

P.E.R.C. NO. 85-3

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-84-158-65

NEW JERSEY STATE POLICEMEN'S  
BENEVOLENT ASSOCIATION, INC.,  
LOCAL 181,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in the absence of exceptions, adopts a Hearing Examiner's conclusions that the Borough of Middlesex violated the New Jersey Employer-Employee Relations Act when it implemented a new work schedule requiring police officers to work seven consecutive days and refused to negotiate with New Jersey State Policemen's Benevolent Association, Local 181 over compensation for a reduction in the number of completely free off-duty days under the new work schedule.

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LOCAL 181,

Charging Party.

Appearances:

For the Respondent, Edward J. Johnson, Jr., Esq.

For the Charging Party, Joseph L. Ranzini, Esq.

DECISION AND ORDER

On December 15, 1983, the New Jersey Policemen's Benevolent Association, Local 181 ("Local 181") filed an unfair practice charge against the Borough of Middlesex ("Borough") with the Public Employment Relations Commission. The charge alleged that the Borough violated subsection 5.4(a)(5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it unilaterally implemented a new work schedule which allegedly resulted in: fewer weekends off, certain shifts finishing three hours into scheduled days off, a violation of the two man patrol clause in the parties' collective agreement, and an unlawful inclusion of six periods of seven consecutive workdays in the 16-week cycle.<sup>2/</sup>

<sup>1/</sup> This subsection prohibits public employers, their representatives or agents from: "(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."

<sup>2/</sup> Local 181 sought interim injunctive relief against the implementation of the new work schedule. On December 29, 1983, Commission designee Arnold H. Zudick conducted a hearing and received briefs on that request. He denied it.

On January 3, 1984, the Administrator of Unfair Practices issued a Complaint and Notice of Hearing. The Borough filed an Answer. It asserts that the implementation of the work schedule was a managerial prerogative and that N.J.S.A. 40A:14-133 does not prohibit a work schedule requiring seven consecutive workdays.

On January 13, 1984, Hearing Examiner Zudick conducted a hearing. Both parties examined witnesses, introduced exhibits, and argued orally. Instead of submitting post-hearing briefs, they relied on the briefs submitted in the interim relief proceedings.

On May 9, 1984, the Hearing Examiner issued his report and recommended decision. H.E. No. 84-58, 10 NJPER \_\_\_\_ (¶ \_\_\_\_ 1984) (copy attached). He concluded that the Borough was obligated to negotiate over compensation for a reduction in the number of completely free off-duty days under the new schedule. He further found that the new schedule illegally required police officers to work seven consecutive days. In re Ewing Township, P.E.R.C. No. 83-165, 9 NJPER 400 (¶14182 1982). He recommended an order requiring the Borough to negotiate over compensation for a reduction in the number of full off-duty days; implement unilaterally, within 45 days, a new work schedule with no more than six consecutive workdays, and post a notice. He found no merit to all the other allegations set forth in the charge and recommended their dismissal.

On May 9, 1984, the Hearing Examiner served his report on the parties and advised them that exceptions, if any, were due by May 22, 1984. Neither party filed exceptions or requested an extension of time.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to resolve this matter in the absence of exceptions. I have reviewed the record. The Hearing Examiner's findings of fact are accurate. I adopt and incorporate them here. In the absence of exceptions and under all the particular factual circumstances of this case, I also adopt his recommended conclusions and remedies.

#### ORDER

A. The Borough of Middlesex is ordered to cease and desist from:

1. refusing to negotiate with Local 181 over compensation for the reduction in the number of full off-duty days; and
2. requiring employees to work seven consecutive days.

B. The Borough of Middlesex is ordered to take the following affirmative action:

1. engage immediately in good faith negotiations with the PBA concerning both retroactive and prospective (if necessary) compensation for the reduction in the number of full off-duty days;
2. implement a new work schedule within 45 days from receipt of this decision which contains no more than six consecutive workdays in any work cycle;

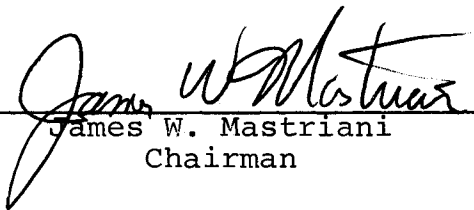
3. negotiate over any other changes in work hours or off-duty days resulting from its implementation of this new work schedule;

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 on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Borough's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Borough to insure that such notices are not altered, defaced or covered by other materials; and

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

C. All other allegations of the Complaint are dismissed.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
August 2, 1984

# 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 refuse to negotiate with Local 181 over compensation for the reduction in the number of full off-duty days.

