

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF STATE POLICE),

Respondent,

-and-

Docket No. CO-H-91-298

IFPTE, LOCAL 195, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by IFPTE, Local 195, AFL-CIO against the State of New Jersey (Department of Law and Public Safety, Division of State Police). The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act when, without input from Local 195, it laid off communications operators and guards represented by Local 195 and assigned the work to state troopers. In addition, Local 195 alleged that the employer planned to subcontract some of the work without discussion with Local 195. The Commission finds no transfer of unit work to non-unit employees of the public employer and that any alleged breach of a contractual discussion provision would have to be pursued through the negotiated grievance procedure.

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IFPTE, LOCAL 195, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Deborah T. Poritz, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On May 6, 1991, IFPTE, Local 195, AFL-CIO filed an unfair practice charge against the State of New Jersey (Department of Law and Public Safety, Division of State Police). The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (4) and (5),^{1/} when, without input from Local 195, it

^{1/} These subsections 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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

laid off communications operators and guards represented by Local 195 and assigned their work to state troopers. In addition, Local 195 alleged that the employer planned to subcontract some of the work without discussion with Local 195.

On July 12, 1991, a Commission designee denied Local 195's request for interim relief. I.R. No. 92-1, 17 NJPER 371 (122172 1991). On August 22, a Complaint and Notice of Hearing issued. The employer's Answer admitted that there were layoffs, but denied that they were planned without input from Local 195. The Answer further claimed that state troopers had in the past and will in the future perform some or all of the functions of the communications operators.

On October 25 and December 30, 1991 and January 7, January 31, March 5, March 24, April 30 and May 19, 1992, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. At the conclusion of the charging party's case-in-chief, the employer moved to dismiss certain portions of the Complaint. Local 195 withdrew or the Hearing Examiner dismissed all allegations except those concerning the transfer of communications operators' duties to state troopers, subcontracting without discussion, and an amendment challenging the assignment of guard duties to a non-unit receptionist. The hearing continued on these issues. At its conclusion, the parties waived oral argument but filed post-hearing briefs.

On October 7, 1993, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 94-6, 19 NJPER ____ (____ 1993). He found that there had been no transfer of unit work to state troopers since troopers had for many years shared communications duties with communications operators. He further found that the subcontracting of guard duties and the assignment of certain duties to a receptionist did not breach any negotiations obligation.

On December 9, 1993, after an extension of time, Local 195 filed exceptions. It claims that the communications training of troopers and the past work by troopers in the communications area have been limited and that therefore there was no history of work sharing. It further claims that by not permitting discussion on subcontracting of guard work and by assigning guard duties to a non-unit receptionist, the employer violated the Act.

On December 15, 1993, the employer filed a reply. It claims that Local 195's assertions are not supported by the record and that the recommended decision should be adopted.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 5-12) with these modifications. We modify finding no. 8 to reflect that there are communications operators at Division headquarters and in the Marine Bureau (1T37; 1T62-1T72). We clarify finding no. 9 to indicate that both Gorczyca and Gray were trained for two weeks or 80 hours. We modify finding no. 12 to recognize that the communications training for troopers and communications operators was not the same. The

overall sense of the record is that operators received greater training because they were to perform communications duties full-time. Troopers were given training sufficient to familiarize them with the communications operation; if they were assigned communications duties, they would have to gain in-depth knowledge on the job. We modify finding no. 14 to indicate that communications officers used much, but not necessarily all, of their accumulated sick time. We clarify footnote 3 to indicate that the locking and unlocking of doors occurred after the layoff of security guards.

We begin our analysis with the communications operators and state troopers. N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over mandatorily negotiable terms and conditions of employment. Preservation of unit work is mandatorily negotiable. See Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); see also cases cited by Hearing Examiner, slip op. at 15 n. 6.

Section 5.3 also defines an employer's duty to negotiate before changing working conditions:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

See also Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 338 (1989); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978).

Here, however, there was no legally significant change in working conditions. State troopers have historically performed communications duties either alone or in conjunction with communications operators. The trooper's training may not have been as extensive, but they nevertheless performed the duties for many years before the layoff of operators in 1991. Having found no transfer of unit work to non-unit employees of the public employer, we dismiss the allegation concerning the communications operators and state troopers.

