

P.E.R.C. NO. 86-26

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Respondent,

-and-

Docket No. CO-85-117-90

NUTLEY P.B.A. LOCAL NO. 33,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission, dismisses a Complaint alleging that the Township of Nutley violated the New Jersey Employer-Employee Relations Act when it assigned a civilian crossing guard to its Traffic Safety Unit. The Chairman, in agreement with a Commission Hearing Examiner and in the absence of exceptions, finds that this assignment was pursuant to a valid departmental reorganization.

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Appearances:

For the Respondent, Anthony T. Drollas, Esq.

For the Charging Party, Abramson & Liebeskind Associates  
(Arlyne K. Liebeskind, Consultant)

DECISION AND ORDER

On October 30, 1984, the Nutley PBA Local 33 ("PBA") filed an unfair practice charge against the Township of Nutley ("Township") with the Public Employment Relations Commission. The charge alleged that the Township violated subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it assigned a civilian school crossing guard to its Traffic Safety Unit to assist in the supervision of other school crossing guards, a duty previously performed by a member of the PBA's negotiations unit.

<sup>1/</sup> 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."

On February 6, 1985, a Complaint and Notice of Hearing was issued. On March 1, 1985, the Township filed its Answer. It admitted the factual allegations contained in the complaint, but denied that its actions violated the Act; rather, it contends the assignment of the duties in question were pursuant to a managerial prerogative and specifically noted that the school crossing guard performs other clerical duties in addition to the challenged assignment and that there is no need to assign a patrolman on a full-time basis to perform these duties.

On March 18, 1985, Commission Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses, introduced exhibits and filed post-hearing briefs.

On April 18, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-38, 11 NJPER \_\_\_\_ (¶ \_\_\_\_ 1985) (copy attached). He recommended a finding that the Township did not violate the Act when it assigned a school crossing guard to assist in the Traffic Safety Unit in addition to other clerical duties assigned to her, since it was pursuant to a departmental reorganization and the elimination of the patrolman in the Traffic Safety Unit. He relied on Toms River Board of Ed., P.E.R.C. No. 84-4, 9 NJPER 483 (¶14200 1983) and Cherry Hill Twp. Bd. of Ed., P.E.R.C. No. 81-90, 7 NJPER 98 (¶12040 1981).

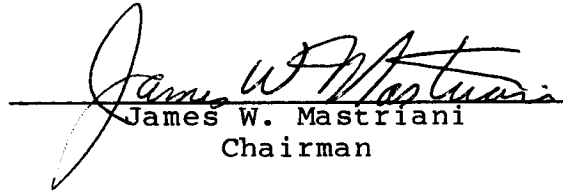
The Hearing Examiner advised the parties that exceptions to his report were due May 1, 1985. No exceptions have been filed, nor have the parties requested an extension to file exceptions.

I have reviewed the record. The Hearing Examiner's findings of fact (3-6) are accurate. I adopt and incorporate them here. While it is well-settled that the PBA may have a legitimate interest in not having unit work assigned to non-unit employees, see County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part, rev'd in part, App. Div. Docket No. A-3564-78 (decided 6/19/80); Washington Township, P.E.R.C. No. 83-166, 10 NJPER 402 (¶14183 1983), I agree with the Hearing Examiner that, under the particular circumstances of this case and in the absence of exceptions, the assignment of the school crossing guard to its Traffic Safety Unit did not constitute an unfair practice. Acting under authority delegated to the Chairman by the full Commission, I hereby dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
August 16, 1985

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

In the Matter of

TOWNSHIP OF NUTLEY,

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-and-

Docket No. CO-85-117-90

NUTLEY P.B.A. LOCAL NO. 33,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Township did not violate Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when in September 1984 it unilaterally assigned a civilian School Crossing Guard to its Traffic Safety Unit to perform the duties previously performed by a Patrolman. The School Crossing Guard spent less than half of her time in the Traffic Safety Unit and worked the balance of an eight-hour day performing clerical duties in the office of the Chief of Police and the office of the Township Court Clerk. The Hearing Examiner concluded that the Township basically reorganized the operation of its Traffic Safety Unit and was under no duty to negotiate with the Charging Party its decision under applicable Commission precedent involving the exercise of a managerial prerogative. See, for example, Toms River Bd. of Ed., P.E.R.C. No. 84-4, 9 NJPER 483 (1983).

