

D.U.P. NO. 94-48

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF PERTH AMBOY,

Respondent,

-and-

Docket No. CO-94-126

PERTH AMBOY PBA LOCAL 13,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on allegations that the City of Perth Amboy prohibited PBA members from conducting a charitable fund drive on duty time. Although the PBA contended that the City's action changed a 35-year practice, the Director finds that negotiations to preserve a charitable fund drive during duty time would restrict the City's managerial prerogative to assign its police officers customary police tasks during regular duty hours.

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Appearances:

For the Respondent
Dennis Gonzalez, Corporation Counsel

For the Charging Party
Abramson & Liebeskind, Consultants
(Marc Abramson, Consultant)

REFUSAL TO ISSUE COMPLAINT

On October 25, 1993, Perth Amboy Policeman's Benevolent Association Local 13 filed an unfair practice charge with the Public Employment Relations Commission charging the City of Perth Amboy with violating subsections 5.4(a)(1), (2) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by

^{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; (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.

prohibiting PBA members from conducting a charitable fund drive while on duty. On January 7, 1994, the City filed a response to the charge, admitting that it prohibited the PBA from conducting fund drives on work time, denying that it committed an unfair practice and urging dismissal of the charge. An exploratory conference was conducted in January, 1994 and the charge has been forwarded to me for determination on complaint issuance.

The PBA contends that for the past 35 years,^{2/} it conducted a "solicitation and safety drive" to solicit charitable contributions from local merchants. Two officers conducted the drive on 400 hours of work time spanning five weeks. During the five-week period, 89 PBA members each donated 4.5 hours of work time to make up the 400 hours spent on the fund drive. The officers conducting the fund drive remained in radio contact with the police department and responded to emergency calls. Other components of the fund drive included updating local business emergency phone lists, checking business licenses and notifying businesses of local criminal activity.

N.J.S.A. 2A:170-20.2 requires that law enforcement organizations conducting fund drives file a notice of intention to solicit funds with the prosecutor of the county where the drive will be conducted. Local 13 filed its notice with Middlesex County

^{2/} Although the City does not admit that the on-duty fund drive was conducted for 35 years, it does acknowledge that the fund drive had, in the past, been conducted by officers on work time.

prosecutor Robert Gluck on September 17, 1993. Gluck granted permission to conduct the drive on September 22, 1993. Deputy Police Chief Robert Moore approved the PBA's request to use two officers for the fund drive in September, 1993.^{3/}

On October 4, 1993, Police Director Thomas Cetnar requested that Moore inform him if the fund drive would be conducted by on-duty officers. Moore responded that the drive would be conducted by two officers during 400 hours of work time over five weeks, and that the time would be reimbursed to the City by 89 PBA members who would each work 4.5 hours without compensation. On October 6, 1993, Cetnar rescinded Moore's authorization for the two officers to conduct the fund drive while on duty. Cetnar's letter states: "It shall be the policy of this department that Fund Drives or solicitations by any member or organization of this department while on duty is prohibited."

Local 13 contends that the City's unilateral prohibition of its on-duty fund drive constituted a refusal to negotiate in good faith. Local 13 also alleges that the City's action restrained members in the exercise of protected rights and interfered with the administration of the PBA. It seeks restoration of the on-duty fund drive and negotiation of any changes in fund drive procedures.

^{3/} The charge alleges that Moore's approval was given "on or about September 22, 1993, but Moore's letter, which is attached to the charge, is dated September 21, 1993.

The City agrees that Local 13 received permission from the Middlesex County Prosecutor to solicit funds provided the solicitation was accomplished in accordance with applicable statutes. However, it stresses that such approval did not include authorization to conduct the fund drive on work time. The City admits that Deputy Chief Moore approved Local 13's on-duty fund drive request, but states that Moore did not have the authority to do so. The City states that it informed Local 13 that it had no objection to the fund drive, provided that it complied with applicable laws, was conducted by off-duty, non-uniformed officers and did not use City property.

Local 13 contests the City's prohibition of officers conducting the drive during regular duty hours. It seeks restoration of the on-duty fund drive and negotiation of any changes in fund drive procedures. The Commission has held that it is within an employer's managerial prerogative to determine the duties and responsibilities of its employees while on duty. Requiring an employer to negotiate employee duties would impinge upon its managerial discretion to determine how to deploy its personnel. Township of West Orange, P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982).

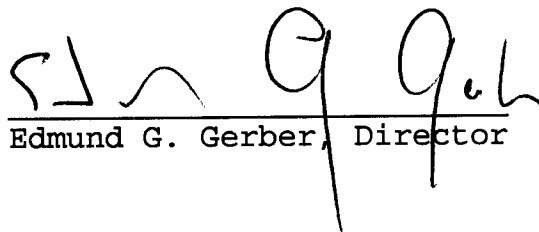
In City of Orange Township, P.E.R.C. No. 85-120, 11 NJPER 373 (¶16134 1985), the Commission found that a proposal restricting firefighters from performing crossing guard duties was non-negotiable; it would restrict an employer's right to make

assignments. Here, negotiations to preserve a charitable fund drive during duty time would restrict the City's managerial prerogative to assign its police officers customary police tasks during regular duty hours.

Although Local 13 has apparently conducted the fund drive during duty hours for over 30 years, this history cannot overcome the City's inherent managerial prerogative to make duty assignments and to make changes in those assignments without negotiating with the PBA. The meritorious nature of the fund drive and any ancillary benefit the City may receive (e.g. updating local businesses' emergency phone numbers, business license check, etc.) cannot overcome the City's right to deploy its police force as it sees fit.

The Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1. Accordingly, I decline to issue a complaint and the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 7, 1994
Trenton, New Jersey