P.E.R.C. NO. 88-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION, MIDDLETOWN TOWNSHIP ADMINISTRATORS & SUPERVISORS ASSOCIATION and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 11,

Respondents,

-and- Docket No. CO-87-67-55

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Middletown Township Education Association against the Middletown Township Board of Education, Middletown Township Administrators and Supervisors Association and International Brotherhood of Teamsters, Local 11. The charge alleged the respondents violated the Act when, allegedly pursuant to illegal parity agreements, the Board granted employees represented by the Administrators three types of benefits negotiated by the Association on behalf of teachers and secretaries. The Commission finds that the benefits were the product of good faith negotiations rather than an automatic illegal parity arrangement.

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MIDDLETOWN TOWNSHIP BOARD OF EDUCATION, MIDDLETOWN TOWNSHIP ADMINISTRATORS & SUPERVISORS ASSOCIATION and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 11,

Respondents,

-and- Docket No. CO-87-67-55

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent Board, Kalac, Newman & Lavender, Esqs. (Peter P. Kalac, of counsel)

For the Respondent Administrators, Wayne J. Oppito, Esq.

For the Respondent Teamsters, Schwartz, Pisano, Simon & Edelstein, Esqs. (Nathanya G. Simon, of counsel)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman, LeVine & Brooks, Esqs. (Mark J. Blunda, of counsel)

DECISION AND ORDER

On September 8 and October 27, 1986, the Middletown Township Education Association ("MTEA") filed an unfair practice charge and amended charge against the Middletown Township Board of Education ("Board"), the Middletown Township Administrators & Supervisors Association ("Administrators"), and the International

Brotherhood of Teamsters, Local 11 ("IBT"). The charge, as amended, alleges that the Board violated subsections 5.4(a)(1), (3), (5) and (7)[1/] and the Administrators and IBT violated subsections 5.4(b)(1),(3) and (5),[2/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when allegedly pursuant to illegal parity agreements the Board granted employees represented by the Administrators three types of benefits negotiated by MTEA on behalf of teachers and secretaries: increased dental benefits, accumulated sick leave on retirement, and prescription drug benefits.

On November 13, 1986, a Complaint and Notice of Hearing issued. The respondents filed Answers denying that benefits were provided pursuant to parity arrangements and raising the Act's six month statute of limitations as an affirmative defense. N.J.A.C. 34:13A-5.4(c).

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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act, and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative, and (7) Violating any of the rules and regulations established by the commission."

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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 January 14, 1987, the Board moved to strike paragraphs 7 through 11 of the amended charge as time-barred. Paragraph 7 alleges an unwritten parity agreement. Paragraphs 8 through 10 refer to increased dental benefits given all staff members effective January 1, 1985. Paragraph 11 refers to payments of accumulated sick leave on retirement. The Chairman referred this motion to Hearing Examiner Alan R. Howe.

On March 3, 1987, the Hearing Examiner issued an unpublished opinion denying the motion with respect to paragraph 7, but granting it with respect to paragraphs 8 through 10 because MTEA had agreed that paragraphs 8 through 10 were untimely. He also granted the motion with respect to paragraph 11 because MTEA had not contested an amended affidavit of the Board's Director of Labor Relations. That affidavit showed that MTEA representatives attended public meetings in August, September and October 1985 at which the Board approved payments for unused sick leave benefits to retired employees who were not in MTEA's unit.

On March 23 and 24 and June 10, 1987, the Hearing Examiner conducted a hearing. At the outset, MTEA asked the Hearing Examiner to reconsider the dismissal of paragraph 11. That request was denied because MTEA had not responded to the amended affidavit. The parties then examined witnesses and introduced exhibits. Post-hearing briefs were received by September 21, 1987.

On November 4, 1987, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 88-21, 13 NJPER 833 (¶18321

1987). He found that the contested changes in benefits were the product of good faith negotiations rather than parity arrangements.

On November 24, 1987, MTEA filed exceptions. It asserts that some findings of fact should be corrected or supplemented; paragraph 11 was timely, and granting prescription benefits to the Administrators before their contract was settled demonstrated a parity agreement.[3/] The Board has filed a response.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 5-15) are accurate. We adopt and incorporate them. We agree with MTEA that the Board and the Administrators had not reached a final agreement on all contract issues before July 1, 1986 and that the Board did not send the MTEA copies of the letters and overview memorandum referred to in findings of fact nos. 7, 16, 18 and 22, but these findings are consistent with those of the Hearing Examiner. We add to finding no. 18 that MTEA's 1984-87 agreement entitled secretaries, upon retirement, to $10 per day for unused sick leave, up to a maximum of $1500. This is the same level of benefits given IBT unit members.

MTEA asserts that the Hearing Examiner erred in dismissing paragraph 11 of the amended charge as time-barred. We disagree. The unfair practice charge was not filed until 14 months after the employees represented by the Administrators and the IBT became entitled to unused sick leave benefits upon retirement and 11 months

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3/ The Association also requested oral argument. We deny that request.

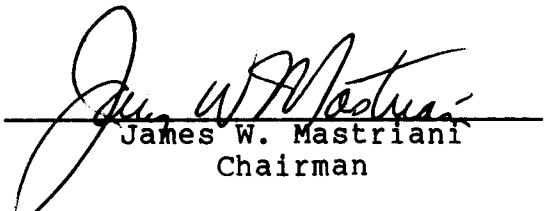
after MTEA representatives had confirmed that the 1984-86 contracts conferred these benefits for both units. MTEA alleges that it did not discover more specific evidence of the alleged parity arrangements until after the charge was filed, but it has not shown that it was prevented from filing a charge within six months after learning of the contractual benefits. Accordingly, paragraph 11 was properly dismissed.

