D.U.P. NO. 2001-8

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

In the Matter of

CITY OF NEW BRUNSWICK,

Respondent,

-and- Docket No. CO-99-289

PBA LOCAL 23A,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed by the PBA's supervisory police unit against the City of New Brunswick. The charge alleges that the City unilaterally changed the work schedules of superior officers from January to June 1999 to accomodate a training program under the Community Oriented Police Services program, whose funding was about to expire. The Director found that under these circumstances negotiations over the work schedule change were not required because they would interfere with the City's managerial prerogative to implement an important training program designed to increase supervisory leadership and management skills. The Director also found that the change did not independently interfere with any protected rights, nor impermissibly interfere with interest arbitration proceedings.

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Appearances:

For the Respondent,
Schenck, Price, Smith & King, attorneys
(Kathryn Hatfield, of counsel)

For the Charging Party,
Abramson & Liebeskind, Consultants
(Marc D. Abramson, consultant)

REFUSAL TO ISSUE COMPLAINT

On March 5, 1999, New Brunswick PBA Local No. 23A (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of New Brunswick (City) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), and specifically, 34:13A-5.4a(1) and (5)[1/] when City Police Director Beltranena issued a special

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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. (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."

order on January 29, 1999, temporarily changing the work schedule of police supervisors effective January 30, 1999, without first negotiating with the PBA. The PBA also filed an Application for Interim Relief seeking an Order requiring the City to restore the work schedule in effect prior to January 30, 1999. The Application was denied on April 22, 1999. City of New Brunswick, I.R. No. 99-18, 25 NJPER 260 (¶30108 1999).

The PBA contends that work schedules are mandatorily negotiable and may not be changed without negotiations. It does not challenge the City's right to train supervisory personnel, but suggests that there was no need to change work schedules to provide the training. The PBA asserts that the City implemented the change for economic reasons, namely to avoid overtime costs. Moreover, it contends that the modified schedule impacted employees' vacations and increased the number of days worked. Additionally, the PBA asserts that implementation of the temporary schedule change during the course of interest arbitration violates section 34:13A-21[2/] of the Act.

The City concedes that work schedule changes are generally negotiable, but argues that in this instance, it had a managerial

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2/ N.J.S.A. 34:13A-21 provides: During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary Act.

prerogative to temporarily change the schedule in order to implement an important training program for its superior officers designed to address deficiencies in leadership and management skills. Therefore, no negotiations obligation was triggered by the change even though the parties were engaged in interest arbitration at the time. Additionally, the City also claims a contractual right to manage its operation, including the right to make all necessary schedule changes.

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. On October 6, 2000, I wrote to the parties advising them of my tentative findings and intention not to issue a complaint on the allegations in this charge. Their responses were solicited, however, none were submitted. Based upon the following, I find that the complaint issuance standard has not been met. Our understanding of the facts appears below.

New Brunswick PBA Local No. 23A is the exclusive representative of all police superior officers employed by the City. The City and PBA are parties to a collective negotiations agreement covering the period January 1, 1995 through December 31,

1997. At the time that this charge was filed, the parties were engaged in interest arbitration.[3/]

Article XXVIII of the parties' collective agreement, entitled Management Rights, generally gives the City the right to manage its operations, to make plans and decide matters involving its operations, to schedule its operations, to determine the means and processes of operations, to regulate the quality and quantity of performance and to run the police department in an efficient manner.

Historically, under the parties' contract, superior officers work steady four-day on, two-day off work shifts.[4/]

For the past five years, the police department has taken steps to change department practices from a traditional para-military organization to an organization more responsive to community needs. While new community policing programs have been introduced to rank and file police officers, leadership techniques commensurate with these community policing initiatives have not been introduced to supervisory personnel.

Therefore, in 1997, to enhance the management skills and leadership abilities of superior officers, Police Director Beltranena applied for and was awarded a grant from the federal

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3/ It appears that an interest arbitration award issued in July 2000 for a contract effective from January 1, 1998 through December 31, 2001.

4/ It appears that the July 2000 interest arbitration award changed the work schedule to a four-day on, four-day off work schedule.

government under the Community Oriented Policing Services (COPS) program. The grant's expiration date was June 30, 1999.

Making use of the grant funds required the City to contract with a vendor to conduct the training program, prepare a budget, locate a training facility and coordinate the training schedule with the vendor, the superior officers and the training facility. These tasks were accomplished by mid-January 1999.

On January 15, 1999, Captain Joseph Catanese issued a memorandum to all police supervisors advising them of the training program, the hours of training (8:30 a.m. to 4:30 p.m.) and the temporary work schedule. A meeting was also conducted a week prior to the implementation of the temporary work schedule change during which the police supervisors were advised that they would receive compensatory time for any additional days worked and overtime for additional hours worked and that all confirmed vacation plans would be honored.

On January 29, 1999, Beltranena issued a special order, effective January 30, 1999, which temporarily changed the work schedule for supervisors in order to facilitate the "Advanced Community Policing Program Supervisors Training." The modified schedule was to remain in effect until around June 25, 1999. The temporary schedule change concluded on or about June 25, 1999, as planned. The temporary schedule required most supervisors to work a five-day on, two-day off work schedule with training scheduled from 8:30 a.m. to 4:30 p.m. The parties did not negotiate over this temporary schedule change.

