

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

In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP,
Respondent,

-and-

Docket No. CO-2008-96

PBA LOCAL 131A, SUPERIOR OFFICERS
ASSOCIATION,

Charging Party,

PARSIPPANY-TROY HILLS TOWNSHIP,
Respondent,

-and-

Docket No. CO-2008-100

PBA LOCAL 131,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Township of Parsippany-Troy Hills violated the New Jersey Employer-Employee Relations Act when it unilaterally changed terms and conditions of employment for certain police officers and police superior officers who engaged in off-duty employment (road jobs). Police working road jobs were receiving premium compensation in certain situations which was not included in the Township's fee ordinance. The Township ordered that police performing road jobs no longer receive such premiums in order to conform to the compensation rate provided in the fee ordinance. The Hearing Examiner found that the premiums paid to employees working road jobs were mandatorily negotiable terms and conditions of employment and could only be changed through the conduct of collective negotiations. The Hearing Examiner ordered the Township to make employees whole for any lost premium pay, plus interest.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. No. 2010-4

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PARSIPPANY-TROY HILLS TOWNSHIP,

Respondent,

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Docket No. CO-2008-96

PBA LOCAL 131A, SUPERIOR OFFICERS
ASSOCIATION,

Charging Party,

PARSIPPANY-TROY HILLS TOWNSHIP,

Respondent,

-and-

Docket No. CO-2008-100

PBA LOCAL 131,

Charging Party.

Appearances:

For the Respondent,
Knapp, Trimboli and Prusinowski, attorneys
(Fredric M. Knapp, of counsel)

For the Charging Parties,
Courter, Kobert and Cohen, attorneys
(Howard A. Vex, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On October 17, 2007, PBA Local 131A, Superior Officers
Association filed an unfair practice charge (C-3)^{1/} against

^{1/} "C" refers to Commission exhibits received into evidence
during the hearing in this matter. "CP" and "R" refer to
(continued...)

Parsippany-Troy Hills Township (Township). On October 18, 2007, PBA Local 131 also filed an unfair practice charge (C-4) against the Township. PBA Local 131A (Superior Officers Association) and PBA Local 131^{2/} allege that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A, et seq. (Act), specifically provisions 5.4a(1), (3) and (5)^{3/} when it unilaterally changed the "off duty police employment program" also referred to as the "road jobs program" by eliminating a guarantee of a minimum number of hours for unit employees working a road job, premium pay for hours worked in excess of eight hours, weekend and holiday differentials and other emoluments associated with off-duty police employment.

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- 1/ (...continued)
Charging Party's exhibits and Respondent's exhibits, respectively, received into evidence. Transcripts of the successive days of hearing are referred to as "1T1" representing the transcript taken on the first day of hearing at page 1, and so forth.
- 2/ I will refer to the respective Charging Parties collectively as the PBA since the allegations asserted and their legal positions are identical.
- 3/ These provisions 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

On February 5, 2008, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1) and an Order Consolidating Cases (C-2). The Director determined that the 5.4a(3) allegation did not meet the Commission's compliant issuance standards and dismissed that claim (C-1). On April 1, 2008, the Township filed its answer denying that any of its actions has caused it to engage in any unfair practice under the Act.

Hearings were conducted on August 21, December 5, December 23, 2008 and May 19, 2009. The parties submitted post hearing briefs and reply briefs. The record closed on August 17, 2009. Based upon the record in this case, I make the following:

FINDINGS OF FACT

1. The Township is a public employer within the meaning of the New Jersey Employer-Employee Relations Act. PBA Local 131A, Superior Officers Association, and PBA Local 131 are employee organizations within the meaning of the Act.

2. Since November 15, 1988, the Township's police department has had a policy pertaining to off-duty police employment (CP-2). The policy defines off-duty police employment as "employment where an officer works for someone other than the Township of Parsippany-Troy Hills and is hired because of their police powers." CP-2 states that "all regular police officers will be paid at an hourly rate approved by the chief of police." CP-2 also provides for officers to be paid a minimum of four (4)

hours pay regardless of the number of hours actually worked; officers working over four hours will be paid for a full day (8 hours); officers will be notified of any cancellation at least one hour prior to the start of the scheduled employment; without prior notification, officers are due four hours of pay, even if the job is cancelled upon the officer's arrival; any time worked over eight hours will be paid at time and one-half; any work performed on a national or state holiday, will be paid at time and one-half and time worked over eight hours will be paid at two and one-half times the hourly rate; traffic control jobs requiring work on Saturdays and Sundays will be paid at time and one-half; and hours worked between 6:00 p.m. and 7:00 a.m. will be considered hazardous hours and be compensated by an additional \$5.00 per hour for each hour worked. CP-2 provides for payment of officers performing work for other than the Township to receive, effective January 1, 1991, \$19 per hour for security work and \$25.50 per hour for traffic work, unless otherwise authorized by the chief of police and within the guidelines of the municipal ordinance (CP-2). No Township administrator employed outside of the police department has ever seen CP-2.

