

P.E.R.C. NO. 88-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SOMERVILLE,

Respondent,

-and-

Docket No. CO-H-87-226

SUPERIOR OFFICERS ASSOCIATION,
SOMERVILLE PBA LOCAL 147,

Charging Party,

-and-

Docket No. CO-H-87-257

SOMERVILLE PBA LOCAL 147,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on unfair practice charges filed by the Superior Officers Association, Somerville PBA Local 147 and Somerville PBA Local 147 against the Borough of Somerville. The charges alleged the Borough violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the SOA negotiations team because a majority of the team was composed of patrol officers and its councilman told a local newspaper that the Borough intended to exclude superior officers from the PBA's negotiations team. The Chairman, in agreement with the Hearing Examiner and in the absence of exceptions, finds that the Borough did not violate the Act.

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Docket No. CO-H-87-257

SOMERVILLE PBA LOCAL 147,

Charging Party.

Appearances:

For the Respondent, Lieberman, Ryan, Welas & Miller, Esqs.
(Thomas C. Miller, of counsel)

For the Charging Parties, Abramson & Liebeskind Associates
(Arlyne K. Liebeskind, consultant)

DECISION AND ORDER

On February 13, 1987, the Superior Officers Association, Somerville PBA Local 147 ("SOA") filed an unfair practice charge against the Borough of Somerville ("Borough"). The charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1),

(2), and (5),^{1/} when it refused to negotiate with the SOA negotiations team because a majority of the team was composed of patrol officers.

On March 6, 1987, Somerville PBA Local 147 ("PBA") filed an unfair practice charge against the Borough. The charge alleged the Borough violated the Act when a councilman told a local newspaper that the Borough intended to exclude superior officers from the PBA's negotiations team.

On April 30, 1987, a Complaint, Notice of Hearing and Order Consolidating the cases issued. On July 27, 1987, the Borough filed its Answer. It asserts it refused to negotiate with the SOA because it objected to the composition of the negotiations unit. It alleges that it had insufficient knowledge to respond to the Complaint's allegation concerning the statement that the Borough intended to exclude superior officers from the PBA's negotiations team.

^{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."

On August 25, 1987, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties stipulated facts and introduced exhibits. They also filed post-hearing briefs.

On February 15, 1988, the Hearing Examiner recommended that the Complaint be dismissed. H.E. No. 88-33, 14 NJPER ____ (¶ 1988). He first concluded that the Borough did not violate the Act when it refused to negotiate with the SOA. He found that the SOA's negotiations team was inappropriate because it included five non-supervisory employees on a team with only two supervisors; it was identical to the PBA's negotiations team; and therefore the non-supervisors, as PBA members, might dominate negotiations. He then concluded that the councilman's statement was within his free speech right to comment about labor relations matters because it was noncoercive.

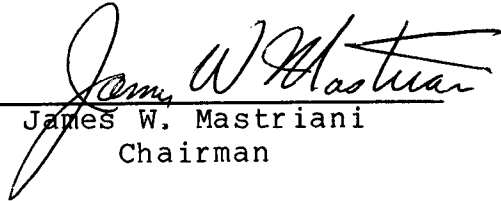
The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before January 29, 1988. Neither party filed exceptions.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-7) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I agree that the Complaint should be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 3, 1988

H.E. NO. 88-33

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

In the Matter of

BOROUGH OF SOMERVILLE

Respondent,

-and-

Docket No. CO-H-87-226

SUPERIOR OFFICERS ASSOCIATION,
SOMERVILLE PBA LOCAL 147,

Charging Party.

-and-

Docket No. CO-H-87-257

SOMERVILLE PBA LOCAL 147

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Borough of Somerville did not violate the New Jersey Employer-Employee Relations Act when it refused to negotiate with a Superior Officers (supervisory) negotiating team because a majority of the team was composed of non-unit, non-supervisory personnel. The Hearing Examiner found that a potential for substantial conflict of interest existed with the team as presently constituted.

The Hearing Examiner also recommended that the Commission find that the Borough did not violate the Act when a councilman made a comment to a local newspaper reporter regarding the inclusion/exclusion of supervisory employees on the non-supervisory negotiating team. The Hearing Examiner found that the councilman's comment was not coercive or intimidating and was thus protected in the context of labor relations.