MTEA asserts that it has proved that the employees represented by the Administrators and IBT received prescription drug benefits effective July 1, 1986 as a result of parity arrangements. Under all the circumstances, we disagree. These benefits were the product of good faith negotiations rather than an automatic extension. Having reached agreement on this issue with the Administrators before July 1, 1986, the Board was not required to withhold that benefit until after salary distribution details were worked out and complete agreements formally ratified.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
April 27, 1988
ISSUED: April 28, 1988

H.E. NO. 88-21

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION, MIDDLETOWN TOWNSHIP ADMINISTRATORS & SUPERVISORS ASSOCIATION and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 11,

Respondents,

-and- Docket No. CO-87-67-55

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate §§5.4(a)(1), (3), (5) or (7) of the New Jersey Employer-Employee Relations Act by its conduct in negotiations with the Respondent Administrators and the Respondent Teamsters, notwithstanding that there had existed an illegal parity arrangement among the three parties prior to March 8, 1986, the commencement of the six-month period prior to the filing of the initial Unfair Practice Charge on September 8, 1986. The Hearing Examiner found that the illegal parity arrangement between the Respondent Board and the Respondent Administrators was last manifested sometime prior to October 1985. The illegal arrangement between the Respondent Board and the Respondent Teamsters was last manifested early in 1985. A close scrutiny of the negotiations which followed thereafter for successor agreements between the Board and the Administrators and the Board and the Teamsters, to become effective July 1, 1986, indicated that bona fide bilateral negotiations occurred, following the submission of independent proposals by the two unions and good faith negotiations where compromises were made and untainted agreements reached. Thus, the most recent negotiations, which resulted in separate contracts, effective July 1, 1986, were not as the result of the "automatic" or "me too" granting of benefits negotiated by the Charging Party and the Respondent Board.

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. 88-21

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION, MIDDLETOWN TOWNSHIP ADMINISTRATORS & SUPERVISORS ASSOCIATION and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 11,

Respondents,

-and- Docket No. CO-87-67-55

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent Board
Kalac, Newman & Lavender, Esqs.
(Peter P. Kalac, Esq.)

For the Respondent Administrators
Wayne J. Oppito, Esq.

For the Respondent Teamsters
Schwartz, Pisano, Simon & Edelstein, Esqs.
(Nathanya G. Simon, Esq.)

For the Charging Party
Oxfeld, Cohen & Blunda, Esqs.
(Mark J. Blunda, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 8, 1986, and amended on October 27, 1986, by the Middletown Township Education Association (hereinafter the "Charging

Party" or the "MTEA"") alleging that the Middletown Township Board of Education (hereinafter the "Board"), the Middletown Township Administrators & Supervisors Association (hereinafter the "Administrators") and the International Brotherhood of Teamsters, Local 11 (hereinafter the "IBT")") had 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, as alleged in the amended Unfair Practice Charge of October 27, 1986,[1/] the Respondents, all of whom are parties to several collective negotiations agreements, were also "parties" to an unwritten "mutual benefits" or "parity clause," which automatically guaranteed to the members of the Administrators and IBT units the same benefits as those that had been negotiated by the MTEA; evidence of such a "parity clause" was manifested by a memo sent by the Board to the Administrators and IBT, advising them that, pursuant to "mutual benefits" clauses, increased dental benefits became available to "all staff members" as of January 1, 1985; prior to January 1, 1985, the Board had concluded contracts with both the Administrators and the IBT through 1986 and neither agreement provided for increased dental benefits; nevertheless, effective January 1, 1985, the Board automatically granted to the Administrators and IBT members the increased dental benefits that the MTEA had negotiated with the Board and, further, the Board

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1/ All of the relevant allegations are contained in the amended Unfair Practice Charge.

automatically granted to the Administrators and IBT units a payment for accumulated sick leave on retirement after the conclusion of their respective negotiations; and during the six months period prior to the filing of the initial Unfair Practice Charge, the Board automatically granted the Administrators and IBT members increased dental benefits, which had been negotiated by the MTEA and thereafter implemented a new prescription drug benefit as of July 1, 1986 for the Administrators and IBT when negotiations with the Administrators for a new contract had not yet been concluded; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7) of the Act[2/] and, further, all of the foregoing is alleged to be a violation of N.J.S.A. 34:13A-5.4(b)(1), (3) and (5) of the Act.[3/]

2/ 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; and (7) Violating any of the rules and regulations established by the commission."

3/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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."

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 November 13, 1986. The commencement of the hearing was delayed until March 23, 1987, because two events occurred, namely, problems with the answering of interrogatories propounded by the Charging Party to the Respondents coupled with a request for sanctions against the Respondents and, secondly, a Motion for Partial Summary Judgment filed by the Board on January 14, 1987. This Motion sought to strike paragraphs 8-11 of the Complaint as time-barred.[4/]

Pursuant to the Complaint and Notice of Hearing, supra, hearings were held on March 23 and March 24, 1987, in Newark, New Jersey, at which time the Charging Party only examined witnesses and presented relevant evidence. The Respondents moved to dismiss at the conclusion of the Charging Party's case and decision was reserved.[5/] A further hearing was scheduled so that the Respondents might present their defenses to the Charging Party's Unfair Practice Charge, as amended. This hearing was held on June

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4/ In an unpublished decision, the Hearing Examiner granted this Motion for Partial Summary Judgment on March 3, 1987.