3. On June 23, 1999, a new police department policy regarding off-duty police employment became effective (CP-3). CP-3 was revised numerous times since 1999 with a final revision of the entire policy effective August 28, 2007. CP-3 defined off-duty police employment as "employment where an officer is

hired on a part-time basis by an employer other than the Township of Parsippany-Troy Hills, to act in their capacity as a police officer." CP-3 provided that "all regular police officers will be paid at an hourly rate as set forth by the municipal ordinance." Additionally, CP-3 stated that all road jobs will be scheduled for a minimum of four (4) hours in duration; the rate of pay will be straight time for all work up to and including eight (8) hours, and any hours in excess of eight will be billed in two hour brackets at the premium rate of time and one-half; holidays to be paid at the premium rate of time and one-half with time worked over eight hours on a holiday to be paid at two times the hourly holiday pay rate; job cancellations affected within one (1) hour of the scheduled start time will result in four hours of pay for the officer; and employers who fail to notify the police department of a cancellation, or makes notification after the job's scheduled start, will pay the entire amount of the scheduled job to the assigned officer provided that officer has arrived at the job site.^{4/}

4. The "extra benefits" reflected in CP-2 were not all contained in CP-3 when it was last revised on August 28, 2007. Management representatives from the police department discussed the revisions with the PBA and obtained the employee

^{4/} For purposes of shorthand, I will refer collectively to the elements enumerated in CP-3 such as the four hour minimum job duration, the premium pay after eight hours, the holiday pay, and the cancellation provision as "extra benefits."

organizations' agreement prior to implementing changes (2T6-2T7; 3T43). Neither the mayor nor any other Township administrator was aware of CP-3 or involved in any discussions concerning revisions to CP-3 (2T116; 3T136-3T137).

5. The Township has adopted ordinances that establish the rates charged to third party vendors for off-duty police employment. Ordinance No. 2000-44, Section 1, states the following:

The salaries for Police Officers of the Township of Parsippany-Troy Hills for off-duty services shall be as follows:
(Per Hour Range)

	Minimum	Maximum
Security	\$ 25.00	\$ 35.00
Traffic Control	\$ 35.00	\$ 45.00

An additional \$5.00 per hour shall be added to the salary of those Police Officers working the 'night shift.' 'Night Shift' shall be defined as that period of time between 6:00 p.m. and 7:00 a.m. [CP-1]

Subsequently, the Township passed an ordinance (Ordinance No. 2001:02) which provided for an outside vendor employing off-duty police officers to pay an additional charge of \$2.00 per hour as an administrative fee to the Township (R-1). Neither of these ordinances contained any reference to the "extra benefits" enjoyed by officers working off-duty assignments (1T10).

On November 27, 2007, the Township counsel adopted Ordinance No. 2007:49 which at Section 4-34 contained the following:

A. The salaries for police officers of the Township of Parsippany-Troy Hills for off-duty services shall be as follows: (1) All off-duty (per-hour rate): (a) regular rate: \$50. (b) premium rate: \$75.

B. All off-duty work will be billed at a minimum duration of four hours up to the fourth hour worked at the regular rate. All work in excess of four hours will be billed at a minimum duration of eight hours up to the eighth hour worked at the regular rate. Any work in excess of eight hours will be billed in two-hour segments at the premium rate. The premium rate shall be billed for any work that is performed on those holidays observed by the Parsippany police department.

C. Any work requiring the use of a marked vehicle will be billed to the employer at the following rate: (1) use of a marked vehicle: (a) up to four-hour shift: \$50. (b) four-to eight-hour shift: \$100.

D. Failure to notify the police department a minimum of two hours prior to a scheduled off-duty job, or if the police officer reports to the scheduled job and the contractor cancels, the contractor will be charged a minimum of four hours at the appropriate rate.

E. There shall be an additional charge of \$5.00 per hour to offset administrative charges.

F. All work will be paid for in advance and deposited in an escrow account to be held with the finance department of the Township of Parsippany-Troy Hills, with the exception of work performed by the Parsippany Board of Education and work related to emergencies.

