

P.E.R.C. NO. 83-165

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EWING TOWNSHIP,

Respondent,

-and-

Docket No. CO-82-170-139

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT INC., LOCAL 111,
EWING TOWNSHIP,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that Ewing Township violated the New Jersey Employer-Employee Relations Act when it instituted a new work schedule without negotiating with the New Jersey State Policemen's Benevolent, Inc., Local 111, Ewing Township. The new work schedule regularly required police officers to work seven consecutive days, despite the absence of any emergency. It violated N.J.S.A. 40A:14-133 and the parties' contract.

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Docket No. CO-82-170-139

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT INC., LOCAL 111,
EWING TOWNSHIP,

Charging Party.

Appearances:

For the Respondent, Dietrich, Allen & St. John, P.C.
(Charles P. Allen, of Counsel)

For the Charging Party, Merlino, Rottkamp & Flacks
(Robert B. Rottkamp, of Counsel)

DECISION AND ORDER

On January 14, 1982, New Jersey State Policemen's Benevolent Inc., Local 111, Ewing Township ("Local 111") filed an unfair practice charge against Ewing Township ("Township") with the Public Employment Relations Commission. The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (3), and (5),^{1/} when its Chief of Police,

^{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; (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; and (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."

without negotiating with Local 111, changed the work schedule that had been in existence for approximately 15 years.^{2/}

On June 17, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On July 6, 1982, the Township filed an Answer in which it asserted that its change in work schedules was non-negotiable and that it had a contractual right to make the change.

On July 21, 1982, Commission Hearing Examiner Gerber conducted a hearing at which the parties were given an opportunity to present evidence, examine and cross-examine witnesses, and argue orally. Both parties waived the filing of post-hearing briefs.

On January 7, 1983, the Hearing Examiner issued his report and recommendations, H.E. No. 83-21, 9 NJPER 110 (¶14059 1983) (copy attached). He concluded that the Township's unilateral implementation of the new work schedule effective January 11, 1982, which regularly required officers to work seven days in a row, violated subsections 5.4(a) (1) and (5) of the Act and N.J.S.A. 40A:14-133. He made no findings as to the subsection 5.4(a) (3) allegations. He recommended the Commission order the Township to reinstitute, within a reasonable time period, the prior work schedule and negotiate in good faith with Local 111 concerning a new schedule.

^{2/} The unfair practice charge was accompanied by an application for interim relief. After a hearing on January 20, 1982, Commission designee Edmund G. Gerber denied interim relief.

On January 20, 1983, the Township filed Exceptions. It maintains that: 1) the Hearing Examiner erred in admitting evidence of the Local 111 poll as to the police officers' positions on the new schedules; 2) the Hearing Examiner erred in not giving greater weight to the discussions between the Deputy Police Chief and the Local 111 representatives; 3) the decision is against the weight of the credible evidence; 4) N.J.S.A. 40A:14-133 was not violated because the consecutive number of work days in any calendar week does not exceed six; 5) the parties' agreement provides the employer with the right to set work schedules; and, 6) the issue is moot because more than one year has elapsed since the implementation of the disputed schedule. In an accompanying brief, the Township also maintains that it had a managerial prerogative to change the work schedules under Town of Irvington v. Irvington PBA Local #29, 170 N.J. Super. 532 (App. Div. 1979).

On January 25, 1983, Local 111 filed a brief in support of the Hearing Examiner's findings.

We have reviewed the record. The Hearing Examiner's findings of fact are supported by substantial evidence. We adopt and incorporate them here. We emphasize the crucial fact that under the new work schedule, police officers in three platoons essentially work seven consecutive days and then have either one, two, or four consecutive days off depending on what week in the work schedule they are working.

We first consider whether the change in work schedule violated the parties' contract. We conclude it did, primarily because the contract incorporates by reference N.J.S.A. 40A:14-133 which prohibits work schedules which require police officers to work more than six days in any one week except in cases of emergency.

N.J.S.A. 40A:14-133 provides:

The days of employment of any member or officer of the police department or force, including any officer having supervision or regulation of traffic upon county roads, parks and parkways shall not exceed 6 days in any one week, except in cases of emergency the officer, board or official in charge of such police department or force shall have authority to retain on duty any member or officer during the period of the emergency...

