

H.E. NO. 2006-9

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

In the Matter of

TOWNSHIP OF MIDDLETOWN,

Respondent,

-and-

Docket No. CO-2005-226

PBA LOCAL 124,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Township of Middletown violated the New Jersey Employer-Employee Relations Act by (1) unilaterally eliminating an established practice providing compensation for shape-up or travel time to patrol officers when called to work emergent overtime and (2) by negotiating in bad faith by refusing to implement a step 2 determination which sustained a grievance filed by the majority representative. The Hearing Examiner recommends that both the past practice and the step 2 determination be reinstated and the parties negotiate in good faith over any proposed modifications or proposed elimination of the past practice or grievance procedure.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommended 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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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PBA LOCAL 124,

Charging Party.

Appearances:

For the Respondent, Township of Middletown
Dowd & Reilly (Bernard M. Reilly, of Counsel)

For the Charging Party, PBA Local 124
Klatsky, Sciarrabone & De Fillippo
(David J. De Fillippo, of Counsel)

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On February 28, 2005, the Middletown Township Policemen's Benevolent Association Local 124 (PBA) filed an unfair practice charge against Middletown Township (Township). The PBA alleges that it is the parties' longstanding past practice and custom to compensate patrol officers from the time they verbally accept an assignment, not from the time the patrol officer arrives at headquarters or otherwise clocks in at headquarters. The PBA asserts the Township unilaterally and improperly rescinded that practice when it refused to compensate patrol officers for shape-up time when called for immediate overtime in violation of

5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The charge further states that on February 1, 2005, the PBA submitted a grievance to the chief of police when the Township denied overtime consistent with the above specified past practice and custom. The chief of police sustained the PBA's grievance based upon the parties' past practice, however, the Township refused to implement the grievance determination, thereby repudiating the grievance procedure, also violating 5.4a(1) and (5) of the Act.

On June 22, 2005, a Complaint and Notice of Hearing issued. On June 27, 2005, the Township filed an Answer denying that the parties had a past practice as alleged by the PBA. The Township asserted that the grievance seeking compensation from the time an officer receives a call and accepts an assignment, rather than when the officer arrived at headquarters, was appropriately grievable, but that Chief Pollinger did not have the jurisdiction or authority to respond to the grievance and further, that Chief

^{1/} These provisions 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; (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."

Pollinger's response was erroneous, outside the scope of his authority, ultra vires and illegal.

On October 4 and 5, 2005, a hearing was conducted before the undersigned at which time the parties examined witnesses and presented exhibits. Post hearing briefs and reply briefs were filed by December 9, 2005.^{2/}

Based on the record, I make the following:

FINDINGS OF FACT

1. The Township of Middletown is a public employer within the meaning of the Act (1T6).^{3/}

2. PBA Local 124 is a public employee representative within the meaning of the Act and represents all rank and file police officers below the rank of sergeant within the Township police department (1T6-1T7).

3. The Township and PBA are parties to a collective negotiations agreement for the period from January 1, 2004 through December 31, 2007 (J-1).

4. Article XI of the parties' collective negotiations agreement, entitled "Overtime", sets forth, in pertinent part:

^{2/} The issuance of this H.E. decision was delayed due to a personal leave of absence from December 1, 2005 through March 31, 2006.

^{3/} "1T" and "2T" refers to the transcripts of the proceedings on October 4 and 5, 2005, respectively, followed by a page number; "J" refers to joint exhibits; "CP" refers to charging party exhibits; "R" refers to respondent exhibits.

D.1. In the event an employee is called into duty other than for his normal assignment, he shall be paid overtime at time-and-one-half (1.5) for all the time worked during each period, but in no case shall he be paid less than four (4) hours at this rate, for each call-in.

The parties' collective negotiations agreement is silent as to when overtime commences for patrol officers on an emergent or immediate basis; that is, whether a patrol^{4/} officer is paid upon acceptance of the assignment, allowing for shape-up or travel time, or only upon arrival at headquarters.^{5/}

Historically, and up to the present time, the Township compensates officers in the detective and traffic divisions for shape-up or travel time upon the officer's receipt of the call for emergent overtime, rather than when the officer "comes in or arrives at the police department" (1T55-1T57).