[CP-4]

6. Annually, the Township retains an independent auditor to review its books and records. In or about July 2007, Ruby Malcolm, the Township's Chief Financial Officer and Treasurer,

received the draft audit from the auditor. The draft audit contains comments raised by the auditor questioning certain Township practices which may not meet accepted standards. The Township takes the auditor's comments seriously, since any practice out of compliance with accepted standards may be subject to State of New Jersey scrutiny.

7. Where the draft audit raises questions, Malcolm refers those issues to the various Township operating departments to provide an opportunity for the respective departments to respond with additional information or justifications to satisfy the auditor's question(s). In the course of a payroll accuracy test, the auditors researched worksheets of off-duty police employment assignments. The auditors identified that certain police officers were not being paid in accordance with the Township's ordinance which establishes the fees charged to the public for off-duty police assignments. The auditor noted that police officers engaged in off-duty employment were receiving premium pay for overtime and were paid in minimum increments of two or four hours which was contrary to the provisions of the fee ordinance. Such premium pay resulted in officers receiving an hourly rate which exceeded the hourly rate designated in the Township's fee ordinance for off-duty police employment. In a memorandum (CP-10), Malcolm advised the police department that absent some justification for paying police officers pay rates

which were not consistent with the fee ordinance, a corrective action plan would be required.

8. Police Chief Michael Peckerman received CP-10. He, along with the police captain in charge of the support services division, developed an action plan which would eliminate any conflict between the police policy covering off-duty employment and the Township's ordinance. At around the time that the draft audit report was provided to the Township, the captain in charge of support services and PBA officials had been meeting to develop a mutually acceptable revision to the police department's policy on off-duty employment which was then in effect. On July 19, 2007, the captain in charge of support services sent a memorandum (CP-11) to Chief Peckerman advising that a revision to the off-duty employment policy had been completed and that the support services division was in the process of drafting a new ordinance to be adopted by the Township which would be consistent with the newly revised policy.

9. In May or June 2007, Mayor Michael Luther became aware that the auditor had discovered a problem with the police off-duty job program. On or about July 6, 2007, Luther received a copy of CP-10 from Malcolm. It was at this time that Luther became aware that the auditor questioned whether police officers were being paid at a rate that was not consistent with the fee ordinance (2T106-2T107). Luther had been unaware that the manner in which off-duty police were actually being compensated was

pursuant to a police department policy and not the Township's fee ordinance. It was Luther's belief that officers engaged in off-duty employment must be compensated in strict compliance with the ordinance, rather than a police department policy. Luther told Malcolm that since officers could only be paid pursuant to the ordinance, she should take steps with the police department to ensure that pay for off-duty employment was consistent with the ordinance. On or about July 19, 2007, Malcolm saw a copy of CP-11 and learned that the off-duty employment policy had been revised and the police department was drafting a new ordinance that would synchronize the department's new policy and the ordinance (3T134).

10. During July and August, 2007, the captain in charge of support services and Chief Peckerman met with PBA representatives to reach a mutually acceptable agreement on the revised police policy and draft ordinance. It was intended that the draft ordinance would be presented to Township Council for adoption. In early September 2007, the draft ordinance was introduced before the Township's Council. Disputes between the PBA and Township representatives concerning the level of administrative fee to be billed to users of off-duty police officers resulted in the draft ordinance being withdrawn from the Council's consideration and a newly revised draft ordinance being subsequently introduced. On November 27, 2007, an ordinance setting forth the fees governing services rendered by off-duty

police officers was adopted by the Township Council as Ordinance No. 2007:49, §4-34 (CP-4). The ordinance became effective on or about January 1, 2008.

11. After Luther told Malcolm in July 2007, to take steps to ensure that off-duty police officers were being paid in accordance with the fee ordinance, it was his understanding that his directive to discontinue the "extra benefits" was implemented and that police officers no longer received the "extra benefits" stated in the police policy. In early September 2007, Luther discovered that off-duty police officers were still receiving the "extra benefits" contained in the police department policy and were not being paid in strict compliance with the fee ordinance. After checking with the auditor regarding whether police officers could continue to be paid the "extra benefits" in accordance with the police department policy, the auditor advised that once the discrepancy had been discovered, the Township could not continue to collect money contrary to the express provisions contained in the fee ordinance. Luther again directed Malcolm to take steps to ensure that off-duty employment was compensated in strict adherence with the fee ordinance and the "extra benefits" were discontinued. On September 24, 2007, Malcolm sent a memorandum to Peckerman advising him that as of that date, all future off-duty work must be billed and paid at the rate established in the current fee ordinance and that all "extra benefits" must stop (CP-12). Police officers engaging in off-duty employment between

September 24, 2007 and January 1, 2008 were paid in strict compliance with Township Ordinance 2000:44 (CP-1) and no "extra benefits" were paid until Township Ordinance 2007:34 (CP-15) became effective on January 2, 2008.