We next address the obligation to discuss the subcontracting of guard duties. Local 195, IFPTE v. State, 88 N.J. 393 (1982), held that a public employer's decision to subcontract to a private contractor is not mandatorily negotiable, but that discussions about subcontracting for fiscal reasons would be in the public interest. Thus, a public employment contract can contain a provision requiring the employer to discuss the economic aspects of subcontracting contemplated for purely fiscal reasons when a job layoff may result. Id. at 420. These parties have negotiated such a provision. Under these facts, this claim that the employer simply breached the provision when it subcontracted guard duties would have to be pursued through the negotiated grievance procedure. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

We next address the claim that guard unit work was transferred to a non-unit receptionist. The facts do not bear out

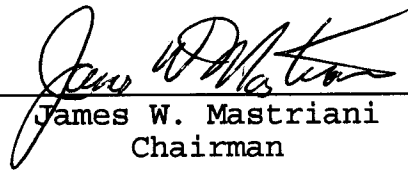
that claim. Other than unlocking a door in the morning, the receptionist did not perform duties performed by guards. She continued to perform her own duties and many of the security functions were left undone.

Finally, in the absence of any supporting evidence, we dismiss the allegation that the employer violated subsection 5.4(a)(4).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision.

DATED: January 24, 1994
Trenton, New Jersey
ISSUED: January 25, 1994

H.E. NO. 94-6

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF STATE POLICE,

Respondent,

-and-

Docket No. CO-H-91-298

IFPTE, LOCAL NO. 195, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that Public Employment Relations Commission dismiss an Unfair Practice Charge, which alleged that the Respondent violated Sections 5.4(a)(1), (4) and (5) of the New Jersey Employee-Employer Relations Act when in July 1991 it laid off 34 of its 123 Communications Operators ("CO's) and 50 to 55 of its 212 Security Guards due to severe budget constraints.

Regarding the CO's, the question was whether or not there was a shifting of work to non-unit State Troopers on and after the layoffs of July 1991, which would have been mandatorily negotiable under the Rutgers (7 NJPER 505, 1981) line of cases. However, the State Troopers had for many years shared the work of the CO's so Town of Dover (15 NJPER 264) became the governing decision.

The Security Guards presented a puzzle because the Charging Party only litigated the fate of four of the 50 to 55 Guards laid off. No viable theory of a violation of the Act was presented. Likewise, a subcontracting argument failed for want of proofs.

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. 94-6

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

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STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF STATE POLICE,

Respondent,

-and-

Docket No. CO-H-91-298

IFPTE, LOCAL NO. 195, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Hon. Frederick P. DeVesa, Attorney
General (Stephan M. Schwartz, DAG)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
Attorneys (Arnold S. Cohen, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public
Employment Relations Commission ("Commission") on May 6, 1991 by
IFPTE, Local No. 195, AFL-CIO ("Charging Party" or "195") alleging
that the State of New Jersey, Department of Law and Public Safety,
Division of State Police ("Respondent" or "State") has engaged in
unfair practices within the meaning of the New Jersey Employer-
Employee Relations Act, as amended, N.J.S.A. 34:13A-5.4(a)(1), (4)
and (5) (the "Act"); in that: (1) 195 and the State are currently
parties to a collective negotiations agreement; (2) 140
Communications Operators ("CO's") have been employed by the State

Police, Department of Law and Public Safety; (3) effective June 28, 1991, 123 of these CO's were to be laid off, all of whom were members of 195; (4) 185 Guards were employed by the Department of Law and Public Safety but effective, June 28, 1991, 123 Guards were scheduled to be laid off, all of whom were members of 195; (5) these layoffs were decided upon without any input from 195, nor was 195 provided with any supporting data regarding the decision of the State to layoff these employees; (6) these job duties of the CO's and the Guards are scheduled to be assumed by State Troopers, the result of which will be to deprive employment to members of 195, contrary to the New Jersey Department of Personnel Rules and Regulations; (7) the reason for these layoffs is to undermine 195 by improperly assigning the job duties of CO's and Guards to State Troopers; and (8) finally, plans are underway to subcontract a portion of the work of the laid off employees without discussion with 195 and the presentation to it of supporting data; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1), (4) and (5) of the Act.^{1/}

^{1/} These subsections 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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

A Complaint and Notice of Hearing was issued on August 22, 1991. The State filed its Answer on July 25, 1991, denying that it shifted work from one bargaining unit to another unit and asserting that it had adhered to all statutory and contract requirements in laying off of Communications Operators and Guards.