WE WILL NOT require employees to work seven consecutive days.

WE WILL engage immediately in good faith negotiations with the PBA concerning both retroactive and prospective (if necessary) compensation for the reduction in the number of full off-duty days.

WE WILL implement a new work schedule within 45 days from receipt of this decision which contains no more than six consecutive workdays in any work cycle.

WE WILL negotiate over any other changes in work hours or off-duty days resulting from our implementation of this new work schedule.

BOROUGH OF MIDDLESEX

(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 the Public Employment Relations Commission,

429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

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Respondent,

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NEW JERSEY STATE POLICEMEN'S  
BENEVOLENT ASSOCIATION, INC.,  
LOCAL 181,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Borough of Middlesex violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it failed to negotiate over compensation for the reduction of full off duty days, and when it implemented a schedule with seven consecutive workdays in a cycle in contravention of the law. The Hearing Examiner recommended dismissal of the Complaint with regard to all other aspects of the Charge.

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  
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Charging Party.

Appearances:

For the Respondent  
Edward J. Johnson, Jr., Esq.

For the Charging Party  
Joseph L. Ranzini, Esq.

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 15, 1983, by the New Jersey Policemen's Benevolent Association, Inc., Local 181 ("PBA") alleging that the Borough of Middlesex ("Borough") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The PBA alleged that the Borough unilaterally changed the work schedule of the employees resulting in a variety of changes affecting the daily and weekly lives of the employees all of which was alleged to be in violation of subsection 34:13A-



5.4(a)5) of the Act. 1/

The PBA specifically alleged that the Borough unilaterally changed the employees' work schedule which had the effect of reducing the number of weekends off per year; imposing three different shifts in a one-week period; forcing the employees to work three hours into several of their days off; violating the two-man patrol clause in the parties' collective agreement (Exhibit J-1); contributing to the deterioration of family life; and, that the change was contrary to the Commission's holding in In re Ewing Township, P.E.R.C. No. 83-165, 9 NJPER 400 (¶14182 1983).

The Borough denied committing any violation of the Act and argued that it had the managerial right to change and implement the work schedule; that the employees will receive an additional seven Sundays off each year; that there is ample time between the completion of one shift and the start of another; that the two-man patrol issue is non-negotiable, nonetheless, the contract does not guarantee such patrols at all times; that the new schedule would not deteriorate the family life; and, that the Commission's holding in Ewing Township, supra, is incorrect.

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1/ This subsection prohibits public employers, their representatives or agents from: "(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 undersigned notes that although the PBA did not allege an independent violation of N.J.S.A. 34:13A-5.4(a)(1), if the PBA was successful in proving the (a)(5) violation, then there would be a derivative violation of 5.4(a)(1). That subsection provides that public employers, their representatives or agents are prohibited from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

It appearing that the allegations of the Unfair Practice Charge may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 3, 1984. The Answer denying any violation was filed by December 29, 1983. <sup>2/</sup> A hearing was held in this matter on January 13, 1984 in Trenton, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Neither party submitted a post-hearing brief. The transcript was received on March 13, 1984.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing, and after consideration of the post-hearing briefs, 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 Borough of Middlesex is a public employer within the meaning of the Act and is subject to its provisions.
2. The PBA Local 181 is an employee representative within the meaning of the Act and is subject to its provisions.

<sup>2/</sup> When the instant Charge was filed on December 15, 1983, the PBA requested interim relief. The undersigned Hearing Examiner subsequently conducted an interim relief hearing in this matter on December 29, 1983, at which time the Borough submitted its Answer to the Charge (Exhibits C-2A and C-2B). The undersigned denied the request for interim relief, and thereafter on January 3, 1984, the Administrator of Unfair Practice Proceedings issued a formal Complaint. At the hearing on January 13, 1984, the Borough requested that its Answer to the Charge filed on December 28 and 29, 1983, serve as its Answer to the Complaint.