12. The parties never engaged in negotiations regarding the elimination of the "extra benefits" from the compensation scheme which was applied to officers engaged in off-duty employment pursuant to CP-3.

ANALYSIS

The Township argues that compensation that is to be paid to an officer must be established by ordinance. It cited N.J.S.A. 40A:9-165 which in relevant part states:

The governing body of a municipality, by ordinance, unless otherwise provided by law, shall fix and determine the salaries, wages or compensation to be paid to the officers and employees of the municipality, including the members of the governing body and the mayor or other chief executive, who by law are entitled to salaries, wages or compensation.

The Township argues that fees that are to be charged to the public for duties by an off-duty police officer must be established by ordinance. Specifically, it cites N.J.S.A. 40:48-1 which states in relevant part:

The governing body of every municipality may make, amend, repeal and enforce ordinances to:

* * *

(4) Fees: fix the fees of any officer or employee of the municipality for any service rendered in connection with his office or position, for which no specific fee or compensation is provided. In the case of salaried officers or employees, such fee shall be paid into the municipal treasury.

The Township concludes that the above statutes are clear, unambiguous and controlling. Compensation that is to be paid to employees and officers of a municipality must be established by ordinance. Fees that are to be charged for any service in connection to the employee's office or position must also be established by ordinance. Thus, the Township concludes that the internal police department policy which provided for all of the enumerated "extra benefits" does not preempt an otherwise controlling Township ordinance and the ordinance prevails to establish the condition of employment where the policy conflicts with such ordinance.

The Charging Parties contend that the "extra benefits" constitute terms and conditions of employment established pursuant to a longstanding practice. Consequently, the Township is required under the Act to preserve the "extra benefits" enjoyed by police officers engaged in off-duty employment (road jobs) unless changed through negotiations between the parties. Charging Parties assert that the Township's unilateral elimination of the "extra benefits" violates 5.4a(5) of the Act.

Off-duty employment for police officers provides opportunities for additional income. Several aspects of off-duty

employment are mandatorily negotiable.^{5/} See Township of Montclair, P.E.R.C. No. 91-13, 16 NJPER 449 (¶21194 1990); Township fo Mine Hill, P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987). The Commission has also held that the allocation of off-duty employment opportunities among qualified police officers is, in general, mandatorily negotiable. Hanover Township, P.E.R.C. No. 94-85, 20 NJPER 85 (¶25039 1994).

In Somerset County Sheriff, P.E.R.C. No. 2002-60, 28 NJPER 221 (¶33077 2002), sheriff's officers were permitted to provide assistance while in uniform to independent contractors for traffic control and other similar situations. The County charged each contractor an hourly rate covering both direct compensation costs paid to the officer and indirect compensation costs attributable to workers' compensation and other employee benefits. During the course of negotiations, the majority representative proposed a clause which would codify the direct compensation to officers at \$52.50 per hour with the employer receiving a stated 15% of that hourly fee. The Commission held that setting the hourly rate for off-duty employment is mandatorily negotiable. Id.

In this case, police employees received a regular hourly rate commensurate with that amount designated by the Township's

^{5/} An administrative fee charged to private employers requesting police services is not mandatorily negotiable. Borough of Paramus, P.E.R.C. No. 2001-57, 27 NJPER 188 (¶32062 2001).

ordinance for certain portions of the time in which they engaged in off-duty employment. However, officers working road jobs also received compensation at a premium rate in the event they worked an assignment which lasted more than 8 hours or on a holiday. Moreover, police officers were paid in 2-hour brackets which would result in an officer who works 8 1/2 hours being compensated for 8 hours at straight rate and 2 hours at premium rate. The officer's "extra benefits" also included a job cancellation provision which could result in an employee receiving 4 hours pay in the event that the job was not cancelled within one hour of the start time. None of the "extra benefits" were reflected in the Township's ordinance and, consequently, could result in an officer being paid at a rate which exceeded the hourly rate established by the Township's fee ordinance in the event that officer received any of the enumerated "extra benefits." However, on the basis of the Commission cases cited above, compensation for off-duty police employment is mandatorily negotiable and may not be unilaterally changed without first engaging in negotiations.