5/ The motions to dismiss and the matter of sanctions were disposed of by the undersigned Hearing Examiner on May 1, 1987. See H.E. No. 87-62, 13 NJPER 411 (¶18160 1987).

The interrogatories were ultimately satisfactorily answered and the Charging Party's motion for sanctions was denied along with the cross-motion for sanctions by the Board. Further, the Respondents' motions to dismiss, supra, were denied.

10, 1987. After the Respondents presented their defense, the hearing was adjourned in order to afford the Charging Party an opportunity to present any rebuttal evidence. The Charging Party advised the Hearing Examiner under date of August 26, 1987, that it was waiving the presentation of rebuttal evidence. The final post-hearing briefs of the parties were filed by the Charging Party and the Board on September 21st and concurrences in the Board's brief were received from the Administrators and the IBT by September 30, 1987.

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 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 Middletown Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Middletown Township Education Association, the Middletown Township Administrators and Supervisors Association, and International Brotherhood of Teamsters, Local 11 are public employee representatives within the meaning of the Act, as amended, and are subject to its provisions.

NEGOTIATIONS/CONTRACTS BETWEEN THE BOARD AND THE ADMINISTRATORS

3. The 1982-84 Administrators contract (CP-2) in Art. IV, "Insurance Protection," contained a provision for dental coverage[6/] but it contained NO provision for prescription coverage. Further, Art. XII, Sick Leave, made NO provision for payment of accumulated sick leave upon retirement. Thus, this is where the Administrators stood as of June 30, 1984.

4. On June 27, 1984, the Board and the Administrators executed a Memorandum of Agreement for a new two-year contract (CP-9). The first paragraph of this memorandum stated that with the exception of the changes below all language in the 1983-84 agreement shall remain in effect for the 1984-86 contract (CP-3). The eight paragraphs of this memorandum of June 27, 1984 made no reference to any of the three benefits in issue[7/] and, therefore, CP-2, supra, remained in effect. Further, the Board minutes of September 10, 1984, which recommended a settlement with the Administrators, made no reference to any of the three benefits in issue (CP-13).[8/]

6/ Art. IV, §4.2, providing for dental coverage, also states that effective July 1, 1983, "these benefits" will be extended to include dependents.

7/ Throughout this decision the "three benefits in issue" are dental, payment for accumulated sick leave upon retirement and a prescription plan.

8/ Diane Swaim, the President of the MTEA, acknowledged that she did not know the status of negotiations between the Board and

Footnote Continued on Next Page

5. Also, Art. IV of CP-3 (p. 2), "Insurance Protection," in the 1984-86 Administrators contract, contained NO provision regarding a prescription plan. The MTEA contract (CP-1) contains in Art. IV, "Insurance Protection," a provision for dental coverage with increased benefits, effective January 1, 1985 (§4.2), and provision for a prescription plan in the 1986-87 school year (§4.3).

6. On January 8, 1985, William F. Hybbeneth, Jr., the Board's Director of Labor Relations, issued a memo to all staff members in the three negotiations units where the subject was "Increased Dental Benefits." In the opening paragraph of this memo he stated:

> As a result of the conclusion of negotiations with the MTEA and pursuant to the "mutual benefits" clauses negotiated by the MTASA and Teamsters Local 11, the Board of Education is pleased to announce that as of January 1, 1985, increased dental benefits became available to all staff members.9/

Hybbeneth testified that after he was employed on July 1, 1984, he learned that the "Board had had a practice of granting identical benefits to the three units" (3 Tr 63).

8/ Footnote Continued From Previous Page

the Administrators or the IBT in November 1984, when the MTEA negotiations were concluded.

Note, however, that Art. IV, §4.2 of the 1984-86 contract carried forward the dental benefits from the 1982-84 contract (see CP-3, p. 2).

9/ In response to a question from the Hearing Examiner, as to whether or not there were "mutual benefits" clauses in the Administrators and IBT contracts, counsel for the MTEA stated that there were none.

7. In a January 18, 1985, letter from Hybbeneth to the President of the Administrators unit (CP-17), Hybbeneth confirmed his meeting with him on January 15th where an agreement was made regarding the printing of the Administrators contract, which did not occur until about October 1985. This contract was to include, inter alia, an Art. XII (§12.12--"new"), and further was to provide that effective July 1, 1985, administrators retiring after a minimum of 15 years would receive $20 per day for all unused sick leave to a maximum of $3,000. Language to this effect appears in CP-3, the 1984-86 contract of the Administrators, supra, as printed in October 1985, on p. 16 thereof. Note is made of the fact that the above letter from Hybbeneth is dated January 18, 1985; the 1984-86 Administrators contract was presumably concluded as of July 1, 1984.

8. Also, at p. 2 of CP-17, supra, in the first paragraph under "§E," Hybbeneth noted that "we agreed" that increased dental benefits "are in place" and that language need not be written into the Administrators contract. In the next paragraph Hybbeneth referred to the prescription plan coverage negotiated by the MTEA for 1986-87 and then stated that since the Administrators did not have a negotiated agreement for 1986-87 as to this benefit they were not entitled to a prescription plan. However, he stated that if they were to place this proposal on the table in negotiations for

1986-87 the "Board will look most favorably on including" the Administrators under the prescription plan.10/

9. In the Summer of 1985, Swaim heard that the Administrators were receiving payment for accumulated sick leave upon retirement. Swaim requested that the Board provide copies of the 1984-86 contracts between the Board and the Administrators and the IBT. On August 20, 1985, Hybbeneth sent a memo to Swaim, advising that the Administrators contract should be printed within the next day or two and he attached a copy of the IBT contract (CP-6). However, Swaim did not receive the Administrators contract (CP-3) until October 1985. Upon receipt of the Administrators contract for 1984-86, the MTEA noted that at p. 16 (§12.12) the contract provided that administrators who retire after 15 years shall receive $20 per day for all unused sick leave up to maximum $3,000 even though this was not provided in CP-2, the 1982-84 Administrators contract, supra. The MTEA had negotiated this benefit, which appears in CP-1 (the MTEA 1984-87 contract) at p. 19 (§13.2) in identical language.