3. On December 6, 1983 Police Chief Sylvester Conrad posted a notice (Exhibit R-1) indicating a change in the work schedule effective January 1, 1984. The new schedule was attached to the notice and distributed to the employees. The facts show that although the Borough did not "negotiate" with the PBA concerning the new work schedule, the Borough did engage in "discussions" with the employees at two separate meetings at which time it solicited employee recommendations regarding the schedule. (Transcript "T" pp. 49-51). However, there was no evidence that the PBA ever requested or demanded "negotiations" concerning the work schedule.

4. The 1983 work schedule included three shifts, 8:00 a.m.-4:00 p.m., 4:00 p.m.-12:00 p.m., and 12:00 a.m.-8:00 a.m., and over a 16-week cycle the schedule included the following on and off periods, 5/3-7/3-7/3-7/2-7/2-7/3-7/2-6/3-7/4-7/2-6/2-7/3. (Exhibit R-3). There were nine, seven consecutive workday periods in the 1983 work cycle with 17 weekends off for the year. (T p. 39) The 1984 work schedule includes four shifts, 8:00 a.m.-4:00 p.m., 4:00 p.m.-12:00 p.m., 12:00 a.m.-8:00 a.m., and 7:00 p.m.-3:00 a.m., and over a 16-week cycle the schedule includes the following on and off periods, 7/2-5/3-7/3-6/2-7/2-5/3-7/3-6/2-7/2-5/3-7/3-6/2-5/2. (Exhibit R-2). <sup>3/</sup> There are six, seven consecutive workday periods in the 1984 work cycle with ten weekends off for the year. (T p. 32) However, there are more Sundays off, but less Saturdays off, in the 1984 schedule as compared to the 1983 schedule. (T p. 56) In addition, employees

3/ The 1984 schedule was actually a five-week repeating schedule of 7/2-5/3-7/3-6/2 with one 5/2 schedule after every 15 weeks. The 16-week schedule in R-2 is merely an example of that repeating schedule.

working the 7:00 p.m.-3:00 a.m. shift in the 1984 schedule are working three hours into a regularly scheduled full day off six times during a 16-week cycle. (T p. 29).

Despite the schedule change, the evidence shows that the number of hours worked per day, the number of hours worked per week, and the number of scheduled days off per week have remained the same in the 1984 schedule. (T p. 55).

5. Chief Conrad testified that the 7:00 p.m.-3:00 a.m. shift was created to add an additional officer during the peak crime hours, and that one of those 7:00-3:00 shifts falls on a Monday in order to allow officers to attend night court during work time. (T pp. 51-52). He also indicated that the overall change in the work schedule allowed for greater supervision and training of the police officers. (T pp. 60-61).

6. The PBA presented the expert testimony of Dr. L. J. Mufson who testified that working seven consecutive days is a very stressful schedule particularly when it involves police work. (T p. 13). He further indicated that working seven consecutive days creates tension at home and at work, that it can lead to ulcers, headaches, and other physical problems, and that employees are not as effective on the sixth and seventh days of work. (T p. 14).

7. The parties' collective agreement (Exhibit J-1) does not contain an hours, workweek or work year clause. However, Article 9 Subsection 0 of J-1 does contain a clause regarding two-man patrols. That clause indicates that the Borough is not obligated to maintain two-man patrols, but that it will endeavor to maximize

the occurrence of two-man patrols. <sup>4/</sup> The PBA failed to present any evidence that said clause was violated.

#### Analysis

As evidenced by the PBA's closing remarks (T pp. 79-82), this case primarily involves the legality - or illegality - of implementing a work schedule consisting of seven consecutive work-days for police officers as discussed by the Commission in Ewing Township, supra, and secondarily concerns the number of off duty weekends in the schedule, and the scheduling of a 7:00 p.m.-3:00 a.m. shift.

