P.E.R.C. NO. 79-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE,

Respondent,

-and-

Docket No. CO-77-204-128

ORANGE P.B.A., INC., LOCAL 89,

Charging Party.

SYNOPSIS

The Orange P.B.A., Inc., Local 89, filed an Unfair Practice Charge against the City of Orange alleging that without prior negotiations the City unilaterally implemented numerous changes in the established practice of scheduling vacations, thereby violating N.J.S.A. 34:13A-5.4(a)(1), (3) and (5).

The Hearing Examiner found that prior to October 1976 there was an established practice of scheduling vacations whereby each officer, on the basis of seniority, would choose his vacation period at the beginning of each year. However, in January 1977, the City, without prior negotiations, implemented a new "manpower deployment system" which incorporated a vacation schedule that substantially altered the method of selecting vacation periods and the length of consecutive vacation time allowable. The Hearing Examiner concluded that this unilateral alteration of a term and condition of employment by the City violated N.J.S.A. 34:13A-5.4(a)(1) and (5). The Hearing Examiner further concluded that the alleged violation of N.J.S.A. 34:13A-5.4(a)(3) should be dismissed since no evidence was presented at the hearing to support this allegation.

The Commission, after careful consideration of the briefs, record and the exceptions filed by the City, accepts the Hearing Examiner's findings of fact, and conclusions of law. However, in accordance with recent decisions the Commission modifies the Hearing Examiner's order to the extent that reinstatement of the vacation scheduling system in effect prior to October 1976 must take place within the framework of the manning requirements established in the City's "manpower deployment system."

P.E.R.C. NO. 79-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE,
Respondent,

Docket No. CO-77-204-128

-and-

ORANGE P.B.A., INC., LOCAL 89,
Charging Party.

Appearances:

For the Respondent, Francis J. Dooley, Esquire
(Daniel J. DiBenedetto, On the Brief

For the Charging Party, Michael Critchley, Esquire

DECISION AND ORDER

On January 28, 1977, an Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Orange P.B.A., Inc., Local 89 (the "Union") alleging that the City of Orange (the "City") engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the Union alleged that without prior negotiations the City unilaterally implemented numerous changes in the established practice of scheduling vacations, thereby violating N.J.S.A. 34:13A-5.4(a)(1), (3) and (5).[1/]

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. (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."

The charge was processed pursuant to the Commission's Rules, and it appearing to the Director of Unfair Practices that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 25, 1977. A hearing was held on August 5, 1977 and October 19, 1977 before Edmund G. Gerber, Hearing Examiner of the Commission, at which both parties were represented and were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Subsequent to the close of hearing, the parties submitted memoranda of law, the final memorandum being received on November 30, 1977. On July 19, 1978, the Hearing Examiner issued his Recommended Report and Decision, 2/ which included findings of fact, conclusions of law, and a recommended order. The original of the report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof. Timely exceptions to the report were filed by the City on August 9, 1978.

The Hearing Examiner found that prior to October 1976, there was an established practice of scheduling vacations whereby each officer, on the basis of seniority, would choose the time and, within limits, length of his vacation period or periods at the beginning of each year. It was determined that this established practice of vacation scheduling was protected by the retention of benefits clause, Article 33, Section 2 of the 1976-77 contract, which was

2/ H.E. No. 79-5, 4 NJPER ___ (Par. ___ 1978).

executed on October 4, 1976. However, the Hearing Examiner found that around October 14, 1976, the City promulgaged a new "manpower deployment system" which incorporated a vacation schedule that substantially altered the method of selecting vacation periods and the length of consecutive vacation time allowable.[3/]

In accordance with recent Commission decisions, the Hearing Examiner concluded that the City could determine unilaterally the number of men necessary for each shift in order to provide adequate police protection. However, within the framework of these manning requirements the City must negotiate a vacation schedule that would include such matters as which employees may be off duty, the method of selecting these employees, the amount of consecutive time-off allowed, and other related matters. The Hearing Examiner, having determined that the meetings which took place prior to implementation of the new vacation schedule did not reach the level of bilateral collective negotiations, concluded that the City did violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when, during the term of the agreement, it unilaterally altered the contractually protected established practice of vacation scheduling. The Hearing Examiner further concluded that the alleged violation of N.J.S.A. 34:13A-5.4(a)(3) should be dismissed since no evidence was presented at the hearing to support this allegation.

