

P.E.R.C. NO. 86-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
TOWNSHIP OF LACEY,

Respondent,

-and-

Docket No. CO-84-289-38

LACEY TOWNSHIP PBA NO. 238,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, and in the absence of exceptions, dismisses the Complaint based on an unfair practice charge that Lacey Township PBA No. 238 had filed against the Township of Lacey. The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act when its police chief unilaterally issued a directive concerning vacation time and personal days. The PBA, however, did not prove this charge by a preponderance of the evidence.

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Appearances:

For the Respondent, Gilmore & Monahan, Esqs. (Terry F. Brady, Of Counsel)

For the Charging Party, Citta, Holzapfel, Citta & Millard, Esqs. (James W. Holzapfel, Of Counsel)

DECISION AND ORDER

On April 19, 1984, Lacey Township P.B.A. No. 238 ("PBA") filed an unfair practice charge against the Township of Lacey ("Township"). The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(5)^{1/}, when its police chief

^{1/} These subsections prohibit public employers, their representatives or agents from: "(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."

unilaterally issued a directive concerning vacation time and personal days.^{2/}

On August 30, 1984, a Complaint and Notice of Hearing issued. The Township then filed an Answer admitting that its police chief had issued a memorandum dealing with vacation time and personal days, but asserting that the chief had a managerial prerogative to do so in order to "assure adequate police protection at all times without unnecessary overtime or emergency expenses."

On September 21, 1984, the Township moved for summary judgment. The Chairman referred the motion to Hearing Examiner Judith E. Mollinger who denied it. H.E. No. 85-24, NJPER (¶ 1985).

On August 19, 1985, the parties submitted a stipulation of facts to the Hearing Examiner and waived their right to a hearing.

On December 20, 1985, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 86-27, NJPER (¶ 1985) (copy attached). She concluded that the Township had a managerial prerogative to issue the directive.

The Hearing Examiner served her report on the parties and informed them that exceptions were due by January 6, 1986. No exceptions were filed.

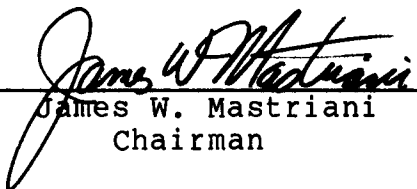
^{2/} The charge initially put into issue all seven paragraphs of the directive; the parties, however, resolved any question concerning paragraphs 1-2 and 6-7.

I have reviewed the record. In the absence of exceptions and under all the circumstances of this case, I conclude that the PBA has not proved its charges by a preponderance of the evidence.^{3/}

Acting pursuant to authority delegated to me by the full Commission, I dismiss the Complaint.

ORDER

The Complaint is dismissed.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
February 14, 1986

3/ I do not adopt the Hearing Examiner's analysis.

H.E. NO. 86-27

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

In the Matter of

TOWNSHIP OF LACEY,

Respondent,

-and-

Docket No. CO-84-289-38

LACEY TOWNSHIP PBA NO. 238

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Township did not violate §5.4(a)(5) of the New Jersey Employer-Employee Relations Act when a Captain in its Police Department issued a directive on January 3, 1984, the purpose of which was to ensure adequate manning vis-a-vis the granting of vacations and personal days. See Closter, P.E.R.C. No, 85-86, 11 NJPER 132 (¶16059 1985) and Paterson, 87 N.J. 78, (1981).

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. 86- 27

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

In the Matter of
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Appearances:

For the Township of Lacey
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(Terry F. Brady, Esq.)

For the Charging Party
Citta, Holzapfel, Citta & Millard, Esqs.
(James W. Holzapfel, Esq.)