#### The Work Schedule and the 7:00 p.m.-3:00 a.m. Shift

The Commission, and indeed the courts have, in the past, generally held that work schedules were negotiable. <sup>5/</sup> However both the Commission and the courts have, particularly with police cases, recognized certain exceptions to that general rule. <sup>6/</sup>

<sup>4/</sup> Article 9 Section O of J-1 is as follows:

Two man patrols are, in the opinion of the Mayor and Council, a desirable policy. However, due to the existing size and commitment of the Police Department, it is impossible to guarantee two man patrols at all times. Accordingly the Police Commissioner and the Police Chief are charged with the responsibility of developing a plan to maximize the occurrence of two man patrols in the after daylight hours.

<sup>5/</sup> See Borough of Roselle, and Roselle Borough PBA, Local No. 99, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Docket No. A-3329-79 (5/7/81); In re Twp. of Franklin, P.E.R.C. No. 83-38, 8 NJPER 576 (¶13266 1982); In re Borough of Atlantic Highlands, P.E.R.C. No. 83-75, 9 NJPER (¶1982).

<sup>6/</sup> See Town of Irvington v. Irvington PBA, Local 29, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980); In re Borough of Pitman and PBA Local 178, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981); In re Kearny PBA Local #21 and Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982), and In re City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982).

Nevertheless, with the Appellate Division's recent decision in Borough of Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. denied \_\_\_ N.J. \_\_\_ (3/2/84), overturning the Commission's decision in Atlantic Highlands, supra, work schedules for police officers are now clearly non-negotiable. That Court held:

We are of the opinion that the fixing of the overall work schedule for the police force of the Borough is a managerial prerogative and a policy not subject to mandatory negotiations. slip. op. at 8.

That case involved a scope of negotiations issue as to whether a change in the work schedule was negotiable. The PBA in Atlantic Highlands sought to change the schedule from a 5-2 schedule, to a 5-2/5-2/5-3 schedule resulting in an extra day off every third week. The Borough sought to retain the 5-2 schedule and argued it was non-negotiable. Since the Borough in Atlantic Highlands was successful in its non-negotiability argument, the schedule therein remained the same and the Court was not presented with a situation involving an increase in work time or decrease in off duty time. Consequently, there was no need for the Court in that case to make any decision regarding additional compensation.

Notwithstanding the above state of the law regarding work schedules, the undersigned finds that based upon the facts of this case there was no showing by the PBA that it has ever negotiated over the work schedule implemented in 1984. In fact, the PBA in its closing remarks at the hearing implied that the Borough alone should be required to change the schedule:

...the [1984] schedule has to be stricken and the municipality should be required to come up with a schedule... (T p. 82)

The PBA never suggested that it should be allowed to negotiate over a new schedule.

Consequently, based upon the law and the instant facts the undersigned finds that it was not improper for the Borough to implement a new work schedule. However, that does not mean that the Borough did not violate the Act. Although the Court in Atlantic Highlands v. PBA Local 242, supra, found that police work schedules were non-negotiable, that does not mean that an employer is excused from negotiating over compensation for any increase in work hours or any change or reduction in the number of off duty days that resulted from the unilateral implementation of a new work schedule.

There was an obvious change in the instant case. The 1983 schedule in R-3 shows that there were 80, eight-hour workdays, and 32 full off duty days in the 16-week work cycle. However, in the 1984 schedule in R-2, while there were 80, eight-hour work periods, there were only 26 full off duty days, and six off duty days reduced by three hours each in the 16-week work cycle. The six reduced off duty days resulted from the implementation of the 7:00 p.m.-3:00 a.m. schedule which overlapped three hours into six off duty days. Consequently, unlike the situation in 1983, six days in the 1984 16-week cycle were not entirely off duty days. The PBA is therefore entitled to negotiate retroactively over compensation regarding the reduction of full off duty days. <sup>7/</sup>

While it must be abundantly clear that the Borough has the managerial right to unilaterally implement a 7:00 p.m.-3:00 a.m.

