

P.E.R.C. No. 85-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Respondent,

- and -

Docket No. CO-84-260-148

HUNTERDON COUNTY SHERIFF'S OFFICERS'
ASSOCIATION, F.O.P. LODGE NO. 94,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge the Hunterdon County Sheriff's Officers' Association, F.O.P. Local No. 94 filed against the County of Hunterdon. The charge had alleged that the County violated the New Jersey Employee-Employee Relations Act when it established a mandatory on-call schedule for its sheriffs. A Hearing Examiner recommended this conclusion and, in the absence of exceptions, the Commission adopts it.

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Charging Party.

Appearances:

For the Respondent (Gaetano M. DeSapio, Esq.)

For the Charging Party, Kenneth T. Brennan, President,
Hunterdon County Sheriff's Officers' Association,
F.O.P. Lodge No. 94

DECISION AND ORDER

On March 15, 1984, the Hunterdon County Sheriff's Officers' Association, F.O.P. Lodge No. 94 ("Association") filed an unfair practice charge against the County of Hunterdon ("County") and its Sheriff with the Public Employment Relations Commission. Count II of the charge alleged that the respondents violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34: 13A-1 et seq., specifically subsections 5.4(a)(5) and (7),^{1/} when they unilaterally substituted a mandatory on-call schedule for the past practice of having undersheriffs call in sheriffs as

^{1/} These subsections prohibit 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," and "(7) Violating any of the rules and regulations established by the commission."

needed.^{2/}

On June 12, 1984, the Administrator of Unfair Practice Proceedings issued a Complaint and Notice of Hearing with respect to Count II. On June 22, 1984, the respondents filed an Answer alleging that under the department's standard operating procedures, sheriffs were always on 24 hour call and their schedules could be changed to meet each day's needs. The respondents also claimed a managerial prerogative to adopt a mandatory on-call schedule.

On August 15, 1984, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. The Association argued orally and both parties filed post-hearing briefs by September 10, 1984.

On September 13, 1984, the Hearing Examiner issued a report recommending dismissal of the Complaint. H.E. No. 85-12, 10 NJPER ____ (¶ ____ 1984). He found that the adoption of the on-call schedule was not mandatorily negotiable. He also found that compensation for being on call was mandatorily negotiable, but that no specific demand had been made to negotiate that subject.

The Hearing Examiner served his report on the parties and informed them that any exceptions were due on or before September 26, 1984. Neither party filed exceptions nor requested an extension of time.

2/ Count I alleged that the respondents negotiated in bad faith when they made a proposal during successor contract negotiations to decrease wages. The Administrator of Unfair Practice Proceedings, however, refused to issue a Complaint on Count I. No appeal was taken from this refusal. Accordingly, this aspect of the charge will not be considered further.

We have reviewed the record. The Hearing Examiner's findings of fact are accurate. We adopt and incorporate them here with the following additions.^{3/} Based on our review of the record, and in the absence of exceptions, we agree with the Hearing Examiner that the Complaint should be dismissed. In particular, under all the circumstances of this case, the need to implement the on-call system in order to improve department efficiency outweighed the employees' interests in the old system's retention.^{4/} We further note that the respondents have at all times been willing to negotiate compensation and other aspects of the on-call system predominantly affecting employees and during successor contract negotiations have negotiated over a proposal for paying employees enough compensation for being on call to insure an adequate supply of volunteers.

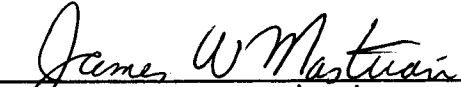
3/ Sheriff officers are allowed to switch the dates of their on-call duty, and employees with serious medical problems are exempted from on-call duty. Employees have at all times been compensated for on-call duty, and the parties during successor contract negotiations have negotiated over a proposal for paying employees enough compensation for being on call to insure an adequate supply of volunteers.

4/ We express no opinion on whether, under different circumstances, an on-call system might be mandatorily negotiable. We further express no opinion on whether the instant change was permissively negotiable.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker and Suskin voted in favor of this decision. None opposed. Commissioners Graves and Wenzler were not in attendance.

DATED: Trenton, New Jersey
November 29, 1984
ISSUED: November 30, 1984

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

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HUNTERDON COUNTY SHERIFF'S OFFICERS'
ASSOCIATION, F.O.P. LODGE NO. 94,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent County did not violate Subsections 5.4(a)(5) and (7) of the New Jersey Employer-Employee Relations Act when its Sheriff on January 17, 1984 implemented a mandatory "on-call" schedule for Sheriff's Officers for use in calling in Sheriff's Officers after the conclusion of the regular work day. Prior to January 17, 1984 there had been a "voluntary" schedule wherein Sheriff's Officers were called in on a "catch-as-catch-can basis," which proved both unprofessional and unsatisfactory in the opinion of the current Sheriff. The Hearing Examiner held that the matter of scheduling of employees was a managerial prerogative under Commission and court precedent. The Hearing Examiner did, however, note that there existed an obligation on the part of the County to negotiate, upon demand, compensation for any increase in workload.

