P.E.R.C. NO. 93-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CO-H-91-80

STATE LAW ENFORCEMENT CONFERENCE OF THE NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION (LOCAL 105),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the State of New Jersey (Department of Corrections) violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally changed the procedures for allocating overtime at the Vroom Readjustment Unit of the New Jersey State Prison. The Commission orders the employer to cease and desist from such violations and to negotiate in good faith immediately with the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (Local 105) over the allocation of overtime at VRU. If the employer does not fulfill its negotiations obligation within 60 days, it must restore the status quo by allocating VRU overtime opportunities to custody line staff permanently assigned to VRU as had been the previous practice. The Commission denies Local 105's request for back pay.

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Charging Party.

Appearances:

For the Respondent, Robert J. Del Tufo, Attorney General (Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party, Zazzali, Zazzali, Fagella & Nowak, attorneys (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On October 11, 1990, the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (Local 105) filed an unfair practice charge against the State of New Jersey (Department of Corrections).[1/] Local 105 alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),[2/] by unilaterally changing procedures for allocating overtime

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1/ The charging party withdrew an application for interim relief.

2/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

(Footnote Continued on Next Page)

at the New Jersey State Prison ("NJSP") and the Vroom Readjustment Unit ("VRU"), an NJSP satellite unit.[3/] The charging party alleges that, effective October 6, 1990, the employer abandoned its intra-institution procedures for allocating overtime that had been in effect for over 18 years.

On November 19, 1990, a Complaint and Notice of Hearing issued. On November 30, the employer filed its Answer generally denying the allegations and asserting it had legitimate contractual and business justifications for changing scheduling to equalize overtime among all corrections officers at the NJSP, the VRU, and the Jones Farm (another NJSP satellite).

On March 13, 1991, the employer moved for partial summary judgment. On April 5, Local 105 cross-moved for summary judgment. The motions were referred to Hearing Examiner Stuart Reichman pursuant to N.J.A.C. 19:14-4.8.

On May 31, 1991, the Hearing Examiner issued his report and recommendations. H.E. No. 91-42, 17 NJPER 324 (¶22143 1991). He found that the employer had violated the Act by unilaterally

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2/ (Footnote Continued From Previous Page)

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...."

3/ The charging party does not challenge the employer's assignment of reserve ("floating") correction officers to the VRU on a non-overtime basis.

changing the manner in which overtime is allocated to correction officers assigned to the VRU. He recommended an order restoring the status quo. Noting that the charging party had not requested a retroactive adjustment for employees improperly denied overtime, he did not recommend any back pay.

On June 27, 1991, after an extension of time, the employer filed exceptions. It asserts that the parties' collective negotiations agreement does not prohibit it from reorganizing the work unit, it complied with the contract by equalizing overtime within the new combined work unit, and material facts are in dispute.

On July 22, 1991, the charging party filed a reply and cross-exceptions. It also relies on its brief in support of its motion. The charging party claims that there are no material facts in dispute; the Hearing Examiner properly found a violation; and its brief included an application for backpay. It asks that we include a backpay award or remand to the Hearing Examiner to determine the employer's backpay liability.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 4-9) are accurate. We incorporate them. We reject the employer's exceptions to those findings. The employer asserts that the three institutions were considered separate work units for all scheduling, including the temporary filling of vacancies created by absences. The Hearing Examiner's finding that the three institutions were considered separate work units for

purposes of overtime allocation is not inconsistent with the employer's assertion. Also, the finding that the September 13 memorandum changed overtime scheduling is not inconsistent with a finding that it also changed other aspects of scheduling as well. Summary judgment will be granted:

> If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law.... [N.J.A.C. 19:14-4.8(d)]

But summary judgment is to be granted with extreme caution. The moving papers must be considered in the light most favorable to the opposing party, all doubts must be resolved against the movant, and the summary judgment procedure may not be used as a substitute for plenary trial. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

For more than 18 years, the NJSP and the VRU were considered separate work units for purposes of overtime allocation. If there were temporary vacancies due to absences at the VRU, the employer would fill those vacancies by having VRU employees work overtime. On September 13, 1990, effective October 6, 1990, the employer announced that all scheduling for the NJSP and the satellite units would be centralized at the NJSP. The charging party does not challenge the assignment of non-VRU correction officers to the VRU to fill temporary vacancies on a non-overtime basis. It contests only the employer's unilateral determination of

the method of selecting which employees will fill those vacancies on an overtime basis. No material facts about that limited issue are in dispute.

