

H.E. NO. 2011-1

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

In the Matter of

TOWNSHIP OF NUTLEY,

Respondent,

-and-

Docket No. CO-2009-487

PBA LOCAL 33,

Charging Party.

SYNOPSIS

A Hearing Examiner, acting pursuant to authority delegated by the Commission, denies the Township's motion for summary judgment and the PBA's cross-motion for summary judgment. The Hearing Examiner concluded that the facts surrounding the Township's managerial prerogative defense were material and in dispute, requiring a hearing.

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Appearances:

For the Respondent, Ruderman & Glickman, attorneys
(John A. Boppert, on the brief)

For the Charging Party, Klatsky, Sciarrabone and
DeFillippo, attorneys
(David J. DeFillippo, on the brief)

**HEARING EXAMINER'S DECISION ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT**

The Commission referred cross-motions for summary judgment to me on August 4, 2010. N.J.A.C. 19:14-4.8(a). In the underlying unfair practice charge, PBA Local 33 (PBA) alleges that the Township of Nutley (Township) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally changed the work hours of the PBA's negotiations unit members and implemented that change during interest arbitration. I deny the Township's motion and the PBA's cross-motion for summary judgment.

The PBA filed its charge on June 25, 2009. On February 2, 2010, a Complaint issued on alleged violations of 5.4a(1) and (5).^{1/} On March 1, 2010, the Township filed its Answer, admitting the unilateral change, but asserting that it has a non-negotiable, managerial prerogative to unilaterally change work hours to enhance operational efficiency, provide better police coverage, and ensure the police department's ability to respond to sudden emergencies.

On March 31, 2010, the Township filed a motion for summary judgment. On May 21, 2010, the PBA filed a cross-motion for summary judgment. The parties have filed briefs and certifications in support of their cross-motions. The following facts appear.

The PBA represents the Township's patrol officers and sergeants. The parties' most recent collective negotiations agreement expired on December 31, 2008. On March 12, 2009, the PBA filed for interest arbitration. Article IX(1) of the

^{1/} These provisions 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."

agreement provides, in relevant part, that "[the] workday shall consist of eight and one half consecutive hours."

The police department is comprised of various divisions, bureaus and units, including the patrol division, detective bureau, and the administrative division. The patrol division is the largest division in the department and operates 24 hours a day, seven days a week.

Before June 1, 2009, patrol division officers worked one of the following shifts:

Day Shift - 7:45 a.m. to 4:15 p.m.
Afternoon Shift - 3:45 p.m. to 12:15 a.m.
Midnight Shift - 11:45 p.m. to 8:15 a.m.
or
12:00 a.m. to 8:30 a.m.^{2/}

The minimum staffing for each shift was five patrol officers, but, typically, eight patrol officers were assigned to each shift. During the 30-minute overlap of each shift, therefore, between ten and sixteen patrol officers would have been on duty.

Effective June 1, 2009, during the pendency of interest arbitration proceedings for a successor collective negotiations agreement, the Township changed the patrol division shifts, subdividing each into two squads (A and B) and staggering the

^{2/} The Chief certified that the original Midnight Shift began at 12:00 a.m. and ended at 8:30 a.m.. The PBA President certified that the Midnight Shift began at 11:45 a.m. and ended at 8:15 a.m..

start time of each squad by 45 minutes. The new shifts for patrol officers are as follows:

Day Shift:

Squad A - 7:15 a.m. to 3:45 p.m.

Squad B - 8:00 a.m. to 4:30 p.m.

Afternoon Shift:

Squad A - 3:15 p.m. to 11:45 a.m.

Squad B - 4:00 p.m. to 12:30 a.m.

Midnight Shift:

Squad A - 11:15 p.m. to 7:45 a.m.

Squad B - 12:00 a.m. to 8:30 a.m.

The five officer minimum staffing level remains in effect, with four officers assigned to each squad.

The new shifts for sergeants are as follows:

Day Shift - 7:00 a.m. to 3:30 p.m.

Afternoon Shift - 3:00 p.m. to 11:30 p.m.

Midnight Shift - 11:00 p.m. to 7:30 a.m.

Immediately prior to the change, the Township installed an Automatic Vehicular Locator system. The system displays the real-time location of each patrol vehicle. The system revealed that during shift changes - for up to one hour, three times per day - all patrol vehicles were at headquarters, creating a gap in coverage. The Chief certified that this left the Township "completely vulnerable, from a public safety perspective, in the event of an emergent need in the community requiring a patrol car response." The Chief also certified that he created the new, "minimally disruptive" shift schedule to ameliorate this coverage problem and enhance public safety.

According to the PBA, the 30-minute overlap in the original shifts resulted in as many as sixteen officers on duty during shift changes, preventing any gap in coverage. The PBA President, who has been employed as a patrol officer since 1997, certified that he is unaware of any instance where patrol officers were unavailable to respond to calls for service during shift changes.

On May 20, 2009, the PBA became aware of the pending schedule change and wrote to the Chief to demand its rescission. The PBA's letter asserted that work hours are mandatorily negotiable and that the Township is statutorily required to maintain the status quo during interest arbitration. On May 22, the Chief denied the PBA's rescission request and explained that the Department needed to alter the shifts to address coverage gaps during shift changes.

On June 25, 2009, the PBA filed its unfair practice charge.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

The PBA asserts that it is undisputed that the Chief changed the work hours of patrol officers and sergeants. The PBA argues that since work hours are mandatorily negotiable, the Township

violated the Act by unilaterally changing that term and condition of employment.

The Township argues that the Commission has found exceptions to the general rule of work schedule negotiability when an employer shows a particularized need to change a schedule. The Township further argues that the coverage gaps - when all patrol vehicles were at headquarters for up to one hour during shift changes - rise to the level of a particularized need that overcomes the general negotiations obligation over work schedules. The Township, therefore, argues that it has a non-negotiable, managerial prerogative to change the work hours and has not violated the Act.

The PBA responds that the Township has not demonstrated an operational need that would justify a change in work hours without negotiations because there was no gap in coverage - officers were always scheduled for duty.

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over their terms and conditions of employment. Section 5.3 also defines an employer's duty to negotiate before changing working conditions:

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

In addition, N.J.S.A. 34:13A-21 specifically prohibits changes in negotiable conditions of employment during the pendency of


proceedings before an interest arbitrator. See also Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000); Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 338 (1989). An employer may defeat this claim if it has a managerial prerogative to change or institute the working condition or if it shows that the majority representative has clearly and unequivocally waived its statutory right to negotiate. Passaic Cty. Reg. H.S. Dist. No. 1 Bd. of Ed., P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990).

The Township does not dispute that work hours are generally negotiable or that it changed the PBA's work hours, but proffered a managerial prerogative defense. The facts surrounding that defense - whether the grouping of officers at headquarters during shift changes resulted in gaps in coverage and whether those potential gaps rise to a particularized need that overcomes the general negotiability of work hours - are material facts in dispute. These factual disputes must be resolved to determine whether or not the Township has committed an unfair practice. Final resolution of this dispute requires the consideration of competing evidence, which cannot be accomplished by reviewing cross-motions for summary judgment. Accordingly, the Township's

motion and the PBA's cross-motion for summary judgment are denied.

ORDER

The Township's motion and the PBA's cross-motion for summary judgment are denied.



Melissa Ferrara
Hearing Examiner

DATED: August 5, 2010
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-4.8(e) this ruling may only be appealed to the Commission by special permission in accordance with N.J.A.C. 19:14-4.6.

Any request for special permission to appeal is due by August 18, 2010.