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. 88-33

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

In the Matter of

BOROUGH OF SOMERVILLE

Respondent,

-and-

Docket No. CO-H-87-226

SUPERIOR OFFICERS ASSOCIATION,
SOMERVILLE PBA LOCAL 147,

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Docket No. CO-H-87-257

SOMERVILLE PBA LOCAL 147

Charging Party.

Appearances:

For the Respondent

Lieberman, Ryan, Welas and Miller, Esqs.
(Thomas C. Miller, of counsel)

For the Charging Party

Abramson & Liebeskind Associates
(Arlyne K. Liebeskind, Consultant)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

Unfair Practice Charges were filed with the Public Employment Relations Commission (Commission) on February 13, 1987 by the Superior Officers Association, Somerville PBA Local 147 (SOA)(CO-87-226), and on March 6, 1987 by the Somerville PBA Local 147 (PBA)(CO-87-257) alleging that the Borough of Somerville (Borough) violated subsections 5.4(a)(1), (2) and (5) of the New

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).^{1/} The SOA alleged that the Borough violated the Act by refusing to negotiate with the SOA negotiations team because it objected to the composition of that team. The PBA alleged that the Borough violated the Act when a councilman made a statement to a local newspaper that the Borough intended to exclude superior officers from the PBA negotiations team in future negotiations.

A Consolidated Complaint and Notice of Hearing was issued on April 30, 1987. The Borough filed Answers on July 27, 1987 denying that it violated the Act. A hearing was held in these matters on August 25, 1987, at which time the parties stipulated facts, introduced certain exhibits and argued orally.^{2/} Both parties submitted post-hearing briefs, the last of which was filed on November 30, 1987.

Upon the entire record I make the following:

Findings of Fact

1. The parties stipulated to the following facts alleged in the Charges (T7-T8).

^{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."

^{2/} The transcript of August 25, 1987 will be referred to as "T."

- a. The Borough of Somerville is a public employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.
- b. The Superior Officers Association, affiliated with the Somerville PBA Local 147, is an employee organization within the meaning of the Act and is subject to its provisions.
- c. The SOA is the majority representative of all employees of the Somerville Police Department holding the rank of lieutenant and captain. Currently, there are two (2) lieutenants and one (1) captain in the bargaining unit.
- d. The Somerville PBA, Local No. 147, is an employee organization within the meaning of the Act and is subject to its provisions.
- e. The PBA is the majority representative of all employees of the Somerville Police Department holding the rank of patrolman and sergeant. Currently, there are twenty-six (26) patrolmen and six (6) sergeants in the bargaining unit.
- f. Until December 15, 1986 the PBA represented a mixed unit of patrolmen, sergeants, and lieutenants. On that date (and signed by the mayor January 2, 1987), the Borough Council adopted a memorandum of understanding resolving the RO-88-55 and CU-87-20 petitions, filed with PERC by PBA Local 147 and the Borough respectively, whereby the Borough gave voluntary recognition to a unit of lieutenants and captains (SOA) leaving the patrolmen and sergeants in the original unit (PBA).^{3/}
- g. On January 7, 1987, the Borough met with PBA Local 147, representing Somerville's patrol officers and sergeants, including detectives, to negotiate a successor agreement. PBA Local 147's bargaining team consisted of five (5) patrol officers and sergeants and two (2) lieutenants plus their labor consultant.
- h. The Borough raised no objections to the make-up of the PBA Local 147's bargaining team and proceeded to negotiate terms and conditions of employment relevant only to patrol

3/ Exhibit CP-1 is the memorandum signed on January 2, 1987 which created a separate unit for rank and file police and a separate unit for superior officers.

officers and sergeants. This meeting took place without incident.^{4/}

i. At the conclusion of negotiations with PBA Local 147, negotiations with the SOA, representing the lieutenants and captains, commenced. The SOA's bargaining team consisted of the same five (5) patrol officers and sergeants and two (2) lieutenants plus their labor consultant.

j. The Borough accepted the SOA's contract proposals but objected to the make-up of the bargaining team and refused to continue the meeting with the patrolmen and sergeants present. When the SOA declined to dismiss members of its team, the Borough terminated the meeting and refused to negotiate further.

k. Subsequently, the SOA filed an unfair practice charge, Docket No. CO-87-226, regarding the Borough's failure to bargain in good faith and interfering with the union's choice of negotiators.