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<sup>7/</sup> For example, the PBA may seek to negotiate for a salary differential for those hours and times employees must work into an off duty day in completion of their regular eight-hour shift.

shift, <sup>8/</sup> see Irvington, supra; Atlantic Highlands v. PBA Local 242, supra, the Borough must then negotiate over compensation for changes in hours or off duty time resulting from the new shift. In Woodstown-Pilesgrove Bd.Ed. v. Woodstown-Pilesgrove Ed. Assoc., 81 N.J. 582, 594 (1980), the New Jersey Supreme Court indicated that negotiations over compensation did not significantly interfere with the employer's managerial prerogative.

In further support of that proposition the Appellate Division in a recent decision, Morris County and Morris County Park Commission v. Morris Council No. 6, N.J.C.S.A., App. Div. Docket No. A-795-82T2, January 12, 1984, (Notice of Appeal denied 4/10/84; petition for certif. pending Supreme Court Docket No. 22,347), held that negotiations over matters of compensation would not prevent the exercise of the managerial decision. In that case the employees had been permitted to commute back and forth to work in County vehicles. When the County unilaterally discontinued that policy the Council sought to negotiate over compensation but the County refused. The Court upheld the Commission's finding of a violation and the requirement to negotiate and said:

Clearly, questions of compensation intimately and directly affect the welfare of public employees. No state statute or regulation is here involved. Nor will the ordered negotiation over compensation for the lost economic benefit significantly affect the County's exercise of its management prerogative to dispose of its vehicle fleet as it deems appropriate. The PERC order for negotiation therefore constituted an appropriate exercise of its remedial discretion. slip. op. at 5.

That decision is similar to the decision in Ramapo-Indian Hills Ed. Assoc. v. Ramapo-Indian Hills H.S. Dist. Bd.Ed., 176 N.J.

<sup>8/</sup> This is especially true where, as here, that shift involves a manning issue because it was created to add additional manpower, i.e. coverage, during a high crime time period.



Super. 35 (App. Div. 1980), where the Appellate Division clearly upheld the negotiability (arbitrability) of compensation as a result of a change that occurred because of the exercise of a managerial prerogative. In that case the Employer created a full-time band director/music teacher position and set the salary according to the teachers guide. The Association filed a grievance and the Board filed a scope petition. The Court, affirming the Commission's scope decision held, that since the hours and workload of the position were part of the managerial decision they were not negotiable, but that the issue of compensation was negotiable (arbitrable).

In addition to the above cases the Commission has in a recent police case in In re City of Paterson, P.E.R.C. No. 84-113, 10 NJPER \_\_\_\_ (¶ \_\_\_\_\_ 4/13/84), again distinguished between the exercise of a managerial prerogative and the obligation to negotiate over compensation. In that case the City assigned temporary captain duties to a lieutenant at the lieutenants rate of pay. An arbitrator ruled that the parties' contract provided captains pay to the affected employee. In a scope proceeding the Commission held that the City could make the assignment, but compensation was negotiable. The Commission held:

The City's right to make assignments and reductions in force is severable from, and not adversely affected by, its obligation to negotiate over compensation for assigned duties. P.E.R.C. No. 84-113, slip. op. at 6. 9/

9/ The decision in In re Maywood Bd.Ed., 168 N.J. Super. 45 (App. Div. 1979), where the Appellate Division held the impact of a managerial decision to reduce the work force was non-negotiable, is not applicable herein to support a claim that compensation is non-negotiable. Maywood, supra was issued prior to Woodstown-Pilesgrove, supra; Ramapo-Indian Hills, supra; and, Morris County, supra; and those cases clearly hold that compensation is negotiable as a result of changes occasioned by managerial decisions where such negotiations will not interfere with such decisions. In the instant case the negotiations over compensation will not prevent the implementation of the new work schedule.

That same holding is applicable here. Negotiations over compensation for the loss of three hours from six off duty days per work cycle will not prevent the Borough from implementing a 7:00 p.m.-3:00 a.m. shift. <sup>10/</sup> Consequently, the undersigned recommends that the Borough be ordered to negotiate retroactively over compensation for the reduction in full off duty days. <sup>11/</sup>

#### The Seven Day Work Issue

The decision in Ewing Township involved the interpretation of N.J.S.A. 40A:14-133 which provides that the number of workdays for police officers shall not exceed six days in one week. That statute specifically provides:

The days of employment of any member or officer of the police department or force, including any officer having supervision or regulation of traffic upon county roads, parks and parkways shall not exceed 6 days in any one week, except in cases of emergency the officer, board or official in charge of such police department or force shall have authority to retain on duty any member or officer during the period of the emergency, but in any such case and within 12 months thereafter, such member or officer shall be given a day off for each extra day so served by him during the emergency.

