

P.E.R.C. NO. 84-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC VALLEY SEWERAGE
COMMISSION,

Respondent,

-and-

Docket No. CO-83-166-73

LOCAL 1158, I.B.E.W.,

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 that Local 1158, I.B.E.W. had filed against the Passaic Valley Sewerage Commission. The charge had alleged that the Sewerage Commission violated the New Jersey Employer-Employee Relations Act when it refused to grant unit employees holiday pay for Christmas Day, 1982, but a Hearing Examiner found that Local 1158 had not proved this charge by a preponderance of the evidence. No exceptions were filed to the Hearing Examiner's recommended decision. Based on his review of the record, the Chairman adopts the Hearing Examiner's recommendation.

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Appearances:

For the Respondent, Gabriel M. Ambrosio, Esq.

For the Charging Party, Gerald A. Fusella, Esq.

DECISION AND ORDER

On January 6 and 24, 1983, Local 1158, I.B.E.W. ("IBEW") filed, respectively, an unfair practice charge and an amended charge against the Passaic Valley Sewerage Commission ("Sewerage Commission") with the Public Employment Relations Commission. The charge, as amended, alleged that the Sewerage Commission violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection 5.4(a)(5),^{1/} when it refused to grant unit employees holiday pay for Christmas Day, 1982.

On March 17, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Authority filed an Answer. It denied violating the contractual clause on holiday pay.

^{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 June 1, 1983, Commission Hearing Examiner Joan Kane Josephson conducted a hearing. The parties examined witnesses, presented evidence, and argued orally. The parties did not file post-hearing briefs.

On October 11, 1983, the Hearing Examiner issued her report and recommended decision, H.E. No. 84-23, 9 NJPER ____ (¶ ____ 1983) (copy attached). She recommended that the Complaint be dismissed because the Sewerage Commission had met its contractual holiday pay obligations by giving employees who worked on Christmas Day, which fell on a Saturday in 1982, compensatory time off. She found that the Sewerage Commission had no contractual obligation to pay or give time off to employees who did not work on a holiday falling on a Saturday.

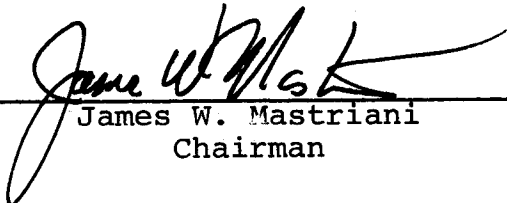
The Hearing Examiner served a copy of her report on the parties. The cover letter stated that exceptions were due October 24, 1983. Neither party has filed exceptions or requested an extension of time.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to review this case. I have reviewed the record. The Hearing Examiner's findings of fact are accurate and I incorporate them here. I agree with the Hearing Examiner that IBEW failed to prove by a preponderance of the evidence that the Sewerage Commission violated its contractual holiday pay obligations.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
November 1, 1983

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

In the Matter of

PASSAIC VALLEY SEWERAGE COMMISSION,

Respondent,

-and-

Docket No. CO-83-166-73

LOCAL 1158, I.B.E.W.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Sub-section 5.4(a)(5) of the New Jersey Employer-Employee Relations Act by not compensating employees who did not work on Saturday, Christmas Day, 1982 for that day. She found that the Respondent's action was consistent with the parties' collective negotiations agreement. She also found that the case was not appropriate for deferral to arbitration because the parties' contract did not provide for binding arbitration of grievances.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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

In the Matter of

PASSAIC VALLEY SEWERAGE COMMISSION,

Respondent,

-and-

Docket No. CO-83-166-73

LOCAL 1158, I.B.E.W.,

Charging Party.

Appearances:

For the Respondent, Gabriel M. Ambrosio, Esq.

For the Charging Party, Gerald A. Fusella, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 6, 1983 and amended on January 24, 1983 by Local 1158, I.B.E.W. (the "Charging Party" or the "Union") alleging that the Passaic Valley Sewerage Commission (the "Respondent") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") by refusing to grant unit employees contractually guaranteed holiday pay for Christmas Day 1982. This is alleged to be a violation of N.J.S.A. 34:13A-5.4 (a) (5) of the Act. ^{1/}

It appearing that the allegations, if true, may constitute unfair practices within the meaning of the Act, a Complaint and

^{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."

