

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

- and -

Docket No. CO-83-297-30

TEANECK PBA, LOCAL 215,

Charging Party.

SYNOPSIS

The Public Employment Relations commission dismisses a Complaint based on an unfair practice charge that Teaneck PBA, Local 215 filed against the Township of Teaneck. The charge had alleged that the Township had violated the New Jersey Employer-Employee Relations Act when its Chief of Police reduced the amount of the PBA president's accrued time off by the amount of on-duty time he spent at an interest arbitration proceeding. The Township had a legitimate contractual expectation that it would be reimbursed for this time and when the Chief sought to discuss alternative ways to secure reimbursement, including spreading the deducted time among PBA negotiations team members or taking it from the president, the PBA did not respond. Under these circumstances, the Township's actions did not amount to a violation of law.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

- and -

Docket No. CO-83-297-30

TEANECK PBA, LOCAL 215,

Charging Party.

Appearances:

For the Respondent, Gerald L. Dorf, Esq.
(Eric Martin Bernstein, of Counsel and on the Brief)

For the Charging Party, Loccke & Correia, Esqs.
(Richard D. Loccke, Esq., of Counsel and on the Brief)

DECISION AND ORDER

On May 2 and July 19, 1983, respectively, the Teaneck PBA, Local 215 ("PBA") filed an unfair practice charge and amended charge against the Township of Teaneck ("Township") with the Public Employment Relations Commission. The charge, as amended, alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (4) and (5),^{1/} when it reduced

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; (2) 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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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.

the amount of the PBA president's accrued time off by the amount of on-duty time he spent at an interest arbitration hearing.

On August 26, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On September 12, 1983, the Township filed its Answer denying that it had committed any unfair practices.

On December 1, 1983 and February 2, 1984, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses, presented exhibits and argued orally. Both parties waived the filing of briefs.

On February 23, 1984, the Hearing Examiner issued his report and recommended decision, H.E. No. 84-44, 10 NJPER ____ (¶ ____ 1984) (copy attached). He concluded that the Township violated subsections (a)(1) and (5) of the Act by unilaterally deducting six and one-half hours of the PBA president's accrued time off to make up for time spent in negotiations while on duty. He recommended an order requiring the Township to cease and desist from refusing to negotiate over the method for deducting accrued time off; to restore the accrued time deducted; to negotiate in good faith with the PBA regarding any proposed reductions in accrued time off; and to post a notice of its violation and the remedial action taken. He further found no evidence that the Township had violated subsections (a)(2), (3) and (4) and accordingly recommended dismissal of those aspects of the charge.

On March 19, 1984, after having received an extension of time, the Township filed exceptions. Specifically, the Township

maintains that the Hearing Examiner erred in not finding that the Chief of Police told the president that the president had the option of deducting the time from other police officers; not giving appropriate weight to the Township's "past practice" in regard to other units; not finding that the Township's actions were de minimis; and not deferring to arbitration.

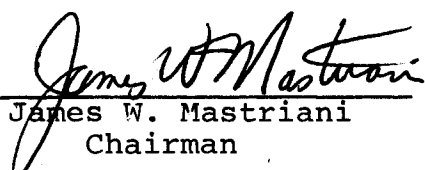
We have reviewed the record. The Hearing Examiner's findings of fact are accurate. We adopt and incorporate them here. However, we do not agree with his conclusion that the Township's conduct, under the circumstances, amounted to a violation of the Act. While it is undisputed that the Chief deducted six and one-half hours from Kilmurray's accrued time, it is equally clear that the PBA negotiations team had exceeded the amount of paid leave to which they were entitled under the contract by that amount of time. Given this, the significant fact is that prior to deducting Kilmurray's time, the Chief met with Kilmurray and suggested that, in the alternative, the time to be deducted be spread among the PBA negotiations team members. While it is questionable that the only solutions to this dispute were those proposed by the Chief, it is clear, given the Township's legitimate expectation that the PBA reimburse it for the 6 1/2 hours, that the PBA neither responded to the Chief's overture, nor proposed to relieve its obligation in an alternative manner despite being given an opportunity to do so. We believe, therefore, under the circumstances of this case, that the Township's actions did not amount to a violation of law.^{2/}

^{2/} We express no opinion on whether the Township's actions amounted to a contractual violation or whether deferral would have been appropriate.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Newbaker, Suskin and Butch voted for this decision. Commissioners Graves and Hipp voted against this decision.

DATED: Trenton, New Jersey
May 30, 1984

ISSUED: June 1, 1984

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

In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

-and-

Docket No. CO-83-297-30

TEANECK PBA, LOCAL 215,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Township violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when its Chief of Police unilaterally decided to deduct 6-1/2 hours from the "accrued time" of the President of the PBA. This occurred pursuant to the Township's construction of the collective negotiations agreement, which provided that up to 45 hours of duty time could be used in collective negotiations. The PBA utilized 51-1/2 hours in the 1983 negotiations but, instead of negotiating with the PBA regarding the allocation of the excess 6-1/2 hours, the Chief of Police unilaterally decided to "load" the 6-1/2 hours upon the PBA President. By way of remedy, the Hearing Examiner ordered the Township to restore the status quo ante and negotiate with the PBA as to which employees, and in what proportion, the excess hours would be deducted from their "accrued time."