N.J.S.A. 34:13A-5.3 requires an employer to negotiate in good faith before changing a mandatorily negotiable term and condition of employment.[4/] N.J.S.A. 34:13A-5.4(a)(5) makes the failure to negotiate an unfair practice.

The allocation of overtime among qualified employees is mandatorily negotiable. N.J. Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd App. Div. Dkt. No. A-4781-86T8 (5/25/88); see also City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982) and cases cited at 8 NJPER 450.[5/] The employer admits that it did not negotiate before making this change, but it claims that the contract does not prohibit it from reorganizing the work units. We agree, but neither does the contract explicitly grant it the right to reorganize work units for purposes of overtime allocation. That issue is mandatorily negotiable and the contract contains no clear and unmistakable waiver of the charging party's right to negotiate over that subject. Elmwood Pk. Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER

4/ N.J.S.A. 34:13A-5.3 provides, in part, that "[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

5/ We do not address the employer's assignment of employees on a non-overtime basis to fill temporary vacancies created by absences. The charging party does not challenge those assignments.

366 (¶16129 1985); see also Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978). The contract specifies that overtime work shall be shared by all employees in an occupational classification within any work unit without discrimination. It does not define work unit and there is no dispute that the VRU has been a separate work unit for these purposes for more than 18 years. We find that the employer failed to negotiate before changing a mandatorily negotiable term and condition of employment. The charging party is therefore entitled to summary judgment as a matter of law.

We now address the recommended remedy and the cross-exceptions. In its brief supporting its cross-motion, the charging party requested that we order compensation to any VRU custody staff who lost overtime opportunities. Although the unfair practice charge did not specifically request monetary compensation, our rules do not require a specific request. Nevertheless, under the particular circumstances of this case, we exercise our discretion not to order backpay.

Although overtime opportunities were denied unit employees assigned to the VRU, those opportunities were instead given to other unit employees who presumably were compensated at overtime rates. In addition, even the custody line staff at VRU worked some overtime as part of the centralized overtime system. Under these facts, we believe the purposes of the Act would not be served by forcing the

employer to pay twice at premium rates for work performed by unit employees. Instead, we order the employer to immediately negotiate in good faith over the allocation of overtime at the VRU. Should the employer fail to satisfy its negotiations obligation within 60 days, it must restore the status quo by allocating overtime opportunities at the VRU to custody line staff permanently assigned to the VRU as had been the practice before October 6, 1990.

ORDER

The State of New Jersey (Department of Corrections) is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, particularly by failing to negotiate with the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (Local 105) before ending the use of VRU as a separate work unit for purposes of overtime allocation.

2. Refusing to negotiate in good faith with Local 105 concerning terms and conditions of employment of employees in its unit, particularly by failing to negotiate with Local 105 before ending the use of VRU as a separate work unit for purposes of overtime allocation.

B. Take this action:

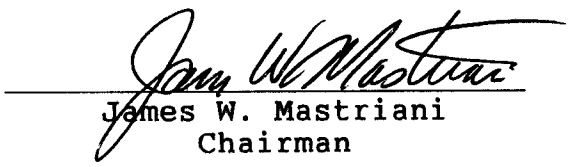
1. Immediately negotiate in good faith with Local 105 over the allocation of overtime at VRU.

2. If, after 60 days, the employer has not fulfilled its negotiations obligation, restore the status quo by allocating overtime opportunities which arise at the VRU to custody line staff permanently assigned to the VRU as had been the practice before October 6, 1990.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and 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.

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

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Bertolino, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: August 20, 1992
Trenton, New Jersey
ISSUED: August 21, 1992

NOTICE TO EMPLOYEES

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by this Act, particularly by failing to negotiate with the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (Local 105) before ending the use of VRU as a separate work unit for purposes of overtime allocation.

WE WILL NOT refuse to negotiate in good faith with Local 105 concerning terms and conditions of employment of employees in its unit, particularly by failing to negotiate with Local 105 before ending the use of VRU as a separate work unit for purposes of overtime allocation.

WE WILL immediately negotiate in good faith with Local 105 over the allocation of overtime at VRU.

