

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BYRAM,

Respondent,

Docket No. CO-79-287-1

-and-

PBA LOCAL 138, BYRAM TOWNSHIP,

Charging Party.

SYNOPSIS

In an unfair practice decision, the Chairman dismisses a Complaint in its entirety. The charge alleged that the Township violated the Act by altering an existing practice which had permitted PBA representatives to attend negotiating sessions and other proceedings while on active duty. A sergeant, who was acting chief, and a patrolman had both received letters regarding their attendance at a meeting 20 miles from their town while on duty. The Hearing Examiner found that there was no established practice which permitted employees to attend such proceedings while on duty and that, in any event, attendance at a court session 20 miles out of town is not analagous to attendance at a negotiating session. Noting particularly the absence of exceptions, the Chairman adopted the findings of fact, conclusions of law, and recommended order of the Hearing Examiner.

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Appearances:

For the Respondent, Mr. J. Peter Braun

For the Charging Party, Osterweil, Wind & Loccke, Esqs.
(Manuel A. Correia, of Counsel)

DECISION AND ORDER

On April 18, 1979, an Unfair Practice Charge was filed by PBA Local 138, Byram Township ("PBA") with the Public Employment Relations Commission alleging that the Township of Byram ("Township") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the PBA alleged that the Township violated the Act by altering an existing practice which permitted PBA representatives to attend negotiating sessions and other types of proceedings involving contract negotiations while on active duty. This alleged change is claimed to constitute a violation of N.J.S.A. 34:13A-5.4 (a)(1), (2), (3), (4), (5) and (7).

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 5, 1979. A hearing

was held before Commission Hearing Examiner Joan Kane Josephson on October 3, 1979, at which time the parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. The parties filed letter memoranda in lieu of brief by November 5, 1979. Thereafter, on April 3, 1980, the Hearing Examiner issued her Recommended Report and Decision, H.E. No. 80-38, 6 NJPER ____ (¶ ____ 1980), a copy of which is attached to this Decision and Order and made a part hereof. The report was served upon the parties and the case was transferred to the Commission. N.J.A.C. 19:14-7.1. Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. N.J.A.C. 19:14-7.3 provides, in part, that any exception which is not specifically urged shall be deemed to have been waived.

In accordance with N.J.S.A. 34:13A-6(f), the Commission has delegated to the undersigned the authority to render decisions on behalf of the Commission in unfair practice cases where exceptions to Hearing Examiners' Recommended Reports and Decisions have not been filed.

The incident which gave rise to this charge stemmed from the attendance on February 23, 1979 of two PBA negotiating committee members at a hearing on a motion filed by the PBA against the Township in Superior Court in Morristown, New Jersey while these officers were on duty. One officer, a sergeant, was the acting chief that day and he received a letter of reprimand for neglect of duty from the Township administrator for attending this hearing. The other officer, a patrolman, although receiving no formal disciplinary

action, was advised that his attendance indicated a lack of sound judgment. Letters reflecting these statements were placed in the personnel folders of the two employees. Furthermore, the administrator issued a directive on March 2, 1979 stating that members of the police department would not be permitted to attend negotiating sessions, court hearings, and other matters concerning the police contract while on active duty.

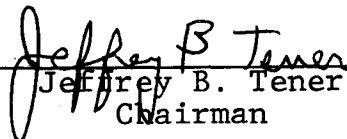
The Hearing Examiner found, and the record supports this finding, that there was no established practice which permitted PBA representatives to attend negotiating sessions and other related proceedings while on duty. She also found that, even if there had been a policy under which police officers had been allowed to attend negotiating sessions while on duty without obtaining prior permission, attendance at a court session 20 miles out of town is not analagous. Accordingly, she recommended dismissal of the alleged violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). She also recommended the dismissal of the alleged violation of N.J.S.A. 34:13A-5.4(a)(2, (3), (4) and (7), noting that no evidence had been introduced regarding these subsections. Therefore, she recommended that the Complaint be dismissed in its entirety.

The undersigned has reviewed the record and finds that the Hearing Examiner's findings of fact and legal conclusions are amply supported by the evidence in the record.

