

D.U.P. NO. 89-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-88-305

BOROUGH OF BELMAR POLICEMAN'S
BENEVOLENT ASSOCIATION, LOCAL NO. 50

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on the allegation that the Borough of Belmar refused to negotiate over the impact of its decision not to assign overtime during Spring 1988. The Director found the change was permitted by the parties' contract.

D.U.P. NO. 89-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-88-305

BOROUGH OF BELMAR POLICEMAN'S
BENEVOLENT ASSOCIATION, LOCAL NO. 50

Charging Party.

Appearances:

For the Respondent
Crammer & Covelli, Esqs.
(Timothy Crammer, of counsel)

For the Charging Party
Joseph N. Dempsey, Esq.

REFUSAL TO ISSUE COMPLAINT

On May 31, 1988, the Borough of Belmar Policeman's Benevolent Association, Local No. 50 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Borough of Belmar ("Borough") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et. seq. ("Act"), specifically subsection 5.4(a)(5)^{1/}

^{1/} This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

when it refused to negotiate the impact of its decision to leave vacant certain posts. Specifically, the Borough decided to leave certain posts on certain shifts vacant or partially vacant anytime an officer assigned to the shift was absent between March 19, and May 31, 1988. Normally, officers receive overtime pay when they substitute for the absentee.

The Commission delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{2/} If this standard has not been met, I may decline to issue a complaint.^{3/}

For the reasons set forth below, I do not believe that the Commission's complaint issuance standards have been met.

On March 18, 1988, the Borough distributed a memorandum detailing a new staffing policy to be effective until Memorial Day. The memo stated that the overtime budget had been reduced so the police department was not able to pay for overtime when a vacancy occurred on a shift. The Borough asserted the reduction in overtime was necessary to save money for overtime during the busy summer season. The decision to leave shifts vacant did not result in a change in work schedules or hours.

2/ N.J.A.C. 19:14-2.1.

3/ N.J.A.C. 19:14-2.3.

Relying on Tp. of Mt. Laurel v. Mt. Laurel Tp. Police Officers Assn., 215 N.J. Super., 108 (App. Div. 1987), the PBA alleges the Borough violated subsection 5.4(a)(5) when it failed to negotiate over the impact of its decision not to assign overtime to fill the vacant shifts. The PBA admits that the Borough's decision not to fill the shifts is a managerial prerogative, but asserts the Borough must negotiate over the increased workload resulting from its economic decision.

The PBA's assertion of increased workload is not supported since the PBA does not dispute that hours, shifts and work schedules have not changed. The only change alleged in terms and conditions of employment is the Borough's decision not to assign overtime to cover vacancies occurring on certain shifts.

The PBA admits the Borough has the managerial authority to determine whether to assign overtime. The PBA argues the Borough committed an unfair practice when it failed to negotiate over the impact of the Borough's decision not to fill vacant shifts. The Borough argues the parties' agreement permitted its decision not to assign overtime. Article XII, section E of the agreement provides in part: "Management may assign overtime in order to replace an absent officer or whenever the needs of the Department require."

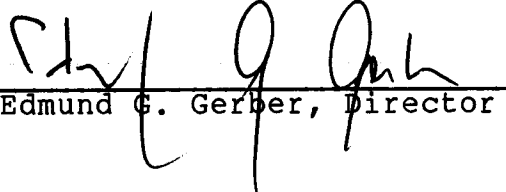
The Borough's decision not to fill vacancies on certain shifts is a managerial prerogative. The Borough's decision not to assign overtime was permitted by the agreement which gives the Borough the discretion over whether to assign overtime "to replace

an absent officer." The contract permits, but does not guarantee, overtime. Therefore, it permits the Borough to decide not to assign overtime. If the change is permitted by the contract, there is no obligation to negotiate. New Jersey Sports and Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987).

Since there is no obligation to negotiate over a change that is permitted by contract, the Borough did not commit an unfair practice when it refused to negotiate over the impact of its decision not to assign overtime to replace absent officers.

Accordingly, the Commission's complaint issuance standards have not been met and I decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 19, 1988
Trenton, New Jersey