In Ewing Township the employer unilaterally changed the work schedule to require three, seven-day work periods each month, but the

<sup>10/</sup> The Borough in Exhibit C-3 cited N.J.S.A. 40:69A-29(2) with respect to its argument over the establishment of a shift schedule. That statute provides:

Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to: (a) organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their term, tenure and compensation.

In the event that the Borough also cited that statute regarding the negotiability of compensation, the undersigned finds that 40:69A-29(a) was not intended to - and does not - negate the right of public employees to negotiate over compensation guaranteed to them by N.J.S.A. 34:13A-1 et seq.

<sup>11/</sup> The PBA is reminded that this recommendation is limited to negotiations over compensation. The PBA is not entitled to negotiate over whether the shift should or should not have been implemented.

seven-day work periods were not confined to a calendar week. The previous schedule did not include any seven-day cycles. The Commission, in accordance with State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978), first found that N.J.S.A. 40A:14-133 was incorporated by reference in the union's contract, and then found that the township violated that statute. The Township had argued that 40A:14-133 only applied to a calendar week. However, the Commission dismissed that argument, and on the basis of the decision in Hoboken Local No. 2, New Jersey State Patrolmen's Benevolent Assn. v. City of Hoboken, 133 N.J.L. 334, 44 A.2d 329, 331-332 (1945), aff'd N.J.L.     , 48 A.2d 917 (Ct. of Errors and Appeals, 1946), where the Court held that the purpose of that statute (as contained in a nearly identical predecessor statute) was

...to protect the health and increase the efficiency of police officers by requiring time off for rest, pleasure, and recreation....,

the Commission found that:

In light of the statutory purpose as articulated in Hoboken, we cannot accept the Township's technical argument that the new work schedule does not violate N.J.S.A. 40A:14-133 because it does not require officers to work seven days in any one calendar week. 9 NJPER at 401.

The Borough herein made the same argument as the Township in Ewing, and it asserted that the Commission's decision in Ewing was incorrect. The Borough argued that "one week" means one calendar week because if the Legislature had intended 40A:14-133 to mean "shall not exceed 6 consecutive days" it would have used the word "consecutive." However, that argument cuts both ways. If the Legislature had intended "one week" to mean one "calendar week" it would have used the word "calendar." The Borough interprets "one

week" to mean from Sunday to Saturday, but "one week" also commonly means seven consecutive days.

When we review the legislative intent of the statute it is clear that, as the Court held, it was intended to protect the health and increase the efficiency of police officers by requiring time off for them for rest, pleasure and recreation (emphasis added). If the statute were limited to a calendar week an employer would be able to circumvent the intent of the statute. For example, under the Borough's argument a police officer could be required to work up to twelve consecutive days, six days in each of two calendar weeks, and not violate the statute. That result, of course, would be absurd, and would clearly violate the intent of 40A:14-133 by not giving the police officer time off for rest and relaxation. Consequently, the undersigned believes that the Legislature clearly intended "one week" to mean "seven consecutive days," and the Borough has violated that statute, and thus also violated Subsection 5.4(a)(5) of the Act.

In Ewing Township the remedy was to reinstate the former work schedule until a new schedule was in place. However, that is not an appropriate remedy in this case because the 1983 schedule contains even more seven-day work cycles than the 1984 schedule. Consequently, the undersigned recommends a two-part remedy herein. First, the Borough must negotiate over retroactive compensation for the reduction of full off duty days. Second, the 1984 schedule in R-2 must temporarily remain in place, but that a new schedule with cycles of no more than six consecutive workdays must be unilaterally implemented by the Borough within 45 days of the Commission's decision. Since, in accordance with the above discussion concerning

work schedules, the Borough is not required to negotiate a new schedule, it may unilaterally prepare and implement a new schedule within the time provided. However, for the reasons described hereinabove, the Borough must then negotiate over compensation for any increase in work hours or decrease in time off resulting from the implementation of that particular new schedule.