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.

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

In the Matter of

TOWNSHIP OF TEANECK

Respondent,

-and-

Docket No. CO-83-297-30

TEANECK PBA, LOCAL 215,

Charging Party.

Appearances:

For the Township of Teaneck
Gerald L. Dorf, Esq.

For the Charging Party
Loccke & Correia, Esqs.
(Richard D. Loccke, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on May 2, 1983, and amended on July 19, 1983, by the Teaneck PBA, Local 215 (hereinafter the "Charging Party" or the "PBA") alleging that the Township of Teaneck (hereinafter the "Respondent" or the "Township") 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 the Respondent, contrary to past practice, reduced the compensation of the PBA President by the amount of time that he had spent at an Interest Arbitration hearing and, although other persons testified, including the Chief of Police, only the President of the PBA was singled out for a reduction in compensation, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a) (1), (2), (3), (4), (5) and (7) of the Act.^{1/}

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.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization." (cont'd. on p. 2)

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 August 26, 1983. Pursuant to the Complaint and Notice of Hearing, hearings were held on December 1, 1983 and February 2, 1984 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally on February 2, 1984 and waived the filing of post-hearing briefs.

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 oral argument 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 Township of Teaneck is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Teaneck PBA, Local 215 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Richard Kilmurray has been the President of the PBA since June 1982. He was previously President of the PBA in 1978-79. He has been Chairman of the PBA's Negotiations Committee since the latter part of 1982.

1/ (con'td.)

"(3) Discriminating in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act.

"(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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.

"(7) Violating any of rules and regulations established by the commission."

4. The collective negotiations agreements between the PBA and the Township, covering patrolmen, have since January 1978 contained an Article XV, "Collective Negotiating Procedure," which provides in Section C as follows:

"In the event any negotiating meetings are scheduled during any part of the working day, employees of the Township may be designated by the Association to participate in such negotiating meetings. Up to a maximum of four (4) will be excused from their Township work assignments by the Township provided their absence will not seriously interfere with the Township's operations. Such employees would suffer no loss of regular straight time pay until a grand total of forty-five (45) hours of duty time has been missed by the employees participating in such negotiating meetings inclusive of preparation and travel time in connection with such meetings."
(J-2, J-3 and J-1). 2/

5. The Township keeps a tally of accumulated negotiations hours utilized by employees in the negotiating units and, as a matter of courtesy, informs the employees when they are approaching the limit, which is 45 hours in the case of the PBA.

6. In the case of the PBA collective negotiations unit, there was one instance in 1978 where the 45-hour limit was waived by the Township. This was at the last negotiations meeting between the parties where there were two contract clauses remaining to be resolved. The Township's Assistant Manager and Fiscal Officer, Gary A. Saage, informed the Township's attorney, Gerald L. Dorf, that the PBA's negotiators were close to the 45-hour limit. Dorf stated that the Township would "waive the 45-hours - lets get on with it." There has been no other instance of waiver since 1978.

7. The negotiations between the Township and the PBA for the 1983 collective negotiations agreement commenced on August 18, 1982 when two negotiators logged a total of 4-1/2 hours (R-3, p. 4). Thereafter 12 hours were logged on January 27, 1983 (R-3, p. 3) and 9 hours were logged on March 4, 1983 (R-3, p. 2). The total as of that date was 25-1/2 hours.

2/ There is also a like provision in other collective negotiations agreements between the Township and other public employees representatives. See, for example, R-1.

8. The parties attended an interest arbitration hearing on April 13, 1983. There were four negotiators present for the PBA, including Kilmurray, who was the only witness on behalf of the PBA. The Township had several witnesses, including the Chief of Police, Bryan E. Burke, and Saage. The total time logged for the PBA negotiators on that date was 26 hours, which brought the total negotiating time for the PBA to 51-1/2 hours total (R-3, p. 1).

9. Shortly after the conclusion of the interest arbitration hearing on April 13, 1983 Kilmurray was summoned by Chief of Police Burke to his office and informed that 6-1/2 hours were being deducted from his "accrued time." This was memorialized in a memo to Kilmurray from the Chief of Police under date of April 22, 1983 (R-2).^{3/}

10. There was no evidence adduced by the Charging Party which constitutes a violation by the Township of Subsections(a)(2), (3), (4) or (7) of the Act. Accordingly, the Hearing Examiner will recommend dismissal of these allegations in the Unfair Practice Charge, as amended.

THE ISSUE

Did the Respondent Township violate Subsections(a)(1) and (5) of the Act when its Chief of Police unilaterally deducted 6-1/2 hours from the "accrued time" of PBA President Kilmurray by memo dated April 22, 1983?

