

H.E. NO. 2016-19

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

In the Matter of

TOWNSHIP OF HILLSIDE,

Respondent,

-and-

Docket No. CO-2014-027

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION LOCAL 35,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss the Complaint alleging violations of 5.4a(1) and (5) of the Act. Specifically, the Hearing Examiner determined that the transfer of unit work allegation did not trigger a negotiations obligation because the duties of training officer were not historically exclusively performed by the FMBA. Additionally, she concluded that the Township had a managerial prerogative to determine staffing which outweighed the union's interest in having the training functions performed exclusively by a training officer captain. The Township demonstrated that it was not fully staffed due to fiscal constraints. Therefore, in order to fill the training officer position, which was essentially an administrative function, the chief would have had to take a captain off of an operational line position, thus compromising emergency response time. Finally, the Hearing Examiner determined that even though the consequence of not assigning a captain as training officer resulted in a savings to the Township, namely not having to pay a stipend attached to that position, its staffing concerns outweighed any fiscal reasons for not assigning a captain to be training officer. Accordingly, the Township had a managerial prerogative to disperse training functions among all ranks, including non-bargaining unit deputy chiefs.

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 that 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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Appearances:

For the Respondent,
LaCorte, Bundy, Varady & Kinsella, attorneys
(Robert F. Varady, of counsel)

For the Charging Party,
Law Offices of Craig S Gumpel, LLC, attorneys
(Craig S. Gumpel, of counsel)

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

On July 19, 2016, Hillside FMBA Local 35 (Charging Party or FMBA) filed an unfair practice charge against Hillside Township (Respondent or Township). The charge alleges that the Township violated 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee

^{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
(continued...)"

Relations Act, N.J.S.A. 34:13a-1 et seq. (Act) by transferring unit work, namely training officer duties, from fire captains to deputy fire chiefs. The Township's actions, Charging Party contends, violate provisions of the parties' collective negotiations agreement (CNA) regarding work schedules and stipends attached to the training officer assignment. Finally, Charging Party asserts that the Township refused to negotiate upon demand. As remedies, the Charging Party seeks, among other things, a return to the status quo, a make whole order for any captain denied the training officer assignment and an order to negotiate.

On July 11, 2014, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1).^{2/} On July 25, 2014, the Township filed an Answer to the Complaint (C-2). The Answer generally denies that it transferred unit work asserting that the training officer work has not been exclusively performed by fire captains and, therefore, the issue is not mandatorily negotiable. The Township admits that the parties' CNA provides for work hours and a stipend for any bargaining unit member assigned as training

1/ (...continued)
refusing to process grievances presented by the majority representative."

2/ "C", "J", "CP" and "R" refer, respectively, to Commission, Joint, Charging Party and Respondent exhibits received into evidence at the hearing.

officer, but denies that the CNA requires it to appoint a training officer or that a training officer has to be a bargaining unit member. It further acknowledges that currently a deputy chief has been assigned training officer duties due to a lack of qualified unit personnel to perform those duties. Finally, the Township asserts that it has negotiated with the FMBA over this issue.

A hearing was conducted on December 3, 2014, July 28 and September 29, 2015.^{3/} The parties examined witnesses and presented documentary evidence.^{4/} Post-hearing briefs were filed by December 8, 2015. Based upon the record, I make the following:

3/ On the first day of hearing, after I opened on the record, Counsel requested an opportunity to speak off the record regarding a possible voluntary resolution. Subsequently, at the parties' request, we adjourned for the day in order for settlement discussions to continue. When I was eventually notified that the parties were unable to reach an agreement, the hearing was rescheduled. Testimony was taken on July 28 and September 29, 2015.

4/ On July 28, the first day of hearing that testimony was taken, I granted Charging Party's request to sequester witnesses. Respondent raised no objection. Each side was allowed one resource person who remained the same throughout the two days of testimony. FMBA President Jeff Albrecht and Fire Chief Dominick Naples were designated resources persons, respectively, for Charging Party and Respondent and were present on both July 28 and September 29, 2015.

FINDINGS OF FACT

1. Hillside Township and the FMBA are, respectively, a public employer and a public employee representative within the meaning of the Act.

2. FMBA Local 35 represents all uniformed fire personnel employed by the Township excluding battalion chiefs, deputy chiefs and the chief of the department. (J-1 at Article 1, Section 1). Deputy Chiefs are represented in a separate unit by FMBA Local 235 (2T24).^{5/}

3. The Township and FMBA are parties to a collective negotiations agreement with an effective date of July 1, 2007 through June 30, 2012 (J-1). The parties are currently in negotiations for a successor agreement (2T6).