HEARING EXAMINER'S
REPORT AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on April 19, 1984, by Lacey Township PBA No. 238 ("PBA") alleging that the Township of Lacey ("Township") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-5.1 et seq. ("Act"). The Charge alleges that the Township through its Chief of Police issued seven orders dealing with vacation time and personal days, which conflict with

existing contractual rights and with the rules and regulations of the Police Department (Section 24, Rule XIII); the seven orders were actually issued by a Captain A. L. Chick on or about January 3, 1984. This unilateral issuance of the orders is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act.^{1/}

It appearing that the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, the Administrator of Unfair Practices issued a Complaint and Notice of Hearing on August 30, 1984. The Township filed an answer on September 13, 1984, and on September 21, 1984, a Motion for Summary Judgment on behalf of the Township. The Chairman of the Commission referred the Township's Motion for Summary Judgment to the Hearing Examiner on October 9, 1984, and thereafter a brief in opposition was filed by the PBA on October 16, 1984, with a reply by the Township on October 22, 1984.

On January 4, 1985, this Hearing Examiner issued a Decision denying the Motion for Summary Judgment on the ground that the record was insufficient (H.E. No. 85-24). The Township filed exceptions on January 10, 1985, which were not pursued, and on April 8, 1985, a hearing was scheduled for May 21, 1985. The plenary

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

hearing was cancelled in lieu of the agreement of the parties to file a Stipulation of Facts upon which a Hearing Examiner's Report and Recommended Decision would issue. The total agreed upon stipulation was received on August 19, 1985, with the parties relying upon the briefs previously filed in connection with the Respondent's Motion for Summary Judgment.

Positions Of The Parties

The PBA contends that paragraphs 3, 4 & 5 of Captain Chick's January 3, 1984, directive are contrary to the collective negotiations agreement addendum regarding the implementation of the "5-2, 5-3" work schedule. The addendum provides in Section B, Vacation, ¶5 that: "Vacation will not be denied because of Military obligations or Personal days." and Section C, Personal Days, ¶3 states that: "Personal days will not be denied because of vacation days already assigned or Military obligation." (Stipulation of Facts, Exhibit "E").

The PBA argues that Captain Chick's directive unilaterally changed the terms and conditions of employment of its members and that the items addressed by the directive were previously the subject of the collective negotiations agreement addendum.

The Township's position is that Captain Chick's January 3 directive was the exercise of a managerial prerogative, and is not subject to collective negotiations.

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

FINDINGS OF FACT

1. The Township of Lacey is a public employer within the meaning of the Act, and is subject to its provisions.

2. The Lacey Township PBA No. 238 is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The current collective negotiations agreement between the parties is effective during the period January 1, 1983 through December 31, 1985.

4. Article X, Section 4 provides that: "The Employee will have the right to select his tour-of-duty schedule for his designated job duty by seniority. This section shall not apply where by reason of emergency or extraordinary circumstances, the Chief of Police finds it necessary to assign certain employees to certain tour-of-duty schedules, for a limited duration, to more efficiently or effectively operate the department."

5. On January 3, 1984, Captain A. L. Chick, the Police Department's Patrol Division Commander, issued a directive to all patrol and communication personnel of the Police Department on the subject of vacation and personal days (Stipulation of Facts, Exhibit "A"). This directive included seven separate paragraphs or orders, the following three of which are placed in issue by the PBA as an alleged violation of the Act:

¶3. No more than one person will be off from a platoon at any time.

¶4. No Personal Days will be granted on holidays, during the months of May 28 through September 5, 1984. Except in an emergency

¶5. No vacations will be granted while other personnel are on Military Leave, except when the float shift is working.

6. The above directive of Captain Chick stated that the purpose of the order was to insure "...that the Department has a proper amount of personnel available so that the normal functioning of the patrol division will not be jeopardized..."

7. Similar directives to that of Captain Chick's of January 3, 1984, were also issued by him on December 11, 1976, December 27, 1977 and January 7, 1980 (Stipulation of Facts, Exhibits "B," "C" & "D").

8. On October 15, 1984, Jorge A. Rod, a Lacey Township Committeeman, certified that he was assigned as the Police Commissioner at the time that the "5-2, 5-3" schedule took effect; that the Mayor, the Chief of Police and he met with the Charging Party regarding implementation of the foregoing schedule; that the collective negotiations agreement then in effect would have required overtime to be paid if the "5-2, 5-3" schedule was implemented; an addendum to the collective negotiations agreement was negotiated, which provided for certain guidelines in the implementation of the "5-2, 5-3" schedule, which addendum is attached to the Stipulation of Facts as Exhibit "E."^{2/}

^{2/} The addendum to the collective negotiations agreement bears no date but was obviously agreed upon prior to the certification of Committeeman Rod on October 15, 1984 (Stipulation of Facts, Exhibit "E").