* * * *

Prior to the issuance of the Notice of Hearing, 195 filed an Application for Interim Relief on June 26th, returnable on June 28, 1991. Following a hearing on July 11th, Edmund G. Gerber, the Commission designee, ruled in I.R. No. 92-1 that the State had a non-negotiable right to issue layoff notices to the affected employees. However, the affidavits filed by the parties created a factual dispute which required resolution at a plenary hearing: see 17 NJPER at 372 (¶22172 1991).

Thereafter, hearings were held before the undersigned in Trenton, New Jersey, on the following dates: October 25, December 30, 1991; January 7, January 31, March 5, March 24, April 30, and May 19, 1992. During the course of the hearing, i.e., at the conclusion of the Charging Party's case, the State moved to dismiss certain portions of the Unfair Practice Charge, as follows:

1. First, the Charging Party voluntarily withdrew all allegations contained in the fourth and last paragraph on the first page of its rider to the Unfair Practice Charge, docketed May 6,

1991, commencing with the phrase "These layoffs were planned and decided..." and concluding with the sentence "Its demands have been refused..." [C-1;3Tr33].

2. The Charging Party voluntarily withdrew from the first complete paragraph at the top of the second page of its rider to its Unfair Practice Charge, supra, but only so much as pertained to the allegations that State Troopers were to assume the job duties of the Guards. [3Tr35-38].

3. A further aspect of the State's Motion to Dismiss at this point concerns the last sentence in the same first full paragraph on the second page of the Unfair Practice Charge, namely, the allegation that: "...The reason for these layoffs is to undermine Local 195..." [the balance of the sentence relates directly to that which has just been quoted]. After evaluating the arguments of counsel for the parties, I granted the State's Motion to the extent that I deemed the above allegation regarding "undermine Local 195" as properly deleted from the first paragraph on page two but excepting therefrom the allegation that the State did "...improperly assign the job duties of communications operators...to State Troopers..." [3Tr39-51].

4. The prior paragraph, dealing with the State's Motion to Dismiss, also raises the larger question of the assignment or shifting of unit work. (Compare 3Tr51-57 with 3Tr57-61). This deals with the State's Motion as to the second paragraph on the second page of the Unfair Practice Charge. Here 195 attacks the

State's plans to subcontract a portion of the work of the laid off employees without discussion. This final part of the State's Motion to Dismiss was combined with its argument regarding the assignment or shifting of unit work. [See 3Tr62-72]. The Motion of the State as to these two matters was denied on the basis of their having been at least a "scintilla" of evidence adduced by the Charging Party.

* * * *

At the hearing, the parties were afforded an opportunity to examine and cross-examine witnesses and present relevant evidence. The parties waived oral argument (8Tr8). Post-hearing briefs, a reply brief by the State and a waiver of any further filing by 195 were received by February 16, 1993.

* * * *

Upon the entire record in this case, I make the following:

FINDINGS OF FACT

1. The State of New Jersey, Department of Law and Public Safety, Division of State Police, is a public employer within the meaning of the Act, as amended, as is IFPTE, Local No. 195, AFL-CIO, a public employee representative within the meaning of the same Act.

2. The applicable collective negotiations agreement, to which the parties were last bound during the term July 1, 1989 through June 30, 1992 (J-1), contains the following relevant provisions:

- **Article I, Recognition:** provides in Section A(1) that the State recognizes 195 as the "...sole collective

negotiating agent with respect to wages, hours of work and other terms and conditions of employment for all its employees in the state-wide Operations, Maintenance and Services and Crafts Unit..." (J-1, p.1). [Although there are many other provisions defining the scope of recognition by the State, they are not relevant to the case at bar].

- Article XXXIX, Out-Of-Title Work: provides, generally, that employees shall be assigned work appropriate to and within their job classification and that assignment of out-of-title work other than on an incidental basis shall be avoided. However, when such occurs a contractual mechanism is provided for resolving the problem. (J-1, p.55).

- Article XLII, Subcontracting of Work: provides in Section A that the "...State will discuss with the Union any decision to subcontract work based on solely fiscal reasons when it is apparent that employees will be laid off as a direct result of the subcontracting." Further, in Section B it is provided that if, during the term of the contract, "...the State contracts out or subcontracts out work normally performed by employees covered by this Contract and such action results in layoff or demotion, employees affected will be given every priority...Any employee thus affected will be protected by the layoff and recall provisions of the Contract and by any relevant laws, rules and regulations..." (J-1, pp.57-58).