For the past twenty-five years, the parties also had a practice permitting payment to patrol officers for a reasonable

4/ The Township police department has four (4) divisions; community relations, traffic, detective and patrol (1T36).

5/ The Township's collective negotiations agreements with the blue collar unit, white collar unit and blue and white collar supervisors unit has historically and expressly permitted payment of one-half hour of travel time for employees called in to work when not regularly scheduled (J2-J11).

shape-up time when called for emergent overtime not to exceed one hour.^{6/}

5. On January 22 and 23, 2005, numerous patrol officers were called to work emergent overtime in response to a significant snow storm(CP-8, pgs. 1-8; CP-13). Each officer completed an "overtime record," wherein they recorded their "time on" at the start of the shift and not at the time they actually arrived and "palmed-in"^{7/} at headquarters^{8/} (CP-8, pgs 1-8;

6/ The PBA offered eight (8) witnesses whose testimony credibly established this longstanding practice (1T50-52, 142-144, 160-161, 164, 198; 2T22-23, 27-28, 39, 52, 77-79, 107, 110, 119-120). The Township offered three (3) witnesses, one of which concurred the practice existed (2T244). The other two (2) Township witnesses acknowledged not knowing what the practice was in the patrol division for the past twenty-five (25) years (2T148, 2T212, 2T310, 2T320, 2T328-2T329). Thus, I credit the PBA's witness on this point. Additionally, I drew an adverse inference from the Township's failure to call Deputy Chief Braun, the head of the Patrol Division, to testify on this point.

Some of the officers testified that they were paid from the time they accepted the emergent overtime assignment rather than from the time they actually arrived at headquarters. Some of the officers testified they were paid from the start of the shift they were called to work even though they arrived after the shift began. Upon review of the testimony in total, the responses to hypotheticals and a review of the documentary evidence, the facts suggest that the officers were usually paid from the start of the shift they were called to work, rather than the actual time of the telephone call. It appears however, that the time the officer received the call to work immediate or emergent overtime corresponded with the start of the shift, so this is consistent with the testimony.

7/ The Township has an electronic time system wherein officers palms are scanned upon entry into and departure from

(continued...)

CP-13). A supervisory officer approved each patrol officer's overtime record as submitted (CP-8; CP-13). These overtime records were later rejected by Deputy Chief Braun. The records were corrected to reflect the time the patrol officer actually palmed-in at headquarters (CP-8; CP-13). Accordingly, the patrol officers would not be compensated for the time period from when they received the call to when they "palmed-in."

6. On February 1, 2005, the PBA filed a written grievance with Chief John Pollinger protesting that the police department changed the manner in which patrol officers were paid for emergent overtime (1T62-1T63; CP-2). The PBA grievance provides that officers have been paid by longstanding custom and practice from the time that they accept an assignment, not from the time that they arrive at headquarters (CP-7).

7. The parties' collective negotiations agreement, Article XXI, sets forth the three-step grievance procedure which provides in pertinent part:

Step 1:

The president of the association or his duly authorized representative shall present and

7/ (...continued)
headquarters. This system was implemented for police personnel, over PBA objections, in September 2004.

8/ The consistent manner in which all of the patrol officers completed the "overtime records," as described above, further evinces the existence of a past practice of entering "time on" as the start of the shift.

discuss the grievance or grievances orally with the immediate supervisor within thirty (30) days of the occurrence, giving rise to the grievance, otherwise that grievance shall be deemed waived. The immediate supervisor shall answer the grievance within five (5) working days from the date of presentation.