4. Article III, entitled "Hours of Work and Overtime", at Section 1(C), sets the hours of work for members assigned as training officer as 10-hour day shifts, four days a week between Monday and Friday.

5. Firefighters, captains and deputy chiefs who are not assigned to specialized units work 24 hours on duty and 72 hours off duty (2T24). There are four shifts and three companies per shift (2T26).

^{5/} Transcript references for the December 3, 2014, July 28 and September 29, 2015 hearing dates are, respectively, 1T through 3T.

6. Article VI, entitled "Salary Schedule", states in pertinent part:

Section 7: Training Officer

Per the practice in existence as of the execution of this Agreement, the Training Officer, or bargaining unit member assigned as Training Officer, shall continue to receive a stipend of 8.5% over his base pay.
[J-1]

This article also provides for salary differentials for unit members assigned to the fire prevention bureau and as emergency medical technicians.

7. Deputy chiefs perform the function of shift commander overseeing the entire shift, while captains are company officers supervising an engine company or a truck company. There is also an ambulance on each shift (2T25).

History of Training Officer Position

8. Article 16 of the Department's Rules and Regulations is entitled "Training Program Procedures" (CP-1). It references the officer in charge of training as the training coordinator which is another term for training officer (2T29).^{6/}

^{6/} On July 10, 2013, in a letter to the FMBA attorney, the then Township Attorney maintained that the training coordinator position and training officer position were not the same (CP-22). Witnesses, however, testified that the terms are interchangeable (2T29, 2T97, 3T13-3T14). Accordingly, I find as a fact that the terms are the same.

CP-1 states that the training coordinator in conjunction with the chief is responsible for establishing probationary and on-going training programs for all personnel. CP-1 also sets out the specific duties of the training coordinator regarding a continuing education program for all fire personnel which is to be developed by the training coordinator in conjunction with the chief and his supervisory staff. Finally, CP-1 confirms the hours of work for the training coordinator as the same as the Fire Prevention Bureau (four 10-hour days, Monday through Friday) or as set by the chief (CP-1; 2T26-2T27).

9. The training program was created around 1988 or 1989 (CP-5; 2T29, 2T13-2T14). Both the parties' 1990-1992 CNA and the 1993-1996 CNA provided for a training officer position together with hours of work for the training officer, but did not provide extra compensation for the position (CP-3, CP-4; 2T37, 2T38-40). The 1996-2000 CNA for the first time provided for a stipend of 8.5 percent over base salary for the training officer (CP-2; 2T31-2T32). None of these CNAs, including the current agreement, require that a training officer has to hold the rank of captain (2T140-2T141, 2T146). Specifically, Article VI, section 7, provides for the 8.5 percent stipend for the "Training Officer or bargaining unit member assigned as Training Officer" (J-1). Since the bargaining unit consists of both captains and firefighters, I infer that either rank can hold the training

officer position, although to date only captains have been assigned to this role (see fact no. 11 below).

10. In order to be assigned as a training officer, the chief solicits applications from interested parties (CP-10; 2T73, 3T57). The chief is solely responsible for the appointment of a training officer, since there is no contractual or statutory requirement that the position be filled (3T58). The chief can decline to appoint a training officer (3T57-3T58). After reviewing applications, the chief requests applicants to write about their qualifications which he then reviews. There are no particular qualifications required for the position (3T46).

When the chief finds a qualified candidate that he wants to appoint, he requests the Mayor's approval. If approval is given, the matter is put before the Township Council for a formal resolution approving the position as well as setting the salary for the position (3T57-3T59).

11. The parties stipulated as to the succession of training officers from the time the program was instituted in 1988 to the present time (CP-15, CP-16, CP-17, CP-18; 2T60-2T62, 2T66-2T67):^{2/}

A. Captain Douglas Ferrigno was the first training officer assigned from 1988 to 1993.

^{2/} Ferrigno and DeLane are now deputy chiefs. Both testified as witnesses for Charging Party.