The Commission, after a careful consideration of the

3/ Refer to the last paragraph on page 2 and the last paragraph on page 3 of the Hearing Examiner's report for a detailed discussion of the vacation scheduling procedure promulgated by the City.

record, exceptions and supporting brief, accepts the Hearing Examiner's findings of fact and conclusions of law.

It is apparent from the major exception filed by the City that it does not understand the dichotomy between its right to establish manpower levels and its obligation to negotiate vacation schedules. Throughout the exceptions the City states that as a result of the increase in vacation time in the new contract, it was left with no alternative but to promulgate a new vacation schedule that would insure sufficient manpower on each shift to provide for the public safety. The Commission emphasizes that this decision, and those cited by the Hearing Examiner,[4/] do not in any way limit the right of the City to establish manpower levels. But once the City has established manning requirements, it then must negotiate a vacation scheduling system. However, such negotiations must take place within the framework of these manpower requirements. Therefore, the City does not have to negotiate over any vacation schedule proposed by the P.B.A. which would cause manpower levels to drop below the minimum the City has established.

The City further objects to the Hearing Examiner's finding that the series of meetings held with the Union between the announcement of the new vacation schedule and its implementation did not satisfy the requirement of good faith collective negotiations. Contrary to the Hearing Examiner's finding, the City contends that the scheduling system was significantly modified as a result of these meetings. It suffices to say that such participation in

4/ See page 3 of the Hearing Examiner's report.

these meetings, even though it resulted in a modification of the unilaterally established working condition, does not reach the level of bilateral collective negotiations required by the Act.

Finally, exception is taken to the Hearing Examiner's finding that the City acted in bad faith. The City contends that, since negotiations for a new contract were completed, it was free to act, under the good faith belief that as a management prerogative it had the right to establish a vacation schedule to accomodate the additional vacation time provided by the contract. Initially, the Commission notes that during the term of a contract the employer has a continuing obligation to negotiate changes in established practices relating to terms and conditions of employment which are not specifically covered by the existing agreement.[5/] Moreover, good faith is not a defense to a charge of unilateral change in a term and condition of employment. Such conduct by an employer constitutes a per se violation of the duty to negotiate in good faith, irrespective of the employer's subjective motivation.[6/]

Concerning the Hearing Examiner's recommended order, substantial statistical evidence was presented by the City indicating that, due to the negotiated increase in vacation time, it could not

5/ New Brunswick Board of Education, P.E.R.C. No. 78-47, 4 NJPER 84, (Para 4040, 1978), Appeal pending, App. Div. Docket No. A-2450-77 and Galloway Bd. of Ed. v. Galloway Tp. Ed. Assn., P.E.R.C. No. 76-32, 2 NJPER 186 (1976), rev'd 149 N.J. Super. 352 (App. Div. 1977), rev'd ___ N.J. ___ (1978), p. 30, fn. 9 of slip opinion.

6/ Hudson County Board of Chosen Freeholders, P.E.R.C. No. 78-48, 4 NJPER 87, (Para 4041, 1978), Appeal pending, App. Div. Docket No. A-2444-77 and Galloway Bd. of Ed. v. Galloway Tp. Assn. of Educational Secys., P.E.R.C. No. 76-31, 2 NJPER 182 (1976); affirmed in part, rev'd in part 149 N.J. Super. 346 (App. Div. 1977), affirmed in part, rev'd in part, ___ N.J. ___ (1978).

maintain minimum manpower levels under the prior vacation scheduling system. Consequently, to order complete reinstitution of this system would conflict with the ability of the Police Department to adequately fulfill its manpower or staffing levels. Therefore, in accordance with recent decisions[7/] the Commission modifies the Hearing Examiner's order to the extent that reinstatement of the vacation scheduling system in prior to October 1976 must take place within the framework of the City's "manpower deployment system". In effect, the City is required to reestablish the old vacation scheduling system to the extent that it does not cause manpower levels to fall below the City's established manning requirements.

ORDER

The Respondent, City of Orange, shall:

1. Cease and desist from interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the P.B.A. concerning proposed changes in vacation schedules within the framework of the manning requirements established by the City.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Reinstate the vacation scheduling system which was in effect at the time the October 4, 1976 agreement was signed to the extent that this system does not cause manpower levels to

7/ In re Town of West Orange, P.E.R.C. No. 78-93, 4 NJPER __ (Para. ___ 1978), In re Town of Irvington, P.E.R.C. No. 78-84, 4 NJPER __, (Para ___ 1978), and In re Town of Northfield, P.E.R.C. No. 78-82, 4 NJPER __ (Para ___ 1978).

fall below the manning requirements established by the City.