Step 2:

If the grievance is not resolved at Step 1, or if an answer has not been received by the association within the time set forth in Step 1, the association shall present the grievance in writing within five (5) working days, furnishing one (1) copy to the police chief and the other to the business administrator. If it is not filed, it is waived. This presentation shall set forth the position of the association. At the request of either party discussion to settle grievance may ensue. The police chief shall answer the grievance in writing within five (5) working days after receipt of said grievance. At his option, the chief of police, with the consent of the director of public safety may refer the handling of this step to the director of public safety. All actions however, in the event the option is exercised, must be taken within the time frames as provided herein.

Step 3:

If the grievance is not resolved in Step 2, or if no answer has been received by the association within the time set forth above, the grievance may be presented in writing to the mayor and township committee within five (5) working days. The final decision of the mayor and the township, shall be given in writing to the association within fourteen (14) working days after receipt of the grievance by the mayor, township committee and administrator [J-1].

* * *

8. On February 8, 2005, Chief Pollinger responded as follows:

I have reviewed the contract and find nothing contained within the collective bargaining agreement that specifically deals with the issue.

Therefore, in the absence of specific language, I relied upon past practices but find the following:

Members of the Department called in on an emergent basis, i.e., within fifteen to thirty minutes of the start of that shift will be granted a reasonable period of time, not to exceed one hour, for travel/shape-up time. Those officers under the circumstances shall be paid for the entire shift (8 hours) for which they are reporting [CP-2].

9. As a result of Chief Pollinger's response to the PBA's grievance, Sergeant Brunt began correcting the overtime records of the patrol officers (CP-3). Sergeant Brunt brought the grievance and Chief Pollinger's response to the attention of Deputy Chief Oches who "ordered Sergeant Brunt not to pay any overtime that was not supported by . . . the time clock. . ." (CP-3). On February 11, 2005, Deputy Chief Oches wrote a memorandum to Chief Pollinger wherein he agreed that the collective bargaining agreement was silent on the issue of travel or shape-up time (CP-3). However, Deputy Chief Oches stated he was not aware of any past practice to allow for payment of shape-up time and that to do so was a violation of the collective bargaining agreement and a criminal act (CP-3). In a responsive

memorandum dated February 22, 2005, Chief Pollinger referred Deputy Chief Oches to step 2 of the parties grievance procedure, granting him authority to resolve grievances (CP-6). Further, Chief Pollinger advised that the grievance resolution was neither a violation of the collective bargaining agreement nor of the law (CP-6). In conclusion Chief Pollinger stated that he would notify the PBA of Deputy Chief Oches' position and allow the PBA to take any necessary steps, "including [a] P.E.R.C. ruling or Unfair Labor Practice," to resolve the issue (CP-6). Chief Pollinger did not disavow his position regarding the PBA's grievance.

10. Chief Pollinger was involved in an ongoing, and very public, dispute with Township Administrator, Robert Czech, from November 2004 until the Chief's retirement in February of 2006. On February 18, 2005, by memorandum to Chief Pollinger (CP-5), Czech wrote that the Chief was "without authority to authorize" the overtime as set forth in his answer to the PBA grievance. Mr. Czech's memorandum also provides that compensation for shape-up time would be contrary to the collective bargaining agreement and law (CP-5).

11. In a memorandum dated February 18, 2005 (CP-4), PBA President Gerald Weimer confirmed his February 17, 2005 conversation with Deputy Chief Oches that the Township police department was refusing to pay overtime despite the fact that

Chief Pollinger resolved their grievance by permitting compensation to patrol officers for shape-up time, not to exceed one (1) hour. The Township, thereafter, forwarded a memorandum dated February 28, 2005 (CP-7) to the PBA denying their grievance. The Township determined that Chief Pollinger had no authority to order the overtime payment for time not worked.

12. The Township did not negotiate or seek to negotiate any change in how emergent overtime was paid to patrol officers prior to its actions in 2005.

13. The PBA has filed other grievances involving overtime directly with the chief of police which have been resolved by the chief, without objection by the Township (2T184-2T190; 2T236).