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 Township of Nutley  
Anthony T. Drollas, Esq.

For Nutley P.B.A. Local No. 33  
Abramson & Liebeskind Associates  
Arlyne K. Liebeskind, Consultant

HEARING EXAMINER'S  
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on October 30, 1984 by Nutley P.B.A. Local No. 33 (hereinafter the "Charging Party" or the "PBA") alleging that the Township of Nutley (hereinafter the "Respondent" or the "Township") 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., (the "Act"), in that the Respondent's Chief of Police, on September 5, 1984, appointed a civilian school crossing guard to assist the patrolman in charge of the Traffic Safety Unit, a position which had

been manned by a patrolman since 1978, all of which was objected to by the PBA and implemented by the Respondent without negotiations with the PBA. The PBA alleges that the Township has violated N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.<sup>1/</sup>

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 February 6, 1985. Pursuant to the Complaint and Notice of Hearing, a hearing was held on March 18, 1985 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by April 10, 1985.

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 post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

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<sup>1/</sup> 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 employment 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. The Township of Nutley is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Nutley P.B.A. Local No. 33 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Township and the PBA are parties to a most recent collective negotiations agreement effective January 1, 1983 through December 31, 1984 (J-1). The parties are currently operating under this agreement. Article IX, "Negotiations Procedure," provides in Sec. B that the Township agrees that there shall be no change in the terms and conditions of employment as provided by this Agreement during its lifetime except through negotiations between the parties (J-1 p. 13).

4. Prior to 1978, the day road sergeant prepared the daily roster and assignments of school crossing posts for the civilian school guards. In addition to scheduling, the sergeant was charged with the guards' training, allocation of equipment, payroll, the conducting of departmental meetings for instructional purposes and checking the coverage of the school crossing posts. (See Exhibit C-1, para. 3 as stipulated to by the parties).

5. In June 1978, a new Traffic Safety Unit was created and Sergeant William R. Kenney was placed in charge. Kenney



continued in this position until January 1984. Kenney assumed responsibility for the supervision of the school crossing guards and, in addition, he also investigated any reports of road hazards, researched the feasibility of related ordinances and kept statistics on accidents and traffic summonses. For this position Kenney received special training in an approved police school. (See Exhibit C-1, para. 4 as stipulated to by the parties).

6. In September 1978, Patrolman John T. Barry was assigned to the Traffic Safety Unit to assist Kenney. On January 9, 1984, when Kenney left the Traffic Safety Unit, Barry assumed Kenney's responsibilities. He performed these duties alone until September 5, 1984. On June 26, 1984, while working alone, Barry wrote to Chief of Police Salvatore E. Dimichino, stating that he was in need of civilian assistance.

7. On September 5, 1984, Dimichino assigned Julia Grab, a school crossing guard, to assist Barry and perform the duties previously performed by Barry when he assisted Kenney.

8. On September 5, 1984, the first day that Grab assumed her duties in the Traffic Safety Unit, the President of the PBA, Robert Cassie, met with Dimichino and objected to Grab being assigned to the Traffic Safety Unit. Two days later Grab was reassigned from the Traffic Safety Unit and a regular patrolman was assigned to assist Barry.

9. On October 9, 1984, Dimichino assigned another school crossing guard, Marion Cundiff, to assist Barry in the Traffic

Safety Unit in place of a regular patrolman. The position was officially designated Adult School Crossing Guard Coordinator, an unclassified position. Cassie again registered his objection to Dimichino, who said he would take the matter under advisement. Cundiff has continued in the position to the date of hearing. The Township never negotiated with the PBA its decision to create the Coordinator position or to make the two assignments of Grab and Cundiff to the Traffic Safety Unit .

