

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLEMENTON SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-82-292-106

AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES,
AFL-CIO D.C. 71,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in the absence of Exceptions, holds that the Clementon Sewerage Authority violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally changed the workweek schedule for assistant plant operators.

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AFL-CIO D.C. 71,

Charging Party.

Appearances:

For the Respondent, Laskin & Botcheos, Esquires
(George J. Botcheos, Of Counsel)

For the Charging Party, John Hemmy, Associate Director
AFSCME D.C. 71

DECISION AND ORDER

On May 27, 1982, the American Federation of State, County and Municipal Employees District Council 71 ("AFSCME") filed an unfair practice charge against the Clementon Sewerage Authority ("Authority") with the Public Employment Relations Commission. AFSCME alleged that the Authority violated subsection 5.4(a)(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), ^{1/} by unilaterally changing the workweek schedule for assistant plant operators ("operators").

On June 10, 1983 the Director of Unfair Practices issued a

^{1/} Although AFSCME only alleged a violation of subsection 5.4(a)(5), the (a)(5) allegation automatically includes a derivative (a)(1) allegation. 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; and (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."

Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On June 16, 1983, the Authority filed its Answer. The Authority admitted changing the schedule, but asserted that the change was within its inherent managerial prerogatives.

On July 19, 1982, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses, presented evidence, and argued orally. The parties did not file post-hearing briefs.

On September 26, 1983, the Hearing Examiner issued his report and recommended decision. In re Clementon Sewerage Authority, H.E. No. 84-19, 9 NJPER ____ (¶ ____ 1983). He found that the Authority violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) when it failed to negotiate concerning the changes in the operators' workweek schedule.

The Hearing Examiner notified the parties that they were entitled to file exceptions within 10 days of service of his report pursuant to N.J.A.C. 19:14-7.3. 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 the Hearing Examiner's report. I have reviewed the record. The Hearing Examiner's findings of fact are accurate and I incorporate them here. Based on these facts, and in the absence of exceptions, I agree with the Hearing Examiner that the Authority violated subsections 5.4(a)(1) and (5) by refusing to negotiate with AFSCME before changing the operators' workweek schedule.

ORDER

The Public Employment Relations Commission orders the Clementon Sewerage Authority to:

A. Cease and desist from

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by failing to negotiate with AFSCME District Council 71 concerning a change in the workweek schedule for operators;

2. Refusing to negotiate in good faith with AFSCME before changing workweek schedules; and

3. Implementing the workweek schedule for operators instituted on April 24, 1982.


B. Take the following action:

1. Restore immediately the Monday through Friday workweek schedule established in Article 3 Section 1 of Exhibit J-1.

2. Negotiate in good faith with AFSCME concerning any proposed changes in the workweek schedule.

3. Post copies of the attached notice, marked as Appendix "A", in all places where notices to employees are customarily posted. The Commission will supply copies of such notices which the Authority shall immediately post. A representative of the Authority shall sign the notices before such notices are posted. The Authority shall post the notices for at least sixty (60) consecutive days. The Authority shall take reasonable steps to insure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Authority has taken to comply with this Order.



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
October 25, 1983

NOTICE TO ALL 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 NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act by failing to negotiate with AFSCME District Council 71 concerning a change in the workweek schedule for operators.

WE WILL NOT refuse to negotiate in good faith with AFSCME before changing workweek schedules.

WE WILL rescind the workweek schedule for operators instituted on April 24, 1982.

WE WILL restore immediate the Monday through Friday workweek schedule established in Article 3 Section 1 of Exhibit J-1.

WE WILL negotiate in good faith with AFSCME concerning any proposed changes in the workweek schedule.

CLEMENTON SEWERAGE AUTHORITY

(Public Employer)

Dated _____

By _____ (Title)

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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

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Respondent,

-and-

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AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES,
AFL-CIO D.C. 71,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Authority violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it failed to negotiate with AFSCME regarding a change in the workweek schedule for plant operators. The Hearing Examiner recommends that the Authority be ordered to return to the status quo ante and to negotiate in good faith regarding any future change in the schedule.

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
Laskin & Botcheos, Esqs.
(George J. Botcheos, Of Counsel)

For the Charging Party
John Hemmy, Associate Director, AFSCME D.C. 71

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on May 27, 1982 by American Federation of State, County and Municipal Employees, AFL-CIO District Council 71 ("AFSCME") alleging that the Clementon Sewerage Authority ("Authority") had 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"). AFSCME claimed that the Authority unilaterally changed the workweek schedule for all Assistant Plant Operators ^{1/} which was alleged to be in violation

^{1/} Although AFSCME in its Charge referred to the relevant title herein as "Assistant Plant Operator," the collective agreement refers to the title as "Plant Operator" or "Sewerage Assistant Operator." For convenience the undersigned will refer to the title hereinafter as "Plant Operator."

of N.J.S.A. 34:13A-5.4(a)(5) of the Act. ^{2/}

AFSCME alleged that on April 24, 1982, which was after the expiration of the parties' 1981 collective agreement (Exhibit J-1), the Authority, without prior negotiations, changed the work-week schedule of the Plant Operators. The Authority admitted having made the change but argued that it did not violate the Act because the change was within its inherent management prerogative.

