

P.E.R.C. NO. 82-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NORTHFIELD,

Respondent,

-and-

Docket No. CO-81-244-145

NORTHFIELD FIRE DEPARTMENT,
LOCAL 2364, IAFF, AFL-CIO,

Charging Party.

SYNOPSIS

In the absence of exceptions, the Chairman of the Commission, acting pursuant to authority delegated by the full Commission, issues a decision adopting the Hearing Examiner's recommendation to dismiss the Complaint. The Hearing Examiner found that the City of Northfield did not refuse to negotiate over the shift schedule and did not ignore a grievance.

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Appearances:

For the Respondent, Martin R. Pachman, Esq.

For the Charging Party, Hartman, Schlesinger,
Schlosser, Faxon & Kotch, P.C.
(Thomas P. Foy, of Counsel)

DECISION AND ORDER

On February 23, 1981, Local 2364, IAFF ("Local 2364") filed an unfair practice charge against the City of Northfield ("City") with the Public Employment Relations Commission. The charge alleged, in pertinent part, that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsection 5.4(a)(5),^{1/} when it, without prior negotiations with Local 2364, unilaterally imposed a new shift schedule on full-time firemen and ignored a grievance on the same issue.

^{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."

On April 29, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The City filed an Answer in which it admitted implementing a new shift schedule, but denied refusing to negotiate or ignoring Local 2364's grievance.

On June 4, 1981, Commission Hearing Examiner Edmund G. Gerber conducted a hearing and permitted the parties to present evidence, examine witnesses, and argue orally. Both parties filed briefs by July 20, 1981. On December 3, 1981, Local 2364 requested permission to file a supplemental brief. The Hearing Examiner denied this motion.

On March 3, 1982, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-38, 8 NJPER ____ (¶ _____ 1982 (copy attached)). Finding that the City had not refused to negotiate over the shift schedule and had not ignored the grievance, he recommended dismissal of the Complaint.

The Hearing Examiner served a copy of his report on all parties and notified them that Exceptions, if any, were due on or before March 16, 1982. Local 2364 requested an extension of time to file exceptions. On March 18, 1982, an extension of 10 days was granted. No exceptions were filed by either party.

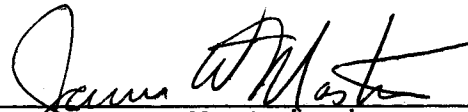
I have reviewed the record. I agree with the Hearing Examiner that no unfair practice was committed when the City altered shift schedules after its fruitless attempts to negotiate with Local 2364 on new work schedules within the limits of the City's minimum manning requirements. I also agree

that the City promptly responded to Local 2364's grievance and that the parties' grievance procedure, in any event, was self-executing. In the absence of any Exceptions, and acting pursuant to authority delegated by the full Commission, I adopt his recommendation to dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 23, 1982

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

In the Matter of

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-and-

Docket No. CO-81-244-145

NORTHFIELD FIRE DEPARTMENT,
LOCAL 2364, IAFF, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss a complaint brought by the Northfield Fire Department, Local 2364 of the National Association of Firefighters, AFL-CIO. The City of Northfield substantially altered the shift schedules of all its employees. It was found that the scheduling alteration was directly related to the level of manning the city deemed necessary to maintain proper safety of the city and it was found that the city attempted to negotiate with the local the work schedules of the employees within the framework of the city's basic manning decisions.

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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Appearances:

For the Respondent
Martin R. Pachman, Esq.

For the Charging Party
James R. King, Staff Rep.
IAFF, AFL-CIO

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On February 23, 1981, the Northfield Fire Department, Local 2364, IAFF, AFL-CIO (Charging Party) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the City of Northfield (Respondent) violated N.J.S.A. 34:13A-1 et seq. (the Act) when it unilaterally imposed a new work schedule on its full-time firemen and further ignored a grievance on this matter which had been filed by the Union. It was specifically alleged that these actions violated § 5.4(a)(5) of the Act. ^{1/}

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."

It appearing that the allegations, if true, may constitute unfair practices within the Act, a Complaint and Notice of Hearing was issued on April 29, 1981, and a hearing was conducted on June 4, 1981, at which time both parties were given an opportunity to present evidence, examine and cross-examine witnesses, argue orally and present briefs. ^{2/}

The City Fire Department consists of a mixed force of full-time paid firemen and part-time volunteers. In late December one of the full-time firemen employed by the Respondent quit and the number of full-time firemen was reduced to eight men. At that time the Respondent re-evaluated its needs. It believed that since the city was facing a decline in population it did not need to fill the vacant position. At this time the City also re-evaluated the existing work schedules to adjust for the new work force complement.

The contract between the parties expired on January 1, 1981, and negotiations had commenced for a successor agreement. On January 5, 1981, the City requested a meeting to discuss a scheduling change. The union refused a separate meeting on schedules and wanted all negotiations over schedules to be included in the contract negotiations. This was agreed to.