In Hoboken Local No. 2, New Jersey State Patrolmens Benevolent Assn. v. City of Hoboken, 133 N.J.L. 334, 44 A.2d 329, 331-332 (1945), aff'd ___ N.J.L. ___, 48 A.2d 917 (Ct. of Errors and Appeals, 1946), the Supreme Court ruled that the purpose of this legislation (as embodied in an almost identical predecessor statute) is "...to protect the health and increase the efficiency of police officers by requiring time off for rest, pleasure, and recreation" and that "a municipality is without power to exceed the limitation upon continuous service therein fixed." In light of the statutory purpose as articulated in Hoboken, we cannot accept the Township's technical argument that the new work schedule does not violate N.J.S.A. 40A:14-133 because it does not require officers to work seven days in any one calendar week.

Under State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80, "...statutes and regulations which are applicable to the employees who comprise a particular unit are effectively

incorporated by reference as terms of any collective agreement covering that unit." (footnote omitted). N.J.S.A. 40A:14-133 is precisely such a statute because it sets a term and condition of employment for all unit employees: no more than six consecutive days of work except in cases of emergency. Accordingly, the parties' contract incorporates that statutory term and condition of employment and the Township therefore violated the contract when it instituted a new work schedule requiring employees to work more than six consecutive days in the absence of any emergency.^{3/}

While our holding on the contractual issue makes it unnecessary for us to reach the other issues in this case, we note our agreement with the Hearing Examiner that the Township did not negotiate (as opposed to discuss) the changes in the work schedule with Local 111,^{4/} nor did it have a managerial prerogative to make these changes without negotiation. In re Local 195, IFPTE v. State, 88 N.J. 393, 411-413 (1982); City of Newark and IAFF, Local 1860, AFL-CIO, App. Div. Docket No. A-4143-80T3

^{3/} As an alternative holding, we specifically find that the Township violated section 7.04 of its contract when it unreasonably altered the previous tours of duty and required officers to work more than six consecutive days in the absence of any claimed emergency.

^{4/} We do not believe the Hearing Examiner erred in receiving evidence concerning a poll taken by Local 111 which showed that a majority of the officers opposed the new schedule. The poll showed that Local 111, in its capacity as majority representative, made a vigorous effort to oppose the change in work schedules and to make the Township negotiate over that change. In the face of a poll conducted by a majority representative manifesting a continued desire to negotiate, the Township could not maintain that its previous discussions with individual officers fulfilled its negotiations obligation. In any event, the question of how many officers either favored or opposed the change is not of significance to our determination. The important facts on this issue are that the majority representative wished to negotiate over the change and the Township refused to do so.

(March 25, 1983), affirming P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981); Borough of Roselle and Roselle Borough PBA Local 99, App. Div. Docket No. A-3329-80T3 (May 7, 1981), affirming P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980). Further, we note that the Township made the unilateral change during successor contract negotiations and thus refused to negotiate in good faith over a successor contract. Galloway Township Bd. of Ed. v. Galloway Township Ed. Ass'n, 78 N.J. 25, 48-52 (1978). Finally, we disagree with the Township's assertion that this dispute is moot because more than a year has passed since the schedule change: Local 111 protests the change now as strongly as it did originally. Galloway Township Bd. of Ed. v. Galloway Township Ed. Ass'n, supra at p. 39.

For the foregoing reasons, we hold that the Township violated subsections 5.4(a)(1) and (5) when it refused to negotiate in good faith with Local 111 before imposing the new work schedule. We enter the following remedial order.

ORDER

Ewing Township is ordered to:

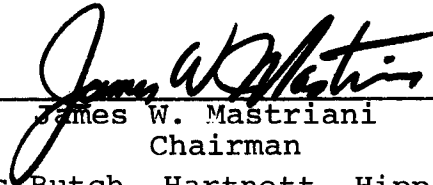
1. cease and desist from interfering with, restraining or coercing employees in the exercise of their rights to negotiate guaranteed by the Act by unilaterally imposing changes in employee work schedules;
2. cease and desist from refusing to negotiate in good faith with New Jersey State Policemen's Benevolent, Inc., Local 111, Ewing Township over employee work schedules;

3. reinstitute the work schedule in effect before January 11, 1982 unless the parties have already negotiated, or within 45 days they negotiate, a new work schedule;

4. post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Township's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Township to ensure that such notices are not altered, defaced or covered by other material.