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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Docket No. CO-84-260-148

HUNTERDON COUNTY SHERIFF'S OFFICERS' ASSOCIATION,
F.O.P. LODGE NO. 94,

Charging Party.

Appearances:

For the Respondent
Gaetano M. DeSapio, Esq.

For the Charging Party
Kenneth T. Brennan, Pro Se

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 15, 1984 by the Hunterdon County Sheriff's Officers' Association, F.O.P. Lodge No. 94 (hereinafter the "Charging Party" or the "Association") alleging that the County of Hunterdon (hereinafter the "Respondent" or the "County") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent on February 24, 1984 unilaterally implemented a mandatory "on-call" schedule for Sheriff's Officers, contrary to past practice wherein Undersheriffs would be "on-call" and would utilize a "call-in" procedure, all of which is alleged to be a violation of N.J.S.A. 34:13A-1/ 5.4(a)(5) and (7) of the Act.

1/ These Subsections prohibit 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.

"(7) Violating any of the rules and regulations established by the commission."

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 12, 1984. Pursuant to the Complaint and Notice of Hearing, a hearing was held on August 15, 1984 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was made by the Charging Party and waived by the Respondent. Both parties filed post-hearing briefs by September 10, 1984.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the oral argument of the Charging Party and the post-hearing briefs 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

1. The County of Hunterdon is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Hunterdon County Sheriff's Officers' Association, F.O.P. Lodge No. 94 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The most recent collective negotiations agreement between the parties was effective during the period January 1, 1982 through December 31, 1983 and was received in evidence as a Joint Exhibit (J-1).
4. There are eleven Sheriff's Officers in the collective negotiations unit. They are supervised by Undersheriffs, who report directly to the Sheriff. The current Sheriff is Warren Peterson, who was sworn in on January 1, 1984.
5. The duties of a Sheriff's Officer include the responsibility for courtroom security, extradition, the serving of writs and restraining orders, answering calls involving domestic violence, transporting juveniles, transporting prisoners for medical

service, and transporting persons involved in criminal warrants.

6. The Agreement in Article 8, Hours of Work, provides, in part, as follows:

"It is understood by the Parties that the hours of work in existence at the time of this Agreement for all employees shall remain in full force and effect until mutually changed. Either party reserves the right to request a change in working hours. This request will be subject to negotiations..." (J-1, p. 15).

7. The "Standard Operating Procedures" (SOP), which were issued by the prior Sheriff, and confirmed by Sheriff Peterson, provide in Paragraph 6, Duty-Responsibilities:

"Members of the department are always subject to duty although periodically relieved of its routine performance. They shall, at all times, respond to the lawful orders of superior officers and other proper authorities..." (C-2).

8. The SOP also includes a Work Schedule, Paragraph D of which provides that, "The schedule may be changed on a daily basis to fulfil the needs of the particular day." (C-2). An example of a schedule change under this SOP was received in evidence as Exhibit CP-1 (Schedule change memo of September 5, 1980).

9. Since in or around 1980 the Sheriff used two Undersheriffs, who were assisted by a juvenile coordinator, to fulfil the "on-call" need for Sheriff's Officers after the conclusion of the regular work day. To the extent that the two Undersheriffs were themselves unable to fulfil the "on-call" needs of the department, they made telephone calls from a random list of Sheriff's Officers, which list was not necessarily in the order of seniority, until the necessary number of Sheriff's Officers were obtained. Sheriff's Officers who responded were paid reporting pay and overtime under the Agreement (J-1, pp. 17, 18).

10. When Peterson assumed the office of Sheriff on January 1, 1984 he determined that the prior system of "catch-as-catch-can" was time consuming and not professional inasmuch as the Undersheriffs, who made the calls from the random list, supra, sometimes had to "beg" in order to fulfil the need. Accordingly, on January 17, 1984 Peterson established a new system, as set forth in a memorandum on that date, which provided,

in part, as follows:

"...the Sheriff's Department shall have an 'On Call' system whereas two Sheriff's Officers will be 'On Call' for a one week period. Each Officer shall have one pager for his/her disposal for the one week scheduled period. The Senior Sheriff Officer shall have a Sheriff's Department vehicle at their disposal after normal working hours for 'On-Call' use..." (CP-3).

This memorandum also provided that changes in the schedule will be allowed by mutual agreement between the Sheriff's Officers and the responsible Undersheriff.^{2/}

11. Pursuant to the January 17, 1984 policy change in "on-call" policy (CP-3, supra), a schedule was issued for the month of February on February 3, 1984 (CP-4). On February 24, 1984 the "on-call" schedule for February 27 through April 1, 1984 was issued and this, for the first time, used the word "mandatory" in describing the schedule.^{3/} (CP-5).

12. On January 4, 1984 the Association submitted its proposals for a successor collective negotiations agreement (CP-6). On either March 14 or March 22, 1984 the Respondent submitted its proposals for a successor agreement (CP-2), which, on page two thereof, set forth in Article 8, Hours of Work, in part, that:

"Members of the Department are always subject to duty. The Sheriff may assign the routine performance of duty, and designate the hours of work which shall constitute the regular work day of any employee, for such times as the Sheriff deems necessary in order to accomplish the responsibilities of the office. A work schedule shall be posted..."