ORDER

Based upon the above, IT IS HEREBY ORDERED that the Complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
May 7, 1980

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

In the Matter of

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Respondent,

-and-

Docket No. CO-79-287-1

PBA LOCAL 138, BYRAM TOWNSHIP,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss an unfair practice charge filed by the PBA alleging that Byram Township committed unfair practices when it reprimanded officers for attending an out of town court hearing concerning PBA business while on duty and issued a directive concerning future attendance at PBA related matters while on duty. The Hearing Examiner did not find that there had been mutual assent to attend any such PBA related matters while on duty and therefore did not find that a past practice had been changed.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Appearances:

For the Respondent
Mr. J. Peter Braun

For the Charging Party
Osterweil, Wind & Loccke, Esqs.
(Manuel A. Correia, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On April 18, 1979, PBA Local 138, Byram Township ("PBA" or "Charging Party") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging the Township of Byram ("Township" or "Respondent") had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq. Specifically, the PBA alleges that the Township altered a standing practice of allowing police department negotiating representatives to attend negotiating sessions and other types of proceedings concerning police contract negotiations while on active duty in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7). ^{1/}

^{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; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; (4) discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act;

(continued)

It appearing to the Director of Unfair Practices that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 5, 1979. Pursuant to the Complaint and Notice of Hearing, a hearing was held on October 3, 1979, in Newark, New Jersey, at which time all parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The parties filed letter memoranda in lieu of briefs by November 5, 1979. Transcripts were received on November 14, 1979.

An Unfair Practice Charge having been filed with the Commission, a question concerning allegations of the Act 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.

Upon the entire record, the Hearing Examiner makes the following:

Findings of Fact

1. The Township of Byram is a public employer within the meaning of the Act and is subject to its provisions.
 2. PBA Local 138, Byram Township is a public employee representative within the meaning of the Act and is subject to its provisions and is the majority representative of all police department members, excluding the chief and lieutenant (vacant position) employed by the Township.
 3. There are 11 police officers employed by the Township: one chief, one sergeant, one detective and eight officers. The eight officers work rotating eight and ten-hour shifts; the others do not. The sergeant acts as chief in the chief's absence.
 4. The PBA and the Township have negotiated agreements between the parties for a number of years through their respective negotiating teams. Meetings have been held in the municipal building at mutually agreeable dates and times.
 5. At times police officer negotiating team members have attended sessions while on duty (R-6 in evid.) without receiving approval to attend negotiating sessions while on duty (Tr. 15 and 87). Officers at times attended sessions
- 1/ (continued) (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."

in uniform and remained in radio communication during sessions (Tr. 15). ^{2/}

6. The Mayor, ^{3/} a Committeewoman ^{4/} and the Business Administrator, all of whom were involved in negotiations, were unaware that officers were attending sessions while on duty. ^{5/} The issue was never discussed in negotiations and the contract is silent on the matter.

7. On February 23, 1979, two police officer negotiating committee members attended a hearing on a motion filed by the PBA against the Township in the Superior Court of New Jersey in Morristown, New Jersey, while on duty. One of the officers, the sergeant, was acting chief on that day because the chief was in Arizona. Morristown is about 20 miles from Byram Township.

8. The sergeant, Sergeant Douglass Bell, received a letter of reprimand for neglect of duty from the Township Administrator. The other officer Patrolmen Bruce Bidgood received no formal disciplinary action because he attended the court session with permission of acting chief (Sergeant) Douglass Bell, but was advised by the Township Administrator that his attendance was unfounded and showed lack of sound judgment. The letters were placed in their respective personnel folders. The administrator also issued a directive on March 2, 1979, that no member of the police department would be allowed to attend "any negotiating session, court hearing, etc. concerning police contract while on active duty." (CP-6 in evid.) The directive provides exceptions can be granted with mutual consent of the chief and the Township Administrator.

The Issue

1. Did the Respondent violate the Act when it reprimanded the officers for attending the court hearing and set the policy for attendance of PBA related matters while on duty without negotiations?

^{2/} One of the officers who testified had been on the negotiating committee since 1975; another since 1978.

^{3/} Involved in negotiations since late 1976.

^{4/} Involved in negotiations since 1975 and police commissioner in 1977-78.