B. Captain Donald Miller was assigned as training officer from 1994 to 1997.

C. Then Captain Jude DeLane was the assigned training officer from 1998 to mid-year of 2006.

D. Captain Richard Von Den Stienen was assigned as training officer from 2006 to 2008.

E. Captain Thomas Mateer was the assigned training officer from 2009 to February 2013 when he retired.

12. There have been gaps in time between training officer assignments when no one filled that role. For instance after Miller, there was a long gap before DeLane was appointed as training officer (3T30). When DeLane left the assignment due to his promotion to deputy chief, there was also a gap before his replacement - Von Den Stienen - was assigned to the training officer position (3T30). According to Charging Party's witness, Deputy Chief Ferrigno, during the gaps between training officers as well as presently, training continued but was carried out by others, including deputy chiefs, captains and firefighters (3T21-3T22). Any member of the department could and did conduct the training which varied depending on the topic and who was willing to do the training (3T64, 3T69). During these gap-periods between training officers, the chief disseminated an annual training schedule to the shifts who would then conduct training (3T57, 3T63).

13. Generally, there are two types of training - tour or departmental training and company training (2T69, 3T35). Tour training is given to the entire department and includes, for example, scuba use safety, hazardous material training, right to know, confined space operations, high angle rescue and maintenance as well as search and rescue (CP-8; 2T69, 2T131, 3T23, 3T34, 3T43-3T44). Some of this training is mandated by law (3T32, 3T47-3T48). Ordinarily, tour training is scheduled by the training officer in conjunction with the chief and is conducted by the training officer (CP-8; 3T33-3T34).

Company training is done on a particular shift and is conducted by the company commander who is a captain and sometimes by a deputy chief or firefighter, whoever has the expertise. This type of training is conducted pursuant to a monthly schedule generated by the training officer (if there is one) in conjunction with the chief (2T69-2T70, 3T24-3T25, 3T36). Examples of company training include policies and procedures, familiarization with new equipment, small tools, fire extinguishers, chain saw use and roof tools (CP-9; 2T72, 3T45, 3T69).

In the past, when company training was completed, a T201 form would be filled out by the company officer indicating the month and year the training was given, who gave the training, on what topic and the members who were present for the training.

The form was signed by the captain as well as someone from the training division and submitted to the deputy chief and then submitted to the chief for verification (CP-12; 2T78-2T79). Since September 2013, a revised form known as a T202 is being utilized (CP-14). This form contains essentially the same information, but has no requirement that it be submitted to the training division (CP-14).

14. Assigned training officers issue training schedules for both tour and company training as well as keep records of training that was done (CP-11 through CP-14). Presently, with no training officer, training records are being forwarded to the Chief (3T46).

Present Day Circumstances Regarding Training Officer Duties

15. There has been no one assigned to the training officer position since Mateer's retirement in 2013, although training has continued and is being handled by Deputy Chief DeLane as well as other deputy chiefs, captains and firefighters. These trainers do not work training officer hours or receive the 8.5 percent stipend but are paid overtime if warranted by their work schedule (CP-19; 2T91, 2T151, 3T46-3T48, 3T52-3T53).

16. Although he has made many requests to fill positions from the bottom up, Chief Dominick Naples has not appointed anyone to the position of training officer since Mateer's retirement, because the Township has not given him the fiscal

ability to do so and also because of related manpower concerns (3T59, 3T61-3T62).

17. Specifically, at the present time, the Hillside Fire Department is not fully staffed. The department currently has 33 firefighters, 8 captains, 4 deputy chiefs and a chief. At 46, the department is two below what it should be at 48 which is required by a Federal Emergency Management Agency (FEMA) grant that the Township is receiving to pay 12 firefighter salaries (2T142-2T144, 3T62). In fact, the Township had to get a waiver from FEMA, because it was supposed to replace firefighters as they retired but has been unable fiscally to do so (3T62). The Department has not hired firefighters or promoted staff in more than two years (3T60). Indeed, without outside grant funding, the Township presently lacks the ability to pay firefighters their salaries (3T62).

18. Because of the current manpower shortage, in order to appoint a captain or firefighter to the position of training officer, Naples would have to take a firefighter or captain off the fire suppression side of the department which hampers emergency response on a daily basis (3T60). Thus, his decision not to appoint a training officer at this time is both fiscal and

because of the manpower shortage (3T65-3T68).^{8/} Naples explained this to FMBA Albrecht who disagreed with him (2T141-2T142).

19. Presently without an assigned training officer, Naples issues an annual training schedule and distributes it to the shifts (3T49, 3T63). Basically, training falls on the company officer to train on specific topics or a deputy chief who ensures that the required departmental training gets done on the shift (3T64-3T65). Deputy Chief DeLane has performed a lot of the training, although training has been dispersed among all ranks (CP-23, CP-24; 3T48, 3T50, 3T52-3T53).

