P.E.R.C. NO. 88-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LONG BEACH,

Respondent,

-and-

Docket Nos. CO-H-87-314 and CO-H-87-315

TEAMSTERS LOCAL 35,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Township of Long Beach violated the New Jersey Employer-Employee Relations Act when it refused to reduce two collective negotiations agreements to writing.

P.E.R.C. NO. 88-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LONG BEACH,

Respondent,

-and-

Docket Nos. CO-H-87-314 and CO-H-87-315

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 35,

Charging Party.

Appearances:

For the Respondent, Shackleton, Hazeltine & Buczynski, Esqs. (Frank A. Buczynski, Jr., of counsel)

For the Charging Party, Markowitz & Richman, Esqs. (Joel G. Scharff, of counsel)

DECISION AND ORDER

On April 30, 1987, the International Brotherhood of Teamsters, Local 35 ("Local 35") filed two unfair practice charges against the Township of Long Beach ("Township"). The charges allege that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(6),[1/] when it refused to reduce two collective negotiations agreements to writing.

1/ This subsection prohibits public employers, their representatives or agents from: "(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

On June 29, 1987, a Complaint and Notice of Hearing and Consolidation Order issued. On July 22, the Township filed its Answer. It denies reaching collective negotiations agreements with Local 35. As affirmative defenses, it contends that the governing body did not authorize the alleged agreements and the alleged salary increase is unconscionable and exceeds the increases budgeted.

On July 24 and September 2, 1987, Hearing Examiner Edmund G. Gerber conducted hearings. The parties examined witnesses, introduced exhibits and argued orally. At the first hearing date, Local 35 moved to amend the Complaint to allege a violation of subsection 5.4(a)(5).[2/] The Hearing Examiner permitted this amendment over the Township's objection.

On January 21, 1988, the Hearing Examiner issued his report and recommended decision. H.E. No. 88-34, 14 NJPER ___ (¶_____ 1988). He concluded that the parties, through their negotiators, had reached negotiated agreements and that the Township's negotiator had the apparent authority to bind the Township to execute the agreements. Therefore, he found that the Township violated subsections 5.4(a)(5) and (6) when it refused to sign and implement the agreements.

2/ This subsection prohibits public employers, their representatives or agents from: "(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 February 17, 1988, after receiving an extension of time, the Township filed exceptions.[3/] It contends that the Hearing Examiner erred in: (1) permitting Local 35 to amend the Complaint; (2) not finding that Commissioner Gore is the Commissioner (not the Director) of Parks and Public Property and that the entire Board of Commissioners (rather than Gore) hired William McGinnis as negotiator; (3) not finding that, on cross-examination, D'Artiglio recognized that McGinnis did not have sole authority to bind the Township, but needed approval from Commissioner Gore; (4) not finding that the contracts needed to be ratified by the full governing body; (5) finding that McGinnis did not give a "forth-right answer to the question concerning his authority to bind the Township" (at p. 6); (6) rejecting McGinnis' testimony that he advised the union he lacked authority to bind the Township; (7) not finding that the Township's form of government requires that contracts be approved by resolution, and (8) finding a subsection 5.4(a)(5) violation because the union believed an agreement had been entered into.

On March 7, 1988, after receiving an extension, Local 35 filed its reply. It urges adoption of the Hearing Examiner's findings and recommendations.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-8) are generally accurate. We adopt them with these minor modifications: Diane Gore is the Commissioner of

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3/ The Township requested oral argument. We deny that request.

Parks and Public Property. The Board of Commissioners hired William McGinnis as labor negotiator. We have considered the Township's other exceptions to the facts, but find them meritless. The Hearing Examiner properly characterized the testimony of both D'Artiglio and McGinnis. The Hearing Examiner recognized that D'Artiglio was aware that McGinnis would consult with Commissioner Gore during negotiations. We will not disturb the Hearing Examiner's characterization of the witness' testimony or his credibility determinations. See, e.g., City of New Brunswick, P.E.R.C. No. 83-26, 8 NJPER 555 (¶13254 1982).

