 29th coupled with the testimony of DePeri and CP-1 & 2, establishes conclusively that the PBA's course of conduct in negotiations from January through August 1987, constituted a refusal to negotiate with the Borough in good faith and thus violated §5.4(b)(3) of the Act. Plainly the PBA was

not engaged in "hard bargaining" in any sense that that term is used. Rather, the PBA adopted "...a pre-determined intention to go through the motions, seeking to avoid, rather than reach an agreement..." (1 NJPER at 40). The NLRB cases, supra, on the issue of surveillance by secret recordings merely makes the case for a violation all the stronger.

* * * *

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

CONCLUSIONS OF LAW

1. The Respondent PBA violated N.J.S.A. 34:13A-5.4(b)(3) when between the dates of January 1987 and August 5, 1987, it refused to negotiate in good faith with the Charging Party by the tactics of failing to appear at scheduled negotiations meetings, surreptitiously recording telephone conversations with Borough officials and, after learning that no illegal conduct had taken place on the part of representatives of Charging Party, proceeded to accuse negotiator William M. Reed with violations of the criminal statutes, namely, that of bribery and extortion.

2. The Respondent PBA did not violate N.J.S.A. 34:13-5.4(b)(5) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent PBA cease and desist from:

1. Refusing to negotiate in good faith with the Charging Party, particularly, by failing to appear at scheduled meetings, by surreptitiously recording telephone conversations with Borough officials and by charging without basis that William M. Reed has violated the criminal statutes of bribery and extortion.

B. That the Respondent PBA take the following affirmative action:

1. Upon demand, negotiate in good faith with the negotiators of the Borough and thereafter appear at scheduled meetings, desist from surreptitiously recording telephone conversations with Borough officials and, finally, desist from charging without basis that William M. Reed has violated the criminal statutes of bribery and extortion.

2. Cease and desist from utilizing the recorded tape, supra, in any manner whatsoever in collective negotiations.

3. 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.

C. That the allegations that the Respondent PBA violated N.J.S.A. 34:13A-5.4(b)(5) be dismissed in their entirety.

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



Alan R. Howe
Hearing Examiner

Dated: January 6, 1988
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 the Borough, particularly, by failing to appear at scheduled meetings, by surreptitiously recording telephone conversations with Borough officials and by charging without basis that William M. Reed has violated the criminal statutes of bribery and extortion.

WE WILL NOT utilize the surreptitiously recorded tape made by Mark Chipps on July 13 and July 14, 1987, in telephone conversations with William M. Reed, in any manner whatsoever in collective negotiations.

Docket No. CE-H-87-22

P.B.A. LOCAL NO. 273
(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.