Docket No. CO-H-91-80

STATE OF NEW JERSEY
(DEPT. OF CORRECTIONS)

Dated: _____

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, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

H.E. NO. 91-42

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

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CO-H-91-80

STATE LAW ENFORCEMENT CONFERENCE OF THE NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION (PBA, LOCAL 105),

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission grant the Charging Party's Cross Motion for Summary Judgment and deny the Respondent's Motion for Partial Summary Judgment. The Hearing Examiner finds that the State of New Jersey, Department of Corrections, violated the New Jersey Employer-Employee Relations Act by unilaterally changing the manner in which overtime is allocated to correction officers assigned to the Vroom Readjustment Unit.

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.

H.E. NO. 91-42

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

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OF THE NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION (PBA, LOCAL 105),

Charging Party.

Appearances:

For the Respondent
Robert J. Del Tufo, Attorney General
(Stephan M. Schwartz, D.A.G.)

For the Charging Party
Zazzali, Zazzali, Fagella & Nowak, Attorneys
(Paul L. Kleinbaum, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION ON RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND CHARGING PARTY'S CROSS MOTION FOR SUMMARY JUDGMENT

On October 11, 1990, the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (Local 105)("Local 105" or "Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the State of New Jersey ("State"), Department of Corrections ("DOC"). Local 105 alleges that the DOC unilaterally

changed a term and condition of employment without prior negotiations in violation of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-5.4(a)(1) and (5).[1/]

In addition to filing the charge, Local 105 filed an Order to Show Cause with the Director of Unfair Practices seeking a temporary restraining order. On October 15, 1990, a hearing was conducted on the temporary restraints and Order to Show Cause. The Commission designee reserved decision and set the matter down for further hearing on October 29, 1990. On October 18, 1990, Local 105 withdrew its application for interim relief and requested that the Unfair Practice Charge proceed to Complaint.

On November 19, 1990, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 30, 1990, the State filed its Answer generally denying the allegations contained in the Unfair Practice Charge and denying that it has violated any provision of the Act. Pursuant to a request from the State, the hearing scheduled for February 21, 1991, was adjourned to permit the filing of the summary judgment motions. On March 13, 1991, the State filed its Motion for Partial Summary Judgment pursuant to

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1/ 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."

N.J.A.C. 19:14-4.8. On April 5, 1991, Local 105 filed its Brief in Opposition to the State's Motion and its Cross-Motion for Summary Judgment pursuant to the above-cited rule. On April 5, 1991, the motions were referred to the Hearing Examiner for disposition. The State did not file a response to Local 105's Cross-Motion.

It is well settled law in this State that in considering motions for summary judgment, all inferences are drawn against the moving party and in favor of the party opposing the motion. Additionally, in considering the instant motion(s) for summary judgment, no credibility determinations may be made. The motion must be denied if material factual issues exist. A motion for summary judgment must be granted with extreme caution, and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 117 N.J. Super 182 (App. Div. 1981); State of N.J., Dept. of Personnel, P.E.R.C. No. 89-67, 15 NJPER 76 (¶20031 1988), aff'd App. Div. Dkt. No. A-3465-88T5 (6/14/90), pet. for certif. den. S. Ct. Dkt. No. 32,331 (10/11/90); AFT Local 481 (Jackson), H.E. No. 87-9, 12 NJPER 628 (¶17237 1986), adopted P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986); Essex County Educational Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

However, the New Jersey Supreme Court established in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1974) that where the party opposing the motion does not submit any affidavits or documentation contradicting the moving party's affidavits or

documents, the moving party's facts may be considered as true, and there would necessarily be no material factual issue to adjudicate unless per chance, it was raised in the movant's pleadings. See also, In re City of Atlantic City, H.E. No. 86-36, 12 NJPER 160 (¶ 17064 1986), aff'd. P.E.R.C. No. 86-121, 12 NJPER 376 (¶ 17145 1986); In re CWA, Local 1037, AFL-CIO, H.E. No. 86-10, 11 NJPER 621 (¶ 16217 1985), adopted P.E.R.C. No. 86-78, 12 NJPER 91 (¶ 17032 1985). The Court in Judson held that:

> ...if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature...he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact. [Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. at 75.]

