P.E.R.C. NO. 87-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES,

Respondent,

-and-

Docket No. CO-85-201-141

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on an unfair practice charge filed by the Communications Workers of America, AFL-CIO against the Middlesex County Board of Social Services. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when it refused to negotiate compensation for a workload increase caused by the Board's reorganization of its intake and supervision units. A Hearing Examiner recommended that the Complaint be dismissed because the reorganization did not result in any measurable workload increase. The Chairman, in the absence of exceptions, agrees with these conclusions.

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Appearances:

For the Respondent,
Convery, Convery & Shihar, Esqs.
(Bernard H. Shihar, of Counsel)

For the Charging Party,
Reitman, Parsonnet, Maisel & Duggan, Esqs.
(Jesse H.Strauss, of Counsel)

DECISION AND ORDER

On February 11, 1985, the Communications Workers of America, AFL/CIO ("CWA") filed an unfair practice charge against the Middlesex County Board of Social Services ("Board"). The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et Seq. specifically subsections 5.4 (a) (1), (5) and (7)[1/] when it refused to

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1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

negotiate compensation for a workload increase caused by the Board's reorganization of its intake and supervision units.

On May 17, 1985, a Complaint and Notice of Hearing was issued. On May 31, the Board filed its Answer. It admits that it refused to negotiate with the CWA, but denied that it increased the workload of the intake and supervision units. As an affirmative defense, it contends that the agency's reorganization was made pursuant to its managerial prerogative.

On March 18, 1986, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On August 14, 1986, Hearing Examiner Zudick issued his report and recommended decision. H.E. No. 87-13, 12 NJPER __ (¶__ 1986). He recommended that the Complaint be dismissed because the reorganization did not result in any measurable workload increase.

The Hearing Examiner served his report on the parties and informed them exceptions were due by August 27, 1986. The CWA requested and was granted an extension until September 12, 1986 to file exceptions, but did not.

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the commission."

I have reviewed the record. The Hearing Examiner's findings of fact (pp.3-9) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, and under all the circumstances of this case, I agree that the Complaint should be dismissed.

ORDER

The Complaint is dismissed

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
October 15, 1986

H.E. NO. 87-13

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BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Respondent,

-and-

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COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Middlesex County Board of Social Services did not violate the New Jersey Employer-Employee Relations Act when it refused to negotiate over perceived workload increases. The Hearing Examiner found that workload increases were, at most, de minimis, and did not require negotiations in the context of this case.

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.

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(Jesse H.Strauss, of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on February 11, 1985 by the Communications Workers of America ("CWA") alleging that the Middlesex County Board of Social Services ("Board") 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 CWA alleged that the Board violated §§5.4(a)(1), (5) and (7) of

the Act by refusing to negotiate over compensation as a result of increased workload.[1/]

A Complaint and Notice of Hearing was issued on May 17, 1985, and the Board filed an Answer (Exhibit C-2) on May 31, 1985. In its Answer the Board admitted that the CWA demanded to negotiate over the issue of increased workload, and it admitted that it refused to negotiate over compensation as a result of increased workload. The Board, however, denied that the workload had been increased or that it interfered with the employees' exercise of their protected rights. A hearing was held in this matter on March 18, 1986 at which the parties had the opportunity to examine witnesses, present evidence, and argue orally.[2/] Both parties

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

2/ When the Complaint issued on May 17, 1985 a hearing was scheduled for July 8, 1985. By letter dated July 3, 1985, however, the CWA informed me that the parties agreed to an adjournment of the hearing in order to prepare stipulations of fact. By letter of July 10, 1985 I rescheduled the hearing for September 30, 1985 to give the parties time to prepare stipulations. On September 23, 1985 the parties requested additional time to prepare stipulations, and by letter of September 26, 1985 I rescheduled the hearing for December 9, 1985. The Board requested cancellation of the December hearing in hopes of resolving the matter, but by January 6, 1986 the matter had not been resolved and the CWA requested a hearing. On January 14, 1986 I scheduled the hearing that took place on March 18, 1986.

