

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-76-211-71

ESSEX COUNTY INSTITUTIONAL
PATROLMEN'S ASSOCIATION,
affiliated with ESSEX COUNCIL
NO. 1, N. J. CIVIL SERVICE
ASSOCIATION,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law contained within the Hearing Examiner's Recommended Report and Decision in an unfair practice proceeding. The Hearing Examiner found, and the Commission affirms, that a change in job title, without changes in terms and conditions of employment, and a decision not to have security employees carry guns and badges, are management prerogatives which the County does not have to negotiate. Further, the Commission affirms the Hearing Examiner's finding that the Association did not meet its burden of proof with respect to its allegation that the County failed to negotiate over employee safety, a term and condition of employment affected by the removal of guns.

Therefore, the Commission concludes that the County did not violate N.J.S.A. 34:13A-5.4(a)(5) by refusing to negotiate with the Association. Accordingly, the Commission adopts the Hearing Examiner's Recommended Order and dismisses the complaint in its entirety.

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Appearances

For the Respondent, Goldberger, Siegel & Finn, Esqs.
(Mr. Howard A. Goldberger, of Counsel)

For the Charging Party, Fox and Fox, Esqs.
(Mr. David I. Fox and Mr. Richard Greenstein,
of Counsel)

DECISION AND ORDER

On February 17, 1976, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Essex County Institutional Patrolmen's Association (the "Association"), affiliated with Essex Council No. 1, N. J. Civil Service Association, alleging that the County of Essex (the "County") had engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the Association alleges that the County violated N.J.S.A. 34:13A-5.4(a)(5)^{1/} when, without prior negotiations,

1/ This subsection prohibits 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."

it unilaterally altered terms and conditions of employment by changing the job title of Institutional Patrolman, and deciding to remove firearms and badges from these employees.

It appearing that the allegations, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 11, 1976.

Pursuant to the Complaint and Notice of Hearing, a hearing was held before James F. Schwerin, Hearing Examiner of the Commission, on May 18, 1978, at which time the parties were given the opportunity to examine witnesses, present relevant evidence and argue orally. A letter memorandum was submitted by the Association on July 24, 1978 but the County chose not to submit a brief. On October 12, 1978, the Hearing Examiner issued his Recommended Report and Decision, which Report included findings of fact and conclusions of law and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.^{2/}

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.3.

Upon careful consideration of the entire record herein, the Commission adopts the findings of facts and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him. Specifically, the Commission notes that a change

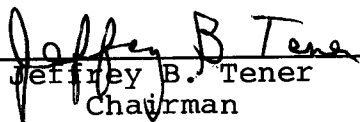
^{2/} H.E. No. 79-20, 4 NJPER ____, (Para. ____ 1978).

in job title, without changes in terms and conditions of employment, is within the County's management prerogative. Further, under our decision in In re Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977), the County's decision to remove both guns and badges from these employees is not a required subject for negotiations. Finally, the Commission finds that the Association did not meet its burden of proof with respect to its allegation that the County failed to negotiate over employee safety, a term and condition of employment affected by the removal of guns. Accordingly, the Complaint is dismissed in its entirety.

ORDER

For the reasons hereinabove set forth, the Commission hereby adopts the aforementioned Hearing Examiner's Recommended Order and it is HEREBY ORDERED that the Complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp, Parcels and Schwartz voted for this decision. None opposed.

DATED: Trenton, New Jersey
November 14, 1978
ISSUED: November 15, 1978

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

In the Matter of

COUNTY OF ESSEX,

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Docket No. CO-76-211-71

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NO. 1, NEW JERSEY CIVIL SERVICE
ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner recommends that a charge alleging violation of N.J.S.A. 34:13A-5.4(a)(5) be dismissed. Change of title without change of terms and conditions of employment is found to be a management prerogative, as is a decision to not have security employees carry guns and badges. In re Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977). The Charging Party did not meet its burden of proof on an allegation that the County failed to negotiate the effect of the removal of guns on employee safety.