Upon application of the standard set forth above, and in reliance upon the record papers filed by the parties in this proceeding to date, I make the following:

FINDINGS OF FACT

1. On February 5, 1991, the parties attended a prehearing conference. The parties were unsuccessful in reaching an overall stipulation of fact, however, during the course of those discussions, the parties agreed on certain facts. The following represents those agreed-upon facts:

A. Local 105 and the State are parties to a collective negotiations agreement which runs from July 1, 1989 through June 30, 1992. Local 105 represents a unit of law enforcement officers employed by the State. Local 105 is one of the affiliate locals in the State Law Enforcement Unit and represents correction officers employed by the State at its correctional institutions throughout the state, including New Jersey State Prison (NJSP), the Vroom Readjustment Unit (VRU) and Jones Farm (the Farm).

B. The VRU opened in 1972 and correction officers work three (3) shifts. There is a senior officer and one officer who works in the storeroom. There are 17 posts in the VRU, not including the school officer or the storeroom officer, which are seven day a week posts. There is also one supervisor on each shift who is a sergeant and there is one supervising lieutenant in charge of the VRU custody staff.

C. Correction officers at VRU received their positions at that facility by job posting. Position vacancies are posted at NJSP, VRU and the Farm. Officers at the main facility and its satellites can request reassignments for jobs at each work site.

D. A memorandum dated September 13, 1990 (J-2) was issued by NJSP administrator Howard L. Beyer concerning scheduling. That memorandum was amended by the October 5, 1990 memorandum (J-3) from Gary J. Hilton, Assistant Commissioner, addressed to Beyer. The Hilton memorandum was transmitted to Chief Deputy Stanley Nunn, Director of Custody Operations, by memorandum dated October 10, 1990 (J-4).

2. For the past 18 years NJSP and VRU have maintained separate rules and procedures for filling temporary vacancies created by absences. Such vacancies were filled from within each institution with the effect that it would allow officers within that institution overtime opportunities when management determined overtime would be necessary.

3. On September 13, 1990, the DOC management, through NJSP administrator Howard L. Beyer, issued a memorandum (J-2)

advising a change in custody line staff scheduling at NJSP, VRU and the Farm. The effective date of this change was October 6, 1990. J-2 stated:

> Commencing Saturday, October 6, 1990, the Operations Unit at New Jersey State Prison--Main will be responsible for all custody line staff scheduling at the main facility as well as the satellite units.

4. On October 5, 1990, Gary J. Hilton sent the following memorandum (J-3) to Beyer:

> For a trial period of thirty days, the scheduling procedures outlined in your memorandum of 9/13/90 [J-2]...are amended as described below:
>
> 1. On the first shift, no more than five senior correction officers from New Jersey State Prison shall be assigned to the Vroom Readjustment Unit (VRU) to fill manpower shortages. If there are more than five vacancies at the VRU during the first shift, the additional vacancies shall be staffed with officers who are regularly assigned to the VRU.
>
> 2. On the second shift, no more than four senior correction officers from New Jersey State Prison shall be assigned to the Vroom Readjustment Unit (VRU) to fill manpower shortages. If there are more than four vacancies at the VRU during the second shift, the additional vacancies shall be staffed with officers who are regularly assigned to the VRU.
>
> 3. On the third shift, no more than three senior correction officers from New Jersey State Prison shall be assigned to the Vroom Readjustment Unit (VRU) to fill manpower shortages. If there are more than three vacancies at the VRU during the third shift, the additional vacancies shall be staffed with officers who are regularly assigned to the VRU.
>
> In the event of a disturbance or other special details which require personnel above the requirements of the post trick for the VRU, the Department may elect to staff these positions as it deems appropriate.

> The above-listed amendments shall be reviewed and evaluated at the end of the 30-day period in order to determine if these provisions meet the institution's operational needs.

5. The change in custody line staff scheduling was not negotiated with the State Law Enforcement Unit or Local 105. The State's implementation of J-2 and J-3 was done unilaterally.

The following paragraphs, 6 through 9, were offered by Local 105 in its Cross-Motion for Summary Judgment. The State submitted no documentation or affidavits contradicting the PBA's facts. Accordingly, I consider them as true. AFT Local 481, 12 NJPER at 629.

6. Until October 6, 1990, scheduling was done by VRU staff for VRU scheduling needs, including overtime. VRU maintained its own regular day off ("RDO"), voluntary and mandatory overtime lists. This practice has been in effect since 1972 when the VRU opened. Correction officers were not required to call in to be placed on the list, placement was done automatically. If an officer was needed for overtime, the VRU staff would consult the list in accordance with procedures, beginning with the RDO list. Overtime needs at the VRU would be filled by VRU custody staff. A similar procedure was followed at NJSP for correction officers assigned to that facility.