filed post-hearing briefs which were received on May 23, 1986.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing and consideration of the post-hearing briefs, this matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record I make the following:

Findings of Fact

1. The Middlesex County Board of Social Services is a public employer within the meaning of the Act.

2. The CWA is a public employee representative within the meaning of the Act and represents employees of the Board in the following pertinent positions: Income Maintenance Technician and Income Maintenance Worker ("Technician" or "Worker"); Income Maintenance Specialist ("Specialist"); Income Maintenance Supervisor ("Supervisor"); and Clerks.

3. In July 1984 the parties reached a new collective agreement, Exhibit J-1, which was retroactive to July 1983 and effective until June 30, 1985. At the time the new agreement was ratified the Board operated 12 Case Supervision Units ("CSU"). Each unit included four Technicians or Workers, one Specialist, one Supervisor and one Clerk, for a total of 84 employees for the 12 CSU's if at full complement. (Transcript "T" pp. 21, 69). The CSU's are responsible for processing clients' applications for financial assistance and determining eligibility for receipt of

funds on an ongoing basis. (T pp. 19-20). Each CSU member has specific duties (T pp. 21-24). The Technicians and Workers, for example, are assigned specific cases to investigate which includes the completion of several forms and documents (T pp. 22-24). The Specialists are assigned more difficult and problem cases. (T p. 22).

In November 1984 the Board reorganized its operation. It consolidated its CSU's from 12 to 8, and changed the complement of the CSU's to include an additional Technician/Worker and an additional Specialist resulting in a CSU including one Supervisor, two Specialists, five Technicians/Workers, and one Clerk for a total of 72 employees in the eight CSU's if at full complement (T pp. 26-27, 69).

There was no evidence to show whether the reduction of twelve employees in the CSU's, from 84 to 72, was accomplished by a reduction-in-force ("RIF"), or achieved through normal attrition prior to the reorganization. The record did show, however, that the reorganization did not result in a change or increase in workhours (T pp. 44, 72).

4. In early 1984 all 48 Technician/Worker positions were filled, but by October 1984 only 40 of those 48 positions were filled (T pp. 43-44, 49, 75). Between October 1 and November 1, 1984 there were somewhere between 5188 and 5113 cases to be handled by the 40 Technicians/Workers averaging to between 130 and 128 cases per person (T pp. 28-29, 42, 44, 75).

Robert Rice, CWA President, maintained, as did the CWA in its post-hearing brief, that prior to the November reorganization the average case load for Technicians/Workers was 106 cases a month which was calculated by dividing 5113 by 48 (T p. 32). Rice alleged a workload increase when the case load became 128 per person after reorganization. Although I do not question Rice's credibility, his testimony does not prove that the Technicians/Workers would have had an average of 106 cases per month for 1984 if the reorganization had not occurred. Joyce Brown, another CWA witness, admitted that during 1984 there was a gradual decline in the number of Technicians/Workers filling the 48 slots, and that by October 1984 only 40 people filled the 48 slots (T pp. 43-44). Although other employees occasionally filled in for certain absent or vacant Technicians/Workers (T p. 51) during 1984, I find that the average case load during 1984, and certainly by October 1984, was well above 106 cases per Technician/Worker.

The record then shows that the caseload dropped steadily since November 1984. The Active Case Document list showed 5014 cases in February 1985, 4977 cases in April 1985, and 4576 cases in May 1985 (T p. 43). The total caseload has also continued to drop through 1986 (T p. 76).

Rice also testified that the Specialist caseload increased after the reorganization. He calculated that prior to the reorganization each Specialist and supervisor reviewed an average of 212 cases, but that after reorganization each Specialist reviewed

an average of 320 cases each (T p. 33).[3/] Once again, however, Rice's testimony cannot be relied upon to show that Specialists had an average of 212 cases per month in 1984. I have already determined that 106 cases per month was not a realistic case load figure for 1984 in light of the decrease of Technicians and Workers to 40 by October 1984. Consequently, the Specialist caseload figure for 1984 was more than 212 cases per month, though undoubtedly less than 320 cases per month on the average for 1984.