1. On February 26, 1987, Mr. Wernock was quoted in the Somerset Messenger-Gazette as saying that the Council intended to exclude the superior officers from the PBA bargaining team at the next session which position was confirmed by Thomas Miller, Borough Attorney, to the undersigned (labor consultant) in a phone conference following its publication.

2. The following documents were introduced into evidence:

Exhibit CP-2 is the SOA constitution and bylaws. Article 2 prohibits membership in the SOA to anyone below the rank of lieutenant. Article 3 provides for the appointment or election of a president, vice-president and recording secretary. The president is authorized to select a chairman for the negotiations committee and other team members. Article 3, Sec. (a)(Responsibilities of Officers)(3)(a) provides that:

^{4/} Although the Borough stipulated to the facts in item "h," it reserved the right to argue that said stipulation does not constitute a waiver of the Borough's position to negotiate separately, with separate, distinct teams composed of only PBA members and only superior officer members (T8).

With the exception of the Chairman, the Negotiations Committee may be comprised of non-members of the association. However, non-members are not entitled to vote on any matters before the committee.

Exhibit CP-3 is a December 17, 1986 letter from Lt. Richard Rose, President of the SOA, to the SOA labor consultant listing the SOA demands for negotiations for 1987-1988 (T11).

Exhibit CP-4 is the SOA contract proposals submitted to the Borough for 1987-88.

Exhibit CP-5 is a memorandum of understanding between the Borough and PBA dated April 23, 1987 concerning the procedure for interest arbitration for both units (T12). The parties agreed that there would be two separate interest arbitrations, but that SOA unit members could sit on the PBA negotiating team, and that PBA unit members could sit on the SOA negotiating team for interest arbitration. Exhibit CP-5 also contained the following pertinent language:

(a) That the agreement to allow members of different negotiating units to sit upon the negotiating team of the other unit, shall in no manner, shape or form be precedent setting.

(b) That the application heretofore filed before P.E.R.C. to preclude Superior Officers from sitting on the PBA negotiating team, and vice-a-versa, shall determine the ultimate composition of each unit's team.

(c) That this consent to intermingle the negotiating teams shall not be used in the hearing before PERC to indicate an agreement to mix negotiating teams.

Exhibit CP-6 is a June 18, 1987 memorandum of agreement between the Borough and SOA setting forth the terms of a contract settlement.

Exhibit CP-7 is the PBA constitution and bylaws. Article 3 does not exclude superior officers from membership. Article 4, Sec. 1 permits superior officers to attend meetings but not to vote except on the expenditures of funds. Article 4, Sec. 3(c) provides that if the superiors become represented in a separate negotiations unit the PBA may assume responsibility for costs in representing that unit.

A new article, Article 23, was added to CP-7 in February 1987. That Article provided that the PBA President could appoint the members of the PBA negotiations team. Sections 3, 4 and 5 of Article 23 provide as follows:

Section 3. A separate negotiations committee shall be appointed to represent the Superior Officers Association, a sub-division of this Association. The Superior Officers in this case shall be a separate bargaining group made up of the Captain and Lieutenants of the Police Department. The Superior Officers Association shall have their own President who shall appoint their negotiations committee using the guidelines set forth in Sections 1 & 2 above.

Section 4. As the Superior Officers Association is a sub-division of the parent association, the members of the Superior Officers Negotiations Committee may contain members from their Association. Conversely, this Associations Negotiations Committee may also contain members from the Superior Officers Association regardless of rank.

Section 5. When a member of the parent Association is serving on the Superior Officers Negotiation Committee, he may serve as a consultant or advisor and may not influence the Superior Officers in their negotiations, nor may he vote in the ratification process in securing a contract.

When a member of the Superior Officers Association serves on Negotiations Committee of this Association he also may serve only as a consultant or advisor and may

not influence this committee, nor may he vote in the ratification process in securing a contract.

Exhibit CP-8 is a letter from the PBA President to its labor consultant listing contract demands for the PBA. Exhibit CP-9 are the PBA's contract proposals made to the Borough.^{5/}

Exhibit CP-10 is the PBA's modified final offer for interest arbitration.

Neither party presented witnesses or offered any other facts regarding this matter (T15).