10. On October 9, 1985, Diane Lenartowicz, the Administrators' President, sent a memo to Hybbeneth wherein she requested a negotiations meeting as soon as possible but no later than early November of 1985 (RB-6). Lenartowicz also requested that Hybbeneth forward to her a copy of the present salary information for the Administrators' unit.

10/ The MTEA in CP-1, Art. IV (§4.3) had obtained prescription coverage for its members as of July 1, 1986.

11. In or about December 9 or December 10, 1985, the Board and the Administrators met in negotiations, the Board having received a contract proposal for a 1986-87 collective negotiations agreement (RB-7; 3 Tr 17). Included in the Administrators' contract proposals, supra, were the inclusion in the agreement of family prescription coverage with a $300 cap (Art. IV) and the buyout in full of unused sick leave (Art. XII).

12. Subsequent to the first negotiations meeting, supra, there were four or five subsequent meetings and on May 21, 1986, the parties had reached a series of agreements on a successor collective negotiations agreement except that longevity and the salary package were still open (3 Tr 18-21, 25; RB-8). Among the agreements reached by the parties was family prescription coverage with a cap at $150 per employee (Art. IV) and a $30 per day maximum to $4500 for the buyout of sick leave, effective July 1, 1986 (RB-8, p. 4; 3 Tr 20, 21).

13. With the assistance of a Commission mediator, the parties met and executed a Memorandum of Understanding on July 3, 1986 (3 Tr 25-27; RA-1). In this Memorandum, an agreement was reached on compensation in a specific dollar amount but the distribution on the salary guide was to be mutually agreed to subsequent to the Memorandum of July 3, 1986, supra. The Memorandum

of Understanding (RA-1) had attached to it the prior agreements reached on May 21, 1986, supra (RB-8).[11/]

14. Hybbeneth testified without contradiction that thereafter the negotiators for the Administrators and the Board met to discuss the distribution of the "overall salary package" (3 Tr 28). The first such meeting took place in August but the completion of the distribution of salary was not reached until subsequent to this meeting. The Board did not finally ratify the complete negotiated successor agreement until October 6, 1986 (CP-4, CP-18; 3 Tr 28-32). The Board minutes of October 6th (CP-18) state that "The specifics of this settlement were forwarded to the Board under separate cover."

NEGOTIATIONS/CONTRACTS BETWEEN THE BOARD AND THE IBT

15. In the IBT contract, effective July 1, 1982 through June 30, 1984, reference to Art. XII, "Sick Leave," discloses that the only provision pertinent hereto is §10, which provided only that the Board agreed to apply accumulated sick leave to retirement benefits "...if and when statutes permitting such application is (sic) enacted..." (CP-5, p. 21). Also, CP-5, Art. XX, "Insurance,"

11/ Hybbeneth testified that the effective date for the family prescription coverage was as of July 1, 1986 even though the Memorandum of Understanding was not executed until July 3, 1986 (3 Tr 27, 67-70). Further, Hybenneth testified that prescription cards were distributed to administrators during the third week of June (3 Tr 68).

provided dental coverage in terms analogous to the dental coverage provided in the MTEA 1984-87 agreement (CP-1, pp. 3, 4).

16. In CP-10, an "overview" memorandum of the IBT 1984-86 settlement, the Office of the Assistant Superintendent for Business on July 5, 1984, set forth the articles that were modified in negotiations. A new Art. XII, "Retirement Sick Day Payment," stated that "...'me-too' informal agreement, granted only if awarded to other units." This same "Overview" memorandum also stated that there would be a new Art. XX (3)(a) "Optical/Prescription," again stating that this was an informal "Me-Too" agreement.

17. CP-12 is the Memorandum of Agreement, dated August 7, 1984, between the Board and the IBT for those terms and conditions to be changed from those in CP-5 for the 1984-86 agreement (CP-6). Significantly, there is no reference in this Memorandum of Agreement, regarding the CP-10 July 5, 1984 memo, supra, where reference was made to a new Art. XII, involving "Retirement Sick Day Payment" and a new Art. XX(3)(a), involving optical/prescription coverage. Further, in the Board minutes of August 6, 1984 (CP-11), which was one day before CP-12, supra, the settlement with the IBT was approved and there was no reference made to prescription coverage or to sick leave pay on retirement.

18. In CP-14, a letter dated November 29, 1984, from Hybbeneth to one Carl Hallengren, a Local IBT representative, Hybbeneth confirmed his conversation of November 26, 1984, regarding negotiations for the 1984-86 "period" and the "me too handshakes"

that were exchanged. Hybbeneth then outlined the benefits that would accrue to the IBT "as a result of the conclusion of negotiations with the MTEA." First, Hybbeneth said that for the 1984-85 school year IBT members would become eligible for increased dental insurance coverage "...should the Board of Education decide to upgrade the Master Policy...."[12/] Hybbeneth next stated that for the 1985-86 school year IBT members would become eligible for reimbursement for accumulated unused sick leave at retirement and that the language "would most likely read" that IBT members who retire after completing a minimum of 15 years would receive $10 per day for all unused sick leave to a maximum of $1500.[13/]

19. Also, in CP-14, Hybbeneth next advised Hallengren that for 1986-87, the MTEA had negotiated a prescription plan, adding that since the IBT did not have this benefit for that year it is not "strictly entitled." Hybbeneth's suggestion was that the IBT place this proposal on the bargaining table for 1986-87 and that it was his "personal belief" that the Board would look "most favorably" on including the IBT members under this coverage.

