

D.U.P. NO. 92-24

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

In the Matter of

CITY OF LINDEN,

Respondent,

-and-

Docket No. CO-92-120

PBA LOCAL 42,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by PBA Local 42 alleging that the City of Linden changed work rules without negotiations by requiring an employee to turn off his/her telephone answering machine when on sick leave. The Director finds that the City has a managerial prerogative to verify the use of sick leave and that this requirement is a less intrusive means of verification than a home visit.

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Appearances:

For the Respondent,
Edward J. Kologi, attorney

For the Charging Party,
S.M. Bosco Associates
(Dr. Simon M. Bosco, consultant)

REFUSAL TO ISSUE COMPLAINT

On October 24, 1991, the Linden Policeman's Benevolent Association, Local #42 filed an unfair practice charge with the Public Employment Relations Commission against the City of Linden alleging that the City violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"); specifically, subsections 5.4(a)(1) and (5),^{1/} when the Chief promulgated a bulletin containing the following statement:

^{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. (5) Refusing to

Effectively (sic) immediately anyone who calls out sick shall not have an answering machine on the phone. To have an answering machine shall mean that no one is home and may result in disciplinary charges.

The PBA contends that the bulletin constitutes a change in work rules made without negotiations with the PBA and therefore is violative of subsection (a)(5) of the Act.

The Commission has held that a public employer has a managerial prerogative to establish a sick leave verification program which includes home visits. City of E. Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982).

Here, the requirement to turn off an answering machine while on sick leave^{2/} would, on balance, be less intrusive than a home visit as a means of sick leave verification. This procedure, used to verify the proper use of sick leave, is a managerial prerogative and its promulgation is not negotiable.

Based upon the foregoing, I conclude that the Township's action here would not constitute an unfair practice and, in

1/ Footnote Continued From Previous Page

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."

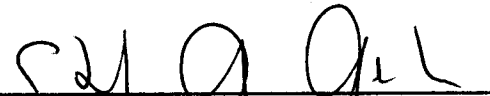
2/ So the employer could talk directly with the employee on sick leave.

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accordance with N.J.A.C. 19:14-2.1 and 2.3, I refuse to issue a complaint and dismiss this charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 11, 1992
Trenton, New Jersey