A Hearing Examiner's Recommended Report and Decision is not a final administrative action 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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Appearances:

For the Respondent
Goldberger, Siegel & Finn, Esqs.
(Howard A. Goldberger, of Counsel)

For the Charging Party
Fox and Fox, Esqs.
(David I. Fox and Richard Greenstein, of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Essex County Institutional Patrolmen's Association (the "Association") affiliated with Essex Council No. 1, New Jersey Civil Service Association ("Council #1") alleging that the County of Essex (the "County") had violated the New Jersey Employer-Employee Relations Act (the "Act"). Specifically it was alleged that the County had failed to negotiate with the Association before making changes in certain terms and conditions of employment in derogation of N.J.S.A. 34:13A-5.4(a)(5) and (7). ^{1/} It appearing that the allegations, if

1/ The charge also lists unspecified "other subsection." This is not in conformance with the Commission's Rules and will not be considered. See N.J.A.C. 19:14-1.3(c). No evidence was presented to support the (a)(7) allegations and so its dismissal is recommended.

proved, might constitute an unfair practice, a Complaint and Notice of Hearing was issued, and a hearing conducted before the undersigned Commission Hearing Examiner concluding on May 18, 1978. ^{2/}

The Association was certified by the Commission on February 11, 1976, as representative of a unit of Institutional Patrolmen, Sergeants and Captains employed by the County, all of whom were assigned to the Essex Hospital Center. By resolution passed February 11, 1976, the Institutional Patrolmen titles were abolished by the Board of Freeholders and these employees were placed in a Guard, Public Property series. Subsequently by resolution passed June 9, 1977, the Freeholders having been notified by the New Jersey Department of Civil Service that the placement in that series was not warranted by the duties performed, placed the former Institutional Patrolmen in a Security Officer series. Also placed in that series were the employees properly in the Guard, Public Property titles who provided security at other County institutions and were also under the jurisdiction of the County's Security Department.

One aspect of the Association's charge is that this changing of job titles was not negotiated. However, the Hearing Examiner finds no merit to that portion of the charge. The initial change from Institutional Patrolmen to Guard, Public Property was effectuated on the day of certification of the Association - February 11, 1976. Because first notice of the proposed change had been given as far back as 1974, the Hearing Examiner does not believe that the timing of the actual passage of the resolution is significant. In any event, there is no allegation of changes in terms and conditions of employment such as compensation or the like, and the undersigned believes that the change in name was within the County's prerogative. Furthermore, the title change - in June 1977 - to the current titles was pursuant to a directive from the Department of Civil Service and therefore beyond the County's power to negotiate. See State of New Jersey v. State Supervisory Employees Association, ___ N.J. ___ (Aug. 2, 1978).

The other portion of the charge relates to the County's decision to remove firearms from these employees, as well as their badges. This unilateral

^{2/} All parties had the opportunity to examine and cross-examine witnesses, present evidence and argue orally. The Charging Party submitted a letter memorandum on July 24, 1978, but the County chose not to submit a brief. The Hearing Examiner finds that the County is a public employer and the Association an employee representative within the meaning of the Act and both are subject to its provisions. This matter is properly before the Hearing Examiner for a Report and Recommendations.

change is claimed to violate N.J.S.A. 34:13A-5.4(a)(5) either for failure to negotiate on that decision or, in the alternative, because of the impact upon terms and conditions of employment, specifically the safety of the employees.

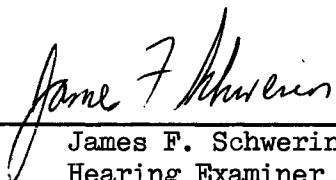
The issue of guns for the security personnel of a public institution was considered by the Commission in In re Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977). Therein the Commission held that "the subject of whether and at what times members of the College's campus police force shall carry firearms is not a required subject for negotiations." P.E.R.C. No. 77-53 at p. 11. However, any effect on terms and conditions of employment, including employee safety, was held to be mandatorily negotiable. Nothing has been cited to the Hearing Examiner which would warrant any departure from Brookdale, either to guns or badges. Therefore the only possible unfair practice would be a refusal to negotiate an effect on terms and conditions of employment.

The Association has alleged an effect on the safety of its members and has convinced the undersigned that there has been an effect that would require negotiations. On the record, during the hearing Counsel for the County conceded that such duty existed and denied that it had ever been breached. Apparently some discussions did take place between representatives of the County and the employees regarding County proposals for a shorter work day as a quid pro quo for both the title changes and removal of the guns and badges. The Association retorts that this "raise in salary" [i.e. same money for less hours] was also unilaterally imposed and that negotiations within the meaning of the Act did not take place.

The Hearing Examiner does not believe that the record before him is adequate to make a meaningful finding of fact as to just what level the meetings between the parties reached. Given the burden of proof imposed upon a charging party by N.J.A.C. 19:14-6.8 this lack must weigh against the Association which has not proven its case by a preponderance of the evidence. As a result, there is no alternative but to recommend that the complaint be dismissed.

RECOMMENDED ORDER

For the reasons set forth it is recommended that the Complaint in this matter be dismissed in its entirety.



James F. Schwerin
Hearing Examiner

DATED: Trenton, New Jersey
October 12, 1978