20. Further, in CP-14, supra, Hybbeneth stated, in reference to Hallengren's "last 'me too' concern as it applies to

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12/ This was, of course, done and was implemented by Hybbeneth's memo of January 8, 1985 (see Finding of Fact No. 6, supra).

13/ The MTEA 1984-87 agreement (CP-1) provides on p. 19 under §13.2 for payment of $20 per day for teachers up to a maximum of $3,000, thus, there is a significant difference in the benefit accorded the IBT members.

the salary package," it was Hybbeneth's recollection that "salaries were not to be covered under any 'me too' arrangement...".

21. The IBT contract, effective July 1, 1984 through June 20, 1986 (CP-6), provided in Art. XII, Sick Leave, §10 (p. 21) that members who retired after completing a minimum of 15 years shall receive $10 per day for all unused sick leave to a maximum of $1500. This follows from the 1982-84 contract (CP-5, p. 21, supra) where it was provided that the Board agreed to apply accumulated sick leave to retirement benefits if and when statutes permit it (see Finding of Fact No. 15, supra). The dental benefit provision in Art. XX, "Insurance," in CP-6 (1984-86) remained the same as the like provision in Art. XX of CP-5 (1982-84). Finally, the 1984-86 IBT contract contained NO prescription plan.

22. On October 9, 1985, the IBT sent to the Board its proposals for a successor agreement to that which was to expire on June 30, 1986 (RB-3). Hybbeneth testified that on page 2 of RB-3 there was a request to modify the buyout of sick leave so as to provide for 50% with a maximum of $3,000 (3 Tr 6). Hybbeneth testified further that on page 4 of the IBT's contract proposals there was a demand that a family prescription plan be added to the "Insurance" article (3 Tr 7).[14/]

14/ On January 7, 1985, Lou Grasso of the IBT telephoned Hybenneth and asked if the IBT could be included under the prescription plan (3 Tr 41). Hybenneth's reply was that the IBT had not negotiated the plan while the MTEA had, adding that if the IBT wanted prescription coverage it should "put it on the bargaining table" (3 Tr 41). Hybenneth confirmed this discussion by letter dated January 9, 1985 (RT-3).

23. The first negotiations meeting between the Board and the IBT occurred in December 1985 and there were three or four negotiations meetings thereafter (3 Tr 10).

24. On February 3, 1986, Hybbeneth wrote to Grasso, enclosing a Memorandum of Agreement (RB-4), and also requesting a ratification vote by the members of the IBT unit. The final negotiations session, which resulted in the Memorandum of Agreement, had taken place on January 30, 1986 (3 Tr 10). The agreement reflected in the Memorandum, supra, provided for an increase in the buyout of sick leave (Art. XII)[15/] and provision for family prescription coverage with a cap of $150 per employee (Art. XX)[3 Tr 11, 12]. Hybbeneth testified that the provision for prescription coverage was negotiated for the first time in the 1986-89 IBT contract (3 Tr 11, 12).[16/]

25. The 1986-89 IBT contract provides in Art. XX, §2 "Insurance," the same dental benefits as in the previous contracts, supra, but also contains in a new §3 thereof that, effective July 1, 1986, "prescription coverage" is to be provided (CP-7, p. 33).

DISCUSSION AND ANALYSIS

15/ Specifically, it was agreed that there would a three-year schedule of increases, beginning in 1986 at the $10 per day with a maximum of $1500 and increasing to $15 per day with a maximum of $1650.

16/ The IBT unit members ratified RB-4 on February 22, 1986 (3 Tr 12, 13). The Board ratified the IBT agreement on March 3, 1986 (RB-5). Hybenneth sent Grasso signature pages for the agreement on May 28, 1986 (RT-1).

The Several Respondents Did Not Violate The Act By Their Conduct Herein When They Negotiated A Modification In The Buyout Of Sick Leave And Prescription Coverage For Employees Represented By The Administrators And the IBT Effective July 1, 1986.

The legal premise from which the Hearing Examiner proceeds is that portion of the Commission's decision in City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978), aff'g H.E. No. 78-32, 4 NJPER 225 (¶4114 1978), where, after concluding that the inclusion of a parity clause in a collective negotiations agreement[17/] constitutes an unfair practice within the meaning of §§5.4(a)(1) and (5) of the Act, the Commission stated:

> This result (that parity clauses are illegal) does not foreclose a public employer from considering the historical background of collective negotiations and traditional patterns of wage and benefits relationships including "comparability" with the different employee organizations it has previously negotiated with. A public employer may voluntarily choose to maintain certain relationships between two or more employee organizations. Additionally, a reopener clause does not offend the Act because there is no predetermined result that an employee organization only agree to reopen negotiations in good faith if another employee organization is successful in achieving a greater economic settlement. This is no guarantee of equality of the economic packages. (4 NJPER at 256)(emphasis supplied).

With City of Plainfield as the polestar, the Hearing Examiner now

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17/ The Hearing Examiner in this case makes no distinction between a written parity clause in a collective negotiations agreement as in City of Plainfield or where, as contended here, there existed an unwritten parity agreement, arrangement or understanding.

analyzes the Findings of Fact as regards, first, the Administrators and then, secondly, the IBT.

