

H.E. No. 2014-2

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

In the Matter of

COUNTY OF ATLANTIC,

Respondent,

-and-

Docket No. CO-2009-276

FOP LODGE 34,

Charging Party.

**SYNOPSIS**

A Hearing Examiner recommends that the Commission dismiss a Complaint filed by FOP Lodge 34 against Atlantic County, alleging that the County unilaterally implemented a policy restricting the number of employees who may be off duty or on leave on any one shift, without negotiations, in violation of 5.4a(1) through (7). The Hearing Examiner finds that the the FOP did not establish a past practice by the County concerning the grant of leave without regard to categories of leave; that the parties had already negotiated terms pertaining to leave categories in their most recent agreement; and that the dispute concerns the interpretation of contractual provisions and should be addressed through the parties' negotiated grievance procedure.

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Appearances:

For the Respondent,  
Eric M. Bernstein & Associates, LLC  
(Eric M. Bernstein, of counsel)

For the Charging Party,  
Plotkin Associates, LLC  
(Myron Plotkin, consultant)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On February 9, 2009, FOP Lodge 34 filed an unfair practice charge against Atlantic County, alleging that the County unilaterally implemented a policy restricting the number of employees who may be off duty or on leave on any one shift, without negotiations, in alleged violation of 5.4a(1) through (7).

The FOP requests, inter alia, that the County rescind the policy, provide the FOP with the number of officers assigned to each shift, the minimum manning requirement for each shift and the total number of officers allowed off per shift; negotiate the

number of employees allowed off during each shift or any proposed modifications to those number; and an appropriate posting. The County asserts there has been no unilateral change in the terms and conditions of employment, therefore the within unfair practice charge must be dismissed.

On August 3, 2009, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the 5.4a(1) and (5) allegations. The Respondent filed an Answer on August 3, 2009. A hearing was conducted on December 16, 2009<sup>1/</sup>. Initial briefs were filed by February 26, 2010. Reply Briefs were filed by March 10, 2010 and the record closed on that date. I hereby make the following:

#### FINDINGS OF FACT

1. FOP Lodge #34 is the recognized majority representative of a bargaining unit consisting of all full-time correction officers employed at the Atlantic County Department of Public Safety Division of Adult Detention (also known as the jail) (J-1).

2. The County and FOP have been parties to a series of negotiated agreements, the most recent with effective dates from January 1, 2003 through December 31, 2006 (J-1). On or about August 3, 2006, the FOP and County commenced negotiations for a

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<sup>1/</sup> The transcript in this matter will be referred to as 1T. Commission exhibits are denoted "C-\_" and joint exhibits are denoted "J-\_".

successor agreement. The parties completed interest arbitration hearings on a successor agreement in early 2009. (C-1, C-2).

3. Under the parties' Agreement, leave benefits for correction officers include vacation, emergency vacation, compensatory time, emergency compensatory time, administrative leave, emergency administrative leave, and bereavement (1T15). Specifically, the Agreement provides in pertinent part:

Article VIII, Holidays

E. All Officers covered by this Agreement shall be entitled to 3 administrative days off annually.

F. . . . An Officer cannot call in for the use of administrative time at the beginning of their shift...An Officer may take 1 administrative day per year with as little as 12 hours notice to the management. Officers cannot be refused administrative time unless there is already 1 Officer from that shift utilizing administrative time.

4. Article VIII (F) has become known between the parties as emergency administrative leave, although that term is not used specifically in the agreement (1T57, 1T70; J-1). Emergency administrative leave is a past practice which has developed between the parties (1T74).

5. The Agreement continues:

Article IX, Vacation

E. Vacation Requests

3. At least 48 hours notice shall be provided for requests for each single day of vacation

and seniority shall resolve all conflicts. (Management shall post the minimum number of Officers needed for each shift. The Operations Unit will provide a list of how many Officers can be off for a shift.) . . . Vacation leave for requested single vacation days as provided herein, will be granted if said use of vacation leave does not violate the posted minimum number of Officers as described above. Each officer shall, however, be granted 1 vacation day annually without regard to minimum staffing. The preceding shall also be limited to 1 Officer per shift.

