

P.E.R.C. NO. 2007-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2005-138

PATERSON POLICE PBA LOCAL 1,

Charging Party.

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CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2005-139

PATERSON POLICE PBA LOCAL 1  
SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the City of Paterson. The Complaint was based on unfair practice charges filed by Paterson Police PBA Local 1 and Paterson Police PBA Local 1 Superior Officers Association alleging that the City violated the New Jersey Employer-Employee Relations Act when it installed overt security cameras inside and outside its public safety complex without notice to or negotiations with the unions. The Commission concludes that the installation of overt video cameras in this public safety building for the purpose of protecting people and property is not a mandatory subject of negotiations.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Dorf & Dorf, attorneys (Gerald Dorf, of counsel)

For the Charging Party, Shaw, Perelson, May & Lambert, LLP, attorneys (Mark C. Rushfield, of counsel)

DECISION

Paterson Police PBA Local 1 and Paterson Police PBA Local 1 Superior Officers Association filed exceptions to a Hearing Examiner's decision dismissing their unfair practice charges against the City. H.E. No. 2007-3, 33 NJPER 9 (¶7 2007). The charges allege that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically

5.4a(1) and (5),<sup>1/</sup> when it installed overt security cameras inside and outside its public safety complex without notice to or negotiations with the unions. The Hearing Examiner determined that the City had a managerial prerogative to install the cameras in non-private areas of the workplace to protect people and property. She also found that the City had a duty to negotiate any impact flowing from the exercise of the prerogative, but that the unions had made no demands to negotiate impact. After an independent review of the record, we adopt the Hearing Examiner's recommendation to dismiss the Complaint.

The charges were filed on November 23, 2004 to challenge the installation of the first two cameras. A Complaint and Notice of Hearing issued on August 8, 2005. Hearing Examiner Wendy L. Young conducted three days of hearing beginning May 4, 2006. The Complaint was amended at hearing to challenge the installation of approximately 30 more cameras.

On January 25, 2007, the Hearing Examiner issued her comprehensive report and recommendations. On February 21, the

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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" 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."

unions filed exceptions, and on March 15, the City filed an answering brief.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's thorough findings of fact (H.E. at 5-24).

N.J.S.A. 34:13A-5.3 prohibits a public employer from unilaterally establishing or changing mandatorily negotiable terms and conditions of employment. Whether an employer has an obligation to negotiate turns on whether the term and condition of employment is mandatorily negotiable. N.J.S.A. 34:13A-5.3; Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). Mandatory negotiability is determined by balancing the impact on employees' work and welfare against any interference with the determination of governmental policy. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). If the interference is significant, the subject is not mandatorily negotiable.

We conclude that the installation of overt video cameras in this public safety building for the purpose of protecting people and property is not a mandatory subject of negotiations. Whether the public is able to enter the monitored areas inadvertently or with permission is not a controlling fact. The employer has a significant interest in monitoring access to its public safety complex because it is not currently capable of excluding the public from most non-private areas of the building and grounds.

That interest outweighs the employees' interest in not having their actions observed and recorded in those non-private areas. The cameras are not installed in private areas such as bathrooms, break rooms, locker rooms or offices, where employee privacy interests would be greater. Given the restrictions on the City's ability to prevent the public from entering many areas of the complex, prohibiting installation of the cameras in non-private areas would significantly interfere with the City's ability to secure its public safety building.

In denying earlier cross-motions for summary judgment, we identified a material factual dispute over whether one of the two initial cameras was installed in a public area and noted the absence of information about any resulting discipline or the extent of the installation of the additional cameras. In response to our reasons for denying summary judgment, the unions have focused their exceptions on those three areas. We will briefly repeat the unions' contentions and respond.

The unions contend that the Hearing Examiner did not specifically address where all but the two initial cameras were located. However, the Hearing Examiner explained that the camera images depict only hallways, elevator lobbies and entrances/exits, not internal spaces such as bathrooms, break rooms, locker rooms, or offices (H.E. at 21). While the unions also contend that the cameras cover non-public work areas of

police officers, there is no dispute that the cameras cover areas where police officers and members of the public traverse during the course of the work day.

The unions contend that because the cameras are small, they do not place an observer on notice as to what is being observed. The unions, however, may negotiate over notice to unit members of placement of all cameras.

After the events of "9/11," several reports were prepared reviewing security at the public safety complex. The unions contend that the reports did not recommend video surveillance as the primary means of securing the facility. We agree and note that the Hearing Examiner summarized the substance of those reports (H.E. at 12-16). That fact does not, however, affect the employer's prerogative to implement security recommendations in the way it deems most appropriate given its finances and priorities.

The unions contend that the Hearing Examiner found that the cameras were installed to address incidents of suspected police employee misconduct. We disagree. The Hearing Examiner accurately reported the police director's testimony that the cameras are not primarily used to catch employees in wrongdoing, but are part of an overall security system. If employee misconduct is captured by a camera, it will not be ignored.

The unions note that one of the incidents of suspected misconduct caught on camera involved material posted to the PBA's bulletin board. This is true. However, the City has not challenged the Hearing Examiner's finding that the PBA may request that the bulletin board be moved.

Finally, the unions challenge the conclusion that the City had a managerial prerogative to install overt cameras in non-private areas of the workplace. They rely on private sector case law holding that the installation of surveillance cameras is a mandatory subject of bargaining.

First, private sector precedents are of limited relevance with respect to the scope of public sector negotiations. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 159 n. 2 (1978). Second, most of the cases cited involved hidden surveillance cameras installed to detect suspected employee misconduct. See, e.g., Colgate-Palmolive Co., 323 NLRB 515 (1997); National Steel Corp. v. NLRB, 324 F.3d 928 (7th Cir. 2003); Brewers and Maltsters Local 6 v. NLRB, 414 F.3d 36 (D.C. Cir. 2005). The balance of employer and employee interests is different when cameras are hidden. The other private sector cases cited by the unions are also distinguishable. East Harlem Council for Human Services, 2006 NLRB Lexis 51 (2006), and The Genlyte Group, 1999 NLRB Lexis 394 (1999), are recommended decisions of administrative law judges that do not necessarily

reflect NLRB policy and do not discuss why the case law on hidden cameras should apply to cameras that are not hidden. The NLRB's decision in Nortech Waste and Operating Engineers Local Union No. 3, 336 NLRB 554 (2001), does not address the camera issue at all and the administrative law judge's recommended decision does not specify whether the cameras were hidden. The judge's brief treatment of the issue focuses on the employer's obligation to bargain over the use of the camera and the effects on working conditions, not the right to install the cameras. Finally, the administrative law judge's decision in Saint Barnabas Medical Center, 1999 NLRB Lexis 582 (1999), deals with badges that identify employee location, not an overt surveillance system installed to protect public property. Both the employer and employee interests are different from the ones in this case.

In summary, the employer had a managerial prerogative to install these overt security cameras. Accordingly, we dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: May 31, 2007

Trenton, New Jersey