At the January 12 negotiations session the City presented a schedule which maintained the existing work week of 40 hours and scheduled five men for daytime duty. It was the City's position that they wanted to increase the number of men on daytime duty. The

^{2/} The final document relating to the filing of briefs was received on December 21, 1981. Said document was a motion to prevent the granting of a request to file a supplemental brief. The motion was granted and the Charging Party was barred from filing the supplemental brief.

City claims that in the evening and nighttime hours there is a very large volunteer turnout for fire calls. However, during daytime hours the turnout of volunteers is very low. The City therefore wanted to keep the number of regular firemen on daytime duty at five men and leave only one man on duty at night. Only one man would be needed to drive the fire apparatus to the area of a fire. Four volunteers would be available to fight the fire. The existing schedule had two or three men regularly on duty 24 hours a day.

The proposed schedule established eight-hour shifts -- one man scheduled 4 p.m. to midnight, one man scheduled midnight to 8 a.m. and five men scheduled for 8 a.m. to 5 p.m. on four weekdays out of five. On the fifth weekday four men are scheduled.

The Union wanted to continue the existing 10-14 schedule pattern, that is three straight shifts 10-hour day, 14-hour night and 10-hour day followed by three days off.

On February 2, 1981, the Union proposed a 10-14 schedule which would put four men on during the day. The City administrator tentatively agreed to this schedule.

On February 3, 1981, the Council rejected this tentative agreement and instructed the Administrative Captain of the Fire Department to institute an interim schedule providing a five-man day shift by February 7. The City did offer to negotiate with the Union on the following day. The Union could not come up with a schedule which complied with the City's requirement for five men on the day shift and the City's proposed shift schedule was modified

to eliminate certain inequities.

The Union filed a grievance on February 4 alleging a violation of the scheduling provision of the expired contract. The Union witness denied ever receiving a response to the grievance. There was evidence that the City negotiator sent a mailgram to the Union denying the grievance but expressing a willingness to negotiate a schedule in accordance with the City Council's manning requirement.

On February 7, the new schedule was imposed. Witnesses for the City testified that the date was chosen because it marked the end of a work cycle under the old schedule.

The Union did not produce any witnesses who took part in negotiations prior to February 3, 1981. The history of the negotiations stated above is from City witnesses. This testimony stands un rebutted, was credible and has been accepted by the undersigned in the above findings of fact. The Charging Party did attempt to submit three letters from former City firemen into the record by their inclusion in its brief. These letters were not, and cannot be, included into the record. The Charging Party was given an opportunity at the hearing to have these individuals brought in as witnesses ^{3/} but the union declined. Further the union was specifically instructed on the record ^{4/} that live, sworn testimony was needed in order to consider the testimony of these individuals.

3/ Transcript, p. 71, lines 5-10.

4/ Transcript, p. 79, lines 17-19.

The Union's contention that the City committed an unfair practice when it refused to respond to its grievance is without merit.

The preponderance of the evidence demonstrates that the Union's grievance was promptly answered by way of the mailgram. Moreover the grievance procedure within the contract terminates in arbitration. Under the terms of the contract either party on its own may file for arbitration. ^{5/} The Commission has long held that since such a grievance procedure is self-executing (if one of the parties is unhappy with the response of its adversary that party can unilaterally bring the matter to arbitration). The very operation of the procedure precludes an employer, or employee from effectively refusing to process a grievance and therefore there is no violation of § 5.4(a)(5). See In re Englewood Bd/Ed and In re Tenafly Bd/Ed, 2 NJPER 175 (1976).

These same two parties have already been before this Commission on the issue of the right of the city to establish the number of men on duty at a given time. City of Northfield, P.E.R.C. No. 78-82, 4 NJPER 4125 (1978). At that time the Commission stated:

The issue confronting us is the reconciliation of the City's right to determine its level of service and the number of men on duty at a given time (which the Local apparently concedes the City has the right to do) and the work schedules of employees (which the City concedes is mandatorily negotiable).

We believe that we can give effect to both of these legislative interests by holding, as we have previously, that the issue of manning is not a required subject of negotiations. Therefore, the City is free to establish unilaterally and without negotiations the number of men on duty at any time. However, once having made that deter-

^{5/} The Union chose not to file for arbitration and the employer would not defer to arbitration.

mination, the City is required upon demand, to negotiate with the Local regarding the work schedules of employees within the framework of the City's basic manning decision.

In this case, the City would decide to eliminate paid fire fighters entirely at night or to have one rather than two fire fighters on duty at night. Once that decision has been made, the City must negotiate work schedules with the Local that are compatible with the City's manning determinations. The Local, for example, could not propose a work schedule that would have two employees on duty at night if the City has determined to have only one paid fire fighter on duty at night.

We believe that this decision is consistent with our earlier decisions in which we have held the actual hours worked is a required subject of negotiations but that decisions as to the level of service and staffing levels are not required subjects for negotiations.

In this instance the City has complied with the Commission's directive to the letter.

Accordingly it is hereby recommended that the Complaint in this matter be dismissed in its entirety.


Edmund G. Gerber
Hearing Examiner

Dated: March 3, 1982
Trenton, New Jersey