10. Prior to being assigned to the Traffic Safety Unit , Cundiff had been a school crossing guard for seven years. As a result of an accident she was disabled for one year, following which she became a dispatcher in the Police Department and served in that position for two years. Cundiff's salary is \$11,500 per year as compared to a patrolman at the first step, whose salary is \$19,424 per year. Barry's salary at the time of the hearing was slightly in excess of \$24,000 per year. Cundiff works eight hours per day from 7:30 a.m. to 3:30 p.m., including 45 minutes for lunch. She spends 3-3/4 hours assisting Barry in the Traffic Safety Unit each day where she schedules school crossing guards and monitors them, in addition to working on payroll, issuing supplies and orienting new school crossing guards. The balance of Cundiff's day is spent in the office of the Chief of Police where she mostly does typing, and assists in the Township Court Clerk's office. When not assisting Barry, Cundiff's supervisor is Dimichino.

11. In 1983 and 1984 there were 31 patrolmen in the Township's Police Department. Dimichino testified that in deciding

to utilize a civilian in place of a uniformed officer in the Traffic Safety Unit , beginning in September 1984, his decision was based on the economics of either hiring another patrolman at a higher rate than a civilian position or reassigning an existing patrolman, which would result in being short another man "on the road." Captain Robert L. Delitta, who participated in the hiring of Grab and Cundiff, testified credibly regarding budget constraints in the Police Department in recent years, as a result of which there are only 31 patrolmen at the present time compared to 43 patrolmen in 1977. Delitta agreed with Dimichino that the decision was based on economics and also having one more patrolman "on the road." Apparently Barry was aware of the fiscal constraints since he testified that he did not request a patrolman in June 1984 because of manpower problems in the Police Department. Finally, the Director of Public Safety, Carmen A. Orechio, testified without contradiction that he responded to Barry's request for civilian assistance and was motivated in the hiring of Grab and Cundiff by the fact that a patrolman costs the Township approximately \$35,000 per year including fringes whereas Cundiff is costing the Township approximately \$14,000 per year including fringes. Orechio testified that not only was the decision based on fiscal considerations, supra, but also upon the fact that the codification of ordinances, which had been done by the Traffic Safety Unit , was about completed. Since the codification must be done by a patrolman as opposed to a school crossing guard, there was little need for a second patrolman to assist Barry.

DISCUSSION AND ANALYSIS

The Respondent Township Did Not Violate Subsections (a)(1) And (5) Of The Act When It Unilaterally Assigned A Civilian School Crossing Guard To The Traffic Safety Unit In September And October 1984.

Despite the excellent arguments contained in the brief submitted on behalf of the Charging Party, the Hearing Examiner is constrained to find that the Township exercised a legitimate managerial prerogative when in September and October 1984 it assigned two civilian School Crossing Guards, first Grab and then Cundiff, to assist Barry in the Traffic Safety Unit in place of a regular patrolman. Aside from the economic considerations put forward by the Township, the Hearing Examiner first notes that a basic change in the Traffic Safety Unit occurred with the assignment of the two civilian Crossing Guards. Instead of working full time in the Traffic Safety Unit performing all of the duties previously performed by a patrolman, Cundiff has since October 9, 1984 spent only 3-3/4 hours out of her regular eight-hour day assisting Barry. The balance of her day is spent in the office of the Chief of Police where she does mostly typing, and she assists in the Township Court Clerk's office. Also, in the Traffic Safety Unit, her duties do not include the codification of ordinances since that work must be done by a patrolman. Of course, the codification is almost concluded this was part of the basis for a decision to utilize a School Crossing Guard in the Traffic Safety Unit instead of a patrolman.

As can be seen from the foregoing excerpts from the facts in this case, we are not confronted with a one-to-one transfer of unit work out of the unit. Had the Township merely reassigned the work of a patrolman in the Traffic Safety Unit to a non-unit civilian School Crossing Guard with no change in the method or manner in which the work was performed then the Hearing Examiner would be compelled to find that the Township violated Subsection (a)(5) of the Act by having refused to negotiate the change with the PBA: see Middlesex College, P.E.R.C. No. 78-13, 4 NJPER 47 (1977); Piscataway Twp. Bd. of Ed., P.E.R.C. No. 78-81, 4 NJPER 246 (1978); Rutgers v. Local 1761, AFSCME, P.E.R.C. No. 79-72, 5 NJPER 186 (1979), aff'd App. Div. Docket No. A-3651-78 (1980); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (1981), aff'd App. Div. Docket No. A-1818-80T8 (1982); Monroe Twp. Bd. of Ed., P.E.R.C. No. 81-145, 7 NJPER 357 (1981); and Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (1981), aff'd App. Div. Docket No. A-468-81T1 (1983).