The language in Article IX E (3) has become known between the parties as the "emergency vacation" provision. (IT57)

6. The parties' grievance procedure terminates in binding arbitration. (J-1)

7. The Agreement also provides:

Article XIII, Management Rights  
C. Inherent management rights include, but shall not be limited to, such areas of discretion in policy as the functions and programs of the County, including but not limited to standards of service, the overall budget, utilization of technology, the organizational structure and selection and utilization of personnel."

8. Post orders are guidelines and instructions for the officers' daily routines in the facility; they are drafted by the administration, approved by the department head, director or warden, and implemented by operations staff (1T45; J-4)<sup>2/</sup>. The

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<sup>2/</sup> "Division Director-Jail" and "Warden" appear to be synonymous terms (1T29-1T30, 1T46).

most recent version was issued on July 31, 2002 by then-Warden Gary Merline and has not been revised or updated since. (1T42-1T46) The post orders specify that "current union contracts as well as local, state and federal regulations will take precedence over these orders in the event of a conflict between documents."

(J-4)

9. Shift one at the jail is 11:30 pm to 7:30 am, shift two is 7:30 am to 3:30 pm, and shift three is 3:30 pm until 11:30 pm.

(1T51)

10. The post orders provide in pertinent part:

Leave Granting Guidelines for Officer Requests

The following is the maximum number of officers permitted off for vacation, administrative and compensatory time: Shift #1 - 3, Shift #2 - 5, Shift #3 - 4.

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Max. number off can consist of any combination of vacation, administrative, compensatory, emergency vacation, or emergency administrative time as determined by the respective collective bargaining agreement....After the maximum # is reached, the following are to be approved. If no administrative days are included in the maximum number (emergency or regular) an administrative day must be approved. For approval purposes the administrative and emergency administrative days are the same. The only difference is that once a year an officer may request an administrative day with as little as 12 hour notice. Therefore, if the request is less than 48 hours but more

than 12 it is counted as the annual emergency administrative day. However, if someone has requested an emergency administrative day for that day, it would not be approved. (In other words emergency status does not require it to be added.)

Officers get one emergency vacation day per year that can be taken without regards to the established minimum staffing guidelines, but must be before 48 hrs. of the start of his/her shift (muster). Only one officer per shift is permitted to utilize an emergency vacation day.

Compensatory days are treated like vacation days. An officer may use "emergency" days for any reason.

The following are examples of the maximum number of officers who may be approved to be off at any given time. Shift 2 is utilized as an example.

11. The orders then depict a chart with four columns, each column containing one example of how leave can be allocated per shift. The first column, example 1, shows a total of 8 officers off - five for vacation (V), one for administrative (A), one for emergency vacation (EMV) and one for emergency administrative (EMA), in that order. The second column, example 2, shows a total of six officers off - two for vacation, one for administrative, two for vacation, and one for emergency vacation, in that order. The third column, example 3, shows a total of five officers off - one for vacation, one for compensatory leave - one for administrative, one for vacation, and one for emergency administrative leave, in that order. The fourth column, example

4 shows a total of six officers off - three for vacation, one for compensatory, one for vacation, and one for emergency administrative, in that order. (The emergency administrative leave in this example is asterisked, with the following explanation: "Only the time limit caused this to be an emergency.") The document also provides leave granting guidelines for sergeants, lieutenants, special occasions, and procedural steps for handling leave requests.

12. George Hebert has been an Atlantic County corrections officer for fifteen years, and the President of FOP Lodge 34 for approximately five years (1T13-1T14). As President, Hebert participated in all of the negotiations sessions for the most recent collective negotiations (1T14). There were no proposals by the County regarding leaves of absence for officers (1T15, 1T73).

