

P.E.R.C. NO. 2007-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST ORANGE,

Respondent,

-and-

Docket No. CO-2005-230

PBA LOCAL NO. 25,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Township of West Orange's motion for summary judgment on an unfair practice charge filed by PBA Local No. 25. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (5) and (7), when it unilaterally assigned police officers the responsibility to fuel their patrol cars. The Commission concludes that the Township has not met its burden of proving that it is entitled to relief as a matter of law and denies summary judgment. The case must proceed to a plenary hearing where the burden will be on the PBA to prove that the disputed duties are not incidental to or contemplated within a police officer's job description and normal duties.

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, Kenneth W. Kayser, attorney

For the Charging Party, Klatsky Sciarrabone & De Fillippo,
attorneys (David J. De Fillippo, of counsel)

DECISION

On June 26, 2006, the Township of West Orange moved for summary judgment on an unfair practice charge filed by PBA Local No. 25. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (5) and (7), when it unilaterally assigned police officers the responsibility to fuel their patrol cars.

On April 18, 2006, a Complaint and Notice of Hearing issued on the 5.4a(1) and (5) allegations only.^{1/} On April 28, the Township filed its Answer and affirmative defenses.

The Township has submitted a certification from its Business Administrator and Police Director. He states that the former system for fueling vehicles was based on the honor system, used mechanical pumps in the gated yard of the Public Works Garage, and had manual record keeping that required drivers using the pumps to enter mileage and gallons pumped with confirming initials. Record keeping was cumbersome and the system was open to abuse and potential misappropriation of fuel. The gate to the yard in which the pumps were located had to be locked at night so that the pumps were not available on the midnight shift. The new system calls for employees to use automated pumps to fuel the cars assigned to them and allows for round-the-clock availability, eliminates the problem of vehicles being unavailable for use on the midnight shift, and permits the generation of reports regarding fuel use by car, department and employee. The new system was implemented for all Township vehicles and all employees.

^{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. (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. . . ."

The PBA has submitted a certification from its former president. He states that civilian employees previously had the responsibility to fuel police cars. The Department would establish certain hours when patrol officers were required to drive to the Township Garage for fueling by civilian garage employees. On rare occasions when a patrol car was close to running out of gas on the midnight shift, a supervisor would order the officer to return his vehicle to headquarters and take another vehicle. As a last resort, the officer would be ordered to re-fuel the vehicle at the Township fire department. This practice was codified in at least two directives issued by the Department, one in 1988 and the other in 2001.

The PBA objected to the change by filing a grievance. The grievance noted that the Township had "floated" a proposal during interest arbitration to have officers fuel their own vehicles, but the PBA rejected that proposal. The chief's response to the grievance stated that the new system is a policy decision not within his purview.

The PBA has also attached the Department of Personnel ("DOP") Job Specifications for Police Officer and School Bus Driver. A police officer:

Inspects and maintains patrol car by visually checking and/or operating all equipment, by arranging for washing, waxing, and mechanical service, and by taking patrol car to service location in order to insure that vehicle is ready for patrol.

A school bus driver "Checks, cleans and performs minor servicing of buses" and "Checks gas, battery, oil, and water before departure." Under "Knowledge and Abilities," a bus driver must have "knowledge of care, maintenance, servicing, and minor repair of motor vehicles."

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

Employers may unilaterally assign duties if they are incidental to or comprehended within an employee's job description and normal duties. See, e.g., City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985) (fire officers required to perform crossing guard or patrol duties connected to fires); Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984) (bus drivers required to pump gas); West Orange Tp., P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982) (firefighters required to go on fire patrols). However, a prohibition against assignment of duties unrelated to an employee's normal duties is mandatorily negotiable. In re Byram Bd. of Ed., 152 N.J. Super. 12 (1977). The issue in this motion is whether the Township has proven, at this juncture, that as a matter of law, pumping gas is a duty that may be unilaterally assigned.

The DOP job description for police officer requires an officer to take a patrol car to a service location to ensure that the vehicle is ready for patrol. The job description for school bus driver requires drivers to have knowledge of care, maintenance, servicing, and minor repair of motor vehicles and to perform minor servicing of buses. This distinction is relevant and consistent with our case law addressing the different kinds of duties that can be assigned to bus drivers and police officers without first having to negotiate with their majority representative. We have found that a school board had a managerial prerogative to require bus drivers to pump their own gas. Monroe Tp. Bd. of Ed. We have also found that a police chief had a prerogative to require police officers to check the oil in their vehicles before going on patrol, and that patrol officers could be expected to change flat tires when maintenance employees were not available. Mercer Cty. Park Comm'n, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980). In Mercer Cty., we balanced the relatively minor work load implications of checking the oil and changing a flat tire while on patrol against the objective of avoiding costly maintenance and keeping cars available for duty.

In this case, we do not know whether the Township's police officers have ever pumped their own gas before the new system was implemented.^{2/} Nor do we know whether public works employees are

^{2/} In its brief, the Township asserts that even before the new system was implemented, the vast majority of police officers
(continued...)

still available to refuel police cars on other than the midnight shift, or whether these employees can report fuel use by car, department and employee. Comparing the DOP job descriptions for school bus driver and police officer in the context of our case law, we are not convinced that the Township has proven, at this juncture and on this limited factual record, that pumping gas is comprehended within the police officers' DOP job description and normal duties.^{3/} We note that neither party has submitted the results of a DOP classification appeal or desk audit; such results would be relevant to our determining whether these duties are contemplated within the DOP job description. See City of Hoboken, P.E.R.C. No. 96-7, 21 NJPER 280 (¶26179 1995) (DOP desk audit results are relevant and admissible but pendency of desk audit does not warrant restraint of arbitration over grievance claiming out-of-title assignment). For all these reasons, we conclude that the Township has not met its burden of proving that it is entitled to relief as a matter of law and we deny summary judgment. The case must proceed to a plenary

2/ (...continued)
of all ranks had for many years pumped their own gas. That factual assertion is not supported by a certification and cannot be considered in this motion. At a hearing, the Township could seek to prove that assertion and the inference that pumping gas has been part of the regular duties of its police officers.

3/ There does not appear to be a dispute over the obligation of police officers to re-fuel cars on the midnight shift when civilian employees are not available. Compare Mercer Cty. Park Comm'n.

hearing where the burden will be on the PBA to prove that the disputed duties are not incidental to or contemplated within the police officer's job description and normal duties.

ORDER

Summary judgment is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

ISSUED: September 28, 2006

Trenton, New Jersey