5. notify the Chairman of the Commission within twenty (20) days of receipt what steps the Township has taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp, Graves, Newbaker and Suskin voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 24, 1983
ISSUED: June 27, 1983

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of their rights to negotiate guaranteed by the Act by unilaterally imposing changes in employee work schedules.

WE WILL cease and desist from refusing to negotiate in good faith with New Jersey State Policemen's Benevolent, Inc., Local 111, Ewing Township over employee work schedules.

WE WILL reinstitute the employee work schedule in effect before January 11, 1982 unless we have already negotiated a new work schedule or within 45 days we negotiate a new work schedule with Local 111.

EWING TOWNSHIP

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 83-21

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

In the Matter of

EWING TOWNSHIP,

Respondent,

-and-

Docket No. CO-82-170-139

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT, INC., LOCAL 111,
EWING TOWNSHIP,

Charging Party.

SYNOPSIS

A Hearing Examiner finds that Ewing Township violated §1 and 5 of the Act and N.J.S.A. 40A:14-133 when it unilaterally imposed a new work schedule without negotiating same with PBA Local 111, a majority representative.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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

In the Matter of

EWING TOWNSHIP,

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-and-

Docket No. CO-82-170-139

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT, INC., LOCAL 111,
EWING TOWNSHIP,

Charging Party.

Appearances:

For the Respondent

Dietrich, Allen & St. John, Esqs.
(Charles P. Allen, Jr., Esq.)

For the Charging Party

Merlino, Rottkamp & Grillo, Esqs.
(Robert B. Rottkamp, Jr., Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The New Jersey State Policemen's Benevolent, Inc., Local 111, Ewing Township, filed an Unfair Practice Charge against Ewing Township with the Public Employment Relations Commission (Commission). The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the Act), specifically §5.4(a)(1), (3) and (5) ^{1/} when effective January 11, 1982, the Township, through its Chief of Police, issued a

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; (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 employees in that unit, or refusing to process grievances presented by the majority representative."

work schedule which changed the old schedule that had been in existence for approximately 15 years. It is alleged that this change was made without any prior notice or prior negotiations.

The unfair practice charge was accompanied by an application for interim relief with an order to show cause. The order to show cause hearing was conducted on January 20, 1982, by the undersigned as the Commission's designee and at that time the application for interim restraints was denied.

On June 17, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The hearing was conducted on July 21, 1982. Both parties were given an opportunity to present evidence, examine and cross-examine witnesses, and argue orally. Robert Litz, the President of the PBA, testified on behalf of the Charging Party. It was his testimony that officers in the Ewing Township Police Department worked pursuant to a rotating shift schedule that was in effect since March 4, 1968. In December of 1981 Deputy Chief Plaag called Litz and some other officers into his office and asked them to look at a new schedule proposal "to find out what the men thought of that proposal." A few days later Litz told the Deputy Chief that he would not like working under the new proposed schedule. Litz also stated that as President of the PBA he was of the opinion that most of the men were not in favor of the new schedule. Litz asked Plaag if it could be shown that the majority of the men were not in favor of the new schedule would it make a difference? Plaag's response was simply to show him.

Litz then conducted a poll to see if the men wanted to go under the new schedule or if they wanted to remain under the old schedule. The results of the poll were that the majority of the men were dissatisfied with the new schedule.

Under the provisions of the new schedule patrolmen were required to work stretches of seven days without interruption for three times a month. Litz also testified that he never was contacted by the Township as the PBA representative. In fact Litz stated Plaag would not negotiate these items, claiming they were non-negotiable. Plaag would only talk to Litz and the other officers as employees and not as union officers. The Chief of Police, Calvin R. Steepy, testified on behalf of the Township.