Rice did not allege that the supervisors' caseload increased as a result of the reorganization.

5. In addition to the alleged change in the number of cases handled per person, the record shows that as a result of--or on or about the same time of--the reorganization there were other work-related changes. those changes were:

a) Prior to reorganization a Technician/Worker had 60 days from the date the Technician/Worker received the case to validate it, but after reorganization that time period was shorter because the employee had 60 days following the date of initial payment to validate the case (T pp. 35, 64). The CWA, however, did not demonstrate just how much of a difference there was between the old and new procedure or to what extent any employees were really affected by the change.

3/ Rice arrived at 212 by multiplying 106 cases times 4 Technicians/Workers in a CSU = 424 divided by 2 (one Specialist and one supervisor) = 212. He arrived at 320 by multiplying 128 cases times 5 Technicians/Workers in a CSU = 640 divided by 2 Specialists = 320.

b) Prior to reorganization a Technician/Worker had two days to correct or provide additional documentation for a case that was returned. After reorganization the employee had only one day (T p. 35). The CWA did not show, however, how often employees had to handle returned cases and how much time was really involved.

c) Prior to reorganization Technicians/Workers were expected to see a client "as soon as possible." After reorganization the employee was expected to see a client within 15 minutes (T p. 36). There was no evidence to show, however, that this change had any serious impact on the employees' day to day workload.

d) Prior to reorganization Technicians/Workers were not required to answer telephones. After reorganization Technicians and Workers were required to answer telephones when no one else was present (T p. 36). There was no showing, however, what percentage of the employee's time was lost in answering telephones.

e) Prior to reorganization the Technicians/Workers had time to review new regulations. After reorganization the employees were expected to learn new regulations within one day (T pp. 38, 65).

6. The record shows that on or about November 15, 1984 CWA Local President Rice met with the Board's Deputy Director and Personnel Director and demanded negotiations over compensation as a result of the reorganization (T pp. 38-39). There was no response on that date, but on November 26, 1984 Rice met with the Director,

as well as the Deputy Director and Personnel Director, and again demanded negotiations over compensation for increased work (T pp. 39-40). The Director responded that nothing about reorganization was negotiable and she would not negotiate over compensation (T p. 41).

7. The only clause in J-1 that affects workload is Article VI Para. A which provides:

> When there are major additions to workload which have to be done within time limits, Administration will not expect to have this accomplished within the normal workhours; therefore, it shall be accomplished on overtime.

Rice testified that overtime was requested during the initial phase of the reorganization but overtime was denied (T p. 45). He also testified that a specific worker whose caseload increased was denied overtime, but the record shows that her caseload was high because she had been on a medical leave during which time her work accumulated (T pp. 45-46). I find that the reorganization was not the primary cause of her temporary workload increase.

Deputy Director Avigliano testified that there was no dramatic increase in overtime requests after reorganization, and that requests for overtime decreased to almost nothing a month and a half after reorganization (T pp. 77-78). He also testified that he was unaware of any denials of overtime since the reorganization (T p. 78).

8. The record shows that despite the change in the CSU's there has been no significant problem in completing the work on time (T pp. 78-79), there have been no threats or pressure on employees to complete work without overtime (T p. 79), and there has been no discipline of employees attributed to the reorganization (T p. 48). Deputy Director Avigliano testified that there were no threats or pressure placed on employees to complete work without overtime (T p. 79). CWA Local President Rice testified that workers were threatened with corrective actions, suspensions and termination (T p. 48). Rice's testimony, however, does not show that any Board threats to employees to complete their work was related to the reorganization. Rice, in fact, admitted that there was no discipline attributed to the reorganization (T p. 48). I can only assume that any threats of corrective action--assuming they occurred--were directed at employees who were simply not performing their work as expected, regardless of the reorganization.