(b) Post in a prominent place at the Orange Police Headquarters copies of the attached notice. Copies of said notice, on forms provided by the Commission, shall, after being signed by the Respondent's representative, be posted for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Chairman, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

3. That portion of the complaint which alleges a violation of N.J.S.A. 34:13A-5.4(a) is dismissed.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp and Schwartz voted for this decision. None opposed.

DATED: Trenton, New Jersey
September 19, 1978
ISSUED: September 20, 1978

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 our employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the P.B.A. concerning proposed changes in vacation schedules within the framework of the manning requirements established by the City.

WE WILL reinstate the vacation schedule system which was in effect at the time the October 4, 1 76 agreement was signed to the extent that this system does not cause manpower levels to fall below the manning requirements established by the City.

CITY OF ORANGE

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

H.E. No. 79-5

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

In the Matter of

CITY OF ORANGE,

Respondent,

-and-

Docket No. CO-77-204-128

ORANGE PBA, INC., LOCAL 89,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends to the Commission that they find the City of Orange committed an unfair practice when it unilaterally implemented a new vacation schedule without negotiating same with PBA.

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. 79-5

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

In the Matter of

CITY OF ORANGE,

Respondent,

-and-

Docket No. CO-77-204-128

ORANGE PBA, INC., LOCAL 89,

Charging Party.

Appearances:

For the City of Orange
Francis J. Dooley, Esq.
(Daniel J. DiBenedetto, on the Brief)

For the Orange PBA, Inc., Local 89
Michael Critchley, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On January 28, 1977, Orange PBA, Inc., Local 89 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the City of Orange ("City") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), as amended, N.J.S.A. 34:13A-1 et seq. [1/] The PBA is the majority representative for all sworn employees and members of the Police Department of the City of Orange, New Jersey. The PBA alleges that the City has engaged in unfair labor practices by not negotiating changes in the scheduling of vacations; it asked that the City be enjoined from continuing such practices and that it (the City) be required to reinstate the vacation schedule and benefits which previously existed.

1/ It is specifically charged that the City violated §5.4(a)(1), (3) and (5) of the Act. These sections 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; (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."

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 25, 1977. Pursuant to the Complaint and Notice of Hearing, hearings were held on August 5, 1977, and October 19, 1977. 2/

The City and the PBA were engaged in negotiations for 2½ years; they finally executed a contract on October 4, 1976. The agreement was made retroactively effective as of January 1, 1976, and was to remain in force and effect until December 31, 1977. This new contract provided up to five weeks vacation, which constitutes a one-week increase over the old contract.

Prior to the execution of the agreement of October 4, 1976, the method of scheduling vacations was that each officer, on the basis of seniority, would choose what periods of time he wanted to go on vacation during the forthcoming year at the beginning of that year. The shifts were also chosen by seniority. The officers were sometimes able to select as many as three or four consecutive weeks in which to enjoy their vacations. However, around October 14, 1976, only ten days after a new contract was signed a new "manpower deployment system" which incorporated a vacation schedule, was announced by the City. This plan was originally to go into effect in November 1976, but a series of meetings were held with the PBA and this scheduling system in slightly modified form went into effect in January of 1977.

Under this new scheduling system which is now in effect the officers select their vacations for three-month periods, and in most cases can only choose one two-week vacation and three one-week vacations. Each officer is assigned either the letter A, B, or C, which he must keep during that year. Each assignment and shift involves a certain letter, and each letter tells the officers from what weeks he can choose his vacation. Since certain vacations are associated with certain shifts, an officer cannot usually choose both his assignment and his vacation as he was able to do in the past; in most cases now he must choose either

2/ Both parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Briefs were submitted by both parties by November 30, 1977. Upon the entire record of this proceeding, the Hearing Examiner finds that the City is a public employer and the PBA is an employee representative within the meaning of the Act. Questions concerning alleged violations of the Act exist and this matter is appropriately before the Commission for determination.

one or the other. This forced choice between assignment and vacation represents a major difference between the two scheduling systems.

The October 4th agreement made no direct mention as to how vacations were to be scheduled. However, Article 33, Section 2--the retention of benefits clause--states that "all rights, privileges and benefits which the officers have heretofore enjoyed and are presently enjoying, shall be maintained and continued to be maintained by the employer..." The PBA claims that the then existing method of choosing vacations was a right, privilege or benefit enjoyed by the officers and was thus retained by the officers according to Article 33, Section 2. This claim is supported by the fact that the officers had chosen their vacations for the entire year of 1976 in January 1976 and that the agreement was made retroactively effective as of January 1, 1976.

