

D.U.P. NO. 99-9

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

In the Matter of

BOROUGH OF UPPER SADDLE RIVER,

Respondent,

-and-

Docket No. CO-97-432

PBA LOCAL 218

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that the employer violated the Act by maintaining an illegal work schedule and refusing to negotiate mid-contract over an alternative schedule.

The Director found that, while the issue of work schedules is negotiable, the Borough's adherence in this context to an existing schedule which allegedly violates N.J.S.A. 40A is not a violation of 5.4a(5) of the Act.

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Appearances:

For the Respondent,
Robert T. Regan, Esq.

For the Charging Party,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 30, 1997, Upper Saddle River PBA Local 218 filed an unfair practice charge with the Public Employment Relations Commission against the Borough of Upper Saddle River. Local 218 alleges that the Borough violated provisions 5.4a(3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act (Act),

^{1/} These provisions prohibit public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (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 and (7) Violating any of the rules and regulations established by the commission."

N.J.S.A. 34:13A-1 et seq., by maintaining an illegal work schedule and refusing to adopt one of the alternative work schedules it has proposed. An exploratory conference was held in August 1997 and the case was then held in abeyance while the parties attempted to resolve the underlying issue. Those efforts were not successful.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint.

N.J.A.C. 19:14-2.3. Based upon the following, I find that the Complaint issuance standard has not been met.

The parties' current agreement runs from January 1996 through December 1999. During negotiations for that agreement, Local 218 raised the issue of its work schedule, contended that it was illegal under N.J.S.A. 40A:14-132 and N.J.S.A. 40A:14-133 and presented the Borough with alternative schedules. The Borough declined to address the schedule issue during negotiations. The successor collective agreement was signed in November 1996 without reflecting any change in work schedules in the agreement. Thereafter, the parties met to discuss schedule alternatives. However, Local 218 alleges that the Borough has refused to alter the work schedule.

Local 218 contends that the Borough's refusal to negotiate and adopt a legally permissible work schedule violates the Act. It seeks a determination that its existing work schedule violates N.J.S.A. 40A:14-132 and N.J.S.A. 40A:14-133 and is therefore illegal, as well as an order requiring the Borough to negotiate a work schedule that is consistent with Title 40A. The Borough contends that scheduling is a non-negotiable managerial prerogative.

ANALYSIS

The issue of work schedules presented here is within the scope of negotiations for police employees. The Commission has issued scope determinations addressing the legality of police schedules under Title 40A. Borough of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980). In Ewing Tp., P.E.R.C. No. 83-165, 9 NJPER 400 (¶14182 1983), the Commission, in accordance with State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978), found that N.J.S.A. 40A:14-133 is incorporated by reference into a collective agreement. See also, Borough of Middlesex, P.E.R.C. No. 85-3, 10 NJPER 486 (¶15218 1984).

However, Ewing Tp., Roselle and Middlesex were decided prior to State of New Jersey (Dept. of Human Services), P.E.R.C.

No. 84-148, 10 NJPER 419 (¶15191 1984).^{2/} Human Services holds that a mere breach of contract claim does not state a cause of action under the Act and may not be litigated through unfair practice proceedings. Therefore, any claim by Local 218 that the Borough's adherence to an allegedly illegal work schedule violates the contract's implicit reference to N.J.S.A. 40A cannot be litigated in an unfair practice context. Human Services.

Moreover, Ewing Tp., Roselle and Middlesex addressed allegations that an employer unilaterally altered an established work schedule without negotiations and replaced it with an illegal one. Local 218's claim is distinguishable. It does not allege that the Borough unilaterally changed its existing work schedule; rather it contends that the Borough is refusing to change the existing schedule. Absent a claim of an otherwise impermissible unilateral change in a mandatorily negotiable condition of employment, Local 218's allegations do not constitute a violation of subsection 5.4a(5) of the Act.^{3/}

^{2/} Human Services was decided by the Commission on June 26, 1984. The hearing examiner issued his decision in Middlesex on May 9, 1984. Neither party in Middlesex filed exceptions to the hearing examiner's report, so on August 2, 1984, in the absence of exceptions, the Chairman of the Commission exercised his administrative authority, delegated to him pursuant to N.J.S.A. 34:13-6(f), by adopting the hearing examiner's recommendations, conclusions of law and remedies.

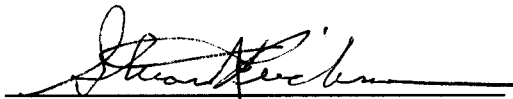
^{3/} Although Local 218 has also alleged that the Borough violated subsections 5.4a(3) and (7) of the Act, it has not proffered facts to support a claim that the Borough's actions discriminated against its members nor has it cited any violation of a Commission rule or regulation.

For the foregoing reasons, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.^{4/}

ORDER

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: January 14, 1999
Trenton, New Jersey

^{4/} N.J.A.C. 19:14-2.3.