P.E.R.C. NO. 80-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLAINFIELD,

Respondent,

-and-

Docket No. CO-79-274-101

FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, BRANCH NO. 7 and FIRE OFFICERS' ASSOCIATION,

Charging Parties.

SYNOPSIS

In the absence of exceptions, the Commission adopts the Hearing Examiner's recommendation that the complaint against the City be dismissed. The Commission found, in agreement with the Hearing Examiner, that the Charging Parties failed to prove that there was in fact an increase in the workload of employees as a result of the City's adoption of a new reporting form. There being no increase in workload, the City had not refused to negotiate regarding a term and condition of employment.

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FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, BRANCH NO. 7 and FIRE OFFICERS' ASSOCIATION,

Charging Parties.

Appearances:
For the Respondent, Sachar, Bernstein, Rothberg, Sikora, & Mongello, Esqs. (Mr. David H. Rothberg)

For the Charging Parties, Mac D. Hunter, Esquire

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on April 9, 1979 by the Firemen's Mutual Benevolent Association, Branch No. 7 and the Fire Officers' Association (the "Associations") alleging that the City of Plainfield (the "City") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). The charge, which was supplemented on July 9, 1979, alleged violations of N.J.S.A. 34:13A-5.4(a)(1) and (5) and arose out of the issuance of an Order which implemented a directive which, according to the Associations, resulted in increased workload and duties. The directive which led to the filing of the charge called for the utilization of a new reporting form which was to be completed by members of the safety patrol in connection

with inspections performed by those employees.

Pursuant to a Complaint and Notice of Hearing which was issued on July 11, 1979, hearings were held on July 30 and 31, 1979 before Commission Hearing Examiner Alan R. Howe at which time all parties were given an opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. On October 16, 1979, the parties filed post-hearing briefs. Thereafter, on October 26, 1979, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 80-16, 5 NJPER ____ (¶___ 1979), a copy of which is attached to this Decision and Order and made a part hereof. The report was served upon the parties and the case was transferred to the Commission. See N.J.A.C. 19:14-7.1. Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.3 which, in part, provides that any exception which is not specifically urged shall be deemed to have been waived. 1/

The Hearing Examiner recommended that the Complaint be dismissed. He found as a fact that the charging parties failed to prove by a preponderance of the evidence that there in fact was an increase in the workload of the fire fighters and fire officers as a result of the City's adoption of the new reporting form. Additionally, he found support in the collective negotiations agreement between the parties for the City's action.

1/ The Association did request oral argument before the Commission although no exceptions were filed. This matter was fully litigated before the Hearing Examiner and we do not believe that further argument would be helpful or appropriate. Therefore, in the exercise of our discretion, we deny the request for oral argument. N.J.A.C. 19:14-8.2.

We have reviewed the entire record in this matter and, noting paritcularly the absence of exceptions, hereby adopt the findings of fact and conclusions of law contained within the Hearing Examiner's Recommended Report and Decision. Therefore, the Unfair Practice Charge will be dismissed.

ORDER

For the foregoing reasons and upon the entire record herein, IT IS HEREBY ORDERED that the Unfair Practice Charge be dismissed in its entirety.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hipp, Newbaker and Parcells voted for this decision. Commissioner Graves voted against this decision.

DATED: Trenton, New Jersey
December 4, 1979
ISSUED: December 5, 1979

H.E. No. 80-16

80-12

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

In the Matter of

CITY OF PLAINFIELD,

Respondent,

- and -

Docket No. CO-79-274-101

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, BRANCH NO. 7
and FIRE OFFICER'S ASSOCIATION,

Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed on behalf of the City's Firefighters and Fire Officers, who had charged that the City did on March 20, 1979 unilaterally, and without collective negotiations, implement a revised inspection reporting form, which increased the workload of said employees.

The Hearing Examiner found as a fact that the Charging Parties had failed to prove by a preponderance of the evidence that the workload of the Firefighters and Fire Officers was increased as a result of the City's action on March 20, 1979. The Hearing Examiner was of the view that the City acted within its managerial prerogative in revising the reporting form when it did not impact on terms and conditions of employment. The Hearing Examiner also found support for his decision in certain provisions of the collective negotiations agreement between the parties.