It is undisputed that during the course of negotiations for the new contract, Article 33, the retention of rights and benefits clause, was considered. The new Commissioner of Police, Saunder Weinstein, had asked the PBA to enumerate all of the specific privileges or benefits covered under this article. The Association resisted, arguing there were simply too many. In fact this was never done and the article remained unchanged in the contract.

Accordingly the undersigned is satisfied that the scheduling of vacation is a right under the contract. The Commission has recently held in Town of West Orange and West Orange Fire Fighter Local 692, IAFF, P.E R.C. No. 78-93, 4 NJPER ___ (Para.___ 1978)(see also In re Town of Irvington, P.E.R.C. No. 78-__, 4 NJPER ___ (Para.___ 1978) and In re Town of Northfield, P.E.R.C. No. 78-__, 4 NJPER ___ (Para.___ 1978), that within the framework of the number of employees that the employer has determined are necessary at a given time, the employer must negotiate as to which employees may be off duty, the method of selecting employees to be off duty, the amount of time that an employee can take consecutively, etc.

The City maintains that the series of meetings between it and the PBA which took place between October 14, 1976, and January 1977 concerning the new vacation schedule were in fact negotiations, that they negotiated in good faith and, accordingly, such negotiations satisfied their obligations under the Act.

As a result of their talks two changes were made in the proposed vacation schedule prior to its implementation by the City. Under the original proposal the officers would have had to choose their vacations for the entire year at the

beginning of the year on the basis of seniority and each officer had to choose five one-week vacations. Under the adopted schedule an officer can have one two-week vacation during the year and could make their selections on a quarterly basis.

The City acknowledges that they took a firm stand in these meetings. Weinstein testified that from the moment he promulgated this new plan he had stated that the old vacation schedule would be changed; but Weinstein also testified that the change of schedule was not, in his opinion, a change in the terms and conditions of employment. Further, in spite of Article 34, Section 3 of the contract, which provides "either party shall have the right upon 60 days' prior written notice to reopen the agreement...for the negotiation of changes, Weinstein admitted that he never contacted the PBA to reopen the contract. The President of the PBA, George Faso, denied that the meetings were negotiations. He acknowledged that he attended them but only with the intent of trying to preserve and protect the negotiated rights of his members. 3/ In fact he went to Director Weinstein and asked him if he realized that they were not negotiating. Weinstein replied, according to Faso, that "he never intended it to be negotiations and he doesn't expect a show of hands that this schedule was going to have to be changed and was going through." 4/ Given the totality of the testimony, including that of Weinstein, the Hearing Examiner finds this testimony credible.

As mentioned above, this new schedule was promulgated only ten days after the contract was signed and Weinstein had the City's Director of Systems Planning Douglas Dallio prepare a new scheduling system in September of 1976 5/ before the new contract was signed. The undersigned cannot accept the City's contention that they had any intention of negotiating the change in the schedule, otherwise at a minimum it would have raised this issue during the negotiations - before the contract was signed. As stated by the Commission in the State of New Jersey and Council of New Jersey State College Locals, E.D. No. 79, 1 NJPER 39 (1975), affirmed P.E.R.C. 76-8 (1975), "a determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and/or attitude of the party charged. The object of this analysis is to determine the intent of the respondent, i.e. whether the respondent brought to the negotiating

3/ Tr. Vol. I, p. 95, line 17.

4/ Tr. Vol. I, p. 88, line 9.

5/ Tr. Vol. II, p. 61.

table an open mind and a sincere desire to reach an agreement, as opposed to a predetermined intention to go through the motions, to avoid rather than reach an agreement."

The City's failure to raise the scheduling issue prior to the signing of the contract, their subsequent failure to notify the PBA of their desire to reopen negotiations pursuant to the contract and Weinstein's clear admission to Faso that the meetings in question were not negotiations make it indisputable that the City failed to negotiate in good faith.

There is no question that an employer may take a firm position on a given subject during the course of negotiations and, assuming good faith negotiations have taken place, may, upon the exhaustion of all of the Commission's impasse procedures unilaterally implement its last, best offer in negotiations. In re City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977). 6/

However, an employer may not alter the status quo regarding terms and conditions of employment while engaged in collective negotiations and before the exhaustion of such procedures. Here, the City did not even begin to utilize these procedures, never mind exhaust them. The acknowledged changes in the original vacation schedule cannot satisfy the City's obligation to negotiate in good faith. It necessarily follows that the City has violated §5.4(a)(1) and (5) of the Act.