20. On January 14, 2013, FMBA President Albrecht wrote Naples regarding his intentions to fill the vacant training officer position and encouraging him to do so (CP-20). Albrecht inquired as to when the position would be available to qualified candidates (CP-20).^{2/} Albrecht received no response to this letter (2T92).

8/ In its Answer, Respondent admitted that it assigned training duties to a deputy chief, because there was no one qualified from the bargaining unit to assume these duties. This rationale is not supported by testimony adduced at the hearing from witnesses for both Charging Party and Respondent. Training duties have been assigned at present to all ranks, including captains and firefighters as well as deputy chiefs. Accordingly, I accept as fact Chief Naples' explanation for assigning training to all ranks and for not appointing a training officer at present.

2/ On March 24, 2013, Captain Joseph Moran wrote to Chief Naples expressing interest in being considered for the training officer position. Moran received no response (CP-25; 2T119-2T120).

21. On June 20, 2013, the FMBA's attorney wrote the then Township attorney protesting the assignment of training officer duties to Deputy Chief DeLane, which the FMBA's attorney maintained, was work exclusively performed by fire captains since 1988 (CP-21; 2T92-2T93). The letter attached Article 16 of the Rules and Regulations (CP-1). The FMBA's attorney also requested negotiations over the reassignment of training program duties to a non-bargaining unit member which, he asserted, constituted a unilateral change in terms and conditions of employment (CP-21).

22. On July 10, 2013, the then Township attorney responded to the FMBA's request to negotiate (CP-22). The letter explained that the assignment to the training officer position had always been the sole province of the chief, including whether or not to assign a captain to that position. However, the attorney related that the chief would not assign anyone to that position below the rank of captain.

Next, the Township asserted that Article 16 does not refer to a training coordinator as a captain and that the terms training coordinator and training officer were distinguishable. Specifically, the Township contended that the training coordinator was a deputy chief whereas the training officer implemented training programs established by the chief in

consultation with the deputy chief who is assigned to work as training coordinator.^{10/}

The letter denied that training had been exclusively bargaining unit work because deputy chiefs had been conducting training for many years. Training was, the attorney maintained, a shared responsibility. The Township attorney, therefore, denied any negotiations obligation (CP-22).

23. Having reviewed the Township's response, Albrecht disagreed with the Township's conclusions set out in CP-22. He felt that captains have always filled the position of training officer and provided training under the direct supervision of the chief. Albrecht testified that training has always been done by the training officer captain through the training division and never by a deputy chief. Albrecht also determined that Deputy Chief DeLane has been the only deputy chief assigned to do training since Mateer's retirement (CP-23, CP-24; 2T95-2T96, 2T98-2T101).

^{10/} Deputy Chief Ferrigno credibly testified that there is no position of deputy chief training coordinator and that the position of training coordinator and training officer are interchangeable. He also testified that the training officer reported to the chief (3T13-3T14, 3T17). Accordingly, I do not find that the Township attorney accurately portrayed the two positions in his letter or the chain of command, but find that these facts are not material to the issue as to whether the Township transferred unit work and whether that work was done exclusively by the FMBA.

In reaching the conclusion as to DeLane, Albrecht reviewed company journals from October 23, 2013 through September 16, 2014 and February 21, 2013 to May 30, 2014 and made investigative notes (CP-23, CP-24). These dates represent periods of time both before and after Mateer retired. The company journals or log books contain all the incidents, calls or training done during specific time frames. Albrecht searched the journals to determine the departmental training provided by DeLane. From his examination of the company journals from February 21, 2013 through May 30, 2014, Albrecht identified many instances where DeLane provided departmental training immediately after Mateer's retirement in February 2013 but not in the period before Mateer's retirement (CP-23, CP-24; 2T107, 2T109).

Based on Albrecht's testimony, I cannot find as fact that DeLane is the only deputy chief providing training since Mateer retired. Charging Party's own witness, Deputy Chief Ferrigno, credibly testified, as did Chief Naples, that both before and after Mateer's retirement and during gaps between the appointment of training officers, training has been performed by more than one deputy chief as well as captains and firefighters (3T21-3T22, 3T47-3T48, 3T53, 3T64). Albrecht himself admitted that there were gaps between training officers, and that training was

provided during those periods by others who were not assigned as training officer (2T124, 2T149-2T150).^{11/}

Moreover, I do not give a great deal of weight to CP-24 to the extent that there were entries which were unclear as to who provided training on a particular date (CP-24; 2T118, 2T131). As to CP-23, Albrecht admitted that his notes did not reflect all of the training performed by individuals other than Deputy Chief DeLane (2T124-2T125). To the extent that Albrecht's notes taken from the company journals between February 2013 and May 2014 reflect only training by DeLane, I do not find that training was not provided by others holding different ranks during this time frame.