Steepy testified that due to the recent reduction in the number of police officers, he was forced to drop certain programs ^{2/} and in order to restore those programs and further in order to allow more men to be on duty during the day shift, he altered the schedule. The new schedule change went into force in January of 1982 and provides for extra men on the day shift when, according to Steepy, they are needed most. Steepy testified that he was never completely satisfied with the old schedule and that for at least ten years he was thinking of ways to revise it. Steepy testified that there was an informal, ongoing process in attempting to develop a schedule that would be beneficial to both the men and the Township. He testified that Officer Litz once attempted to devise a schedule and the past president of the PBA Hutchinson also attempted to create a

^{2/} Such as the Officer Joe Program in the Township schools.

schedule. The former PBA officers went to outside individuals to try to come up with a better schedule. Steepy testified that he never personally was contacted by the PBA vis-a-vis the imposition of the new schedule. Steepy testified that he has always taken the position if anyone is dissatisfied with the schedule he would ask him to devise a new one and they would look it over. No one has been able to come up with a better schedule that both meets the needs of the Township and of the men.

Litz's testimony that Plaag refused to negotiate with the PBA concerning the imposition of the new schedule stands unrebutted. It goes without saying that the Township has a right to establish its own manning needs to put men on the street as it sees fit, but within these parameters, the Association has the right to negotiate a work schedule concerning the individual employee's hours of work. The proposed schedule does not change the hours worked on a shift or the number of hours of week worked. It does however change the number of times that the officers have to work seven days without a break. N.J.S.A. 40A:14-133 provides that

The days of employment of any member or officer of the police department or force, including any officer having supervision or regulation of traffic upon county roads, parks and parkways shall not exceed 6 days in any one week, except in cases of emergency the officer, board or official in charge of such police department or force shall have authority to retain on duty any member or officer during the period of the emergency...

It is noted that no evidence was adduced at the hearing to indicate that the new schedule was implemented as a result of an emergency.

The New Jersey Supreme Court held in Bd/Ed of Bernards

Tp. v. Bernards Tp. Ed/Assn, 79 N.J. 311, 316 (1979) that "in carrying out its duties PERC will at times be required to interpret statutes other than the New Jersey Employer-Employee Relations Act." See also Hunterdon Cent. H.S. v. Hunterdon Cent. H.S. Teachers Assn, 174 N.J.Super. 468 (App. Div. 1980).

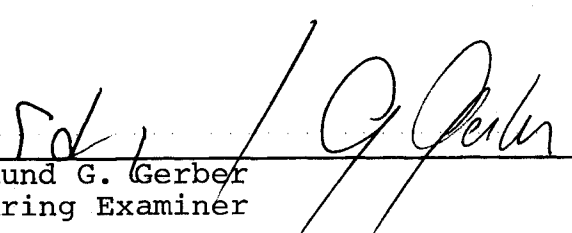
The Township had the right to establish manning levels but within the framework of those levels the Township must negotiate with the PBA concerning scheduling. In re Boro of Roselle and Roselle Boro PBA Local 99, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120, 1980), affm'd App. Div. Docket No. A-3329-79; In re City of Newark, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110, 1981); In re City of Newark, P.E.R.C. No. 82-59, 7 NJPER 606 (¶12269, 1981). Here, however, when the Township imposed a new work schedule, they not only failed to negotiate with the PBA, they also violated N.J.S.A. 40A:14-133. Further, simply because the Township conferred with several officers as to the creation of a new schedule does not satisfy the requirements of good faith negotiations. City of Orange and Orange PBA, Inc. Local 89, P.E.R.C. No. 79-10, 4 NJPER 420 (¶4188, 1978).

Accordingly, it is recommended that the Commission find that the Township of Ewing violated §5.4(a)(1) and (5) of the Act when it refused to negotiate in good faith with the New Jersey State Patrolmen's Benevolent Association, Inc., Local 111 of Ewing Township and unilaterally imposed a new work schedule on January 11, 1982.

It is further recommended that the Commission order that the Township of Ewing within a reasonable time period reinstate

the prior work schedule and further negotiate in good faith with the PBA concerning the implementation of a new work schedule.

It is further recommended that the Commission order that they post at all places where notices to employees are customarily posted copies of the attached Notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent Town's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Town to ensure that such notices are not altered, defaced or covered by other material.


Edmund G. Gerber
Hearing Examiner

Dated: January 7, 1983
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce the New Jersey State Patrolmen's Benevolent Association, Inc., Local 111 of Ewing Township by refusing to negotiate the imposition of a new work schedule on members of the Police Department.

WE WILL within a reasonable time rescind the current schedule and reinstate the old schedule until good faith negotiations conclude pending the imposition of a new work schedule.

EWING TOWNSHIP

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.