However, as indicated above, the instant case does not present a situation of musical chairs where a one-to-one change has taken place in the performance of job duties. The Hearing Examiner cites with approval the Township's citation of Toms River Bd. of Ed., P.E.R.C. 84-4, 9 NJPER 483 (1983) where the Commission in a scope of negotiations decision found non-arbitrable and non-negotiable a decision of the school board to replace two cafeteria managers with one traveling cafeteria manager, the latter

being outside the collective negotiations unit. The Association there argued that the Board's two-for-one change in cafeteria management had the effect of transferring unit work to a non-unit employee or employees. The Commission first noted that a public employer may commit an unfair practice by unilaterally abolishing a position and creating an identical position outside of the unit: Deptford; Monroe Twp.; and Rutgers; supra. The Commission then said:

...Distinct from the above circumstances are cases where a public employer changes the level of services delivered and implements corresponding personnel changes. A restructuring of an employee's responsibilities in this context is a managerial prerogative. For example, in Ramapo Indian-Hills Ed. Assn. v. Ramapo Indian-Hills Reg. H.S. District, 176 N.J. Super. 35 (1980)...the public employer abolished a full time teaching position and a part-time extracurricular position, and created a full-time position which encompassed the responsibilities of two abolished positions...(9 NJPER at 484).

The Commission in Toms River concluded that the Board had evidently decided that the responsibilities of cafeteria management could be adequately performed by one traveling manager. The Commission then said: "...Applying the Woodstown-Pilesgrove balancing test for the determination of negotiating, we find the dominant issue herein is the Board's managerial prerogative to provide services efficiently and to effect a reduction in force..." (9 NJPER at 484) (emphasis supplied).

The Hearing Examiner is persuaded that like Toms River the dominant interest under the Woodstown-Pilesgrove balancing test is the Township's managerial prerogative to provide services in the

Traffic Safety Unit efficiently and with due regard to fiscal considerations, a concomitant of which is the elimination of a patrolman in the Traffic Safety Unit. In effect, there has been a reorganization of the Traffic Safety Unit wherein a civilian School Crossing Guard has been hired on an eight-hour per day basis, performing in the Traffic Safety Unit for 3-3/4 hours and the balance of the day in the office of the Chief of Police and/or at the Township Court Clerk's office. The supervision has been changed, in that Cundiff is supervised both by Barry and Dimichino.

The Commission has exempted from a duty to negotiate the decision of a public employer to reorganize a department or other administrative units. Thus in Cherry Hill Twp. Bd. of Ed., P.E.R.C. No. 81-90, 7 NJPER 98 (1981) the Commission dismissed a charge alleging a refusal to negotiate where the school board had unilaterally eliminated department chairperson persons, and had distributed their duties to non-unit administrative personnel since the Board's actions were a result of reorganization of departmental structure and reassignment of supervisory duties within the unit. See also, Tenafly Bd. of Ed., P.E.R.C. No. 83-123, 9 NJPER 211 (1983) and Point Pleasant Boro Bd. of Ed., P.E.R.C. No. 80-145, 6 NJPER 299 (1980).

In conclusion, and based upon the above-cited applicable precedent, the Hearing Examiner must recommend dismissal of the instant Unfair Practice Charge.

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

CONCLUSION OF LAW

The Respondent Township did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when in September and October 1984 it unilaterally and without negotiations with the PBA assigned a civilian School Crossing Guard to the Traffic Safety Unit.

RECOMMENDED ORDER

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



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Alan R. Howe  
Hearing Examiner

Dated: April 18, 1985  
Trenton, New Jersey