13. According to Hebert, prior to December 2008, in order to request leave time, a corrections officer would fill out a slip with operations at least 48 hours prior to the requested leave, and await word on whether the request was approved or denied (1T16). There is no limitation on the form as to how many officers are allowed to take a certain category of leave (1T17). Hebert's understanding of the stated number of officers permitted time off on a given shift was that the officers could use "any time (they) want" (1T44).



14. Myron Plotkin is the FOP's labor consultant (IT3). James Ferguson is County Counsel (1T31). On January 22, 2007, in response to the FOP's request for a copy of the County's minimum manning guidelines during the most recent negotiations, Ferguson wrote to Plotkin, as follows.

Below are the minimum staffing guidelines for shifts 1, 2, and 3 as you requested at our last negotiation session on 01/09/07.

Shift 1 29 on duty, Maximum 3 off

Shift 2 55 on duty, Maximum 5 off (includes 2A).

Shift 3 35 on duty Maximum 4 off (C-1).

15. On October 31, 2006, Officer William Jacobo filed a request to use compensatory leave on November 19 and 21, 2006. The request for November 19 was denied. On November 12, 2006, Jacobo filed a grievance.

Warden Merline denied the grievance, saying:

Upon review of the matter with the Operations staff I found that your day was denied due to the facility already having the maximum amount of officers off on the day you requested....The facility has maximum mount [sic] of staff off to alleviate what would be out of control sticks if these maximums were not used. For all the reasons listed above your grievance is denied. (Emphasis in decision).<sup>3/</sup> (C-2)

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<sup>3/</sup> I infer that the term "stick" refers to a need for mandatory overtime.

16. After the grievance was denied at subsequent steps, the FOP filed for arbitration. The arbitration hearing took place on June 23, 2008 before arbitrator Martin Scheinman (C-2).

17. During the course of the arbitration hearing, Scheinman requested the County to supply a list of the correction officers who were off on November 19, 2006, and the number of correction officers assigned to the second shift who were off on approved leave for each day of the 2006 calendar year (1T22). The County provided the information (J-2). Hebert believed that Scheinman requested additional information because Scheinman wanted to know if there were "more officers off than the County was alluding to" (1T27). The document showed that up to 9 officers were off per shift in some cases (1T28).

18. On November 19, 2008, Scheinman issued an award on the grievance (C-2). Scheinman found in favor of the FOP, concluding that the County had failed to comply with clear and unmistakable language of the Article IX (E) (3) of the Agreement requiring it to post the minimum number of officers needed for each shift, and therefore could not justify its denial of leave to Jacobo based upon "an asserted but unpublished rule prescribing the number of officers allowed off for a shift."

(C-2)

19. Scheinman further found that the County had no consistent rule of how many officers are allowed off from a

shift. The record showed that only four officers of the asserted maximum of five had been approved to be off at the time Jacobo's request was denied, thus the claimed maximum number of five officers off would not have been exceeded by approving Jacobo's request. Scheinman found that the County's disregard of its "ostensible standard" rendered that standard "illusory" (C-2). Scheinman also found that the County's failure to post the minimum number of officers needed for each shift, coupled with its denial of the requested day based on an unpublished rule, exceeded its managerial discretion under the parties' agreement (C-2).

Scheinman ordered Jacobo to be paid for one day at time and a half (C-2).

20. On December 4, 2008, Captain Bondiskey, Operations Commander, issued an interoffice memorandum to all personnel entitled Leave Granting Guidelines (hereinafter known as the "December 2008 memo"), as follows:

The following is the maximum number of staff allowed off for vacation, administrative, compensatory, emergency vacation (Officers), emergency administrative (Officers, Sergeants & Lieutenants) \*See individual collective bargaining agreements, and Operations Post Orders, for specific circumstances with regard to "emergency" time.