* * * *

3. Frank A. Mason, the former Director of the Office of Employee Relations from 1969 through 1991 testified without contradiction that 195 had never succeeded in obtaining from the State, and incorporating into its contract, a Work Preservation clause (7Tr79, 80). Further, Mason testified that the Recognition clause in 195's agreements has remained unchanged over the course of twenty years (7Tr82).

BUDGETARY BACKGROUND

4. Severe budget constraints were imposed upon the Department of Law and Public Safety ("Department") by the State for the fiscal year 1992 (5Tr116). As a result, general layoff notices were issued on May 9, 1991, to all 123 CO's employed by the New Jersey State Police ("Police"), effective June 29, 1991 (1Tr55, 56; 5Tr116-119). Prior to July 1991, 195 represented 212 Security Guards, who were assigned to the Police. Of these, 50 to 55 were laid off, effective July 12, 1991. [2Tr94-96].

5. Between June 29th and July 13, 1991, the proposed number of layoffs of CO's was reduced to 34, each of whom was terminated, effective July 12, 1991. [1Tr56, 57; 5Tr121]. The number of Security Guards to be laid off remained unchanged.

COMMUNICATIONS OPERATORS

6. The State Police radio communication system is a digitally trunked system that provides universal coverage throughout the State of New Jersey. This system became operational in the latter part of 1986 but was not fully perfected and accepted by the State Police until July 1991. [5Tr 15-17, 23-25].

7. In July 1991, the State Police determined that for reasons of efficiency and economy they would move from regionalization of communications to a centralized system. As a result, the 23 radio dispatch locations in Troops A, B and C were combined into 8 locations throughout the State. [2Tr13, 14; 5Tr22-24, 31-34]. The centralized radio dispatch system was to be operated by fewer CO's, which would allow the State Police to place more State Troopers on patrol (5Tr33, 34).

8. The Police Field Operations Section is organized geographically into five Troops, each composed of several substations. Additionally, there is one Headquarters within each of the Troops: Troop A (Hammonton); Troop B (Totowa); Troop C (Princeton); Troop D (New Jersey Turnpike) and Troop E (Garden State Parkway). CO's perform functions only at the Troop A, B and C Stations. There are no CO's assigned to Division Headquarters in West Trenton or to the Marine Law Enforcement Bureau. [1Tr16, 17; 5Tr15, 16, 32].

9. The job title of Communications Operator was created in 1969 (1Tr11; 5Tr39). The 1988 job description for CO's was received in evidence as CP-1 (1Tr18-21).^{2/} The length of the training period required by the State for CO's varied among three of the Charging Party's witnesses, as follows: Delores A. Gorczyca - 80 hours; James J. Gray - two weeks; and Linda A. Baker - 28 days, respectively (1Tr36, 69, 70; 3Tr18; 5Tr41).

10. Certain of the CO's, such as Gorczyca, have taken post-employment training courses, for which they have received certifications under the New Jersey Criminal Justice Information System ("CJIS") and, additionally, as an APCO Public Safety Telecommunicator (1Tr33-36; 6Tr106; CP-3, CP-4, CP-5). These

^{2/} The job duties of the CO's fall within three areas: (1) the handling of Station records, answering telephones and speaking to persons who enter a Station; (2) dispatching State Troopers in emergency, medical and fire apparatus; and (3) operating a computer terminal. [1Tr11; 5Tr43, 44].

certifications have issued even though the CO job description does not require them in order to function as a CO.

11. In the early 1960's, there were only civilian communications operators at Division Headquarters and the three Troop Headquarters. The radio dispatch function was performed at all other stations by State Troopers. [5Tr38].

12. State Troopers have for years performed certain of the duties of the CO's (1Tr52-55; 6Tr70). State Troopers receive the same level and quality of communications training at the Police Academy, coupled with on-the-job training, as do the CO's (5Tr47, 48, 73, 79; 6Tr85, 94, 95, 98, 101, 102, 112, 113, 116, 117; 7Tr6). Thus, from the mid-1960's to the present time, all aspects of the radio dispatch function in Troops A, B and C have been performed by State Troopers in conjunction with CO's (5Tr38, 120; 6Tr6, 71, 72, 96, 107, 108; 7Tr6, 23, 24).