It appearing that the allegations of the Unfair Practice Charge may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 10, 1983, and a hearing was held regarding this matter on July 19, 1983, in Trenton, New Jersey, at which time the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Neither party exercised their opportunity to file a posthearing brief. The transcript was received by the undersigned on September 9, 1983.

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

^{2/} Although AFSCME only alleged a violation of subsection 5.4 (a) (5) of the Act, and did not allege an independent violation of 5.4(a)(1) of the Act, the (a)(5) allegation automatically includes a derivative (a)(1) allegation.

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 employees in that unit, or refusing to process grievances presented by the majority representative."

Upon the entire record the Hearing Examiner makes the following:

Findings of Fact

1. Clementon Sewerage Authority is a public employer within the meaning of the Act, is the employer of the employees involved herein, and is subject to the provisions of the Act.
2. AFSCME, District Council 71 is a public employee representative within the meaning of the Act and is subject to its provisions.
3. AFSCME is the majority representative for all Plant Operators and office clerks employed by the Authority. AFSCME and the Authority have been parties to collective agreements, Exhibit CP-1 for 1978-79, and Exhibit J-1 for 1980-81, covering the employees involved herein. The work schedule set forth in both agreements, Article 3 Section 1, provides for the following workweek.

The regularly scheduled workweek for Plant Operators shall consist of five (5) consecutive days, Monday through Friday. The hours of work shall be from 8:00 a.m. til 4:30 p.m. with one-half hour for lunch.

From at least 1978 through early 1982 the workweek (and hours) for the Plant Operators was 8:00 a.m.-4:30 p.m. Monday through Friday in accordance with the collective agreements. In addition, Article 3 Section 3 of both CP-1 and J-1 provided for four hours of work on Saturday and Sunday. Employees working on those days were compensated on an overtime basis. On April 24, 1981, however, the parties amended Article 3 Section 3 of J-1 to reduce the work hours on Saturday and Sunday from four to two hours.

4. The parties began negotiations for a new collective agreement in October 1981. J-1 subsequently expired on December 31, 1981. On April 24, 1982 the Authority unilaterally and without negotiations changed the work schedule of the Plant Operators so that one plant operator on a rotating basis would work 8:00 a.m.-4:30 p.m. Wednesday through Sunday, and the remaining operators worked the traditional workweek of Monday through Friday. The new schedule eliminated the need for regular overtime on Saturday and Sunday and thus resulted in a loss of overtime income for the affected employees. ^{3/} (Transcript "T" p. 42). As a result of the staggered workweeks, each plant operator on a rotating basis works five days, Monday through Friday, is off Saturday-Tuesday, then works ten days Wednesday through the following Friday, is off Saturday and Sunday and begins the schedule again. (T p. 41).

5. At the start of negotiations in October 1981 AFSCME made no proposal to change the workweek schedule. However, in early 1982, James Koch, a Plant Operator and Local AFSCME President, in an attempt to clarify a rumor he heard regarding a staggered workweek, went to a meeting of the Authority and inquired about any such change and he testified that he was told there would be no change at that time. (T p. 44).

Subsequently, on March 8, 1982, John Hemmy, Associate Director of AFSCME Council 71, wrote to the Authority's attorney, George Botcheos (Exhibit CP-2), concerning some budget and percentage figures. In the last paragraph of that letter Hemmy said:

3/ Although the employees did lose overtime because of the elimination of the Saturday and Sunday hours, they did not lose all overtime since the employees were still being called out on an overtime basis. (Transcript "T" p. 40)

At this time, I will not speak to any change in the workweek, due to that subject not having been a formal proposal by the Authority.

The Authority argued that CP-2 was in response to a letter from the Authority to AFSCME, but it did not produce the alleged letter at hearing, nor did it introduce any testimony with regard to the content or purpose of the alleged letter. Consequently, there is no evidence that the Authority ever offered to negotiate with AFSCME concerning the change in the workweek schedule or that it gave AFSCME any official prior notice of the change.

6. Authority Chairman John Henderson testified that the reasons for the change to the staggered workweek were to reduce the amount of overtime expenses, provide for better and more reliable coverage of the plant on Saturday and Sunday, and to better distribute the work during a seven day period. (T pp. 53-63).

Analysis

The undersigned has reviewed the entire record herein and finds that the Authority violated the Act by failing and refusing to negotiate with AFSCME concerning the change in the workweek. Both in its Answer and on the record the Authority argued that its decision to change the workweek was a management prerogative and that it was therefore not required to discuss the change with AFSCME. The Authority, however, obviously misunderstands the law with respect to such changes.

