

D.U.P. NO. 93-33

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of  
CITY OF WOODBURY,

Respondent,

-and-

Docket No. CO-93-110

PBA LOCAL 122,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses the PBA's charges alleging violations of 5.4(a)(5) and issues a complaint on the (a)(3) allegations. The Director found that the City had a managerial right to rotationally assign patrolmen to the police detective division and was not obligated to negotiate before doing so. The Director further found that the City was not required to negotiate with the PBA before it abandoned an experimental 12-hour shift schedule, implemented in conjunction with a team-policing project, and returned to the contractually set 8-hour shifts.

The Director issued a complaint on the PBA's (a)(3) charge that the City took these actions in retaliation for the PBA's complaints about the team policing program.

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Appearances:

For the Respondent,  
Louis Rosner, attorney

For the Charging Party,  
Ferg, Barron & Gillespie, attorneys  
(Thomas M. Barron, of counsel)

DECISION

On September 24, 1992, PBA Local 122 filed an unfair practice charge alleging that the City of Woodbury violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(2), (3) and (5).<sup>1/</sup>

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "Dominating or interfering with the formation, existence or administration of any employee organization; (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."

The PBA alleges that in February 1992, the City eliminated police detectives positions; in September 1992, it recreated the positions but assigned patrolmen to serve rotationally as detectives, and it ended an experimental 12-hour shift schedule and returned to 8-hour shifts, all without negotiations with the PBA. The PBA also alleges that the elimination of fixed detective assignments and the shift change were in retaliation for PBA protests about team policing in violation of subsection 5.4(a)(3) of the Act. By amendments to the charge filed on October 13, October 26, and December 3, 1992, the PBA further alleges that the City pressed disciplinary charges against PBA President Robert Atkisson in retaliation for his union activities; and that it violated (a)(3) by giving employees who did not sign a PBA protest letter more favorable shift assignments.

The City denies engaging in unfair practices. It asserts that the February 1992 elimination of permanent detective positions is beyond the Commission's six-month statute of limitations. It further contends that its assignment of patrolmen to the detective grade is a non-negotiable managerial prerogative. As to the shift change, the City argues that it merely conformed the employees' hours to the current contract. Finally, the City maintains that the charges do not establish a nexus between protected activities and the City's allegedly retaliatory acts.

According to the charge, in December 1991, after discussions with the members of the department, the Police Chief

implemented an experimental "team policing" program. As part of the team-policing program, the Department simultaneously implemented a 12-hour shift, notwithstanding that the then-current PBA contract provided that patrolmen would work 8-hour shifts. Further, in February 1992, the Chief issued an order eliminating the permanent assignment of two patrolmen to the detective bureau, which the Chief felt was unnecessary under the team policing scheme.

In May 1992, the PBA met with the Chief and indicated the employees' unhappiness with team policing and particularly the elimination of the detective assignments. In August 1992, the PBA membership sent a letter to the Chief which expressed the same sentiments and asked the Chief to return the detective assignments.

In September 1992, the Chief discontinued the team policing program, ordered patrolmen returned to an 8-hour, fixed shift schedule and implemented a rotating assignment of patrolmen to the detective division.

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The Commission is precluded from issuing a complaint where an unfair practice charge has not been filed within six months of the alleged unfair practice event unless a charging party was prevented from filing an otherwise timely charge. See N.J.S.A. 34:13A-5.4(c); No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 55 (¶4026 1977). See also, N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

Here, the City implemented team policing, including the elimination of the permanent detective assignment and the change in the patrolmen's work hours to 12-hour shifts, in February 1992. This charge was filed on September 24, 1992, beyond the six-month statute of limitations. Accordingly, I am inclined to dismiss that part of the charge which concerns changes relating to the December 1991 - February 1992 implementation of team policing.

The PBA also charges that the City failed to negotiate before it returned to the 8-hour shift configuration in September 1992. The successor contract, covering patrolmen for 1992 through 1994, was re-negotiated after the experimental program for 12-hour shifts had begun and executed by the parties in July 1992; that contract continued to provide for 8-hour fixed shifts:

Article XXII, Work Week and Work Year: Section 1:  
Except as operational needs dictate, there shall be no change in any employee's work schedule without prior written notice to the employee...

Section 5: The normal work week shall be forty (40) hours. The City reserves the right to assign overtime as necessary.

Section 6: Except for vacation time permitted by the contract and/or sick time, employees will normally be expected to work fifty-two (52) forty-hour (40) weeks as their regular work year.