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.

H.E. No. 80-16

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

In the Matter of

CITY OF PLAINFIELD,

Respondent,

- and -

Docket No. CO-79-274-101

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, BRANCH NO. 7
and FIRE OFFICER'S ASSOCIATION,

Charging Parties.

Appearances:

For the City of Plainfield
Sachar, Bernstein, Rothberg, Sikora & Mongello, Esqs.
(David H. Rothberg, Esq.)

For the Firemen's Mutual Benevolent Association, Branch No. 7
and the Fire Officer's Association
Mac D. Hunter, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on April 9, 1979 by the Firemen's Mutual Benevolent Association, Branch No. 7 and the Fire Officer's Association (hereinafter the "Charging Parties" or the "Associations") alleging that the City of Plainfield (hereinafter the "Respondent" or the "City") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Chief of the City's Fire Department did on or about March 20, 1979 issue an order implementing a directive of May 8, 1978, the effect of which imposed additional workload and duties upon the Firefighters and Fire Officers by requiring that they make Burglary Code and Property Maintenance Code inspections, all of which is contrary to the provisions of the Associations' contract and the provisions of the City Charter, and all of

which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act. 1/

It appearing that the allegations of the above charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 11, 1979. Pursuant to the Complaint and Notice of Hearing, hearings were held on July 30 and July 31, 1979 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The parties filed post-hearing briefs by October 16, 1979. 2/

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The City of Plainfield is a public employer within the meaning of

1/ These Subsections prohibit 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."

Under date of July 9, 1979 the Charging Parties filed a Supplemental Unfair Practice Charge, which alleged that the same Subsections of the Act, supra, were violated by the City at meetings between the parties on May 7, 10 and 22, 1979 at which discussions took place concerning the issues arising out of the initial Unfair Practice Charge, supra.

At the hearing, counsel for the Charging Parties agreed that, notwithstanding the allegations in paragraph 10 of the initial Unfair Practice Charge, which pertain to an alleged illegal reclassification under Civil Service, these allegations were not at issue in the unfair practice proceeding.

2/ The briefing schedule was originally set at four weeks following the receipt of transcript by the Hearing Examiner and this was due to vacation schedules. Counsel for the Respondent thereafter requested an additional three-week extension due to the late receipt of transcript, which was granted.

the Act, as amended, and is subject to its provisions.

2. The Firemen's Mutual Benevolent Association, Branch No. 7 and the Fire Officer's Association are public employee representatives within the meaning of the Act, as amended, and are subject to its provisions.

3. The current collective negotiations agreement between the parties is effective during the term January 1, 1978 to December 31, 1979 and the one agreement covers both the Firefighters and the Fire Officers, the Charging Parties herein (see J-1).

4. Article 8 of the aforesaid collective negotiations agreement, which is entitled "Additional Duties," provides in Section 8-1, in pertinent part, as follows:

> "In addition to the normal fire duties performed by the Firefighters and Fire Officers the FMBA and FOA in an effort to improve the effectiveness of the Fire Division and the Department of Public Affairs and Safety agrees to participate in a Safety Patrol Program. It is expressly understood that the Safety Patrol is not a police function, it is merely an expansion of the normal public safety duties of a Firefighter, that is, protecting lives and property. Members of the Safety Patrol will not be expected to engage in those activities for which they have not been properly trained or equipped. The duties of the Safety Patrol will be as follows:
>
> "(a) Detect and report all fires, smoke, false alarms observed or detected within areas of assignment, paying particular attention to public buildings.
>
> * * * *
>
> "(e) The Safety Patrol shall be assigned to check street alarms and boxes during their hours of patrol.
>
> "(f) The Safety Patrols may be called upon to perform other normal Fire Division activities while engaged in patrol duty, such as pre-fire planning, inspection, fire code enforcement, or training.

"(g) The Safety Patrol will engage in a check of all houses listed on the 'vacant house checklist' in its assigned areas during daylight hours.