DISCUSSION AND ANALYSIS

The Respondent Township Violated
The Act When Its Chief Of Police
Unilaterally Deducted 6-1/2 Hours
From the "Accrued Time" Of Kilmurray
On April 22, 1983

^{3/} Prior to R-2 the Chief of Police informally suggested to Kilmurray that the 6-1/2 hours could be spread out over six men. Saage told the Chief of Police to charge the excess negotiating hours against the PBA's Negotiations Committee but did not say that the 6-1/2 hours had to come from any particular person. The import of this testimony will be discussed hereinafter.

A unilateral change in the terms and conditions of employment of public employees has been held to be a violation of Subsection(a)(5) of the Act since Piscataway.^{4/} The Hearing Examiner finds and concludes that the April 22, 1983 memo from the Chief of Police to PBA President Richard Kilmurray, which deducted 6-1/2 hours from his "accrued time," constituted a unilateral change in Kilmurray's terms and conditions of employment without collective negotiations with the Charging Party. Neither Saage's instructions to the Chief nor the Chief's suggestion to Kilmurray that the 6-1/2 hours be "spread" over six men takes away from the fact that the decision of the Chief was to "load" the 6-1/2 hours on Kilmurray alone. It is this action of the Chief, as indicated in his memo of April 22, 1983, that constitutes the illegal action of the Township in this matter.

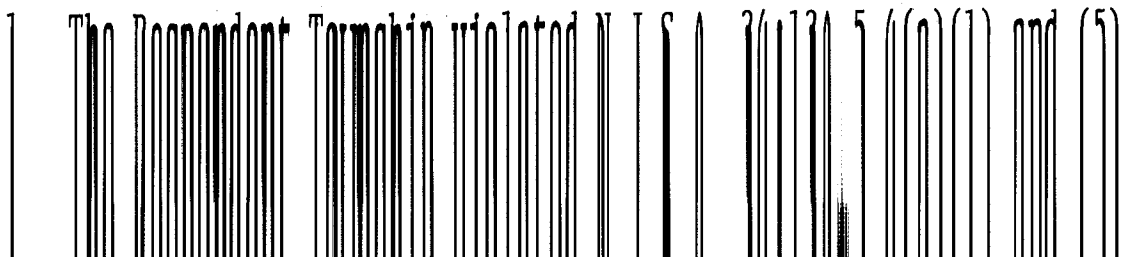
* * * *

By way of additional clarification as to the conclusion of the Hearing Examiner, it is noted that Article XV of the PBA agreement, supra, provides that no employees are to suffer "a loss of regular straight time pay" until a total of 45 hours of "duty time" is missed due to negotiating meetings. The agreement is totally silent as to the method of apportioning or allocating hours in excess of 45 among the employees involved. Due to this silence or omission, the subject of allocation of hours must be the subject of collective negotiations. There may be no unilateral implementation in the allocation of hours until after exhaustion of the Commission's impasse procedures: City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977).

* * * *

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

CONCLUSIONS OF LAW



when the Chief of Police deducted 6-1/2 hours from the "accrued time" of Richard Kilmurray on April 22, 1983.

2. The Respondent Township did not violate N.J.S.A. 34:13A-5.4(a)(2), (3), (4) and (7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent 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 deducting "accrued time" from PBA President Richard Kilmurray.

2. Refusing to negotiate in good faith with the PBA concerning terms and conditions of employment, particularly, by deducting "accrued time" from PBA President Richard Kilmurray without collective negotiations with the PBA.

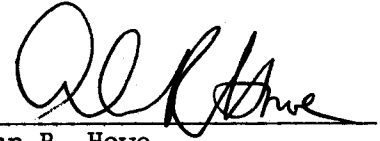
B. That the Respondent Township take the following affirmative action:

1. Forthwith restore the status quo ante by rescinding the deduction of "accrued time" in sum of 6-1/2 hours from PBA President Richard Kilmurray and, thereafter, negotiate in good faith upon demand with the PBA regarding any proposed reduction in the "accrued time" of Kilmurray or any other employee before any deduction is made.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent Township to insure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Township has taken to comply herewith.

C. That the allegations that the Respondent Township violated N.J.S.A.
34:13A-5.4(a)(2), (3), (4) and (7) be dismissed in their entirety.



Alan R. Howe
Hearing Examiner

Dated: February 23, 1984
Trenton, New Jersey

NOTICE TO ALL 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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by deducting "accrued time" from PBA President Richard Kilmurray.

WE WILL NOT refuse to negotiate in good faith with the PBA concerning terms and conditions of employment, particularly, by deducting "accrued time" from PBA President Richard Kilmurray without collective negotiations with the PBA.

WE WILL forthwith restore the status quo ante by rescinding the deduction of "accrued time" in sum of 6-1/2 hours from PBA President Richard Kilmurray and, thereafter, negotiate in good faith upon demand with the PBA regarding any proposed reduction in the "accrued time" of Kilmurray or any other employee before any deduction is made.

TOWNSHIP OF TEANECK

(Public Employer)

Dated _____

By _____

(Title)

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
Chairman, Public Employment Relations Commission,
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780