Article XXV, Section 2 - Shift Differential - a shift differential in addition to the base salary shall be paid to each member of the negotiations unit for shift time actually worked as follows:

4:00 p.m. to 12:00 midnight shift -  
50 cents per hour

12:00 midnight to 8:00 a.m. shift -  
75 cents per hour

Given these contract provisions, it is apparent that the parties' contract provides for a 40-hour work week with 8-hour shifts. The Commission has frequently found that where clear and unambiguous contract language sets employees' terms and conditions of employment, an employer does not violate the Act by ending a past practice granting different benefits and by returning to the benefit level set by the contract. See New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79); Kittatinny Reg. Bd. of Ed., P.E.R.C. No. 92-37, 17 NJPER 475 (¶22230 1991) ("Kittatinny I"); Kittatinny Bd. of Ed., P.E.R.C. No. 93-34, 18 NJPER 501 (¶23231 1992) ("Kittatinny II"); Burlington Cty. Bridge Comm., P.E.R.C. No. 92-47, 17 NJPER 496 (¶22242 1991); Passaic Co. Reg. Bd. of Ed., P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990); New Jersey Sports and Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987); Ramapo State College, P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985).

Further, the parties' current contract provides, Article V, Section 4: ...employees shall continue to serve under the directions of the Chief of Police and in accordance with employer and administrative policies, rules and regulations, provided that the provisions of this agreement shall supersede and prevail over any conflicting provisions.

Article XVII, Section 1: The employer agrees that in the event of conflict between the agreement and any other agreement, rule or regulations of the City, the provisions of this agreement shall be controlling to the extent permitted by law.

Article XIX, Section 1: This contract represents the entire agreement between the parties and no other agreements or practices are binding upon either party hereto with respect to wages and terms and conditions of the employees covered hereby.

Even assuming that the establishment of 12-hour shifts amounted to a past practice, the City had no duty to negotiate before conforming the employees' actual work hours to the contractual work hours. Accordingly, I find that the employer did

not refuse to negotiate in violation of the Act when it returned to the work hours as set by the contract, and I dismiss that part of the charge. N.J.A.C. 19:14-2.3.

The City contends that it had a managerial prerogative to establish or eliminate permanent positions and establish rotating positions in the detective division without first negotiating the assignment (or non-assignment) with the PBA.

Management has a prerogative to transfer an employee to meet the governmental policy goal of matching the best qualified employee to a particular job. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978); Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of E. Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). This is usually so even if a transferred employee loses a shift differential or premium pay. City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985).

The Commission has often stated that police transfers from the detective division to another division are exercises of managerial prerogative and has thus restrained arbitration over the

transfers.<sup>2/</sup> Bor. of Bergenfield, P.E.R.C. No. 93-12, 18 NJPER 441 (¶23197 1992); Tp. of Wayne, P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991); City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990); City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990); Oakland.

Here, the City abolished the permanent assignment of patrolmen to the detective bureau and in September 1992, decided to rotate patrolmen into the detective division for a few months at a time. Based upon the well-established caselaw, I find that the City had a managerial right to do so. Therefore, I dismiss the PBA's (a) (5) charge alleging the City failed to negotiate before establishing the rotating detective assignments.

Further, the charge alleges no facts which indicate that the City violated subsection (a) (2) of the Act. Accordingly, I dismiss the (a) (2) charge.

However, the PBA also argues that the September, 1992 elimination of the permanent detective assignment and reversion to the fixed, 8-hour shifts were done in retaliation for the PBA's protests over team policing. The City denies any illegal motive in these acts and asserts that there is no nexus between protected

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<sup>2/</sup> The exception to this general principle is found in the discipline amendment, N.J.S.A. 34:13A-5.3, which permits binding arbitration over a police officer's reassignment if the reassignment is disciplinary and the officer has no alternate statutory appeal procedure. Ocean Tp., P.E.R.C. No. 93-13, 18 NJPER 442 (¶23198 1992); Atlantic City; Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986); see generally, CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984).



activity and these changes. To the extent that there is a question about the City's motives in taking these personnel actions, as well as the Atkisson disciplinary charges and the alleged preferential shift assignment, I find that the (a)(3) allegations meet the Commission's complaint issuance standard. Accordingly, I am issuing a Complaint on the PBA's (a)(3) charges.

In accordance with the foregoing, the (a)(2) and (a)(5) charges against the City are dismissed. A complaint is being issued on the PBA's (a)(3) charges.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: March 25, 1993  
Trenton, New Jersey