

P.E.R.C. NO. 2008-4

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERNARDSVILLE,

Respondent,

-and-

Docket No. CO-2004-253

PBA LOCAL 365,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Borough of Bernardsville. The Complaint was based on an unfair practice charge filed by PBA Local 365. The charge alleged that the Borough violated the New Jersey Employer-Employee Relations Act when it discontinued an alleged practice of permitting police officers assigned to full-day, off-site training to leave from and return directly to their homes without using compensatory time to make up the difference between the actual training time and their 12-hour shifts. The charge also alleges that the Borough refused the PBA's demand to negotiate over the alleged change or the impact of the change. The Commission finds that the PBA has not met its burden of proving that a February 2002 memorandum changed a term and condition of employment. Under the facts of this case, the Commission cannot conclude that an established practice entitled officers to end their shifts early without charging time.

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, Apruzzese, McDermott, Mastro & Murphy, attorneys (Robert J. Merryman, of counsel)

For the Charging Party, Loccke, Correia, Schlager, Linsky & Bukosky, attorneys (Michael A. Bukosky, of counsel)

DECISION

PBA Local 365 has filed exceptions to a Hearing Examiner's report and recommended decision. H.E. No. 2007-6, 33 NJPER 67 (¶22 2007). The Hearing Examiner found that the Borough of Bernardsville did not unilaterally change an established working condition when it reminded police officers working 12-hour shifts of their obligation to report to headquarters before and after attending training classes and to use compensatory time for any time-off resulting from shortened work days. The Hearing Examiner thus recommended dismissing a Complaint that issued based on an unfair practice charge filed by the PBA. We adopt that recommendation.

The case began on February 20, 2004 when the PBA filed an unfair practice charge against the Borough. The charge alleges that the Borough 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 discontinued an alleged practice of permitting police officers assigned to full-day, off-site training to leave from and return directly to their homes without using compensatory time to make up the difference between the actual training time and their 12-hour shifts. The charge also alleges that the Borough refused its demand to negotiate over the alleged change or the impact from the change.

On August 4, 2004, a Complaint and Notice of Hearing issued. On August 18, the Borough filed its Answer denying that it changed a past practice, refused to negotiate, or otherwise violated the Act.

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<sup>1/</sup> 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."

On January 9 and 10 and February 23, 2006, Hearing Examiner Elizabeth J. McGoldrick conducted a hearing.<sup>2/</sup> Both parties filed post-hearing briefs and the Borough filed a reply brief.

On March 20, 2007, the Hearing Examiner recommended dismissing the Complaint. She found that a February 2004 memorandum issued by the police chief simply reiterated an existing policy that required each officer to obtain permission before reporting directly to training from home or returning home after training without having to charge compensatory time for the balance of a 12-hour shift.

The PBA has filed exceptions and the Borough has filed an answering brief. We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact (H.E. at 3-14).

N.J.S.A. 34:13A-5.3 prohibits a public employer from unilaterally changing mandatorily negotiable terms and conditions of employment. The PBA has not met its burden of proving that the February 2002 memorandum changed a term and condition of employment.

Although officers work 12-hour shifts, full-day training with outside agencies normally lasts only eight hours. In 1994, the year the 12-hour shift was established, the patrol lieutenant

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<sup>2/</sup> The original hearing date was postponed and the parties requested that the hearing be further postponed while they completed their successor contract negotiations.

issued a memorandum notifying patrol officers that "an officer attending training for 8 hours owes the Borough 4 hours." Any early dismissal without the use of compensatory time would be decided on a case-by-case basis. Nevertheless, before the February 2004 memorandum, some officers went home without permission after full-day training but before completing their 12-hour shifts and without charging compensatory time for the balance of those shifts. Other officers received permission to leave after eight hours without charging compensatory time and still others charged compensatory time for the balance of their 12-hour shifts.<sup>3/</sup> Under these facts, we cannot conclude that an established practice entitled officers to end their shifts early without charging time. No evidence shows that the employer ever authorized the alleged practice. Nor can we impute knowledge based on widespread use. In over one-third of the documented cases, employees took compensatory time for the balance of their 12-hour shifts; we infer that those employees understood that

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3/ The police chief testified that individual officers were sometimes permitted to report directly from home to training and that preparation time or homework sometimes filled out the balance of an officer's 12-hour shift (3T17-3T26). The February 2004 memorandum did not change those procedures (3T17).

they were obligated to do so.<sup>4/</sup> No evidence contradicts that inference.

The PBA's reliance on Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000), is misplaced. That case found that the township had a practice of placing new police officers with police academy training and at least one year's municipal experience at step three of the police salary guide. Although the exact limits of the practice were not clear, there was a discernible practice. Middletown does not, as the PBA asserts, stand for the proposition that an established practice can be "fuzzy." The union in Middletown was not aware of a few deviations from the practice. When it was made aware of a deviation, it registered its objection by filing an unfair practice charge. Here, when a personnel audit revealed that some officers were not charging compensatory time to complete their 12-hour shifts, the chief issued his February 2004 memorandum. The fact that some officers went home after training without charging time and without the Borough's knowledge does not establish that the Borough was required to permit all employees

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<sup>4/</sup> The PBA argues that officers used compensatory time only to complete the balance of an 8-hour shift when training ended after only 4 or 5 hours. However, some officers used compensatory time to complete the balance of 12-hours shifts on training days (R-7 through R-16).

to do so and to maintain that benefit pending negotiations over ending it.

For these reasons and the reasons stated in the Hearing Examiner's report, we conclude that the PBA did not prove that the memorandum changed a working condition or that the Borough unlawfully refused to negotiate.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: August 9, 2007

Trenton, New Jersey