Analysis

CO-87-226 - Background

The record shows that prior to December 15, 1986 the PBA represented a mixed unit of non-supervisory employees, patrolmen and sergeants, with supervisory employees, lieutenants. As a result of cross-petitions filed by the PBA and Borough, those parties on January 21, 1987 agreed to remove the lieutenants from the PBA unit, and the Borough agreed to recognize a separate unit of supervisors, lieutenants and a captain, in a separate unit represented by the SOA but affiliated with PBA Local 147.

Exhibit CP-2 permitted the SOA President to select the SOA negotiating team members, and non-members of the SOA could be

^{5/} Exhibits CP-8 and CP-9 were prepared prior to the time CP-1 was implemented separating the superior officers from the patrolmen and sergeants for collective negotiations. The parties stipulated that to the extent that CP-8 and CP-9 included proposals or demands for superior officers, the PBA did not pursue those demands in negotiations or interest arbitration (T14-T15).

selected as team members. The SOA President selected as the SOA team the same five PBA and two SOA members that comprised the PBA negotiating team. After completing PBA negotiations to the extent possible, the same seven-person team began to negotiate for the SOA unit. It was at that point that the Borough accepted the SOA contract proposals, but then refused further negotiations with that team for the SOA unit.

The Issue

The issue in this Charge is whether the Borough violated the Act by refusing to negotiate with the SOA negotiating team. The Borough did not assert, nor do the facts show, that the SOA team attempted to negotiate items for the PBA or in some other manner acted inappropriately. Rather, the Borough merely asserted that the composition of the SOA team was inappropriate, and that was the basis for its decision not to negotiate with that team.^{6/}

Discussion

The Act at 34:13A-5.3 permits employees to select a majority representative to be their exclusive representative for collective negotiations for employees in the unit. In North Brunswick Township Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193 (¶11095 1980)(No.

^{6/} The Borough did not argue that it was inappropriate for the SOA to be affiliated with the PBA. The law in this State is well settled that an employee organization representing nonsupervisors in a separate unit may be affiliated with an organization representing supervisors in a separate unit. Bowman v. Hackensack Hospital Ass'n, 116 N.J. Super. 260 (Ch. Div. 1971); Union Council No. 8 v. Housing Auth. of Elizabeth, 124 N.J. Super. 584 (L. Div. 1973).

Brunswick), the Commission held that different employee unions could coordinate their negotiating strategies by establishing a joint negotiating team which included members from other unions. Each separate union, through the joint negotiating team, could then simultaneously, but separately, attempt to negotiate a common contract for the employees in the unit it represents. 6 NJPER at 194. But the separate units involved in No. Brunswick were all non-supervisory units, and that case did not address the appropriateness of a joint negotiating team including supervisory and non-supervisory employees.

The Act at 34:13A-5.3 prohibits the inclusion of supervisors and non-supervisors in the same negotiations unit. In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971)(Wilton), the New Jersey Supreme Court held that in deciding whether certain employees could join a unit an examination had to be made as to whether there was any conflict of interest between the employees in the unit and/or those seeking to join. The Court found that a significant indication of such conflict would be the duty of some of the employees in the unit to evaluate the performance of other employees in the unit. It also held that the substantial potential for conflict was incompatible with the community of interest required for membership in a single unit. Id. at 423, 425. In sum, the Court held:

...If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the

interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. Id. at 425-426.

In Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 339 (¶12153 1981(Kearny)), the Commission first considered whether supervisors and non-supervisors could form joint negotiating teams, and it considered the holding in Wilton in reaching its determination. The Commission concluded that although public employees generally have the right to select their own representatives for negotiations, and the right to form joint negotiating teams, those rights are not absolute. 7 NJPER at 340.

In Kearny the Commission's Director of Representation had earlier clarified the unit structure by excluding sergeants, lieutenants and captains from a unit including patrolmen.^{7/} Thereafter, a separate unit of those superiors was formed and became affiliated with the PBA local that represented the patrolmen. The PBA local selected the PBA negotiating team, and the superior officers for the superiors team. The Commission found that actual and potential substantial conflict existed by the manner in which the superiors' team was selected and found that the PBA violated the Act. The Commission, however, did not attempt to impose specific limitations on the composition of negotiating teams; it merely

^{7/} Town of Kearny, D.R. No. 78-30, 4 NJPER 54 (¶4025 1977).

stated that in the event of a dispute it would pass upon whether a particular structure is consistent with the law. 7 NJPER at 341.