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over their terms and condition of employment. Section 5.3 also defines an employer's duty to negotiate before changing working conditions:

Proposed new rules or modifications of
existing rules governing working conditions

shall be negotiated with the majority representative before they are established.

In Township of Middletown, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), the Commission addressed the three types of cases it generally sees involving allegations that an employment condition has been changed: (1) Cases where the majority representative claims an express or implied contractual right to prevent a change; (2) Cases where an existing working condition is changed and neither party claims an express or implied right to prevent or impose that change; and (3) Cases where the employer alleges that the representative has waived any right to negotiate, usually by expressly or impliedly giving the employer a right to impose a change. Id. at 29.

The second type of case applies here. In the second type of case, the representative need not show an actual contractual entitlement or establish a binding past practice. Citing Sayreville Board of Education, P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983), the Commission explained:

[A]n employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment . . . even though that practice or rule is not specifically set forth in a contract. . . . Thus, even if the contract did not bar the instant changes, it does not provide a defense for the [employer] since it does not expressly and specifically authorize such changes.
[Middletown at 30.]

The Township's argument that it should not be prevented from unilaterally eliminating the "extra benefits" since they did not comply with the Township's fee ordinance and they were not known to the mayor, business administrator or chief financial officer, is not persuasive. Police officers were receiving the "extra benefits" since approximately 1988 and such "extra benefits" were well known to the previous and current chiefs of police. The chiefs of police are clearly part of the management ranks of the Township and have the apparent authority to bind the Township in matters related to terms and conditions of employment in the police department. The "extra benefits" were detailed in the police department's policies and always readily available to be viewed by Township officials. Moreover, I find that the "extra benefits" should have been known by other Township management officials. Regardless of whether the mayor, business administrator or chief financial officer was specifically aware of the "extra benefits," the "extra benefits" constituted existing terms and conditions of employment and are subject to change only through prior collective negotiations.

The Township argues that the only legal means of compensation for off-duty employment for police officers was pursuant to ordinance. The ordinance prevails over the contradictory policy of the police department. The Township asserts that upon discovery of the off-duty police officers' non-conforming compensation, it had no alternative but to discontinue

the "extra benefits" and ensure off-duty police officers were paid in strict accordance with the Township's ordinance. Thus, finding itself between the proverbial "rock and a hard place," the Township could not be held to have engaged in any violation of the Act.

The Commission has addressed this issue previously. In Township of Denville, P.E.R.C. No. 81-146, 7 NJPER 359 (¶12162 1981), the Denville PBA Local 142 alleged that the Township of Denville violated 5.4a(5) of the Act when, beginning in 1980, contrary to a ten-year practice, the Township began charging absences from work due to job-related injuries against an officer's accumulated sick leave days and had, thereby, unilaterally altered the working conditions of employees represented by PBA Local 142 without engaging in collective negotiations. The hearing examiner recommended that the complaint be dismissed on the grounds that a New Jersey State statute (N.J.S.A. 40A:14-137) authorizing a municipality to grant certain leaves of absence with pay, is operable only where a municipality has adopted an ordinance to such effect. The hearing examiner found that the Township had no ordinance on its books which authorized the grant of leaves of absence with pay and, therefore, could deduct time from a police officer's accumulated sick leave accrual in sufficient quantity to cover the difference between the officer's full salary received while on leave and temporary disability and/or workers compensation

payments. The Commission rejected the hearing examiner's construction of the state statute and found that the statute did not preempt negotiations of the disability leaves at issue in that case and found such issue to be a mandatorily negotiable term and condition of employment. Id. at 360. The Commission went on to say:

While it is true that a municipality acts through ordinance, it is also specifically empowered to enter into binding and enforceable contracts with its employees by virtue of the New Jersey Employer-Employee Relations Act. Indeed, an employer is prevented by the Act from taking unilateral action with respect to terms and conditions of employment. . . .

* * *

Conversely, by failing to enact an ordinance, a municipality can not evade its responsibility not to unilaterally alter terms and conditions of employment which it had agreed upon through negotiations, or . . . has been an established practice of longstanding duration. [Id.]

In Denville, the record showed that for the period of at least ten years the Township, without any ordinance on the books, routinely paid ill, injured or disabled police officers full salary, without deductions from the officer's sick time accrual, where such officers endorsed compensation payments over to the Township. It was only after the appointment of a new business administrator that exception was taken to an officer's application for treatment pursuant to the practice. The

Commission held that under such circumstances, the Township should be estopped from asserting its ultra vires claim. Id.