ANALYSIS

The Act affords majority representatives the opportunity to negotiate over terms and conditions of employment. Terms and conditions of employment have been defined as those matters which intimately and directly affect the work and welfare of public employees....State of New Jersey v. State Supervisory Employees Assn., 78 N.J. 54, 67 (1978), and employee workload has been found to be such a term and condition of employment. Red Bank Bd.Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 167); In re Byram Twp.

Bd.Ed., 152 N.J. Super. 12 (App. Div. 1977). Where a public employer unilaterally alters (increases) a term and condition of employment--such as workload--it constitutes an unlawful refusal to negotiate and is a violation of the Act. Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25, 48 (1978); NLRB v. Katz, 369 U.S. 736, 743-47 (1962).

Although an employer may exercise its managerial prerogative to, for example, reorganize or restructure its operation, it is required to negotiate with the majority representative of its employees for compensation over any increase in workload resulting from the reorganization. See, Burlington Co. College Faculty Assn v. Bd. Trustees, 64 N.J. 10 (1973); Red Bank, supra; In re Byram Twp. Bd.Ed., supra; City of Bayonne Bd.Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd App. Div. Dkt. No. A-954-79 (1980), pet. for certif. den. 87 N.J. 310 (1981); Newark Bd.Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/20/80); Dover Bd.Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82). Where, however, a workload increase is the direct result of a RIF, the employer is not required to negotiate over the increased workload. Maywood Bd.Ed. v. Maywood Ed.Assn., 168 N.J. Super. 45, 5 NJPER ¶10093 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979); Pequannock Twp. Bd.Ed., P.E.R.C. No. 85-167, 9 NJPER 404 (¶14184 1983); Edison Twp. Bd.Ed., P.E.R.C. No. 83-106, 9 NJPER 142 (¶14067 1983); Milltown Bd.Ed., P.E.R.C. No. 80-118, 6 NJPER 189 (¶11090 1980).

But in order to find a violation over workload, there must first be a factual finding that the workload was, in fact, increased. Where, as here, there was no measurable increase in workload, no violation may be found.

The RIF Issue

The CWA argued that the instant reorganization resulted in a workload increase, but the Board denied any increase in workload, and also argued that Maywood, supra, applied.

The Board's reliance on Maywood is without merit. There was no evidence that the Board RIF'd any employees in reorganizing the CSU's. The record shows, in fact, that the Technician/Worker positions went from 48 to 40 through attrition and prior to the reorganization. The difference between the 84 employees in the 12 CSU's prior to reorganization and the 72 employees in the 8 CSU's subsequent to reorganization was not explained by the Board. Absent any evidence to the contrary, I find that the employee complement had decreased through attrition prior to the reorganization. Thus, Maywood does not apply.

The Workload Issue

The CWA based its case on the allegation that the reorganization resulted in a 20% case load increase for Technicians/Workers from an average of 106 to an average of 128 cases per employee per month and a corresponding increase in cases for Specialists. It also noted several other changes which it alleged increased the employees' workload. I found, however, that

the record did not support the CWA's contention that the reorganization abruptly increased the Technicians/Workers caseload from 106 to 128 per month. Rather, their case load was rising throughout most of 1984 because the employee complement was decreasing by attrition from 40 to 48. By October 1984, which was prior to reorganization, the Technicians and Workers were already handling an average of 128 cases per month. Although I presume that the caseload for October was higher than the average for the first nine months of 1984, the reorganization in November does not appear to have increased the caseload from what already existed. Had there been no reorganization at all, I can only assume that the employees in November would have maintained the same caseload, or even less, than they had in October.