In City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982)(Camden), the Commission again considered the effect of an affiliation between supervisory and non-supervisory units on the ability of the supervisory unit to control its own negotiations. In Camden the Commission affirmed the Director of Representation's decision in City of Camden, D.R. No. 82-25, 8 NJPER 11 (¶13005 1981). The Director had directed an election where a superior officer organization affiliated with the Fraternal Order of Police (FOP) representing the patrolmen, sought to represent the superior officers. The Director required the superior officers' organization to certify that it would be a separate organization from the FOP and not admit non-supervisory employees to membership. The Commission adopted that standard but added that the superior officers also had to certify that no non-supervisory employees were included in membership at that time. The Commission in Camden, however, to be consistent with its decision in Kearny, also required the superior officers organization to certify that it, and not the FOP, would "control the negotiations and administration of contracts concerning the supervisory personnel." 8 NJPER at 227.^{8/}

^{8/} See also State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981); Hudson County, D.R. No. 84-21, 10 NJPER 293 (¶15144

Contrary to the SOA argument in its post-hearing brief, No. Brunswick is not the controlling case in this matter. Kearny and Camden control. In applying the standards and intent developed by the Commission in those cases, I find that the SOA's negotiating team was improperly constituted; thus the Borough did not violate the Act by refusing to negotiate with that team. I find that the SOA negotiating team was improper on its face. The inclusion of five non-supervisory employees on a team with only two supervisors has the potential for substantial conflict of interest.

While the five PBA members of the SOA team may not be entitled to vote on the SOA contract or "influence" the two SOA members, the inclusion of five non-supervisory employees on the supervisory team which negotiates for just three supervisors could lead to substantial conflict. Although the five non-supervisory employees on the SOA team are not "permitted" to influence the two SOA team members, it is naive to think that those five people speaking in a strong collective voice would not influence and even intimidate the two supervisors who are otherwise expected to negotiate the contract. Such influence or intimidation would inevitably create a conflict between the supervisors and

8/ Footnote Continued From Previous Page

1984), request for review denied, P.E.R.C. No. 84-131, 10 NJPER 320 (¶15152 1984), mot. for leave to appeal den. App. Div. Dkt. No. AM-944-83T2 (6/7/84), mot. for leave to appeal and stay of election den. Sup. Ct. Dkt. No. 22,796 (6/12/84); City of Vineland, D.R. No. 88-18, 14 NJPER ____ (¶____ 1987).

non-supervisors, and it was that conflict--and the potential for such conflict--that Wilton found unacceptable.

Although the SOA may have made a good faith effort to comply with Camden when it created CP-2, the SOA constitution and bylaws, the composition of its negotiating team violates the intent expressed in Wilton and Kearny. This case is similar to Kearny in one important respect. In Kearny, the PBA selected the members of the superiors' team and the Commission found that action to be a Wilton conflict. In this case the SOA negotiating team consisted of the same people as the PBA negotiating team with the PBA members forming the majority. That result was not coincidental. It smacks of control by the PBA over the selection of people for the SOA negotiating team and that amounts to the same type of Wilton conflict that existed in Kearny.^{9/}

While the SOA is entitled to choose its own negotiating team, there was no apparent or established rational basis for needing five non-supervisory employees on a team negotiating for just three supervisors when the non-supervisory individuals were only expected to "advise" the supervisors. One PBA unit member could have provided adequate advise to the SOA team. As the SOA

^{9/} I am not finding that the PBA actually told the SOA president who to select for the SOA team. Rather, based on the fact that the same team was "selected" by the SOA, and that that team contained a majority of PBA rather than SOA individuals, I am inferring that the PBA significantly influenced the composition of the SOA team. Such influence presents actual, as well as the potential for, substantial conflict of interest found inappropriate in Wilton.

team is presently constituted, it is difficult to believe that the two supervisors could control the team in the face of five non-supervisory team members who could apply pressure on the supervisors during the negotiations process. The supervisors should not be placed in that position, and the amount of pressure that non-unit team members should have the ability to apply to supervisors should be kept to a minimum. Thus, to the extent that the SOA has the right to select its own negotiating team, in order to satisfy the Camden requirement that the supervisors control their own negotiations, I find that it is essential for the majority of the team to be composed of unit, not non-unit, members. That composition would ensure the supervisors' ability to disregard the "advice" of a non-unit member without meeting the resistance of a majority of the negotiating team.