"(h) The Safety Patrol will seek out and report vehicles that appear to be abandoned..." (Emphasis supplied)

5. Section 8-5 of the agreement, which is headed "Alternative Duties," states that:

"It is understood that those Firefighters and Fire Officers who do not qualify for Safety Patrol duties or who with the approval of the Chief of the Fire Division, after request by the Firefighter or Fire Officer are excused from Safety Patrol duties, may be trained and assigned as building inspectors during the day-time hours..." (Emphasis supplied)

6. Finally, Article 9 of the agreement, entitled "City's Rights and Privileges," provides in Section 9-1, headed "Management Responsibilities," that:

"It is recognized that the management of the City Government, the control of its properties and the maintenance of order and safety, is solely a responsibility of the City. Accordingly, the City hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitution of the State of New Jersey and of the United States, including, but without limiting the generality of the foregoing following rights:

"1. The executive management and administrative control of the City Government and its properties and facilities, and the activities of its employees.

"2. The selection and direction of the work forces, including the right to hire, suspend or discharge for just cause, assign, promote or transfer..." (Emphasis supplied)

7. The City has for some years used a Form M-21 (J-2) in reporting to the Chief Inspector of the Bureau of Fire Prevention conditions within the City

involving alleged infractions of the Property Maintenance Code (J-7A, J-7B), the Burglary Prevention Code (J-8A, J-8B) and the Fire Prevention Code (J-14). Form M-21 was completed and filed by members of the Safety Patrol.

8. Under date of May 8, 1978 the Chief of the Fire Department, Maurice F. Reilley, sent a memo to all Platoon Commanders on the subject of the Fire Safety Patrols (J-6), which was critical of the activity and performance of the Safety Patrols, and which made reference to a new form, M-21A (J-3), for the reporting of infractions of the various Codes, supra.

9. Thereafter, the FMBA filed a grievance concerning the use of Form M-21A and, after the grievance procedure was exhausted, Fire Chief Reilley sent a memo to all Platoon Commanders under date of March 20, 1979 (J-4) implementing the use of the said Form M-21A for infractions of the Fire Prevention Code. 3/

10. Under date of June 6, 1979, the Acting Fire Chief, Edward Ingraham, sent a memo to all Platoon Commanders with respect to Burglary Code Inspections, indicating that the memo of March 23, 1979 (J-5) was rescinded and that the Form M-21 would no longer be utilized (see J-9, J-10 and J-11). 4/

11. The witnesses for the Charging Parties, in the main, attempted to establish that since the issuance of the memo of March 20, 1979 (J-4, supra) there was a significant increase in the workload of the Firefighters and Fire Officers as a result of the implementation of Form M-21A, which, on its face, is more detailed in inspection reporting than was Form M-21 (compare J-3 with J-2). 5/

12. The Charging Party introduced into evidence two charts which purport to present statistically the number of Code inspections made by the various

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3/ Under date of March 23, 1979 Fire Chief Reilley sent a memo to all Platoon Commanders regarding Burglary Code Inspections (J-5), which recited that effective April 2, 1979 the Fire Division will conduct an inspection of properties for compliance with the Burglary Prevention Code.

4/ The forms for residential and commercial inspections with respect to the Burglary Prevention Code were received in evidence as J-12 and J-13.

5/ The Hearing Examiner attaches great significance to the testimony of John P. Tedesco, a Deputy Fire Chief since July 1976 and a witness for the Charging Parties, who testified on cross-examination that 50 per cent fewer inspections were made "this year" than "last year" and who agreed that "...the men aren't spending any more time on their inspection duty now than before the orders were promulgated..." (2 Tr. 88, 89), the latter being an obvious reference to the implementation of Form M-21A. Interestingly, this testimony of Mr. Tedesco coincides with the testimony of Respondent's witness Edward Ingraham, the Acting Fire Chief (see 2 Tr. 137).

Platoons in April, May and June 1979 (CP-1 and CP-4). The Hearing Examiner is unable to make a finding that CP-1 and CP-4 prove that there was an increase in the inspection workload of Firefighters and Fire Officers after the implementation of Form M-21A since the two exhibits provided no basis for comparison between the workload before and after the implementation of Form M-21A. 6/

THE ISSUE

Did the Respondent City violate the Act by the unilateral implementation of Form M-21A on March 20, 1979, i.e., did the Respondent City unilaterally increase the workload of Firefighters and Fire Officers without collective negotiations with the Charging Parties?