OFFICERS

Shift #1

Vacation or Compensatory

Three (3) maximum

Administrative

One (1) maximum

Emergency Administrative

One (1) maximum

Emergency Vacation

One (1) maximum

Shift #2

Vacation or Compensatory

Five (5) maximum

Administrative

One (1) maximum

Emergency Administrative

One (1) maximum

Emergency Vacation

One (1) maximum

Shift #3

Vacation or Compensatory

Four (4) maximum

Administrative

One (1) maximum

Emergency Administrative

One (1) maximum

Emergency Vacation

One (1) maximum

The memorandum concluded:

\*\*Leave Granting Guidelines are currently under review." (J-3).

Thus, according to the memo, 6 officers below the rank of Sergeant total were permitted off on Shift 1, 8 on Shift 2, and 7 on Shift 3.

21. Prior to the December 2008 memo, Hebert had never seen a list where the number of officers allowed off was shown per category of specific leave (1T38). Hebert's understanding of the operation of the December 2008 memo is that "if nobody asked for an emergency day, administrative time, and nobody asked for an emergency vacation day and four people asked for an administrative day, only one person would be allowed off for that day. Three people would be denied. And they would not fulfill any of the obligations to have eight people off. There would only be one person off." (1T39)

22. Seeking to clarify the memorandum, Plotkin wrote to Ferguson on January 12, 2009 requesting minimum staffing information. Plotkin requested the number of slots/positions per shift available if 100% staffed, and the number of actual

employees assigned to each shift (C-1). On January 14, 2009, Ferguson responded, providing different minimum staffing information for shifts 1 through 3 than in the January 2007 letter - 38, 58 and 53 officers, respectively. Ferguson also stated that the memorandum was "enacted" in response to Scheinman's arbitration decision (C-1). On January 27, in response to Plotkin's January 23 followup correspondence, Ferguson provided further clarification of the minimum manning figures he reported (C-1).

23. Hebert believes that prior to the issuance of the December 2008 memo, the County had a past practice of not categorizing or "pigeonholing" leave time; "you'd just go in and apply for the time off and you got the time off" (1T58, 1T62). Hebert feels that the memo potentially limits the total number of officers permitted to take leave (1T52).

24. According to Hebert, the County has never followed the contract the way it is expressed in the December 2008 memo; more officers than the stated maximum of three have been permitted to be off, so the County is now enforcing something that was never previously enforced (1T67-1T68).

#### ANALYSIS

The FOP alleges that the County changed an alleged practice whereby leave time was granted to officers upon request without

regard to the category of leave requested, when it issued the December 2008 memorandum.

The FOP bears the burden of proof. To prove a past practice, or implied contractual commitment, the representative must show that the practice has been

- (1) unequivocal;
- (2) clearly enunciated and acted upon, and
- (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.

If the representative succeeds, the employer is bound to maintain the established past practice during the life of the contract. Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000).

For the reasons that follow, I find that the FOP has not established a past practice by the County concerning the grant of leave without regard to categories of leave; moreover, the record shows that the parties have already negotiated terms pertaining to leave categories in their most recent agreement. Finally, to the extent the FOP challenges the County's interpretation of the contract by the December 2008 memorandum, this dispute concerns the interpretation of those contractual provisions and should be

addressed through the parties' negotiated grievance procedure. Thus, I recommend the charge be dismissed.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [Id. at 92-93; citations omitted].

The Commission has consistently held that minimum staffing level determinations are managerial prerogatives. Hawthorne Borough, P.E.R.C. No. 2011-061, 37 NJPER 54 (¶20 2011); see also City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980),



aff'd NJPER Supp.2d 100 (¶82 1981); Borough of West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101 (¶31041 2000); See, e.g., City of Linden, P.E.R.C. No. 95-18, 20 NJPER 380 (¶25192 1994); Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 1981), certif. den. 88 N.J. 476 (1981).