7. With the issuance of J-2 and J-3, overtime scheduling for the VRU was no longer done there, but rather at the NJSP

Operations Unit.[2/] Correction officers at VRU now must call the NJSP Operations Unit in accordance with an established time schedule. The directive in J-3 did not terminate at the end of the 30-day trial period referenced therein and continues in effect.

8. The RDO, voluntary and mandatory overtime lists for the VRU were eliminated. VRU custody staff seeking an overtime assignment are pooled with over 700 other custody employees at NJSP and the Farm on a single overtime list. Thus, when an overtime opportunity exists at the VRU, it might be filled by an officer who is regularly assigned to NJSP or the Farm and not by an officer assigned to the VRU.

9. Reductions in force did not precipitate the DOC's change in overtime scheduling procedures. Local 105 does not dispute the DOC's right to schedule in emergency situations.

10. For the 18 years prior to the issuance of J-2 and J-3, the VRU, NJSP and Farm were considered separate work units for purposes of overtime.[3/]

2/ Local 105 does not challenge the DOC's right to assign who does the scheduling or where it is done.

3/ This is apparent from a reading of the State's brief, p. 8. Additionally, this fact was confirmed during a telephone conference call on May 7, 1991, among counsel for the parties and the Hearing Examiner.

11. Local 105 does not challenge DOC's right to assign a pool of reserve ("floating") correction officers who may be assigned to the VRU on a non-overtime basis.[4/]

ANALYSIS

The State argues that the decision by DOC to reconstitute the work unit at New Jersey State Prison to include the VRU for purposes of temporary reassignment of personnel to fill vacancies created by absences is within its managerial prerogative and, therefore, is non-negotiable. The State asserts that the focus of the dispute concerns management's right to reassign or transfer public employees.

It is well established within this State that a public employer has the right to configure its organization by abolishing positions, reducing its work force and assigning employees. In re IFPTE Local 195 v. State of N.J., 88 N.J. 393 (1982); Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981); Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); Ramapo-Indian Hills Ed. Assn. v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980); Maywood Bd. of Ed., 168 N.J. Super. 45, certif. den. 81 N.J. 292 (1974). An employer's

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4/ I raised the issue of the status of these "floating" correction officers with the parties in a telephone conference call on May 23, 1991. Local 105 and the State confirmed this fact in letters dated May 24 and May 29, 1991, respectively.

decision to transfer employees or reassign employees to meet operational needs is also non-negotiable. Ridgefield Park; Piscataway Tp. Bd. of Ed., H.E. No. 87-63, 13 NJPER 419 (¶18163 1987), adopted P.E.R.C. No. 88-42, 13 NJPER 823 (¶18317 1987).

Local 105 sets forth its position by stating what it contends is not at issue in this case. Local 105 does not challenge the State's right to abolish positions, reduce the workforce, transfer, assign or reassign employees to meet operational needs. Local 105 does not challenge the State's practice of assigning or reassigning its pool of reserve correction officers to fill temporarily vacated positions, nor does it challenge the State's right to assign employees in emergency situations. Local 105 is not challenging the fact that the assignment of overtime was removed from the VRU and made the responsibility of NJSP's Operations Unit. Local 105 contends that the State violated the Act when it unilaterally eliminated the overtime lists used by the VRU, comprising only VRU correction officers, to work overtime at the VRU in favor of master overtime lists comprised of correction officers from NJSP, VRU and the Farm.

In City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982) the Commission reviewed the issue of allocation of overtime work. Long Branch police officers had no limitation on the number of overtime hours any individual employee could work. The public safety director changed that overtime system by limiting the number of weekly overtime hours a police officer could work. The

parties' collective agreement was silent with respect to overtime allocation, however, there was an overtime clause which provided that overtime would be paid at the rate of time and one-half to employees working more than 40 hours per week. Id. at 448. After indicating that a public employer has a non-negotiable, managerial prerogative to determine the minimum staffing levels necessary for the efficient delivery of governmental services, the Commission addressed the issue of which employees could work the overtime. The Commission stated the following:

> Generally, the allocation of overtime among unit employees is a mandatorily negotiable subject. The determination of who works overtime relates directly to the hours employees work and the compensation they earn. Thus, an employer must negotiate over such questions, for example, as whether overtime will generally be distributed according to seniority, according to a schedule, or according to who volunteers [citations and footnote omitted].
>
> Even though the allocation of overtime is generally a negotiable subject, there are still specific limitations on negotiability designed to ensure that the employer will obtain a sufficient number of qualified employees to perform the necessary overtime tasks. Thus, if an urgent situation necessitates that the police department meet its manpower needs without instant compliance with a negotiated allocation system, it has the reserved right to make the necessary assignments to protect the public interest. In re Boro of Pittman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981). Also, if an employer needs a particular employee with special skills and qualifications to perform a specific overtime task, it may order that individual to work the overtime and thus ensure that its needs are met. In re IFPTE Local 195. [Citation omitted.] In addition, an employer may reject an employee's request to work overtime, despite a negotiated system distributing overtime on a voluntary basis, if that employee is unqualified or physically incapable of doing the required work. In sum, the allocation of overtime is a mandatorily

> negotiable subject of negotiations, provided that the employer remains assured that it will be able to obtain enough qualified and physically sound employees to perform the tasks at hand. [Id. at 450]

The Commission again addressed the question of overtime allocation in N.J. Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd App. Div. Dkt. No. A-4781-86T8 (5/25/88). In that case several unions representing N.J. Sports and Exposition Authority employees filed grievances alleging that the Authority violated the negotiated agreements by depriving certain of its employees weekend work hours at overtime rates and, instead, bringing in other part-time or casual employees to work on the weekends at straight time rates. The Commission found the grievances to present issues which

> ...the Supreme Court has located at the heart of the collective negotiations process: rates of pay, hours of work and work schedules. [Woodstown-Pilesgrove Reg. School Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Assn., 81 N.J. 582 (1980); State v. State Supervisory Employees Assn., 78 N.J. 54 (1978); Englewood Bd. of Ed. v. Englewood Teachers Assn., 64 N.J. 1 (1973); Burlington Cty. College Faculty Assn. v. Bd. of Trustees., 64 N.J. 9 (1973).] In sum, the central equation of the negotiations process is at issue: how many hours or days will employees work and how much compensation will they receive in return? [Id. at 495]

The Commission went on to state:

> The Authority retains the sole right to determine when its services will be offered, what work must be done, how many employees are needed to staff its operation, and what qualifications an employee must possess in order to work. The Authority's reliance on Long Branch and Harrison [P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1982)] is misplaced because there we held that the employer could determine that no extra hours of work would be required while here the Authority has

> determined in its sole discretion that some extra hours of weekend work by the same number of employees as had always done this work must be done. The first question is which employees will work these extra work hours and here there is no dispute that the regular full-time employees who normally perform such tasks are fully qualified to work these weekend hours as well. [Footnote excluded.] The second question is what rate employees will be paid for working these weekend hours. That question is wholly economic and indeed is what triggered these grievances. The Authority may have legitimate budgetary concerns about that question, but such concerns do not make this rate of pay issue non-negotiable in the abstract. Woodstown-Pilesgrove at 594; Piscataway Tp. Bd. of Ed. v. Piscataway Principals Assn., 164 N.J. Super. 98, 101 (App. Div. 1978); Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd App. Div. Dkt. No. A-3651-78 (7/1/80); Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83); Borough of Park Ridge, P.E.R.C. No. 87-55, 12 NJPER 851 (¶17328 1986); State of N.J., P.E.R.C. No. 86-139, 12 NJPER 484 (¶17185 1986); Mooretown Tp., P.E.R.C. No. 84-122, 10 NJPER 268 (¶15132 1984). [Emphasis in original.] [Id. at 495-496.]

In Tp. of Bound Brook, P.E.R.C. No. 88-30, 13 NJPER 760 (¶18287 1987), the Township reassigned a detective to work at the desk on Thanksgiving, 1986. The temporary reassignment was made because a dispatcher and a senior patrol officer who would normally work at the desk were scheduled to be on leave. The majority representative, PBA Local No. 148, filed a grievance alleging that the job of desk officer should have been offered as an overtime assignment in accordance with its collective agreement. Ibid. The Township asserted that it had a managerial prerogative to set staffing requirements and to reassign officers to meet those needs.