^{5/} In cross-examination Councilwoman Carol Jacobs testified that negotiations sessions with units of employees are never conducted during employees work hours, noting that negotiations with units that work 9 to 5 hours are always at night (Tr. 177).

Discussion and Analysis

The Respondent did not violate the Act when it reprimanded the officers for attending the court hearing of when it set the policy for attendance at PBA related matters while on duty.

Assuming arguendo a policy existed whereby police officers were allowed to attend negotiating sessions while on duty without obtaining prior permission to do so, I am not convinced that attendance at a court session 20 miles out of town is analogous to attending negotiating sessions in the municipal building. ^{6/}

The PBA argues that the letters of reprimand should be removed from the officers' files because the past practice of being allowed to attend such PBA related matters had been unilaterally changed. Since I do not find that such a past practice existed, I will not recommend to the Commission that the requested relief be ordered. ^{7/}

The PBA argues that the Administrator's directive of March 2, 1979, concerning PBA representatives attending collective negotiating sessions should be ordered rescinded because it violates a past practice which, while not an express provision of the contract, is a term and condition of employment that cannot be changed without negotiations.

In the absence of the inclusion of a term and condition of employment in a contract between parties, such a term and condition may be established by past practice between the parties ^{8/} and cannot be changed without negotiations. ^{9/}

^{6/} There was a prior court session on another PBA related matter that the PBA negotiating committee attended but no one was on duty (Tr. 67) and there was a negotiations session Sgt. Bell attended in Mt. Arlington, N. J., also while off duty.

^{7/} It is not argued that the discipline imposed, the letters of reprimand, did not follow the normal disciplinary procedure thereby violating the Township's negotiations obligation with the PBA, and I do not, therefore, pass on that aspect of the Township's conduct.

^{8/} See Hudson Cty. Board of Chosen Freeholders and Hudson Cty. PBA Local 5, P.E.R.C. No. 78-48, 4 NJPER 87 (114041 1978), affm'd App. Div. Docket No. A-244-77 (4/9/79). State of New Jersey v. Local 195, IFPTE and Local 518 SEIU, P.E.R.C. No. 80-7, 5 NJPER 299 (110161, 1979), appeal pending App. Div. Docket No. A-4601-78.

^{9/} N.J.S.A. 34:13A-5.3 provides in part:

"Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

I am not convinced that a practice between the parties was established that allowed PBA representatives to attend contract negotiations and other related proceedings while on duty. (compare findings of fact 5 and 6), and therefore do not recommend that the March 2, 1979, directive be rescinded because it violates the Township's negotiations obligations with the PBA. ^{10/}

No evidence was introduced as to the alleged violations of N.J.S.A. 34:13A-5.4(a)(2), (3), (4) or (7).

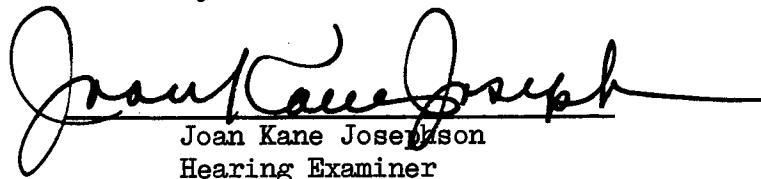
Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following

Conclusions of Law

The Respondent Township did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) or (7).

Recommended Order

The Respondent Township having not violated the Act, it is HEREBY ORDERED that the Complaint be dismissed in its entirety.


Joan Kane Joseph
Hearing Examiner

DATED: April 3, 1980
Trenton, New Jersey

^{10/} The Commission has found that procedures for employee representation by the majority representative is a mandatory subject of bargaining. In the Matter of Administrative Employees Association and Newark Board of Education, SN 80-22, 5 NJPER (¶ 1980). The Commission found a proposal that procedures for transfer of shop stewards was mandatorily negotiable. Work hours have been agreed to between the parties and is incorporated into their contract. Time off within work schedules whether it be for vacations (Byram Township Board of Education and Byram Township Education Association, 152 N.J. Super. 12 (App. Div. 1977) or to negotiate on behalf of unit members would therefore be mandatorily negotiable. I do not find it was negotiated or that it is a past practice that PBA representatives be granted such time off. The May 2 directive falls within the negotiated hours of work.