In Bergenfield Bd. of Ed., P.E.R.C. No. 90 (1975), we found that the parties were bound by the agreement reached by their representatives and directed them to execute a formal writing reflecting that agreement. We concluded that a party is entitled to rely upon the apparent authority of the other party's negotiators, in the absence of any express qualifying conditions. We reached the same conclusion in East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976), noting the following facts.

> The record reveals that no qualifications were ever placed upon the authority of the Board team to conclude an agreement. There was no writing that delimited the authority of either negotiating team or which called for final ratification by the parties themselves. The record reveals no instance wherein a member of the Board indicated to any Association representatives that the Board's negotiators could not conclude an agreement, nor was it established that any member of the Board's team ever qualified his authority to conclude a binding agreement with the Association's representatives. [Id. at 281]

These principles were set forth at the Act's inception and are conducive to stable labor-management relations. In this regard, the Township's contention that contracts must be approved by resolution under Title 40A is misplaced under this case's circumstances. We rejected similar arguments in Bergenfield because our Act requires the application of agency principles concerning the duty to negotiate.

This case turns on a resolution of two factual disputes: (1) did the Township negotiator qualify his authority to reach an agreement, and (2) was an agreement reached? The Township negotiator testified that he told the union of his limited authority. The Township introduced an exhibit purportedly supporting that testimony. The negotiator denied stating that "Gentlemen, we have an agreement." But union witnesses denied that he told them that his authority was limited, denied seeing the exhibit with the limiting statement relied on by the Township, and testified that the Township negotiator said "Gentlemen, we have an agreement" immediately after returning from a meeting with Commissioner Gore. This testimony was supported by written correspondence in which the Township negotiator listed the contract changes as "per our agreement." In short, the Hearing Examiner was faced with a sharp credibility conflict. He concluded that the Township negotiator did not qualify his authority and did, in fact, reach an agreement with the union. There is no basis to disturb his

credibility determination. Therefore, we find that the Township violated subsection 5.4(a)(5)[4/] and (6) of the Act when it refused to sign and implement the negotiated contracts.[5/] We adopt the recommended remedy.

ORDER

The Township of Long Beach is ordered to:

A. Cease and desist from:

1. Refusing to negotiate in good faith and to reduce negotiated agreements to writing by failing to implement the terms of the contracts for the Blue Collar and Supervisors units which were reached on March 12, 1987.

B. Take the following affirmative action:

1. Implement the collective negotiations agreement between the parties retroactive to January 1, 1987 plus interest in accordance with R. 4:42-11(a).

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

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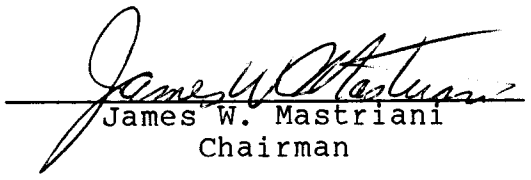
4/ The Hearing Examiner properly permitted amendment of the Complaint to allege a violation of subsection 5.4(a)(5). The amendment did not allege any new facts and the Township was not prejudiced by it. We have already held that such a refusal to sign a negotiated agreement also violates subsection 5.4(a)(5). East Brunswick.

5/ The size of the negotiated increase is of little moment. The key facts are that the Township's negotiator, by his conduct, had the apparent authority to negotiate an agreement and an agreement was reached.

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.

3. 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
April 27, 1988
ISSUED: April 28, 1988

APPENDIX "A"

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.

WE WILL reduce the negotiated agreements to writing for the Blue Collar and Supervisors units which were reached on March 12, 1987.

WE WILL implement the collective negotiations agreement between the parties retroactive to January 1, 1987 plus interest in accordance with R. 4:42-11(a).