THE BOARD AND THE ADMINISTRATORS

As of June 30, 1984, the Administrators' contract contained a provision for dental coverage, including dependents, but it contained NO provision for prescription coverage. Further, the Administrators' contract contained NO provision for payment of accumulated sick leave upon retirement (hereinafter "buyout of sick leave"). (See Finding of Fact No. 3, supra).

On June 27, 1984, the Board and the Administrators executed a Memorandum of Agreement for a new two-year contract, which made no reference to any of the three benefits in issue (dental, buyout of sick leave or prescription coverage). Further, the Board minutes of September 10, 1984, recommending a settlement with the Administrators, made no reference to any of these three benefits except that Art. IV, §4.2 of CP-3 carried forward the dental benefits from the prior agreement.[18/] (See Finding of Fact No. 5, supra).

On January 8, 1985, Hybenneth issued a memo to all staff members in the three negotiations units where the subject was "Increased Dental Benefits." In this memo Hybenneth stated, in part, that "pursuant to the 'mutual benefits' clauses negotiated by

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18/ The MTEA contract (CP-1) contains in Art. IV, "Insurance Protection," a provision for dental coverage with increased benefits, effective January 1, 1985, and provision for a prescription plan in the 1986-87 school year (§4.3).

the MTASA and Teamsters Local 11..." the Board was pleased to announce that as of January 1, 1985, increased dental benefits became available to all staff members (CP-15). Hybenneth testified that after he was employed on July 1, 1984, he learned that the Board had had a practice of granting "identical benefits to the three units" (3 Tr 63).

Hybenneth wrote to the President of the Administrators' unit on January 18, 1985 (CP-17) where he confirmed the printing of the Administrators' contract, which did not occur until October 1985. This contract was to include a new provision in Art. XII for sick leave buyout, effective July 1, 1985. Obviously, this occurred during the term of the 1984-86 Administrators contract. (See Finding of Fact No. 7, supra).

Hybenneth also stated in his January 18, 1985 letter (CP-17, supra) that since the Administrators did not have prescription coverage, which had been negotiated by the MTEA for 1986-87, the Administrators were not entitled to this benefit. He added that if the Administrators were to place this proposal on the table in negotiations for 1986-87, the "Board will look most favorably on including" the Administrators under the prescription plan. (See Finding of Fact No. 8, supra).

Swaim testified that she first learned that the Administrators were receiving buyout of sick leave in the summer of 1985 and, upon receiving a copy of the Administrators' contract in October 1985, she first saw the sick leave buyout provision in print

(Art. §12.12). The MTEA had negotiated a like provision in its 1984-87 contract (CP-1, p. 19). (See Finding of Fact No. 9, supra).

* * * *

Initially, it appears clear that no evidence was adduced that the provision for dental coverage in the 1982-84 Administrators' contract (CP-2) resulted from the implementation of an illegal parity arrangement between the Board and the Administrators since §4.2 of CP-2 refers back to 1979. However, the Hearing Examiner concludes that the insertion into the 1984-86 contract (CP-3) of a provision for the buyout of sick leave was as the result of the implementation of an illegal parity arrangement since there were no bona fide bilateral negotiations between the Board and the Administrators with respect to this benefit. Recall that the June 27, 1984, Memorandum of Agreement for the 1984-86 contract made no reference to the buyout of sick leave nor did the Board minutes recommending settlement, dated September 10, 1984 (CP-9 & CP-13). Miraculously, after Hybenneth met with the President of the Administrators unit "...regarding the printing of the...contract..." in January 1985 (CP-17), there surfaced a buyout of sick leave provision denominated as "new language," which is exactly identical in its terms to the 1984-87 MTEA contract (CP-1, §13.2, at p. 19). Plainly, the Board and the Administrators "lifted" the sick leave buyout provision from the MTEA 1984-87 contract and inserted it into the Administrators' 1984-86 contract without negotiations.

Further evidence of an illegal parity arrangement was Hybenneth's letter to all staff members on January 8, 1985, regarding increased dental benefits, where he said in the opening paragraph of this letter that as a result of conclusion of negotiations with the MTEA and pursuant to the "mutual benefits" clauses negotiated by the Administrators and the Teamsters the Board had increased dental benefits to all staff members (see Finding of Fact No. 6, supra).

However, for purposes of the instant Decision as to whether or not the Board and the Administrators violated the Act within the six-month period between March 8, 1986 and September 8, 1986, the date of the filing of the initial Unfair Practice Charge, the Hearing Examiner can only make a finding of a violation of the Act based on what transpired between the Board and the Administrators on and after March 8, 1986, since the events prior thereto are time-barred under §5.4(c) of the Act.[19/]

The only benefits of the three involved herein, which fall within the six-month period, are those involving family prescription coverage and the buyout of sick leave. Here we have to scrutinize

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19/ This was decided by the Hearing Examiner in an unpublished decision on March 3, 1987, wherein the Board's Motion for Partial Summary Judgment as to paragraphs 8-11 of the Complaint was granted. However, as noted in H.E. No. 87-62 (p. 8), supra, the time-barred allegations in paragraphs 8-11 of the Complaint may be used by the Hearing Examiner as "background" in deciding whether or not the time-barred illegality carried over into the timely period on and after March 8, 1986: Local Lodge No. 1424, IAM (Bryan Mfg. Co.) v. NLRB, 362 U.S. 411, 45 LRRM 3212 (1960).

the negotiations which took place between the Board and the Administrators as to these benefits. On October 9, 1985, the Administrators' President sent a memo to Hybenneth requesting negotiations by November 1985 (see Finding of Fact No. 10, supra). Thereafter there were four or five negotiations sessions between December 9 or December 10, 1985 and May 21, 1986. Prior to December 9, 1985, the Board had received contract proposals from the Administrators, requesting, inter alia, family prescription coverage and the buyout in full of unused sick leave.[20/] (See Findings of Fact Nos. 11 & 12, supra).

