

H.E. No. 2005-9

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

In the Matter of

BOROUGH OF RUNNEMEDE,

Respondent,

-and-

Docket No. CO-2003-177

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, LOCAL 1034,

Charging Party.

SYNOPSIS

A Hearing Examiner finds that the employer violated 5.4a(1) and (5) of the Act when it removed two police clerk positions from the white-collar negotiations unit, increased those employees' salaries, and gave them an extra day off. The Hearing Examiner rejects the Respondent's defense that the police clerk titles lack community of interest with the other unit employees.

The Hearing Examiner recommends that the Commission order the employer to restore the police clerk positions to the white-collar unit and negotiate in good faith with the majority representative over the employees' terms and conditions of employment, including compensation and days off.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommended 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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,
Capehart and Scatchard, attorneys
(Alan Schmoll, of counsel)

For the Charging Party,
Weissman & Mintz, attorneys
(Rose Cipparulo, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 5, 2003, Communications Workers of America, Local 1034, AFL-CIO (CWA) filed an unfair practice charge against the Borough of Runnemede (Borough). The charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically, 5.4a(1), (2) and (5)^{1/}

^{1/} These subsections prohibit public employers, their representatives of 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 an employee organization; (5) Refusing to negotiate in good faith with the majority representative."

when, during negotiations with CWA, it unilaterally removed police clerks from the CWA's negotiations unit and gave those employees a pay increase and an extra day off.

On May 14, 2004, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Borough failed to file an answer to the complaint. On June 6, 2004, CWA filed a motion asking that the allegations in the complaint be deemed as true pursuant to N.J.A.C. 19:14-3.1. I granted CWA's motion and deemed the allegations as set forth in the complaint as true, but permitted the Borough to assert affirmative defenses to the complaint. The Borough argues that the police clerks must be removed from the unit because they do not share a community of interest with other unit employees.

At a hearing conducted on June 29, 2004, the parties examined witnesses and presented documentary evidence.^{2/} The parties filed post-hearing briefs by August 23, 2004. Based on the record in this matter, I make the following:

FINDINGS OF FACT

1. On April 22, 2002, CWA filed a representation petition seeking to represent the Borough's white-collar employees. The parties signed a Consent Agreement stipulating that a

^{2/} "C" refers to Commission exhibits received into evidence at the hearing in the instant matter. "CP" and "R" refer to Charging Party's exhibits and Respondent's exhibits, respectively, received into evidence at the hearing. The transcript of the hearing is referred to as "T."

negotiations unit consisting of all regularly employed white-collar employees is appropriate and consenting to an election among the unit employees. Beginning on May 30, 2002, a mail ballot election was conducted among the unit employees. Police clerks Hartmann and McGrath appeared on the employer's list of eligible unit employees, and did in fact participate in the election without challenge. A majority of the employees voted in favor of representation by CWA, and on June 28, 2002, CWA was certified as the majority representative for the Borough's white-collar employees.^{3/}

2. Following CWA's certification, the parties have been negotiating the first collective agreement for the white-collar unit. At the time of the hearing, negotiations had not yet produced an agreement. CWA's collective negotiations unit consists of clerical employees in the Borough's municipal offices, including the police clerks Hartmann and McGrath.

3. Police clerks work in the police department in the rear of the municipal building. Other white-collar unit employees work in front of the municipal building (T34-T35). The majority of the duties of the police clerks are clerical in nature (T49-T53). Specifically, their duties are as follows: scheduling crossing guards, tallying work hours for crossing

^{3/} Administrative notice is taken of the procedural history in the matter of Commission docket no. RO-2002-81.

guards and special police, tallying crimes for the Uniform Crime Reporting system by filling out the required forms and entering the data into the computer, assigning station house hours for juveniles, maintaining domestic violence, breathalyser, and juvenile offender processing files, compiling police officer statistics, processing paperwork regarding expungements, typing and filling out handicap placard applications, filling out solicitor's applications, and acting as secretaries to the police officers. In addition, police clerks are sometimes called upon to search female prisoners, including strip searches for contraband (R1; T26-T32).

4. Police clerks as well as the other white-collar employees work between the hours of 9 am and 4 pm. However, police clerks are on call 24 hours a day (T30-T32). Police clerks also wear uniforms (T31, T36).

5. On December 3, 2002, the Borough adopted an ordinance establishing the position of police clerk within the Runnemede Police Department (J-1). The ordinance did not change the job duties, assignments, or titles of the police clerks (T14).

6. Lorraine Hartmann and Patricia McGrath are the two individuals employed by the Borough as police clerks. Hartmann has been employed as a "police clerk 1" for 17 years (T13). McGrath has held the title "police clerk 2" for nine years (T59).

Hartmann and McGrath are the two employees the Borough removed from the CWA negotiations unit (T8).

As previously noted, the allegations in the complaint were deemed to be true based on the Borough's failure to answer.

Accordingly, the following facts are found to be true:

7. Hartmann and McGrath were given a day off on December 31, 2002 while all other CWA unit members worked on that day.

8. Hartmann and McGrath were given a 3% salary increase on December 31, 2002 while all other unit members received no increase.

Analysis

CWA maintains that the Borough violated subsections 5.4a(1), (2) and (5) of the Act by removing the police clerk positions from the negotiations unit and by unilaterally granting Hartmann and McGrath a pay increase and an extra day off.