PBA Local 148 argued that the grievance was arbitrable because the reassignment affected an opportunity to work overtime. It contended that when the Township decided that the desk should be covered on Thanksgiving, it had already made its staffing determination and should have followed the procedure for allocating overtime opportunities. Id. at 761. The Commission held as follows:

> Based upon the facts of this case, we find this grievance to be arbitrable. The Township had a managerial prerogative to determine which posts should be staffed on Thanksgiving. It exercised that prerogative by scheduling coverage of the desk. [Footnote omitted.] Once the Township determined that this post should be covered, it could legally agree that a vacancy caused by leaves of absence be temporarily filled by a qualified officer selected pursuant to a negotiated procedure for allocating overtime work. See Middletown. There is no dispute as to the qualifications of the pool of officers who could have covered the desk, nor is there any question of the Township needing to fill the vacancy on an emergent basis. On balance we find that the grievance relates to the mandatorily negotiable issue of the allocation of overtime opportunities [Citation omitted.] [Id.]

Local 105 cites Tp. of Teaneck, P.E.R.C. No. 89-12, 14 NJPER 535 (¶19228 1988) in support of its position. The State relies upon Tp. of Maplewood, P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985), to stand for the proposition that the reassignment of employees and resultant reduction of overtime compensation is a non-negotiable managerial prerogative. In Teaneck, PBA Local 215 filed grievances contesting aspects of a revised overtime policy issued by the chief of police. The Township's new overtime policy had the effect of automatically assigning overtime from 2 a.m. to 4 a.m. to the two officers working in the street crime unit whenever

there existed a staffing shortage on the 12 midnight to 8 a.m. shift. The street crime officers' shift was 6 p.m. to 2 a.m. The Township argued that the "loss" of overtime to off-going 4 p.m. to 12 midnight officers was attributable to the non-negotiable assignment and staffing decision to hold over street crime officers from 2 a.m. to 4 a.m. The Township, as does the State in the instant case, relied upon Maplewood in support of its position. Id. at 537. The Commission stated the following:

> In Maplewood, however, the "loss" of overtime arose because of the consolidation of police, fire and dispatching functions and an overall loss of overtime. A redistribution of functions produced a redistribution of overtime. Here, however, the "loss" of overtime is caused by a reallocation of the same amount of overtime to street crime officers. Thus, the allocation of overtime among qualified employees is the issue, not the reduction of actual numbers of hours of overtime. The allocation of overtime is a mandatorily negotiable subject. See City of Long Branch.... [Tp. of Teaneck, at 537.]

The sole issue here is DOC's change in the manner in which it identifies the employees who will be offered overtime at the VRU. This change was not the result of a reduction in force, elimination of position, or the consolidation or reorganization of the organizational structure. Nor does this case involve the establishment of the minimum staffing level or the determination as to whether or not to schedule overtime. This case does not involve the DOC's right to determine the overall size and composition of its custody line staff and the deployment or assignment of that staff. This case pertains to the circumstance where the DOC has determined, in its sole discretion, that certain posts must be staffed by way of

an overtime assignment and who, among equally qualified correction officers, will receive that overtime assignment.

Local 105 challenges the State's right to unilaterally change the procedure for assigning overtime to unit employees. The State does not contend that the change was made in order to provide it with a sufficient number of qualified employees to perform the necessary overtime tasks, or that it needed particular employees with special skills. Thus, the facts establish that the dispute in this case involves the allocation of overtime among qualified custody line staff at NJSP, the VRU and the Farm. The above-cited cases establish that the allocation of overtime among qualified employees is a mandatorily negotiable subject.

The State argues that in the event the issue in this case is found to be negotiable, "...there must be consideration of whether the agreement (J-1) already covers the substance or procedures for filling temporary vacancies created by unscheduled absences." State brief at p. 14. The State goes on to indicate that "[t]he subject matter of the scheduling of overtime and reassignments to fill temporary vacancies once it has been determined that overtime work would be required are both matters of contract."[5/] State brief at p. 14. The State asserts that once

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5/ The State notes in its brief that the procedures for temporary reassignment to fill vacancies are contained in Appendix 1 of J-1 "for information purposes" only, since they have been acknowledged to be non-negotiable. I have found that the issue in this case does not involve reassignment. Accordingly, I address only the overtime allocation issue.

management has made the decision to make overtime work available, Article 30 of the agreement (J-1) states that "[t]he opportunity to work scheduled overtime shall be extended to each employee on a rotational basis provided the employee is capable of performing the work except where the overtime requirement is caused by an emergency situation." However, Article 30, Section A, also provides: "It is agreed that overtime work shall be shared by all employees in an occupational classification within any work unit without discrimination." (Emphasis added) The State concedes for purposes of its motion only that for the past 18 years (until October 6, 1990) the work unit for the scheduling of overtime was NJSP, the VRU and the Farm, individually. The above-cited language contained in the agreement, Article 30, Section A, demonstrates that the parties have already negotiated upon the manner in which overtime will be allocated among equally qualified employees, i.e. "...overtime work shall be shared by all employees in an occupational classification within any work unit...."