The result is the same for the Specialists. Their caseload per month did not abruptly go from 212 to 320 after reorganization. Since the caseload for the Technicians/Workers was increasing during 1984 the Specialists' caseload was similarly increasing. Since the Technicians/Workers were handling 128 cases in October, then the Specialists caseload in October was at least 256 cases, not 212.[4/] Although the Specialists may have handled as many as 320 cases in November 1984, since there was a continuous decrease in the number of cases handled by Technicians/Workers after November 1984,

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4/ The 256 was calculated by multiplying 128 x 4 Technicians/Workers = 512 divided by 2, one Specialist and one Supervisor = 256 cases each in October 1984.

there was a similar decrease in the number of cases for Specialists. Thus, it is inaccurate to fix the average caseload for Specialists after reorganization at 320 cases each month.

Similarly, there was no showing that the five other workload changes discussed in Finding No. 5 resulted in any measurable increase in work.

I must, therefore, conclude that the effect of the reorganization on the employees' workload was de minimis at most. The courts decision in Caldwell-West Caldwell Bd.Ed. v. Caldwell-West Caldwell Ed. Assn., 180 N.J. Super. 440 (App. Div. 1981), is instructive in this case. In that case the Court held:

> The Board must have some flexibility in making managerial decisions. The concept of preexisting practices should not be so rigidly adhered to as to require negotiation of every minute deviation. 180 N.J. Super. at 447.
>
> Without some measure of flexibility constant battles would be waged over every change in format....180 N.J. Super. at 448.

That same philosophy enunciated in Caldwell is applicable here. The workload increase resulting from the reorganization was minor. But of greater significance in this case is, that unlike Caldwell, even the minor increases in this case in November 1984 were not permanent. The workload decreased each month thereafter. Given the nature of the Board's work it was possible that the employees' workload could rise one month and fall the following month based upon the number of applicants for social assistance. Certainly the Court's admonition that "pre-existing practices should not be so rigidly adhered to as to require negotiation of every

minute deviation" applies here to the extent that the CWA must recognize that given the nature of the job, there may always be some deviations in the caseload which would not reasonably justify negotiations. Therefore, the 5.4(a)(5) allegation should be dismissed.

Overtime Issue

Although there may have been some increase in overtime requests after reorganization, that does not establish that there was anything more than a de minimis and temporary workload increase, nor does that establish that the overtime requests were all attributed to the reorganization. The record shows that some overtime requests were from individual workers whose workload increased for reasons mostly unrelated to the reorganization. Since there were only 40 Technicians/Workers performing the workload in October, I find that the workload was already higher in October going into November 1984, and that the reorganization itself did not otherwise create any measurable increase in workload.

Additionally, the CWA could not force the Board to use overtime pursuant to Article VI Para. A of J-1. In City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982), the Commission held that although the determination of which employee(s) will work overtime may be negotiable, the decision concerning the need for overtime and the number of employees who will work overtime is non-negotiable.[5/] Thus, to the extent that Article VI Para. A

5/ See also, Hunterdon County, P.E.R.C. No. 83-86, 9 NJPER 66 (¶14036 1982).

would require the Board to use overtime to handle workload increases, it is non-negotiable and unenforceable.

The §5.4(a)(7) Allegation

Since there was no evidence that the Board violated any Commission rule or regulation, the 5.4(a)(7) allegation must be dismissed.

Conclusions of Law

The Board did not violate §§5.4(a)(1), (5) or (7) of the Act by failing to negotiate over compensation for perceived workload increases.[6/]

Recommended Order

Based upon the above findings and analysis I recommend that the Commission ORDER that the Complaint be dismissed.

Arnold H. Zudick
Hearing Examiner

Dated: August 14, 1986
Trenton, New Jersey

6/ The Board should not interpret this decision to mean that it can avoid or refuse to negotiate over compensation for increases in workload--when such changes can be proven. In reality, the Board took a chance because if it had unilaterally increased workload significantly, absent a RIF, it would have violated the Act. The Board may have avoided a hearing by giving the CWA the opportunity to make known its demands, and then rejecting those demands on the basis that it did not increase workload. The Commission generally favors the voluntary resolution of disputes, and this dispute could have been resolved through less formal, and less expensive alternatives.