Docket No. CO-H-87-314
CO-H-87-315

TOWNSHIP OF LONG BEACH
(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. 88-34

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

In the Matter of

TOWNSHIP OF LONG BEACH,

Respondent,

-and-

Docket Nos. CO-H-87-314 and CO-H-87-315

TEAMSTERS LOCAL 35,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that a negotiator for the Township of Long Beach bound the Township to the terms and conditions of employment which were negotiated between himself, as a representative of the Township, and the Teamsters. It was found that the Township negotiator did not express to the Union that he lacked the power to bind the Township. Rather, he conducted himself in a way which reasonably led the Union to believe he had the power to bind.

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. 88-34

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

In the Matter of

TOWNSHIP OF LONG BEACH,

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Docket Nos. CO-H-87-314 and CO-H-87-315

TEAMSTERS LOCAL 35,

Charging Party.

Appearances:

For the Respondent,
Shackleton, Hazeltine & Buczynski, Esqs.
(Frank A. Buczynski, Jr., of counsel)

For the Charging Party,
Markowitz & Richman, Esqs.
(Joel G. Scharff, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On April 30, 1987, the International Brotherhood of Teamsters, Local 35 ("Local 35" or "Union") filed two unfair practice charges with the Public Employment Relations Commission ("Commission") alleging that the Township of Long Beach ("Township") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") specifically subsection (a)(6)[1/] when after, reaching collective negotiations agreements

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1/ These subsections prohibit public employers, their representatives or agents from: "(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

for two units, the Township refused to reduce these agreements to writing.

A Complaint and Notice of Hearing issued on June 29, 1987. The Township filed an answer on July 22, 1987 denying that it reached binding agreements with the Union and (by way of separate defenses) alleging the agreements were never authorized by the governing body, that the salary increase is unconscionable and that the increases exceed the amount provided in the municipal budget. Hearings were held on July 24 and September 2, 1987. Both parties were given an opportunity to present evidence, examine and cross-examine witnesses, present briefs, and argue orally.

At the July 24 hearing, the Union's complaint was amended to allege that the Township also violated 5.4(a)(5)[2/] when it refused to reduce the negotiated agreements to writing.

The Township has a Commission form of government with three commissioners. Commissioner Diane Gove serves as the Director of Parks and Public Property. She hired William McGinnis to negotiate two contracts. McGinnis had formerly served as a Township Commissioner.

Teamsters Local 35 represents the two units of employees: the Blue-collar employees unit and the Park and Public Property Supervisors Unit ("Supervisors"). The most recent contract expired on December 31, 1986.

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

Anthony D'Artiglia is the Secretary-Treasurer of Teamsters Local 35. He was on the negotiations team for Local 35 along with Frank Lucidi, John Jones and Tony Toten.[3/]

The negotiations began on October 28, and the parties also met on November 12, 13 and 20 and December 10, 1986 and February 5 and March 12, 1987.

McGinnis and D'Artiglia negotiated the two prior sets of contracts for these same units when McGinnis served as Township Commissioner.

D'Artiglia testified that during the negotiations in question, McGinnis made actual changes in economic offers and never indicated he had to get approval for them. D'Artiglia testified that McGinnis never stated that he lacked authority to bind the Township nor did he state he had to take proposals back to the employer. He did state that McGinnis would, on occasion, consult with Commissioner Gove. In the negotiations for preceding contracts, McGinnis also made changes without consulting anyone.

In 1986, a member of the negotiations unit received a substantial wage increase directly from the Township. The Township neither negotiated the increase nor notified the Teamsters of its action.[4/] D'Artiglia testified that the Teamsters were taking a hard position in negotiating for salaries.

3/ Antonelli and Cortiaus also sat on the team during several negotiation sessions.

4/ An additional salary raise was given to a managerial official in the Park and Public Property Department who was not in the unit.

D'Artiglia claimed that around 3:30 or 4 p.m. on the March 12 meeting, the parties reached a tentative accord which provided for across the board raises of $1,800 for blue collar employees and $2,500 for the Supervisors' Unit. Thereupon, the employees were called together in the garage and members in both units ratified the contracts. The Union so informed McGinnis who went into Commissioner Gove's office, emerged after about five minutes and said, "Gentlemen, we have an agreement." The meeting was concluded. John Jones, a member of the supervisors unit and Frank Lucidi, President of Teamsters Local 35, corroborated D'Artiglia's testimony about the March 12 meeting.

