

L.D. NO. 97-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DELRAN,

Respondent,

-and-

Docket No. CO-96-367

CWA, LOCAL 1044,

Charging Party.

Appearances:

For the Respondent
Jeffrey S. Hatcher, Administrator

For the Charging Party
Steve Jarema, Staff Representative

DECISION

On June 7, 1996, CWA Local 1044 filed an Unfair Practice Charge against the Township of Delran. I conducted a conference for this matter on August 27, 1996 at which Local 1044 and the Township jointly requested that the dispute be decided through the Commission's Litigation Alternative Program. The parties requested that the LAP decision be based on their prior submissions and information provided at the August 1996 conference. The parties also agreed that this decision is binding and resolves the

above-captioned charge, which will be withdrawn upon decision issuance.

Local 1044 alleges that the Township denied its members payment for a day they were scheduled to work but were sent home on after working 16 hours in a snow emergency. Local 1044 also alleges that the Township's action was taken during negotiations in an attempt to coerce its members. The parties requested that I address both the substantive issue of payment for the shift, as well as its alleged effect on the negotiations process.

On a Sunday in December 1995, the Township's blue-collar employees were called in to work during a snow emergency. Employees who were called in worked for 16 hours and were paid for part of that time at a double time rate and for the balance of the time at time and a half pursuant to the contract. The employees were sent home after they worked for 16 hours. Article VII, Section H of the parties' agreement gives the Township the right to change employee work shifts with less than 48 hours notice in emergency circumstances. Section J 16 of the agreement provides that emergency hours worked shall not exceed 16 hours and that employees who work 16 hours are to be sent home for a minimum of eight (8) hours rest. Local 1044 does not dispute the compensation paid for the 16 hours worked, or the Township's right under the contract to send employees home after they worked for a 16 hour period.

Local 1044 contends that employees who were sent home after working for 16 hours were entitled to be paid straight time for the

eight hour regular shift that they did not work. It alleges that the Township had a past practice of paying employees under this circumstance. A past practice is a term and condition of employment not appearing in the parties' collective agreement, but arising as implied from their mutual conduct. Caldwell-West Caldwell Board of Education, P.E.R.C. No. 80-64, 5 NJPER 536 (¶10276 1979), aff'd in part., rev'd in part, 180 N.J. Super. 440 (App. Div. 1981). A past practice establishing a term and condition of employment is entitled to the same status as a term and condition of employment defined by statute or the parties' collective agreement. County of Sussex, P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982); Watchung Borough, P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981). Normally where a collective agreement is silent or ambiguous on an issue, past practice controls. Sussex.

However, it is incumbent upon the party claiming a past practice to prove that such a practice existed. Although Local 1044 alleges a past practice of employees receiving payment for their regularly-scheduled shift when they were sent home after working 16 hours, it was unable to produce any definitive or compelling proof that this practice existed. Therefore, absent such proof, I cannot conclude that there was a past practice obligating the Township to compensate employees in December 1995 under these circumstances.

Local 1044 also alleges that the Township's denial of compensation in December 1995 had a chilling effect on negotiations. However, there is no evidence that the Township's

action was illegally motivated, or repudiated either the contract or a past practice. The Township denied compensation in December 1995, and negotiations commenced in early 1996. Therefore the timing of the Township's action does not support a finding that it was illegally motivated.

CONCLUSION

Based upon the arguments of the parties and the evidence before me, I conclude that the Township of Delran did not commit an unfair practice by denying payment to employees for the eight hour regular shift that they did not work after working 16 hours of overtime in December 1995. I further conclude that the Township's denial of this payment was not an illegally motivated attempt to chill the collective negotiations process.

Margaret A. Cotoia
LAP Umpire

DATED: September 10, 1996
Trenton, NJ