ANALYSIS

DID THE TOWNSHIP VIOLATE §5.4(a)(5) OF THE ACT WHEN IT UNILATERALLY ISSUED A DIRECTIVE ON JANUARY 3, 1984, REGARDING THE TAKING OF VACATION AND PERSONAL DAYS?

This analysis must focus on whether the Township had an obligation to negotiate over the restrictions on use of vacation and personal leave i.e., whether the subjects of the directive were mandatorily negotiable. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981)(Paterson); Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1918). Cf. In re Borough of Closter, P.E.R.C. 85-86, 11 NJPER 132, (¶16059 1985 (Closter)).

In Closter, the Commission found that the entire subject of work schedules for police officers did not fall within the non-negotiable sphere of managerial prerogative. See also Franklin Township, P.E.R.C. No. 85-97, 11 _____ (¶ _____ 1985) and City of Orange v. FMBA, Local No. 10, P.E.R.C. No. 85-120, 11 NJPER _____ (¶ _____ 1985). The Commission concluded that it would "continue to make our work schedule scope of negotiations determinations based upon the balancing test" enunciated in Paterson. Closter at p. 10 slip opinion.

In Paterson the court said:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).]

If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. (At 92-93, citations omitted).^{3/}

In the instant case, it is true that the parties negotiated an addendum to the collective negotiations agreement in 1984, regarding vacation and personal days, which provided that vacation would not be denied because of military obligations or personal days and that personal days would not be denied because of vacation days already assigned or military obligations. Thus, this addendum together with Article X, §4, providing for the right to select tour-of-duty by seniority, affords considerable strength to the position of the Charging Party that Captain Chick's directive of January 3, 1984, in paragraphs 3-5, constitutes a unilateral change in terms and conditions of employment, i.e. - vacation and personal leave benefits.

^{3/} Neither party contends that the issues in the instant case are controlled by statute.

However, an examination of the foregoing three paragraphs in the January 3, 1984 directive of Captain Chick discloses that the emphasis is upon personnel manning and the maintenance of the normal functioning of the Township's Police Department. This is indicated in the first paragraphs of Captain Chick's directive. Thus, in paragraph 3 he directs that no more than one person may be off from a platoon at any time, a provision clearly directed at manning. In paragraph 4 Captain Chick states that no personal days will be granted on holidays between May 28 and September 5 except in an emergency--again a directive aimed at manning and providing for an adequate complement in the Department. Finally, in paragraph 5 he directs that no vacations will be granted while other personnel are on military leave; however, a significant exception permits such vacations to be granted when a float shift is working.

Hence, based on a balancing of the cited contractual provisions, and the manning aspects of Captain Chick's January 3rd directive, this Hearing Examiner is persuaded that the balance favors the managerial interests of the Township in providing adequate staffing for the delivery of police services. Paterson. Accord, Borough of Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71, 79 (App. Div. 1983), pet. for certif. den. 96 N.J. 293 (1984) and Town of Irvington v. Irvington PBA Local 29, 170 N.J. Super. 539, 546 (App. Div. 1979), pet. for certif. den. 82 N.J. 296 (1980); cf. Closter.

Based on the foregoing analysis and the authorities cited above, this Hearing Examiner must recommend dismissal of the allegation that the Respondent violated §(a)(5) of the Act. In recommending the dismissal of the Unfair Practice Charge, I have given full consideration to the cases cited by the Charging Party. However, I do not find them apposite to the factual issues raised by the Statement of Facts.

CONCLUSION OF LAW

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

The Township of Lacey did not violate N.J.S.A. 34:13A-5.4(a)(5) when Captain A. L. Chick issued his directive of January 3, 1984, regarding manning in the Township's Police Department vis-a-vis the granting of vacations and personal days.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.


Judith E. Mollinger
Hearing Examiner

Dated: December 20, 1985
Trenton, New Jersey