ANALYSIS

Compensation, including overtime compensation, is a mandatorily negotiable term and condition of employment. State Troopers, P.E.R.C. No. 86-139, 12 NJPER 484 (¶17185 1986); City of Newark and Fraternal Order of Police, Newark Lodge No. 12, P.E.R.C. No. 86-150, 12 NJPER 542 (¶17202 1986). Terms and conditions of employment may arise from a past practice not contained in parties' collective negotiations agreement. New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1977) mot. for recon. den., 4 NJPER 56 (¶4073 1978). A past practice demonstrates "a pattern of conduct and some kind of mutual understanding, either express or implied." United

Transportation Union v. St. Paul Union Depot Co., 434 F.2d 220, 75 LRRM 2595 (8th Cir. 1970). The Commission has defined past practice as a course of events ". . . which is repeated, unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties." Somerville Boro, P.E.R.C. No. 84-90, 10 NJPER 125, 126 (¶15064 1984), quoting from Elkouri and Elkouri, How Arbitration Works, p. 391 (BNA 1973).

Where a collective negotiations agreement is silent or unclear concerning a particular term, the parties' past practice may control. Sussex Cty., P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982). A past practice that is determined to be contrary to the clear, express terms of a collective negotiations agreement, must yield to the clear meaning of the contractual agreement. Randolph Tp. Bd. of Ed.; Kittatinny Reg. Bd. of Ed., P.E.R.C. No. 92-37, 17 NJPER 475 (¶22230 1991). When an employer is charged with a unilateral change in a past practice, the contract provides a defense only where it specifically and expressly authorizes the change. See, Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); Township of Middletown, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd. 334 N.J. Super. 512 (App. Div. 1999), aff'd. 166 N.J. 112 (2000).

The Township asserts that the word "worked" in Article XI, D.1 requires: "reporting to his job location and actually commencing work"; that travel time is not work and is therefore precluded unless otherwise mandated by law or expressly permitted by contract.

The Township also argues that no past practice exists because there was no knowledge or approval of the governing body and that a past practice cannot be established by the actions of subordinate employees.

In the instant matter, the parties' agreement does not address travel or shape-up time for patrol officers called for emergent overtime. The record shows that for 25 years before January 22, 2005, patrol officers were compensated for a reasonable period of shape-up or travel time when called in for emergent or immediate overtime. That practice became a binding term and condition of employment, and the Township was obligated to engage in negotiations with the PBA before attempting to change or eliminate that benefit. In February 2005, the Township unilaterally altered the practice by refusing to pay patrol officers for shape-up or travel time when called for emergent overtime. The Township's conduct violated 5.4a(1) and (5) of the Act.

Charging Party also alleges that the Township repudiated the collective agreement, violating 5.4a(5) of the Act, by refusing

to implement the Step 2 grievance determination of Chief Pollinger. The Township asserts that it is not bound by Chief Pollinger's decision because (1) Chief Pollinger was without the power or authority to "negotiate or create contracts with the PBA" and (2) the PBA did not properly follow the grievance procedure.

Failure to implement a grievance determination has been held to be a violation of 5.4a(1) and (5). In Passaic County (Preakness Hospital), P.E.R.C. No. 85-87, 11 NJPER 136 (¶16060 1985), a dispute regarding sick leave obligations was grieved. Step 3 of the parties' grievance procedure required a meeting of the public employer and majority representative and resulted in a written decision sustaining the grievance. The parties' contract provided that if either party was dissatisfied with the Step 3 resolution, it may request binding arbitration within ten days of receipt of the Step 3 decision. The Hospital failed to timely appeal the Step 3 decision which, ten days after receipt, became binding. However, the Hospital thereafter refused to implement or adhere to the determination, prompting the union to file an unfair practice charge. In finding the employer's actions, or inaction, a violation of the Act, the Commission had "no hesitancy" concluding:

. . . the Hospital's conduct constituted a refusal to negotiate in good faith. . . .
[The union] pursued the negotiated grievance procedure, [winning] a binding ruling through

those grievance procedures and the Hospital then failed to comply with that ruling and the parties' negotiated procedures for appealing that ruling. [11 NJPER at 137]