On May 21, 1986, the Board and the Administrators reached a series of agreements on a successor agreement except that longevity and the salary package were still open (see Finding of Fact No. 12, supra). Among the agreements reached by the Board and the Administrators was a provision for family prescription coverage and a modification of the buyout of sick leave provision. Ibid.[21/] The parties ultimately met and executed a Memorandum of Understanding on July 3, 1986, regarding salary. However, the

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20/ Hybenneth had in his January 18, 1985 letter to the President of the Administrators unit (CP-17) stated at p. 2 thereof that since the Administrators did not have a negotiated agreement for 1986-87 regarding prescription plan coverage they were not entitled to it but, if they were to place it "on the table" the Board would look "most favorably" on including it in the successor agreement (see Finding of Fact No. 8, supra).

21/ Prescription coverage was agreed to with a $150 cap as opposed to the $300 cap requested by the Administrators. The buyout of sick leave was negotiated at $30 per day with a maximum of $4500 instead of "in full."

distribution of salary on the salary guide was not concluded until August of 1986 with Board ratification occurring on October 6, 1986 (see Findings of Fact Nos. 13 & 14). Prescription coverage was implemented on the effective date of the successor agreement, July 1, 1986. Prior thereto, prescription cards were distributed to the Administrators during the third week of June.

* * * *

The Hearing Examiner, having considered the illegal parity "background" evidence, supra, (Bryan Mfg., supra), concludes that there is no objective evidence, either direct or by inference, that the negotiations between the Board and and the Administrators, which resulted in family prescription coverage and a modification of the buyout of sick leave in the successor agreement, effective July 1, 1986, were tainted by the prior illegal parity arrangement.[22/] A fair reading of what transpired on and after October 9, 1985, when Lenartowicz sent a memo to Hybenneth requesting negotiations, followed by at least five negotiations sessions between December 9, 1985 and May 21, 1986, indicates clearly that the negotiations were bilateral, bona fide and untainted by the prior illegal parity arrangement, which had been implemented during the term of the 1984-86 contract but which did not continue into the 1986

22/ This conclusion is in contrast to the state of the record at the conclusion of the Charging Party's case when the Hearing Examiner concluded that there was at least a scintilla of evidence of the existence of an illegal parity arrangement since 1982 (H.E. No. 87-67, pp. 18, 19).

negotiations. Further, this conclusion is buttressed by the fact that bona fide negotiations continued after May 21, 1986, with respect to the longevity and salary package issues, which were not concluded until August 1986.

In so concluding, the Hearing Examiner has considered the testimony of Hybenneth that after he was employed on July 1, 1984, he learned that the Board had had a practice of granting identical benefits to the three collective negotiations units. This fact, in and of itself, is not per se proof of illegality since, as the Commission stated in City of Plainfield, supra, a public employer is not foreclosed "from considering the historical background of collective negotiations and traditional patterns of wage and benefits relationships including 'comparability' with the different employee organizations" (4 NJPER at 256).

Further, the Hearing Examiner attaches great significance to the course of negotiations, which commenced with a set of demands, followed by five negotiations sessions, and which resulted in negotiated compromises on prescription coverage and the buyout of sick leave. This indicates clearly that these parties broke with the past and engaged in true good faith negotiations. Thus, the benefits ultimately granted by the Board were not "automatic" nor as the result of a "me too" parity arrangement. Finally, the Hearing Examiner attaches no legal significance to the fact that the Board distributed prescription cards to Administrators during the third week of June, which was prior to the effective date of the 1986-87

contract since it occurred after an agreement had been reached on May 21, 1986, to provide family prescription coverage to Administrators.

For all of the foregoing reasons, the Hearing Examiner will recommend dismissal of the allegations that the Respondent Board and the Respondent Administrators violated the Act when they agreed, during the course of bona fide bilateral collective negotiations between December 9, 1985 and May 21, 1986, to provide for modification of the buyout of sick leave and family prescription coverage for the Administrators' collective negotiations unit, effective July 1, 1986.[23/]

* * * *

THE BOARD AND THE IBT

Turning next to the alleged illegal parity arrangement between the Board and the IBT, the facts as found above in ¶'s 15 through 20 indicate that, as in the case of the Administrators, supra, there existed an illegal parity arrangement at least into early 1985. On November 29, 1984, Hybenneth had sent a letter to Hallengren, a Local IBT representative, in which he confirmed a November 26th conversation regarding negotiations for the 1984-86 period and the "me to" handshakes that were exchanged (see Finding of Fact No. 18, supra. Hybenneth then outlined the benefits that

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23/ In so concluding, the Hearing Examiner has taken into consideration the fact that the MTEA had negotiated prescription coverage, effective July 1, 1986, for its members in its 1984-87 contract.

would accrue to the IBT as a result of the conclusion of negotiations between the Board and the MTEA. First, Hybenneth stated there would be increased dental coverage if the Board decided to upgrade its Master Policy, which was done as of January 1, 1985 (see Finding of Fact No. 6, supra). Hybenneth then stated that IBT members would become eligible for sick leave buyout, indicating the range of benefits in this regard (see Finding of Fact No. 18, supra). However, what Hybenneth indicated the IBT members would receive was considerably less than that negotiated by the MTEA.