I find that Denville is controlling in this case. A lengthy practice of allowing off-duty police officers to collect the "extra benefits" enumerated in the police policy existed. The "extra benefits" clearly constitute terms and conditions of employment and, pursuant to N.J.S.A. 34:13A-5.3, parties are required to engage in prior negotiations before any change can be made. Rather than engage in such negotiations, the Township decided to act unilaterally and eliminate the "extra benefits" as a means to conform to the then-existing Township ordinance. However, alternatively, the Township could have passed an emergency ordinance that conformed to the then-existing terms and conditions of employment which included the "extra benefits." Indeed, the Township ultimately passed such an ordinance which became effective in January 2008. An additional alternative, albeit more expensive, would have been for the Township to bill vendors in compliance with its existing ordinance yet continue to pay officers the "extra benefits" which they enjoyed, until the Township could pass an ordinance conforming to the extant conditions of employment or until the Township and the charging parties could negotiate a mutually acceptable means of compensating officers engaged in the off-duty work program.

Accordingly, I find that the Township of Parsippany-Troy Hills violated 5.4a(5) of the Act when it unilaterally eliminated

the "extra benefits" enjoyed by police officers performing off-duty assignments. Consequently, any police officer who performed an off-duty assignment between the period of September 24, 2007 and the institution of the modified ordinance in January, 2008 and who suffered a loss as the result of not being compensated in accordance with the "extra benefits" reflected in the police department policy (CP-3) must be made whole and compensated in accordance with the terms which existed prior to the Township's unilateral change in conditions of employment on September 24, 2007.

CONCLUSIONS OF LAW

1. Parsippany-Troy Hills Township violated 5.4a(5) and derivatively a(1) of the Act when it unilaterally eliminated the "extra benefits" enjoyed by police officers performing off-duty employment between September 24, 2007 and January 2, 2008.

RECOMMENDATION

I recommend the Commission **ORDER:**

A. That the Township cease and desist from:

1. Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed to them by the Act, specifically, by unilaterally changing mandatorily negotiable terms and conditions of employment including the unilateral elimination of the "extra benefits" provided to employees who engaged in off-duty employment during the period of September 24, 2007 and January 2, 2008.

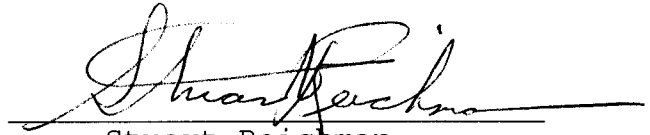
2. Refusing to negotiate in good faith with the charging parties before unilaterally changing a mandatorily negotiable term and condition of employment, specifically, by eliminating the "extra benefits" enjoyed by unit employees who engaged in off-duty employment during the period of September 24, 2007 and January 2, 2008.

B. That the Township take the following affirmative action:

1. Compensate all affected police officers for any of the "extra benefits" they would have received for having worked an off-duty job during the period September 24, 2007 through January 2, 2008, plus interest on the monetary difference, from the date earned to the date of payment in accordance with R. 4:42-11.

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

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



Stuart Reichman
Hearing Examiner

DATED: December 11, 2009
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by December 24, 2009.



NOTICE TO 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 cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed to them by the Act, specifically, by unilaterally changing mandatorily negotiable terms and conditions of employment including the unilateral elimination of the "extra benefits" as defined in P.E.R.C.'s Hearing Examiner's Decision, H.E. No. 2010-4, provided to employees who engaged in off-duty employment during the period of September 24, 2007 and January 2, 2008.

WE WILL cease and desist from refusing to negotiate in good faith with the charging parties before unilaterally changing a mandatorily negotiable term and condition of employment, specifically, by eliminating the "extra benefits" as defined in H.E. No. 2010-4, enjoyed by unit employees engaged in off-duty employment during the period of September 24, 2007 and January 2, 2008.

WE WILL compensate all affected police officers for any of the "extra benefits" as defined in H.E. No. 2010-4, which they would have received for having worked an off-duty job during the period September 24, 2007 through January 2, 2008, plus interest on the monetary difference from the date earned to the date of payment in accordance with R. 4:42-11.

Docket Nos. CO-2008-96 & 100

Township of Parsippany-Troy Hills
(Public Employer)

Date: _____

By: _____

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, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372