The Commission has decided many cases involving the interplay between employees seeking to take negotiated leave and employers seeking to staff shifts. Galloway Tp., P.E.R.C. No. 2003-65, 29 NJPER 114 (¶35 2003), summarizes the case law on the relationship between requested leave and minimum staffing:

1. Scheduling of vacation leave or other time off is mandatorily negotiable, provided the employer can meet its staffing requirements.
2. An employer may deny a requested leave day to ensure that it has enough employees to cover a shift, but it may also legally agree to allow an employee to take leave even though doing so would require it to pay overtime compensation to a replacement employee.
3. An employer does not have an inherent prerogative to unilaterally limit the number of employees on leave or the amount of leave time absent a showing that minimum staffing requirements would be jeopardized.

Township of Galloway, P.E.R.C. No. 2003-65, 29 NJPER 114 (¶35 2003) (citations omitted).

The Commission has generally seen three types of 'past practice' cases involving allegations that an employment condition has been changed: (1) cases where the majority representative claims an express or implied contractual right to prevent a change; (2) cases where an existing working condition is changed and neither party claims an express or implied right to prevent or impose that change; and (3) cases where the employer alleges that the representative has waived any right to negotiate, usually by expressly or impliedly giving the employer a right to impose a change. Middletown.

This is the first type of case. The FOP argues that prior to Captain Bondiskey's December 2008 interoffice memorandum, the County had no written policy imposing or stating restrictions on the number of employees allowed to take leaves of absence based on the specific category of the leave; that no past practice existed regarding any restrictions or limitations on the number of employees allowed off based upon the category of leave requested prior to the memorandum; and that the County failed to raise these issues during the most recent negotiations and interest arbitration proceeding.

The County asserts that the December 2008 memo "simply codifies...previously existing leave granting guidelines coupled with leaves explicitly addressed and provided for in the

collective bargaining agreement between the parties" and is consistent with Scheinman's arbitration decision.

I find that the parties did, in fact, have written policies pertaining to leave categories - in both the parties' collectively negotiated agreement (J-1) and the County's post orders (J-4). The collective agreement explains in Article VIII and IX, respectively, the staffing conditions under which administrative leave, emergency administrative leave and vacation can be granted - and that each type of leave can essentially only be granted to one officer per shift. The post orders provide illustrations of how leave can be granted under the County's asserted minimum manning standards coupled with those contractual provisions. The issue of the interpretation of those provisions led to officer Jacobo's grievance before arbitrator Scheinman.

Following the arbitration decision, the County issued the December 4, 2008 memorandum (the December 2008 memo). The July 2002 post orders mention that leave may be approved until the maximum is reached, providing examples for the number of officers who can be off per shift in each category; Ferguson's January 2007 letter stated that in accordance with the County's minimum manning standards, 3, 5, and 4 officers total were permitted off per shifts one through three, respectively.<sup>4/</sup> The parties'

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<sup>4/</sup> While the County's asserted minimum manning standards are mentioned in Ferguson's letters to Plotkin in January 2007  
(continued...)

agreement provides that up to three officers can potentially be off per shift for vacation, administrative, and emergency administrative leave, respectively. The sums for each shift, added together, total a maximum of 6, 8, and 7 officers off per shifts 1 through 3, respectively. These numbers are identical to those provided in the December 2008 memorandum.

Thus, the December 2008 memo appears to arrive at the number of officers who can be off for vacation or administrative leave per shift by adding the three possible contractually required types of leaves - one possible administrative leave day and one possible emergency administrative leave day (pursuant to Article VIII E) and one emergency vacation leave day (pursuant to Article IX E (3)) - to the total number of officers permitted off per the County's minimum manning standards per shift, as set forth in Ferguson's January 2007 letter. Having been issued after the County was criticized in Scheinman's arbitration award for applying and exceeding its own "unpublished" rules prescribing the number of officers allowed off per shift, the December 2008 memorandum appears designed to clarify those categories based on the parties' negotiated agreement.

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4/ (...continued)  
and January 2009, I cannot specifically discern from the record the minimum manning standards upon which the examples in the July 2002 post orders are based.