DISCUSSION AND ANALYSIS

The Respondent City Did Not Violate The Act When It Implemented Form M-21A And The Charging Parties Have Failed To Prove That There Was Any Increase In The Workload Of The Firefighters And Fire Officers

Clearly, decisions of a public employer which involve: "Work hours and workloads clearly relate to terms and conditions of employment and thus are mandatorily negotiable...": Byram Township Board of Education and Byram Township Education Association, 152 N.J. Super. 12, 26 (App. Div. 1977). Further, current Commission precedent also indicates that the decision to increase the workload of public employees is in itself mandatorily negotiable where the negotiations with respect to the additional duties would not interfere with or infringe upon the right of a public employer to make basic managerial decisions. 7/

As the foregoing Findings of Fact dictate, the Hearing Examiner neces-

6/ Note is made here that the Respondent offered in evidence 10 exhibits, which consist of a series of completed Form M-21's spanning a four-year period from 1975 through 1978, and which indicate that these Form M-21's contain the same types of Code violations as are presently enumerated in the 12 categories of violations set forth on Form M-21A (compare R-1 to R-9 and R-11 with J-3). Comparing the aforesaid completed Form M-21's with Form M-21A it appears to the Hearing Examiner that the format of Form M-21A represents a more efficient and easier way to compile inspection data on Code violations.

7/ See Rahway Board of Education, P.E.R.C. No. 79-30, 5 NJPER 23, 25 (1978); Newark Board of Education, P.E.R.C. No. 79-38, 5 NJPER 41, 42 (1979); Fair Lawn Board of Education, P.E.R.C. No. 79-44, 5 NJPER 48, 49 (1979). Buena Regional Board of Education, P.E.R.C. No. 79-63, 5 NJPER 123, 124 (1979); and

(continued next page)

sarily finds and concludes that the Charging Parties have failed to meet the burden of proving by a preponderance of the evidence that there was in fact an increase in workload of the Firefighters and Fire Officers as a result of the Respondent City eliminating the use of Form M-21 and substituting in lieu thereof Form M-21A on March 20, 1979 (J-4). Mr. Tedesco, a witness for the Charging Parties, testified on cross-examination that the inspection workload had not been increased this year over the past year and, further, that inspections were down by 50 per cent. 8/

While it is true that Form M-21A solicits more detailed information than did the prior Form M-21, the Respondent's proofs demonstrate clearly to the Hearing Examiner that the new Form M-21A is merely a more efficient way to compile data by the use of a 12-paragraph checklist than was done previously on Form M-21. 9/

There being no increase in workload, the City's decision to substitute Form M-21A for Form M-21 was clearly within the City's managerial prerogatives, which are set forth in Article 9 of the collective negotiations agreement and the decision is thus insulated from attack by a charge of unfair practices. Further support for such action by the City is also found in Article 8 of the collective negotiations agreement, namely, Sections 8-1 and 8-5. 10/

Accordingly, the Hearing Examiner has no alternative but to recommend dismissal of the Complaint. 11/

7/ (continued)

Hope Township Board of Education, P.E.R.C. No. 79-96, 5 NJPER 236 (1979). See also, New Jersey Institute of Technology, P.E.R.C. No. 80-27, 5 NJPER 392,394 (1979).

8/ See footnote 5, supra. Exhibits CP-1 and CP-4, as previously noted, add nothing to the Charging Parties' proofs in this case.

9/ See footnote 6, supra.

10/ See Findings of Fact Nos. 4 and 5, supra.

11/ It is noted here that the Charging Parties adduced no evidence in support of the Supplemental Unfair Practice Charge, filed July 9, 1979, and, therefore, the recommended dismissal will also include the Supplemental Charge.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

The Respondent City did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when on March 20, 1979 it implemented Form M-21A for reporting Code violations.

RECOMMENDED ORDER

The Respondent City not having violated the Act, supra, it is HEREBY ORDERED that the Complaint, including the Supplemental Unfair Practice Charge, be dismissed in its entirety.

Dated: October 26, 1979
Trenton, New Jersey

Alan R. Howe
Hearing Examiner