The Commission has authority to interpret the parties' collective agreement where the unfair practice charge alleges that the employer has unilaterally altered a term and condition of employment established by the agreement. Tp. of Jackson, P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1982). Thus, I find that the collective agreement sets the condition of employment applicable to the manner in which overtime will be allocated among custody line staff. Since the VRU is a separate work unit, overtime

opportunities arising there must be shared among employees in the same occupational classification assigned to the VRU, as required by the agreement.6/

The charge also alleged that correction officers permanently assigned to the VRU do not receive proper training when they are assigned to NJSP to work overtime, and, likewise, NJSP correction officers are not trained in the procedures used at the VRU when they receive an overtime assignment at that location. The State's Motion for Partial Summary Judgment specifically excluded this training issue. Local 105's Cross-Motion for Summary Judgment did not address this issue. In light of this decision, the allegations regarding training are no longer at issue and need not be addressed here.

On the basis of the particular facts in this matter, I make the following:

CONCLUSIONS OF LAW

1. The State of New Jersey, Department of Corrections, violated Section 5.4(a)(5) and, derivatively, (1) by unilaterally

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6/ Since I find that the parties have already negotiated with respect to this issue and memorialized their understanding in the collective agreement, I need not address the parties' dispute with regard to whether a past practice exists. See Upper Pittsgrove Tp. Bd. of Ed., H.E. No. 89-44, 15 NJPER 429, 434 (¶201799 1989), adopted P.E.R.C. No. 90-34, 15 NJPER 621 (¶20259 1989); New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), mot. for recon. den. 4 NJPER 156 (¶4073 1978).

changing the overtime allocation procedure set forth in the parties' collective agreement.

2. The Charging Party's Cross-Motion for Summary Judgment is granted.

3. The Respondent's Motion for Partial Summary Judgment is denied.

RECOMMENDED ORDER

I recommend that the Commission **ORDER**:

A. That the State of New Jersey, Department of Corrections cease and desist from:

1. Unilaterally changing the overtime allocation system established under the collective agreement, specifically as it pertains to the VRU.

2. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by unilaterally changing the overtime allocation procedure used at the VRU.

B. That the State take the following affirmative action:

1. Restore the status quo ante by allocating overtime opportunities which arise at the VRU to custody line staff permanently assigned to the VRU as had been the practice prior to

October 6, 1990.[7/]

2. At the appropriate time, negotiate with the employee representative concerning overtime allocation prior to implementation of any change in the procedure.

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 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.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.[8/]

Stuart Reichman
Hearing Examiner

Dated: May 31, 1991
Trenton, New Jersey

7/ The record contains no facts pertaining to the issue of payment for employees who may have lost overtime opportunities due to the change in the overtime allocation procedure and the Charging Party makes no request for a retroactive monetary adjustment in its unfair practice charge. Consequently, I make no recommendation with respect to a monetary adjustment for employees or whether such adjustment is appropriate.

8/ Pursuant to N.J.A.C. 19:14-4.8(e), a decision on a Motion for Summary Judgment which resolves the complaint in its entirety may be appealled to the Commission in accordance with N.J.A.C. 19:14-7.3(a).

RECOMMENDED POSTING - APPENDIX 'A'

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 unilaterally change the overtime allocation system established under the collective agreement, specifically as it pertains to the VRU.

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by unilaterally changing the overtime allocation procedure used at the VRU.

WE WILL restore the status quo ante by allocating overtime opportunities which arise at the VRU to correction officers permanently assigned to the VRU as had been the practice prior to October 6, 1990.

WE WILL at the appropriate time, negotiate with the employee representative concerning overtime allocation prior to implementation of any change in the procedure.

Docket No. CO-H-91-80 State of New Jersey (Dept. of Corrections)
(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, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.