ANALYSIS

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over mandatorily negotiable terms and conditions of employment. In City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998), the Supreme Court analyzed

^{11/} Deputy Chief DeLane is now President of FMBA Local 235 representing deputy chiefs. He testified that before Mateer's retirement, the training officer would provide all the departmental training (3T43-3T44, 3T47). He also testified that some training was delegated by the training officer (3T47). I find that to the extent DeLane's testimony conflicts with the testimony of Albrecht, Naples and Ferrigno regarding whether the training officer exclusively did departmental training, DeLane's testimony is immaterial, because their testimony is consistent that during the periods when there were no training officers, officers of all ranks performed both company and tour training.

the transfer of unit work issue under the unit work rule and the balancing test set forth in Local 195, IFPTE, 88 N.J. 393 (1982). Under the unit work rule, the shifting of work from employees within a particular negotiations unit to other public employees outside of the unit is a mandatorily negotiable subject. An employer has an obligation to negotiate with the majority representative before shifting work to employees outside of the unit. Id. at 575. See also, Hudson Cty. Police Dept., P.E.R.C. No. 2004-14, 29 NJPER 409, 410 (¶136 2003), recon. den. P.E.R.C. No. 2004-39, 29 NJPER 547 (¶177 2003). However, this rule contemplates three exceptions whereby the transfer of unit work is not mandatorily negotiable, namely (1) where the union has waived its right to negotiate the transfer of unit work; (2) historically the job was not within the exclusive province of the unit personnel; or (3) the employer is reorganizing the way it delivers government services. Id. at 577.

Here, Charging Party contends that the Respondent violated 5.4a(1) and (5) of the Act by transferring unit work - training officer duties - to deputy chiefs. Respondent defends that training duties are not exclusively unit work performed by captains, but have been shared by other ranks where appropriate and as needed. Therefore, the Township asserts, no negotiations obligation was triggered by its decision not to appoint a training officer and to disperse training duties to other ranks,

including to deputy chiefs. Basically, the employer is asserting the second exception to the unit work rule releasing it from any negotiations obligation. I agree.

The evidence supports that there is a training officer position recognized by the parties' CNA, and that captains have exclusively been assigned as training officers when that position is filled. Captains, however, have not exclusively performed training officer duties - creating training schedules and conducting departmental training - in particular during periods when no one held the position of training officer.

For instance, there have been gaps between training officers since the training program began in 1989 and the training officer position was created. During those gaps, training continued and was conducted by firefighters, captains not holding the position of training officer as well as deputy chiefs, while the chief scheduled the training. Based on these facts, the training officer duties have been shared with non-bargaining unit employees. Accordingly, the employer had no duty to negotiate when these duties were assigned to Deputy Chief DeLane or to other deputy chiefs after the retirement of Captain Mateer.^{12/}

^{12/} To the extent, that training officer duties were performed by firefighters, there was no transfer of unit work violation established, because firefighters and captains are in the same bargaining unit. If Charging Party asserts that those duties contractually belong only to captains, any violation of the parties' collective agreement is not

(continued...)

The cases cited by Charging Party to support that the Township violated the Act are inapposite. For instance, in North Arlington Bd. of Ed., H.E. No. 97-18, 23 NJPER 156 (¶28077 1997), the hearing examiner considered whether the union waived its right to contest the transfer of its unit work. That claim is not asserted here. Charging Party also cites Board of Fire Commissioners, Fire District No. 1, Monroe Township, P.E.R.C. No. 2015-14, 41 NJPER 156 (¶54 2014), aff'd 42 NJPER 281 (¶81 App. Div. 2015). There the Court affirmed the Commission's determination that the employer violated the Act when it employed per diem firefighters to perform what was traditionally full-time firefighter bargaining unit work and terminated the paid firefighters in retaliation for filing the unfair practice charge alleging transfer of unit work. Here, I have determined that the training officer duties have not been exclusively bargaining unit work, and there is no claim that any firefighter or captain has lost a job in retaliation for lodging this transfer of unit claim.