The Borough argues it removed the police clerk positions from the negotiations unit because the police clerks do not share a community of interest with the other members of CWA's clerical unit (T12-T13). CWA maintains that the certified unit, including the police clerks, continues to be appropriate and a community of interest does exist among them.

* * *

N.J.S.A. 34:13A-5.3 empowers an employee representative to exclusively represent a collective negotiations unit of employees

for which it has either been certified by the Commission or voluntarily recognized by the public employer. Once an employee representative is certified or recognized, the public employer is legally obligated to negotiate in good faith over terms and conditions of the employees in the negotiations unit. N.J.S.A. 34:13A-5.3. An employer may not unilaterally remove employees from the established negotiations unit unless those employees are statutorily exempt from coverage under the Act. See, Passaic Cty. Reg. H.S. School Dist. No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976) (Employer did not violate the Act by removing confidential employees from the unit); Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987) (Board violated the Act when it removed employees from the unit based upon an incorrect claim of supervisory status); City of Newark, P.E.R.C. No. 88-24, 13 NJPER 727 (¶18274 1987) (City committed unfair practice by unilaterally removing police recruits from police unit).

In this matter, the Borough's claimed reason for removing the police clerks from the white-collar unit cannot serve as a defense to the charge. CWA was certified by the Commission for a negotiations unit of "all white-collar employees employed by the Borough." There was apparently no dispute about the inclusion of the police clerks when the unit was formed since the Borough consented to an election and stipulated in the Consent Agreement

that the unit is appropriate for collective negotiations. In addition, it permitted the police clerks to vote in the election without challenge as to their eligibility. The exclusions from the unit were only those required by the Act.

Once a unit is certified, there is presumptively a continued community of interest among the unit employees; the Commission has consistently refused to sever employees from an existing unit based solely upon a claimed lack of community of interest.

Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (1961 1971).

Moreover, in the absence of an agreement between the parties to modify the parameters of an existing unit, the composition of a negotiations unit must be left to the Commission to decide, generally through a representation or unit clarification proceeding. N.J.S.A. 34:13A-6; N.J.A.C. 19:11-1.2 and 1.5. As noted above, absent a valid claim of statutory exemption, neither party may unilaterally act to reform the scope of a negotiations unit it finds objectionable. Passaic Cty. Reg.

Finally, while the two police clerks may have some unique characteristics to their worklife, there are more similarities between the police clerk and the other clerks than there are differences. The police clerks have the same employer and contribute to the same governmental mission as the other white-collar employees. All work in the same building, share the same

work schedule, and perform primarily clerical and administrative work. While there are some differences regarding on-call hours, uniforms and prisoner duties, these facts are not sufficient to destroy the community of interest between the police clerks and the other unit employees. Therefore, the same community of interest exists today as when the unit was certified.

I find that the Borough violated 5.4a(1) and (5) of the Act when it unilaterally removed the police clerk positions from CWA's white-collar negotiations unit.

CWA maintains that the Borough violated the Act when it unilaterally increased the police clerks' salaries and gave them an extra day off. The Borough had an obligation to negotiate in good faith with the certified representative over terms and conditions of employment for all unit employees, including the police clerks. An employer cannot be said to be negotiating in good faith while at the same time unilaterally setting employees' wages and working conditions. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 49, 4 NJPER 334 (¶4163 1978). It is undisputed that compensation and time off are negotiable terms and conditions of employment. Woodstown-Pilesgrove Reg. Ed. Assn., 88 N.J. 582 (1980); Galloway; Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1974). Here, the Borough changed the police clerks' salaries and gave them a day off without negotiating with their majority representative, CWA.

Accordingly, I find that the Borough violated 5.4a(5) and derivatively, (a)(1) of the Act.

Finally, no evidence was offered which would support a finding of a violation of subsection 5.4a(2).

Based upon the record I make the following:

Conclusions of Law

1. The City violated subsection 5.4a(5) and derivatively 5.4a(1) of the Act by unilaterally removing the police clerks from the bargaining unit and failing to negotiate with the Association prior to increasing the salaries of the police clerks and giving them an extra day off.

2. The Borough did not violate subsection 5.4a(2) of the Act.

Recommended Order

I recommend that the Commission ORDER:

A. That the Borough cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by removing positions from the collective negotiations unit represented by CWA, and by unilaterally changing employees' salaries and granting extra days off.

Refusing to negotiate in good faith with CWA by removing positions from CWA's collective negotiations unit and

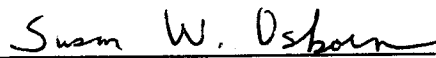
unilaterally changing employees' salaries and granting employees extra days off.

B. That the Borough take the following affirmative action:

1. 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.

2. Restore the police clerk positions to CWA's white-collar negotiations unit and negotiate in good faith with CWA over those employees' terms and conditions of employment, including compensation and days off.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Borough has taken to comply herewith.



Susan Wood Osborn
Hearing Examiner

Dated: March 1, 2005
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in

accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by March 14, 2005.



RECOMMENDED



NOTICE TO 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 cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by this Act, particularly by removing employee positions from the collective negotiations unit represented by CWA, and by unilaterally changing employees' salaries and granting them extra days off.

WE WILL restore the police clerk positions to CWA's white-collar negotiations unit and negotiate in good faith with CWA over those employees' terms and conditions of employment, including compensation and days off.

Docket No. CO-2003-177

Borough of Runnemede
(Public Employer)

Date: _____

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