Notice of Hearing was issued on March 17, 1983. On April 11, 1983 the Respondent filed an Answer denying the allegations of the charge and raising a separate defense that all paid holidays had been granted pursuant to the parties' agreement. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 1, 1983 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and waived the filing of post-hearing briefs.

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 arguments of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

The Passaic Valley Sewerage Commission is a public employer within the meaning of the Act, and is subject to its provisions.

Local 1158, I.B.E.W. is a public employee representative within the meaning of the Act, and is subject to its provisions.

The collective negotiations agreement between the parties is dated March 22, 1982 and is effective during the term January 3, 1982 to December 31, 1982 (J-1 in evidence).

The agreement contains the following provision:

18.01 HOLIDAYS - All employees will be granted holidays with pay for only those days specifically designated as holidays as follows:

New Year's Day	Labor Day
Martin Luther King's Birthday	Columbus Day
Lincoln's Birthday	Election Day
Washington's Birthday	Armistice/Veterans' Day
Good Friday	Thanksgiving Day
Memorial Day	Day After Thanksgiving Day
Independence Day	Christmas Day

If a holiday falls during an employee's vacation, a day of vacation shall be granted in lieu of such holiday. However, all vacation days must be approved in advance in accordance with the procedure detailed in the Vacation Schedule portion of this contract.

If a holiday falls on a Sunday, it shall be observed on the following Monday.

Holidays falling within a period of other authorized leave with pay will not be charged against such leave. (Emphasis added)

* * *

13.02 COMPENSATORY TIME - When an employee is required to work on a holiday, the employee shall receive equivalent time off for the holiday worked. The compensatory time earned must be used within one month of the time earned except for Chlorination personnel who must use that time within a two month period after closing of the Chlorination section. The schedule for using compensatory time is subject to the approval of the department head and the needs of the agency. The foregoing shall include meter men when a holiday falls on a normal meter reading day.

December 25, 1982, Christmas Day, was a Saturday.

The Passaic Valley Sewerage Commission employs shift and non-shift employees. The non-shift employees work 8:00 a.m. to 4:30 p.m. Monday to Friday. The shift employees rotate their working schedules within seven days a week and 24 hours a day.

Non-shift workers did not work on Saturday, Christmas Day, 1982, and were not compensated in pay or granted compensatory time off. Shift workers who did not work on Saturday, Christmas

Day 1982, were not compensated in pay or granted compensatory time off. Shift workers who were required to work on Saturday, Christmas Day, 1982 received compensatory time for the day worked.

DISCUSSION

The Charging Party argues that bargaining unit employees should be given a day's pay for Christmas Day 1982. The Respondent argues that the unfair practice charge should be dismissed because the employer fully complied with the terms of the contract.

Initially, I note that the case is not appropriate for deferral to arbitration under East Windsor Bd/Ed, E.D. No. 76-6, 1 NJPER 59 (1975) inasmuch as the grievance-arbitration provision of the contract terminates in advisory arbitration and the Commission will defer only to binding arbitration. Twp. of Jackson, P.E.R.C. No. 82-79, 8 NJPER (¶13057 1982).

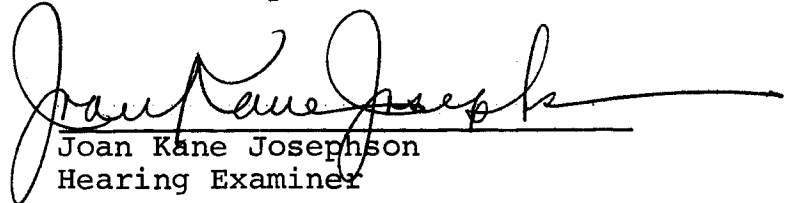
The undersigned concludes that the employer's actions were consistent with the contract and the charge should be dismissed. The language of the contract is clear. Shift workers who worked on Christmas were granted equivalent time off as provided in the "Compensatory Time" section quoted above.

The parties clearly intended that holidays that fell on Sunday would be observed on Monday. If the parties had intended that holidays that fall on Saturday be celebrated on another day, the contract would have reflected that intention. By specifically providing for observance of holidays that fell on Sunday, the undersigned can only conclude that the parties intended to exclude observance of holidays that fell on Saturday: expressio unis est exclusio alterius.

Based on the entire record the Hearing Examiner concludes that the Passaic Valley Sewerage Commission did not violate N.J.S.A. 34:13A-5.4(a)(5).

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.


Joan Kane Josephson
Hearing Examiner

Dated: October 11, 1983
Trenton, New Jersey