The City further argues that implementation of the new vacation schedule was in response to a problem threatening the safety of the community, and that when one considers all the circumstances, its conduct was both fair and reasonable. The City claims that the old scheduling system was causing a situation in which the police force would be undermanned at certain times - thus endangering the safety and well-being of the community - and that it could use its police power to rectify this situation. The City states that its police power is absolutely inalienable and cannot be restricted or limited in any manner, nor can this power be contracted away.

The City argues that a reasonable exercise of the police power is one required by public necessity, and that public necessity is the limit of the legiti-

6/ See also In re Piscataway Twp. Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1976); In re Township of Little Egg Harbor, P.E.R.C. No. 76-15, 2 NJPER 5 (1976); In re Burlington City Board of Education, P.E.R.C. No. 77-4, 2 NJPER 256 (1976).

mate exercise of this power. Certainly if the City could prove that the safety of the community was threatened this argument would have merit. See Porcelli v. Titus, 108 N.J. Super. 303 (App. Div. 1969), cert. denied 55 N.J. 310 (1970). The City failed to establish, however, that a crisis actually existed which was endangering the public's safety and thus necessitating a change in the scheduling system; the evidence was simply insufficient on this point. The only time which the City was able to pinpoint was the night of February 14, 1976, which occurred well before the agreement was signed. The City was unable to show that any crisis occurred after the signing of the agreement which would justify a unilateral change in the scheduling system. Since the City was fully aware of the situation before the agreement was signed, or should have been, and since the situation did not worsen after the agreement was signed, the City is unable to use its police power to justify the unilateral change in the scheduling system.

Also, as noted above Weinstein was not caught short by the new negotiated extra week for patrolmen. He had Dallio design a new scheduling system before the contract was even signed. If he genuinely anticipated a crisis the issue could and should have been brought up during the ongoing negotiations.

In West Orange supra the Commission recognized that the number of officers on vacation or otherwise off duty is permissively but not mandatorily negotiable, for to hold otherwise would mandate negotiations on manning levels and the City has the right to set minimum manning requirements for police to ensure the safety of the City.

However the City's right to set sufficient manning does not give it the right to ignore the coexisting rights of its employees. The City must negotiate on all terms and conditions of employment which are effected by any manning decisions. Even if the City's schedule was the only one viable under the circumstances, it was unlawful for the City to implement it without giving the PBA the right in good faith negotiations to work out all options and possibilities and possibilities.

The agreement in this case was due to expire on December 31, 1977, but Article 34, §2 states that it "shall remain in full force and effect on a day-to-day basis beyond the date of expiration set forth herein during collective bargaining negotiations between the parties."

If this agreement is still in effect, it is recommended that the Commission order the City to reinstate the vacation scheduling system which was in effect at

the time the October 4, 1976 agreement was signed pending a resolution of such negotiations.

Although the charging party alleged a violation of §5.4(a)(3) of the Act no evidence was adduced at the hearing in support of such an allegation. Accordingly, it is recommended that this portion of the charge be dismissed.

RECOMMENDED ORDER

It is recommended that the Commission order the Respondent, its officers and agents to

1) Cease and desist from

a) interfering with the rights of its employees by denying them their rights to negotiate any proposed changes in their vacation schedules;

b) refusing to negotiate in good faith with the PBA any proposed changes in vacation scheduling

2) Take the following affirmative action which is necessary to effectuate the policies of the Act:

a) reinstate the vacation scheduling system which was in effect at the time the October 4, 1976 agreement was signed, assuming the terms of such agreement are still in force and effect;

b) post in a prominent place at the Orange Police Headquarters copies of the attached notice. Copies of said notice, on forms provided by the Commission, shall, after being signed by the Respondent's representative, be posted for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other materials.

3) It is further recommended to the Commission that the portion of the Complaint alleging a violation of N.J.S.A 34:13A-5.4(3) be dismissed.

Edmund G. Gerber
Hearing Examiner

DATED: July 19, 1978
Trenton, New Jersey

RECOMMENDED POSTING

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 the rights of our employees by denying them their rights to negotiate any proposed changes in their vacation schedules.

WE WILL reinstate the vacation scheduling system which was in effect at the time the October 4, 1976 agreement was signed, assuming the terms of such agreement are still in force and effect.

WE WILL post in a prominent place at the Orange Police Headquarters copies of this notice for a period of sixty (60) consecutive days.

CITY OF ORANGE

(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780