Accordingly, since the SOA negotiating team was inappropriately constituted, the Borough had a legitimate defense to its actions in this case and I recommend that this Charge be dismissed.

CO-87-257 - Background & Issue

The facts of this Charge show that the Borough did negotiate with the PBA team, but that when negotiations had been completed a Borough councilman made a remark to a local newspaper that the Borough intended to exclude superior officers from the PBA negotiating team at the next session. There was no showing that the Borough ever actually took any action to exclude superiors from that

team or that there was a "next session." Thus, the issue presented here was whether the Borough violated the Act when one councilman made the remark to a newspaper reporter and/or when the Borough Attorney confirmed the remark in a telephone conversation with the PBA's labor consultant.

I find that the Borough did not violate the Act by such conduct. Public employers have a free speech right to comment upon its labor relations with an employee representative as long as the comment(s) is (are) not coercive. Black Horse Pike Reg. Bd. Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981). In that case the Commission held:

...A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. 7 NJPER at 503.

Subsequently, in Camden Fire Dept., P.E.R.C. No. 82-103, 8 NJPER 181 (¶13078 1982), adopting H.E. No. 82-34, 8 NJPER 181 (¶13078 1982), and Rutgers, The State University, P.E.R.C. No. 83-136, 9 NJPER 276 (¶14127 1983), adopting H.E. No. 83-26, 9 NJPER 177 (¶14083 1983), the Commission adopted the free speech rule established in the private sector, N.L.R.B. v. Corning Glass Works, 204 F.2d 422, 32 LRRM 2136 (1st Cir. 1953), which protected an employer with respect to oral expressions of its views regarding labor matters as long as those expressions contained "no threat of reprisal or force or promise of benefit." 32 LRRM at 2139.

In the instant case, the remark by Councilman Wernock to a local newspaper reporter was not coercive to the PBA nor was it made as a threat or as a reprisal for the PBA engaging in protected activity. The remark was made because of the Borough's belief that the PBA's negotiating team was improperly constituted because it included superior officers. The Borough has not taken any improper action vis-a-vis the PBA to seek the removal of the superiors from the PBA team. It (through a councilman) only commented to a reporter that it was the Borough's intent to take a position in future negotiations that superiors should be removed from the PBA's team. I do not interpret such a remark to be intimidating or coercive to the PBA in the context in which it was made.^{10/}

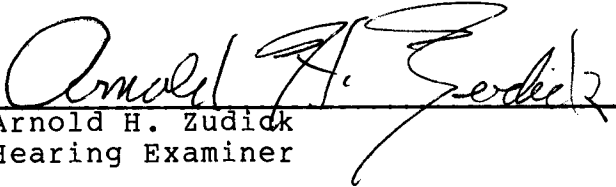
^{10/} This decision is not at all intended to affect the PBA's right to select its own negotiating team without interference from the Borough. The decisions in Kearny and Camden were intended to apply to negotiating teams for supervisory units, not to frustrate the rights of non-supervisory units to select their negotiating teams even if supervisors are included. Thus, in the instant matter, noting the absence of any evidence of actual Wilton conflict by the inclusion of a minority number of supervisors with a majority number of non-supervisors on the PBA team, the mere presence of those supervisors on the PBA team presents, at this time, no more than de minimis conflict which does not presently justify a change in the composition of that negotiating team. Should the Borough subsequently interfere with the PBA's right to select that team, or refuse to negotiate with that team, the PBA could file charges with the Commission. If the Borough then has a legitimate defense to its actions such as evidence of Wilton conflicts, it may present that to the Commission, and the Commission will ultimately decide whether a violation was committed. Of course, should circumstances change, the Borough has the right, as in Kearny, to file charges against the PBA regarding the composition of the PBA team, and again, the Commission will ultimately decide whether a violation was committed.

Accordingly, that Charge should be dismissed.

Based upon the above Analysis and Discussion I make the following:

Recommended Order

I recommend that the Consolidated Complaint be dismissed.


Arnold H. Zudick
Hearing Examiner

Dated: January 15, 1988
Trenton, New Jersey