In Borough of Keansburg, P.E.R.C. No. 2004-29, 29 NJPER 506 (¶160 2003), the Commission again held that a public employer violated 5.4a(1) and (5) by refusing to implement or otherwise honor grievance determinations in favor of the majority representative. The Hearing Examiner in Keansburg found in pertinent part:

The PBA in this case did what our policy prescribes; it pursued the negotiated grievance procedure, winning binding rulings at step 2 and the Borough failed to comply with them. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The Borough's contentions largely signify a frustration with the procedure to which it assented - the express designation of the Chief as the employer representative at step 2. The Borough did not negotiate an avenue of appeal if the Chief sustains a grievance. Preakness Hospital affirmed the notion that grievance procedures negotiated for the resolution of contractual disputes must be "honored." It did not authorize a public employer to consciously disregard or repudiate procedures which do not include an avenue of employer appeal prior to binding arbitration. . . . [H.E. No. 2003-015, 29 NJPER 123,128 (¶39 2003)]

In City of Somers Point, H.E. No. 2003-008, 28 NJPER 554 (¶33173 2002)^{9/}, the charging party asserted the City violated the Act when it unilaterally discontinued an established practice

^{9/} This decision became a final decision pursuant to N.J.A.C. 19:14-8.1(b).

of providing superior officers compensatory days off for extra work performed. The City denied any such authorized practice existed. Specifically, the City argued that to the extent such a practice existed, ". . . such actions were undertaken solely by the chief of police without the knowledge, consent, or authorization of the City's administrator or its governing body . . . [and] was ultra vires and not binding on the City." Id. at 555. In support of its argument the City relied on N.J.S.A. 40A:14-118 which gives the governing body of a municipality the exclusive authority to establish, maintain, regulate and control the police department. Although the facts were clear, and supported the City's contention that a practice existed without any knowledge or approval by the City Administrator or City Council, the Hearing Examiner nonetheless found the City in violation of 5.4a(1) and (5) for its unilateral discontinuance of the past practice. In doing so, the Hearing Examiner held,

. . . the Chief is an agent of the City, has the authority to take action to maintain the efficient operation of the police department, and those actions are attributable to the City which is obligated in turn to negotiate over changes in terms and conditions of employment. City of Atlantic City, P.E.R.C. No. 88-93, 14 NJPER 313 (¶19112 1988); adopting H.E. No. 88-46, 14 NJPER 269 (¶19101 1988). The cited statute does not specifically preclude a chief from having the authority to institute a compensatory term and condition of employment. Additionally, there is nothing in the Somers Point City Code, or case law cited by the City in its post hearing brief, which invalidates the

Chief's action or prohibits him from instituting a method of compensation in lieu of overtime which he otherwise had the authority to approve. [28 NJPER 558]

In further response to the City's argument in Somers Point that it was without knowledge of the compensatory payment practice, the Hearing Examiner noted, "the City's ignorance of and lack of authorization and ratification . . . neither invalidates the benefit nor makes the practice less binding." Id. at 559.

In the case sub judice, the PBA followed the grievance procedure in the collective negotiation agreement. Chief Pollinger resolved the grievance at step 2. The Township was obligated to honor that negotiated procedure and cannot lawfully disregard the Chief's step 2 decision now because it disagreed with his determination. Further, the grievance procedure does not contemplate an appeal by the Township. See Keansburg.

Chief Pollinger acted within the scope of authority delegated to him by the parties' grievance procedure. None of the statutes cited by Respondent, N.J.S.A. 40A:5-19, 9-165 or 14-118, and no Township ordinance precludes or invalidates Chief Pollinger's decision (R-3, R-4). He was as much an agent of the Township as the chief in Somers Point.

The Township's contention that the PBA did not comply with steps 1 and 2 of the grievance procedure, because the PBA wanted to present the grievance solely to Chief Pollinger because it was

common knowledge in the Township that relations between Chief Pollinger and Township Administrator Czech were strained, is insufficient justification for refusing to honor the chief's determination of the grievance. The chief had the authority to consider and/or disregard all of those issues in deciding whether to sustain the grievance. While there may have been some conflict between the chief and Czech, that did not diminish Pollinger's authority to decide the grievance.