The New Jersey Supreme Court and this Commission have clearly held that although a public employer has the right to make a managerial policy determination for regular full-time employee

coverage on the weekend, that does not eliminate the need for the employer to negotiate terms and conditions of employment with the majority representative regarding a change in the workweek schedule. See Local 195, AFPTTE v. State of N.J., 88 N.J. 393, 411-412, 8 NJPER 285, 290 (¶13129 1982); In re Borough of Atlantic Highlands, P.E.R.C. No. 83-75, 9 NJPER 46 (¶14021 1982); In re Township of Franklin, P.E.R.C. No. 83-38, 8 NJPER 576 (¶13266 1982); In re Ocean County Bd. of Health, P.E.R.C. No. 82-6, 7 NJPER 441 (¶12196 1981); and, In re City of Newark, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981). See also Borough of Roselle v. Roselle Borough PBA, Local No. 99, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Docket No. A-3329-79 (5/7/81), wherein the Appellate Division upheld the Commission's finding that within the context of minimum manning, a public employer is required to negotiate with respect to hours and workweek schedules.

In In re Ocean County Bd. of Health, supra, a case directly on point with the instant matter, full-time nurses had been employed on a traditional Monday through Friday workweek with part-time or per diem employees doing most of the weekend work. The employer, however, unilaterally implemented a cyclical schedule whereby some nurses would have a regular workweek which included Saturday and Sunday. The Commission, in reliance upon Local 195, supra, and Borough of Roselle, supra, held that there was a difference between the policy decision to provide services on the weekends which is non-negotiable, and the change to a cyclical workweek schedule which involves a term and condition of employment and is mandatorily negotiable.

The result in the instant case is the same. The Authority had the right to decide the need for full-time Plant Operators on the weekend, but it was required to negotiate the change in the Plant Operators workweek schedule prior to the implementation thereof. Its failure to do so violated the Act. ^{4/}

Moreover, any suggestion by the Authority that AFSCME waived its right to negotiate the change in the workweek because of its comments in CP-2 is without merit. The Authority never demonstrated that AFSCME's comment in CP-2 not to speak about a change in the workweek was in response to an offer to negotiate the change, or was actually a refusal to negotiate the change. In fact, the undersigned does not believe that the Authority ever offered to negotiate the change in the workweek as evidenced by their position that it was a managerial right which did not need to be discussed.

Accordingly, based upon the above analysis the undersigned finds that the Authority failed to negotiate with AFSCME regarding the change in the workweek for Plant Operators.

Based upon the entire record the Hearing Examiner makes the following:

Conclusions of Law

1. The Authority violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively 5.4(a)(1), when it failed to negotiate in good faith

^{4/} The Courts and the Commission in the above-cited cases recognized that in some instances negotiations as to which employees are working at a given time might interfere with the determination of governmental policy. See Town of Irvington v. Irvington PBA Local #29, 179 N.J. Super. 532 (App. Div. 1979), pet. for certif. den. 82 N.J. 296 (1980).

However, Irvington, supra, is distinguishable from the instant matter. The instant case is more closely aligned with the cases cited and relied upon above.

with AFSCME regarding the change in the workweek schedule for Plant Operators.

Recommended Order

The Hearing Examiner recommends that the Commission

ORDER:

A. That the Authority cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and from refusing to negotiate in good faith with AFSCME concerning terms and conditions of employment of AFSCME unit members, particularly, by failing to negotiate with AFSCME with respect to a change in the workweek schedule for Plant Operators.

B. That the Authority take the following affirmative action:


1. Immediately cease implementing the new workweek schedule for Plant Operators and restore instead the status quo ante by returning to the Monday through Friday workweek schedule established for all Plant Operators in Article 3 Section 1 of J-1.

2. Forthwith engage in good faith negotiations with AFSCME regarding any future change in the workweek schedule for Plant Operators.

3. 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 Authority's authorized representa-

tive shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Authority to insure that such notices are not altered, defaced or covered by other materials.

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


Arnold H. Zudick
Hearing Examiner

Dated: September 26, 1983
Trenton, New Jersey

NOTICE TO ALL 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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, and

WE WILL NOT refuse or fail to negotiate in good faith with AFSCME concerning terms and conditions of employment of AFSCME unit members, particularly, by failing to negotiate over the change in the workweek schedule for Plant Operators.

WE WILL forthwith restore the status quo ante by returning to the Monday through Friday workweek schedule for all Plant Operators and at the same time we will enter into good faith negotiations with AFSCME regarding any future change in the Plant Operators' workweek schedule.

CLEMENTON SEWERAGE AUTHORITY
(Public Employer)

Dated _____

By _____
(Title)

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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.