Finally, Hybenneth indicated in the same November 29, 1984 letter that the IBT was not "strictly entitled" to the prescription coverage that the MTEA had negotiated in its 1984-87 agreement, but that if the IBT placed this on the bargaining table Hybenneth believed that the Board would look most favorably upon providing this coverage to IBT members (see Finding of Fact No. 19, supra). Thus, the 1984-86 IBT contract provided for the buyout of sick leave, the dental benefit provision remained the same and, finally, there was no prescription plan (see Finding of Fact No. 21, supra).

* * * *

Based on the above, the Hearing Examiner has no difficulty in concluding that the insertion into the 1984-86 contract (CP-6) of a provision for the buyout of sick leave was as a result of the implementation of an illegal parity arrangement since there were no bona fide bilateral negotiations between the Board and the IBT with respect to this benefit. The fact that the level of the benefit was

less than that of the MTEA is of no moment since the insertion of this benefit in the IBT contract for 1984-86 was not as the result of bona fide negotiations. Further, just as in the case of the discussion of an illegal parity arrangement between the Board and the Administrators, supra, Hybenneth's letter to all members on January 8, 1985, regarding increased dental benefits, referred to the IBT as well as the Administrators with respect to "mutual benefits" clauses (see Finding of Fact No. 6, supra).

Also, as in the case of the Administrators, supra, the Hearing Examiner can only make a finding of a violation of the Act based on what transpired between the Board and the IBT on and after March 8, 1986, since the events prior thereto are time-barred under §5.4(c) of the Act. Thus, we must look to the chronology of events in the negotiations between the Board and the IBT, which culminated in the 1986-87 contract (CP-7).

On October 9, 1985, the IBT sent to the Board its proposals for a successor agreement (RB-3). Among the proposals was a request to modify the buyout of sick leave so as to provide for 50% with a maximum of $3000 plus a demand for a family prescription plan with no value stated. Hybenneth had told Grasso of the IBT in a telephone conversation on January 7, 1985, that the IBT could be included under the prescription plan if it was placed on the bargaining table (see Finding of Fact No. 22, supra). Thereafter, there were three or four negotiations meetings between the parties between December 1985 and January 30, 1986. On February 3, 1986,

Hybenneth wrote to Grasso, enclosing a Memorandum of Agreement (RB-4) with a request for a ratification vote by members of the IBT unit. The IBT ratification occurred on February 22, 1986, and the Board ratification occurred on March 3, 1986 (see Finding of Fact No. 24, supra).

As a result of the above negotiations between the Board and the IBT, the final agreement contained a provision for an increase in the buyout of sick leave over the three-year term of the contract and a provision for the first time for family prescription coverage with a cap of $150 per employee. Thus, the IBT accepted in negotiations a compromise on its greater demand for the buyout of sick leave benefit and although the IBT had not placed a specific dollar cap on its prescription coverage demand it accepted a cap of $150 per employee, the same amount which the Administrators ultimately accepted in May 1986, supra.

* * * *

The Hearing Examiner, having considered the illegal parity arrangement "background" evidence, supra, reaches the same conclusion as in the case of the Administrators, i.e., there is no objective evidence, either direct or by inference, that the negotiations between the Board and the IBT, which resulted in a modification of the buyout of sick leave provision and the addition of family prescription coverage in the successor agreement, effective July 1, 1986, were tainted by the prior illegal parity arrangement. Again, as in the case of the Administrators, supra, a

fair reading of what transpired on and after October 9, 1985, when the IBT sent to the Board its proposals for negotiations, followed by at least three or four negotiations sessions between December 1985 and January 30, 1986, indicates that the negotiations were bilateral, bona fide and untainted by the prior illegal parity arrangement. The benefits ultimately granted by the Board to the IBT were as the result of true, good faith negotiations and were not "automatic" nor as a result of a "me too" parity arrangement.

Further, unlike the negotiations between the Board and the Administrators, portions of which occurred after March 8, 1986 and, thus, were within the six-month timely period, the negotiations between the Board and the IBT resulted in a ratified agreement by March 3, 1986, five days before March 8, 1986. Hence, even if illegality in these negotiations were assumed to have occurred because of the implementation of a past illegal parity arrangement, the Hearing Examiner could make no finding to this effect since the negotiations were concluded and the Memorandum of Agreement was ratified before March 8, 1986. However, the Hearing Examiner does not rest his decision on the fact that the Board and the IBT may be insulated from any finding of an unfair practice by virtue of the time bar of March 8, 1986. The time bar observation is merely made to demonstrate that the Board and the IBT did not engage in an unfair practice as alleged either as a result of the negotiations that led to the July 1, 1986 agreement or by the fact that the Memorandum of Understanding was ratified before March 8, 1986.

For all the foregoing reasons, the Hearing Examiner will recommend dismissal of the allegations that the Respondent Board and the Respondent IBT violated the Act when they agreed, during the course of bond fide bilateral collective negotiations between December 1985 and January 30, 1986, to provide for a modification of the buyout of sick leave and the addition of family prescription coverage for the IBT's collective negotiations unit, effective July 1, 1986.

* * * *

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

CONCLUSIONS OF LAW

1. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (3), (5) or (7) by its conduct in negotiations with the Respondent Administrators and the Respondent IBT on and after the timely period, commencing March 8, 1986.

2. The Respondent Administrators and the Respondent IBT did not violate N.J.S.A. 34:13-5.4(b)(1), (3) or (5) by their respective conduct in negotiations with the Respondent Board on and after the timely period, commencing March 8, 1986.

RECOMMENDED ORDER

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

Alan R. Howe
Hearing Examiner

Dated: November 4, 1987
Trenton, New Jersey