The testimony in this matter uniformly revealed that the PBA frequently skipped step 1 where the gravamen of the grievance involved a policy issue (1T178-184, 1T98, 1T130-131). No evidence in the record supports the Township's contention that the PBA's actions were designed to withhold information intentionally from the Township Administrator or that failure to provide a copy of the grievance to the Township Administrator in anyway prejudiced the Township. Although there existed an ongoing, and very public dispute between Chief Pollinger and Mr. Czech, there was no evidence presented to support a finding that Chief Pollinger's grievance determination was an attempt to harm the Township or was anything other than a legitimate determination. In fact, the testimony of both the Township witness and PBA witness confirmed that other grievances involving

overtime had been presented directly to Chief Oches^{10/} and resolved similarly without objection from the Township (2T184-2T190, 2T236).

If the Township believed the PBA did not appropriately avail itself of the bargained-for grievance procedure, it could have filed an unfair practice charge against the union. See Willingboro Bd. of Ed., P.E.R.C. No. 83-091, 9 NJPER 76 (¶14041 1982). It did not. Respondent's reliance on Philadelphia Printing Pressman's Union v. International Paper Co., 648 F.2d 900 (3rd Cir. 1981) and United Steelworker's v. American Manufacturing Co., 363 U.S. 564, 80 S. Ct. 1343 (1960), in support of its argument is misplaced. Neither reported case adequately addresses the factual circumstances of this matter before this agency.

CONCLUSION

The Township violated Subsection 5.4(a)(5) and derivatively 5.4(a)(1) of the Act when it (1) unilaterally discontinued payment to patrol officers for a reasonable amount of shape-up or travel time when called for immediate or emergent overtime, and (2) failed to implement the Step 2 decision of Chief Pollinger.

Based upon the above findings and analysis, I make the following:

^{10/} Deputy Chief Robert Oches, succeeded Chief Pollinger as the chief of police.

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Township cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to negotiate with the Association over the elimination of a reasonable shape-up or travel time, not to exceed 1 hour when called for immediate or emergent overtime, and by failing to implement the Step 2 decision of Chief Pollinger.

B. That the Township take the following action:

1. Restore the long standing practice of compensating patrol officers for a reasonable period of shape-up or travel time, not to exceed 1 hour, when called for emergent or immediate overtime.

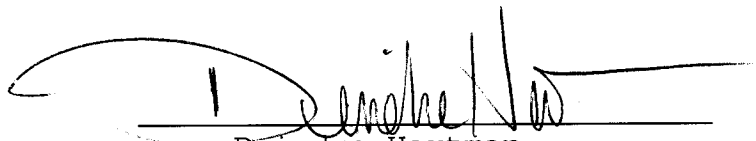
2. Make whole any patrol officer who was denied shape-up or travel time for emergent or immediate overtime.

3. Negotiate in good faith with PBA Local 124 over any proposed change or elimination of compensation to patrol officers for shape-up or travel time associated with immediate or emergent overtime.

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix A. Copies of such notice shall, after being signed by

the Respondent's authorized representative, be posted immediately and 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.

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



Deirdre Hartman
Hearing Examiner

DATED: June 6, 2006
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by June 19, 2006.



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to negotiate with the Association over the elimination of a reasonable shape-up or travel time, not to exceed 1 hour when called for immediate or emergent overtime, and by failing to implement the Step 2 decision of Chief Pollinger.

WE WILL restore the long standing practice of compensating patrol officers for a reasonable period of shape-up or travel time, not to exceed 1 hour, when called for emergent or immediate overtime.

WE WILL make whole any patrol officer who was denied shape-up or travel time for emergent or immediate overtime.

WE WILL negotiate in good faith with PBA Local 124 over any proposed change or elimination of compensation to patrol officers for shape-up or travel time associated with immediate or emergent overtime.

Docket No. CO-2005-226

Township of Middletown
(Public Employer)

Date: _____

By: _____

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 Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372