Similarly, Charging Party's reliance on City of Passaic, P.E.R.C. No. 2000-8, 25 NJPER 373 (¶30162 1999) is misplaced. There, in a scope of negotiations determination, the Commission concluded that a typical unit work clause which the union sought

12/ (...continued)
 appropriately before me but should be deferred to the parties' grievance procedure.

to include in a successor agreement was non-negotiable where the clause did not specify that it was subject to the employer's right to civilianize for governmental policy reasons. Here, the training officer position has not been civilianized. Rather the FMBA's unit work claim asserts that the training officer duties are being performed by a deputy chief who is not in the bargaining unit. Nor is there any allegation in the charge of job loss or a reduction in union membership as a result of the deputy chief performing training duties.

Even if the FMBA had proven that the training officer duties were exclusively unit work, the Township has asserted a governmental policy reason for its decision not to fill the training officer position that outweighs the union's right to have the position filled. Chief Naples proffered both fiscal and operational reasons for not appointing a training officer.

Specifically, the Township is currently unable to meet the salaries of its firefighters and is relying on a federal grant to pay 12 firefighters. In fact, the Township acquired a waiver from the federal agency providing the grant, because under the grant's terms, it is required to maintain a departmental staffing level of 48, two above the current level of 46. Because of these fiscal constraints, Chief Naples has no ability to promote and hire to fill the ranks.

Moreover, because the department is down by two firefighters, in order to fill the training officer position, Chief Naples would have to remove a captain from a line or operational position which jeopardizes the department's emergency response capability. He has determined, therefore, not to fill what is essentially an administrative position - the training officer works four 10-hour days four days Monday through Friday - while keeping the operational or line positions available to meet emergency needs. In this instance, the Township's decision not to jeopardize the delivery of emergency services outweighs the union's desire to have the training officer position filled and the duties performed solely by a captain assigned to that position.

The FMBA maintains that the Township's rationale for not appointing a training officer is primarily fiscal, namely that it does not want to pay the 8.5 percent stipend over base that is required under the parties' CNA for the training officer. The FMBA is correct that a by-product of the Township's decision not to appoint a training officer and to disperse the training functions among the ranks results in those officers being paid to do training, sometimes on an overtime basis, when warranted by their work schedules. This fact alone does not preclude the Township from determining how best to effectively deliver emergency services in the most cost effective manner possible.

A case that is similar to the matter before me is Rutgers, The State University of NJ and Union of Rutgers Administrators, AFT, Local 1766, AFL-CIO, P.E.R.C. No. 2014-41, 40 NJPER 289 (¶110 2013), aff'd 41 NJPER 471 (¶146 2013). There, the Appellate Court affirmed the Commission's determination to restrain arbitration of a grievance contesting the University's assignment of boiler-check functions to non-unit employees. In that case, like here, the Commission found that the University's actions did not violate the unit work doctrine because the record did not support that the boiler-monitoring function was performed exclusively by unit employees. Moreover, in balancing the interests of the public employees and the public employer, the Commission determined that the University had a managerial prerogative to establish staffing levels for the efficient performance of the boiler-monitoring services on campus even though the staffing assignments to different bargaining units impacted the amount of overtime available to unit employees.

Thus, even if the Township's decision not to staff the training officer position resulted in the loss of the 8.5 percent stipend to a captain who was assigned as training officer, the Township's decision to maintain operational or line staffing levels for the provision of emergency services and disperse the training functions on an overtime basis is an exercise of its managerial prerogative to establish staffing levels. See also,

Morris County Sheriff's Office v. Morris County Policemen's Benevolent Ass'n, Local 298, 418 N.J. Super. 64 (App. Div. 2011) (decision not to staff positions that have no function on holidays implicates County's managerial prerogative to spend public funds wisely in the efficient allocation of limited resources); Jersey City v. Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555 (1998) (decision to transfer police officers from administrative/non-police positions and fill positions with civilians was exercise of non-negotiable managerial prerogative where City established goal set by governmental policy to improve effectiveness and performance of police department).

CONCLUSIONS OF LAW

Respondent Township did not violate 5.4a(1) and (5) by not appointing a training officer, by assigning training officer duties to Deputy Chief DeLane and/or other non-unit employees, and by refusing to negotiate.

RECOMMENDATION

I recommend that the Commission dismiss the Complaint.



Wendy L. Young
Hearing Examiner

DATED: April 20, 2016
Trenton, NJ

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 May 2, 2016.