D'Artiglia asked McGinnis to outline their agreement so that it could be prepared for contract signing. McGinnis sent two letters, one for each unit, which state in pertinent part:

> Per our agreement in Long Beach Township, I have reviewed our mutual agreements and I have now developed the enumeration of changes that will be necessary to prepare the contracts for signature...
>
> To further that end, I believe the following revision will effectuate our mutual agreements.

The letter enumerated each paragraph number in the contract, including:

> 33. Salary. Each employee will receive an across the board increase in his/her base salary, provided the employee was on the township payroll in compensable status on the 12th day of March, 1987.
> The increase in base salaries will be[5/]

5/ The blue collar employees unit contract provides "The increase in base salary shall be $1,800.

2,000.00 for Richard Grob
2,500.00 for all other Supervisors
Salary ranges shall also be revised to reflect the across the salary increases.

Both letters were unsigned.

Before the new contracts could be printed up, McGinnis called D'Artiglia and told him he "could not implement these increases and we had to stop right there." D'Artiglia replied that they had a contract. McGinnis responded that his hands were tied and the Commissioners would not pay increases of this size and offered six percent a year for two years.

McGinnis' testimony differed substantially from that of D'Artiglia's. McGinnis testified that at the first session both parties discussed their authority to conclude an agreement. McGinnis had to submit the contract to Commissioner Gove for review. The agreement would then be discussed by the Commissioners and the Township Clerk; if all agreed, "we'd have a contract." McGinnis claimed "The procedure was no different now then when I served as a Commissioner."

The Township introduced a photo copy of a memo dated October 31, 1986 sent by McGinnis to Antonelli. A paragraph of the memo states, "Discussed ratification procedures, same as before, Commissioners will review and the entire Commission has to approve. Union will review after Town employees vote." The Teamsters also submitted a photo copy of the same memo which excluded the above-quoted paragraph nor does this copy contain any language about ratification.

At the hearing, McGinnis was asked several times to state exactly what he said concerning his authority to bind the Township. However, he never gave a forth-right answer to the question and asserted that "the union understood."[6/]

McGinnis also testified that no agreement was reached on March 12. He only agreed to "get back to the Commissioners with the Union's latest proposals." McGinnis claims he told D'Artiglia that the parties would probably meet again. McGinnis further testified that he stated "we had a discussion in the hallway and Tony asked me to put it in writing...where, we were in all the language issues and incorporate their positions in a document and I mailed it to them in March."[7/] McGinnis testified that the salary increases stated in CP-1 and 2 were merely the Teamsters' last demand. He had never agreed to the proposals on behalf of the Township. McGinnis claimed that a couple of days later, Commissioner Gove called him. She stated there were a couple of problems with the language and he should go back to the Union and find out where it stood on those items, particularly overtime. McGinnis did so, but no new agreement was ever reached.

Diane Gove testified that she never expressed to anyone that McGinnis had the authority to bind her or the Township. She told McGinnis that she had to take any tentative agreement back to

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6/ For example, TB5-14; TB6-10; TB29-10.

7/ TB32.

the other Commissioners. Gove did not attend the negotiations session on March 12 and could not say what occurred at this meeting.

In light of the direct conflict in testimony between McGinnis and the Teamsters negotiators, as well as conflicting versions of the same Memorandum, (CP-6 and R-6), the wording of CP-1 and 2 is most significant. Although McGinnis never signed the documents, he admitted that he wrote them.

The language of the documents is inconsistent with McGinnis' testimony. McGinnis, in the letter memoranda, twice refers to the existence of "our mutual agreements." Moreover, it is unlikely that McGinnis would put the Union position in writing and take it back to the Commissioners if there was not a tentative agreement, particularly when he knew that the agreement would not be approved.