ANALYSIS

The PBA alleges that the City violated subsections 5.4a(1) and (5) of the Act when its police director unilaterally implemented the temporary work schedule change for superior officers without negotiations. It asserts that work schedules are mandatorily negotiable.

N.J.S.A. 34:13A-5.3 requires an employer to negotiate with the majority representative before changing a mandatorily negotiable term and condition of employment. Moreover, it is well established that the unilateral alteration of terms and conditions of employment during the course of collective negotiations causes a chilling effect upon those negotiations because such action frustrates the statutory objective of establishing working conditions through bilateral negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). Additionally, N.J.S.A. 34:13A-21 expressly prohibits any change in terms and conditions of employment while the parties are engaged in the interest arbitration process. Thus, a change in employees' terms and conditions of employment without negotiations violates the provisions of 5.4a(5) of the Act. Here, however, I find that the PBA has not established that the temporary change in work schedule is a negotiable term and condition of employment.

Work hours are generally negotiable. Englewood Bd. of Ed. v. Englewood Teachers Ass'n., 64 N.J. 1 (1973). However, where

negotiations over work schedules interfere with the employer's managerial prerogatives, negotiations are not required. Borough of Atlantic Highlands and Atlantic Highlands PBA Local 42, 192 N.J. Super. 71 (App. Div. 1983) certif. denied 96 N.J. 293 (1984); Town of Irvington v. Irvington PBA Local No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif. denied 82 N.J. 296 (1980).

In Irvington, the employer changed the shift schedule for police officers from one where one-third of the officers worked steady midnights and two-thirds of the officers worked rotating shifts from days to evenings, to a schedule where all officers worked rotating shifts. The employer made this change to enhance departmental efficiency, particularly the supervision of its officers. The employer noted that superior officers were unable to enforce discipline and follow-up on disciplinary matters because their rotating schedule did not permit them to supervise non-supervisory officers who are on a permanent midnight shift for more than a short period of time.

The Court viewed the "fundamental issue" as "...whether the change of shifts...is a term or condition as to which mandatory negotiations would significantly interfere with the exercise of the Town's managerial prerogative." Id. at 543. The Court held that the shift change was not mandatorily negotiable because negotiations on this issue could impede the Town's ability to increase departmental efficiency, particularly as it related to providing continuous and consistent supervision, and to address departmental discipline.

In Atlantic Highlands, the PBA sought to negotiate a change in the shift schedule from a five-two work schedule to a five-two, five-two, five-three work schedule. The employer contended that the proposed shift change was not mandatorily negotiable because, citing the small size of the department, coverage gaps in the schedule and increased police costs, negotiations would intrude on the employer's managerial prerogative to plan for "the most efficient utilization of its existing manpower." Atlantic Highlands, 192 N.J. Super. at 75. The Court held that negotiations concerning the proposed work schedule change "... would significantly interfere with the exercise of inherent managerial prerogatives necessary to the proper operation of a police force." Id. at 77.

In this matter, it appears that the City's underlying rationale for implementing the temporary schedule change also implicates the exercise of managerial prerogatives. The City claims that its decision to temporarily change unit employees' work schedules was made in order to accommodate an important training program that was designed to increase supervisors' leadership and management skills. The City asserts and the PBA does not deny that the training program was necessary to the successful implementation of its community policing efforts. I find that, under the circumstances here, the City had a managerial prerogative to make such a change. Consequently, there was no obligation to negotiate.

The PBA asserts that the City could have provided the training without a work schedule change and that it only did so to

save overtime costs. However, the fact that financial considerations may have partially motivated the City's actions does not preclude it from exercising an inherent managerial prerogative. Borough of Bogota and PBA Local 86, P.E.R.C. No. 99-77, 25 NJPER 129 (¶30058 1999), aff'd 26 NJPER 169 (¶31066 App. Div. 2000), certif. den. ___ N.J. ___ (2000). To the extent that the temporary schedule change may implicate contractual rights such as overtime, additional work days or vacation selection, the parties' grievance mechanism could be invoked.

The PBA also asserts that the temporary change in work schedule altered the status quo ante during interest arbitration in violation of N.J.S.A. 34:13A-21. Having found under this circumstance that the schedule change was an exercise of managerial prerogative and did not trigger a negotiations obligation, I find no violation of 34:13A-21.

Based on the above, I find that the City has not violated 5.4a(5) of the Act.

The PBA also asserts that the City violated 5.4a(1) of the Act when it changed the work schedule. A public employer violates 5.4a(1) of the Act if its actions tend to interfere with employee rights under the Act and the employer lacks a legitimate and substantial business justification for its action. N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (Note 1) (¶10285 1979); New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422 (¶4189 1978). See also Jackson

Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988); UMDNJ-Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). Since the City exercised a managerial prerogative when it unilaterally implemented the temporary work schedule change, no employee rights protected by the Act were interfered with in violation of 5.4a(1). No other facts have been presented here which implicate a violation of the employees' statutory rights.

Based on the foregoing, the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.5/

ORDER

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Stuart Reichman, Director

DATED: October 20, 2000
Trenton, New Jersey

5/ N.J.A.C. 19:14-2.3.