The December 2008 memorandum, having memorialized the parties' existing post orders practice and the various provisions of the parties' collectively negotiated agreement into one document, was then published to the unit membership, ostensibly to comply with the collective agreement. The December 2008 memo appears to be an expanded summary of the post orders and various provisions of the parties' collective agreement. Thus, I find that the FOP has not met its burden of proving that the "December 2008 memo" constituted a unilateral change without negotiations.

The FOP relies on Galloway, supra. In Galloway, a scope of negotiations case, the union's grievance asserted that the Township required more officers on duty than required by the Township's minimum staffing guidelines, thus denying officers time off and overtime opportunities. The Commission permitted arbitration, finding that, in the abstract, "(p)ermitting officers to take leave in numbers that do not compromise minimum staffing levels would not substantially limit governmental policymaking powers". Galloway. The Commission specifically declined to determine whether the parties had agreed how many officers could be off on a given shift; or to consider the union's claims that the employer had denied requests for time off on specific occasions, finding those issues reserved for arbitration.

Here, as in Galloway, the dispute is grounded in the parties' own negotiated agreement.

The FOP disagrees with the terms of the memorandum, saying it has the effect of limiting the number of officers who can be off during a shift. The FOP suggests, through scenarios in Hebert's testimony and its brief, that officers could be denied time off although "the categorical restrictions have not been exceeded." These examples underscore the point that this is essentially a contractual dispute.

The Commission has held that "allegations setting forth 'at most a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. Contract disputes must be resolved through negotiated grievance procedures.'" Camden Cty Pros. P.E.R.C. No. 2012-42, 38 NJPER 289 (¶102 2012) citing, State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

In Hillsborough Board of Education and Hillsborough Education Association, P.E.R.C. No. 2005-54, 31 NJPER 99(¶43 2005), the Commission found that since part time clerical assistants working less than 35 hours a week had never received health benefits, the Board did not unilaterally change a past practice of providing them health benefits. The Commission held:

This is an issue of contract interpretation that we decline to consider further. Any entitlement to [health benefits] derives from the parties' collective agreement. Any

dispute over contractual benefits should be resolved through the parties' negotiated grievance procedure.

See also N.J.S.A. 34:13A-5.3 (grievance procedures shall be utilized for any dispute covered by the terms of the agreement).

Here too, leave entitlements are set forth in the parties' collective agreement, and are tempered by the County's managerial right to set minimum manning standards. The FOP also asserts that officers may be denied time by the alleged "pigeonholing" effect of the memo; however, the record contains no evidence that this has occurred. If the FOP contends that officers have actually been denied leave time by operation of the memo, or that the memorandum misinterprets the parties' agreement, or even that it operates to give the officers greater rights, it can present that scenario before an arbitrator.

The Commission has held, "(w)here clear and unambiguous contract language grants a benefit to employees, an employer does not violate the Act by ending a past practice granting more generous benefits and by returning to the benefit level set by the contract." Kittatinny Reg. Bd. of Ed. P.E.R.C. No. 92-37, 17 NJPER 475 (¶22230 1991); See also e.g., New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79); See also In re Randolph B/E, PERC 81-73, 7 NJPER 23 (¶12009 1980). The record reflects that the County has,

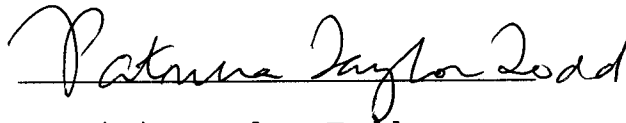
on occasion, granted more officers time off per shift than the contractual categories appear to permit. The County is not bound to continue to do so, as an employer may enforce negotiated terms at any time.

CONCLUSIONS OF LAW

The County did not violate the Act when it published the memorandum entitled Leave Granting Guidelines on December 8, 2008.

RECOMMENDED ORDER

I recommend that the Complaint be dismissed.



Patricia Taylor Todd  
Hearing Examiner

DATED: July 30, 2013  
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 August 09, 2013.