The language of CP-1 and CP-2 is consistent with the existence of an agreement. CP-1 and CP-2 do not contain qualifying language about the Township's right of ratification.

I am satisfied that the Teamsters conducted a ratification vote on March 12. Again, this vote would make no sense if there was not even a tentative agreement.

Accordingly, given McGinnis' equivocal testimony and the logical inconsistencies in his testimony and documents CP-1 and CP-2, I must credit the testimony of the Teamster witnesses and find that a tentative agreement was reached on March 12. The Teamsters ratified the agreement and McGinnis consulted with

Commissioner Gove, returned and announced - "Gentlemen, we have an agreement." Assuming the Board initially reserved unto itself the right to ratify, under these circumstances, his announcement constituted a waiver of the Township's right to ratify the contracts. The size of the raises does not alter this decision. The Township unilaterally granted a raise consistent with the amount in the contract to a unit member without negotiations.

In Black Horse Pike Regional School District Bd. of Ed., P.E.R.C. No. 78-83, 4 NJPER 249 (¶4126 1978) the Commission has held that in the absence of expressed qualifying conditions, a negotiator has the power to bind an employer to execute a collective negotiations agreement through a Memorandum of Understanding. The Commission will look beyond the express terms of an agreement and examine the totality of conduct of the parties to determine whether negotiators have such apparent authority.

> ...In order for collective negotiations to be effective and productive, it is essential that each participant know with certainty the extent of the opposing negotiating team's authority. A party must be able to rely on the statements and general conduct of the other side's representatives during the negotiations process. Accordingly, the Commission, in applying the criteria established in the Bergenfield and East Brunswick[8/] decisions, will consider only whether during the course of the particular negotiations in dispute, there was an absence of oral or written qualifying statements or general conduct by negotiating representatives from which

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8/ Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975); East Brunswick Board of Education and East Brunswick Administrators Association, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), motion for reconsideration denied, P.E.R.C. No. 77-26, 3 NJPER 16 (1977), dismissed as moot 12/2/77, App. Div. Docket No. A-250-76 (Unpublished Opinion).

> binding authority on the part of the negotiating teams to conclude an agreement could reasonably be inferred. Black Horse Pike.9/

When McGinnis returned to the union negotiations from Gove's office and announced, "Gentlemen, we have an agreement" and later produced written agreements CP-1 and CP-2, the Teamsters had the right to rely on his statement and general conduct. Accordingly, I find that the Township violated 5.4(a)(5) and (6) when it refused to implement the tentative contracts which were negotiated between the parties.

RECOMMENDED ORDER

Accordingly, it is hereby recommended that the Commission ORDER that:

A. The Township of Long Beach cease and desist from:

1. Refusing to negotiate in good faith and refusing to reduce the negotiated agreements to writing by failing to implement the terms of the contracts for the Blue Collar and Supervisors units which were negotiated and ratified on March 12, 1987.

9/ In Black Horse Pike, the Commission found it would be inappropriate to consider the past history of negotiations.

> To consider the additional factor of past history of ratification would only cause confusion and disruption to the negotiations process. A party would be uncertain whether to rely on the practice of ratification in previous negotiations or the current representations of binding authority by the negotiating representatives.

The history of the prior negotiations between McGinnis and D'Artiglia and Lucidi are not relevant to this determination.

B. Take the following affirmative action:

1. Implement the collective negotiations agreement between the parties retroactive to January 1, 1987 plus interest in accordance with R 4:42-11.

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.

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

Edmund G. Gerber
Hearing Examiner

DATED: January 21, 1988
Trenton, New Jersey

APPENDIX "A"

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.

WE WILL reduce the negotiated agreements to writing for the Blue Collar and Supervisors units which were negotiated and ratified on March 12, 1987.

WE WILL implement the collective negotiations agreement between the parties retroactive to January 1, 1987 plus interest in accordance with R 4:42-11.

Docket No. CO-H-87-314
CO-H-87-315

Township of Long Beach
(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.