"At the Sheriff's discretion, he may designate two Sheriff's officers per week, who will be available and on call, outside of their scheduled work week. These officers shall be immediately and readily available to perform any assigned duty, before or after their regular work schedule, during the one week period. When such a system is implemented, all officers will be assigned such on-call responsibility on a rotation basis."

^{2/} It was stipulated that on the same date, January 17, 1984, a petition was signed by 10 of the 11 Sheriff's Officers in the collective negotiations unit protesting this unilateral change in the "on-call" procedure.

^{3/} The Charging Party seeks to make the distinction between the "on-call" procedure, which was in effect prior to January 17, 1984 and which, it is alleged, was "voluntary," and the new procedure on and after January 17, 1984, which is "mandatory."

13. There was conflicting testimony offered by the parties as to whether the new mandatory on-call procedure of January 17, 1984 unduly impinges upon the off-duty life of a Sheriff's Officer. Charging Party witness Kenneth T. Brennan testified that it interferes with his part-time employment inasmuch as he must be home by the telephone when he is on the "on-call" schedule. Sheriff Peterson, testifying for the Respondent, stated that no Sheriff's Officer is require to stay at home inasmuch as the pager has a radius of 30 miles and that anyone "paged" would only be expected to respond on a non-emergency basis. The Charging Party witnesses also argued for additional compensation under the mandatory "on-call" procedure, citing as precedent the Respondent's Probation Officers, who receive one hundred dollars per week for being available by telephone.

DISCUSSION AND ANALYSIS

The County Did Not Violate The Act
When Its Sheriff Unilaterally And
Without Negotiations With The Asso-
ciation Implemented A Mandatory
"On-Call" Schedule For Sheriff's
Officers On January 17, 1984

The County correctly cites Irvington and Atlantic Highlands^{2/} in support of the decision of Sheriff Peterson on January 17, 1984 to implement a mandatory "on-call" schedule for Sheriff's Officers. These two Appellate Division decisions make clear that the fixing of the over-all work schedule for Sheriff's Officers employed by the Respondent is a managerial prerogative, which is not subject to mandatory negotiations. Thus, Sheriff Peterson was free to implement a mandatory "on-call" schedule for Sheriff's Officers, notwithstanding that previously the "on-call" schedule had been voluntary.

Sheriff Peterson testified that the prior system of "catch-as-catch-can" recruiting of off-duty Sheriff's Officers was time consuming and unprofessional inasmuch as the Undersheriff sometimes had to "beg" in order to fulfil the particular

need. It is noted that the new system provides that two Sheriff's Officers per week are to be "on-call" and that each is to have a pager for use during that week. The Sheriff testified that the "on-call" Sheriff's Officers were only expected to respond on a non-emergency basis. Finally, the new procedure provides for changes in the schedule by mutual agreement between the Sheriff's Officers and the responsible Undersheriff.

The County And Its Sheriff Are
Subject To A Mandatory Obligation
Upon Demand, To Negotiate Additional
Compensation As A Result Of The
Implementation Of The New-Call
Schedule

Although the Hearing Examiner has found that the County had no obligation to negotiate with the Association regarding the promulgation and implementation of the mandatory "on-call" schedule for Sheriff's Officers, this does not relieve the County of its mandatory obligation to negotiate compensation when and if the Association makes such a demand. It is well settled that while a public employer may unilaterally exercise managerial prerogatives in the matter of scheduling it is not relieved of the obligation to negotiate, upon demand, the subject matter of additional compensation for any change or increase in workload: See Ramapo-Indian Hills Education Association v. Ramapo-Indian Hills High School District Board of Education, P.E.R.C. No. 80-9, 5 NJPER 302 (1979), aff'd 176 N.J. Super. 35 (App. Div. 1980).

Under the voluntary "on-call" schedule the collective negotiations agreement provided for three hours of call-in pay and overtime. Presumably, this provision of the agreement still exists and is in effect, notwithstanding current negotiations for a successor agreement. The Association is not precluded from making a demand for additional compensation over and above that which already exists. This is a matter for resolution by the parties in negotiations for a successor agreement to J-1. Any refusal of the County to negotiate on an additional demand of the Association for compensation would be violative of Subsection(a)(5) of the Act.

Inasmuch as the evidence presented to the Hearing Examiner at the hearing in

this matter did not disclose a refusal by the County to negotiate as aforesaid, the Hearing Examiner will make no affirmative finding in this regard and will recommend dismissal of the Complaint in its entirety.

* * * *


Upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent County did not violate N.J.S.A. 34:13A-5.4(a)(5) and (7) when Sheriff Warren Peterson unilaterally and without negotiations with the Association implemented a mandatory "on-call" schedule for Sheriff's Officers in lieu of the "voluntary" schedule, which had existed previously.

RECOMMENDED ORDER

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


Alan R. Howe
Hearing Examiner

Dated: September 13, 1984
Trenton, New Jersey