#### Weekend Duty and Number of Shifts Per Week

Although the 1984 schedule represented a reduction in the number of off duty weekends, the undersigned does not believe that said change in the context of this case violated the Act. The undersigned believes that the number of off duty weekends herein is too closely involved with the determination of shifts and the implementation of the work schedule, and that negotiations thereon may interfere with the implementation of governmental policy. See IFPTE, Local 195 v. State, 88 N.J. 393, 404 (1982).

The number of off duty weekends must be differentiated from the reduction of six off duty days discussed hereinabove. The PBA, with regard to the number of off duty weekends, is seeking a return to the 17, or more, off duty weekends per year. Compensation is not the issue. Since the number of off duty weekends is related to the Borough's weekend manning needs, negotiations on that subject would unlawfully interfere with the determination of governmental policy. Except for the above-discussed reduction in six off duty days, the employees herein still receive the same number of off duty days per cycle, they still receive them in consecutive groupings, but do not receive as many on Saturday and Sunday.

In contrast, with regard to the reduction of full off duty days, the issue as set forth in the Charge is one of both the schedule and compensation. While the scheduling is not negotiable, compensation is.

Finally, the PBA's argument regarding three shifts in one week is without merit. The Borough has the right to implement shifts and the work schedule. See Irvington, and Atlantic Highlands v. PBA, Local 242.

#### The Two Man Patrol

The PBA failed to prove by a preponderance of the evidence that the Borough violated Article 9 Section 0 of J-1. Even assuming that two man patrols were negotiable, that clause did not guarantee two man patrols, and the PBA did not establish that the Borough failed to develop a plan to maximize two man patrols after daylight hours. Consequently, that aspect of the Charge must be dismissed.

Accordingly, based upon the entire record and the above analysis, the undersigned makes the following:

#### Conclusions of Law

1. The Borough of Middlesex violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively 5.4(a)(1), by failing to negotiate over compensation for the reduction of full off duty days, and by implementing a schedule which included several seven consecutive work day cycles in contravention of N.J.S.A. 40A:14-133.

#### Recommended order

The Hearing Examiner recommends that the Commission ORDER:

A. That the Borough cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and from failing and refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of PBA unit members, particularly by failing to negotiate with the PBA over compensation for the reduction of full off duty days, and by implementing seven consecutive workday cycles in contravention of 40A:14-133.

B. That the Borough take the following affirmative action.

1. Immediately engage in good faith negotiations with the PBA concerning both retroactive and prospective (if necessary) compensation for the reduction in full off duty days.

2. Implement (unilaterally) a new work schedule within 45 days from the Commission's decision which comports with 40A:14-133 and contains nothing more than six consecutive workdays in any work cycle. 12/

3. 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 Borough's authorized representative shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Borough to insure that such notices are not altered, defaced or covered by other materials.

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12/ The Borough must recognize that compensation for any other changes in work hours or off duty days resulting from its implementation of a new work schedule to comply with 40A:14-133 must also be negotiated.

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

C. That the Complaint be dismissed regarding all other aspects of the Charge.

  
Arnold H. Zudick  
Hearing Examiner

Dated: May 9, 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, and

WE WILL NOT refuse or fail to negotiate in good faith with the PBA concerning terms and conditions of employment of PBA unit members, particularly, by failing to negotiate over compensation for the reduction of full off duty days, and by implementing a work schedule with seven consecutive workdays in any cycle.

WE WILL forthwith engage in good faith negotiations with the PBA regarding retroactive and prospective compensation for the reduction of full off duty days.

WE WILL implement a new work schedule within 45 days containing nothing more than six consecutive workdays in a cycle.

WE WILL forthwith enter into good faith negotiations with the PBA concerning compensation regarding any future change in the number of workdays or off duty days of PBA unit members resulting from the implementation of a new work schedule.

BOROUGH OF MIDDLESEX

(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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.