13. Up to and including July 1991, CO's had never been able to provide 24-hour coverage for the radio dispatch function at each and every station (6Tr7, 71, 72). State Troopers and CO's have always had to share the radio dispatch function at the several stations (1Tr52, 53, 73, 75; 2Tr25, 26, 29, 30, 46, 67, 73, 87, 92; 3Tr 23; 5Tr33 & CP-13).

14. Immediately after the May 9, 1991, layoff notices, supra, a two-month period followed, during which the CO's used all of their sick leave (2Tr10, 11; 5Tr44-46). This event created a shortage of CO personnel. While this sick leave problem endured,

State Troopers alone performed the communications function daily on all three shifts (2Tr11). The job performance of these State Troopers in dispatching proved satisfactory except for the occurrence of several isolated problems (2Tr11, 12).

* * * *

SECURITY GUARDS

15. Prior to July 12, 1991, there were 212 Security Guards in 195's collective negotiations unit (2Tr94). On July 12th, approximately 50 or 55 Security Guards were laid off and on September 10, 1991, 195 learned of the subcontracting of the unit work of its Security Guards (2Tr96, 97). There had been no discussion between 195 and the State prior to the State's subcontracting decision (2Tr101).

16. Among the 50 or 55 Security Guards who were laid off in July 1991, four had since at least 1986 been assigned to building security for the Department of Human Services ("DHS") at Capital Place One, as follows: two Guards in the building lobby; one Guard in the parking lot; and one roaming Guard (4Tr19, 20; 6Tr129, 130). However, by June 1991, there were usually only two Security Guards assigned to DHS on any given day (6Tr129, 130).

17. The lobby Security Guards were required to work with a Receptionist, who was employed by DHS to screen visitors and check ID's. The several Security Guards acted as a back-up, double

checking the ID's of persons entering the building (4Tr20, 22, 30-50; 6Tr131, 132).^{3/}

18. When DHS was advised by the Department of Law and Public Safety that the Security Guards at Capital Place One were to be laid off, it immediately planned to install an electronic security system for the building (6Tr138, 139; R-6). This system was to have been in place by July 15, 1991, but the vendor was not able to complete the installation until September 3rd (6Tr144, 149). In November of 1991, one Security Guard was reassigned to Capital Place One to provide a reduced level of security services from 12:00 noon to 8:00 p.m. (6Tr150, 151).

* * * *

SUBCONTRACTING OF SECURITY GUARDS

19. In June 1991, Robert Campana, the Division Director of Administration for the Department of Labor ("DOL"), advised Nicholas Massari, an Administrative Analyst II in the DOL's Division of Procurement, that Law and Public Safety was going to layoff certain Security Guards who were employed by it but who were assigned to three DOL buildings in Trenton (7Tr55-57, 66; R-9). Massari was requested to determine whether or not the vendor contract currently applicable to Security Guards could be amended to have private guards stationed at DOL's three sites (7Tr56, 57). Massari informed

^{3/} The DHS Receptionist had also provided access functions such as locking and unlocking doors (6Tr146, 150). Even after the layoff of the Security Guards, the duties and responsibilities of the Receptionist did not change (6Tr148).

Campana that it would be possible to amend the vendor's contract since it allowed the State to add or delete security guard services at prevailing contract prices (6Tr58).

20. On June 19, 1991, Massari wrote to Wells Fargo Guard Service ("Wells Fargo") [the vendor], requesting it to provide the additional Security Guards at the three DOL locations in Trenton (R-10). Three additional Security Guards of Wells Fargo were so assigned on July 1, 1991 (7Tr67).

21. The Charging Party was informed in September 1991, of the decision of DOL either to extend the Wells Fargo contract or to award a new contract to Consec Security in October 1991 (7Tr91-96; R-8, R-11, R-12). The Charging Party was invited by Peter Beil of the Governor's Office of Employee Relations to discuss the matter of subcontracts "pretty quickly" with representatives of DOL, but 195 refused to do so (7Tr93). Donald Buchanan, the Vice-President of 195, stated to Beil at the time that "...he didn't want to talk with them (DOL) until the scumbags were gone..." (Id.

* * * *

ANALYSIS

**Factual Recap Of Work Performed By
Communications Operators Vis-A-Vis
State Troopers At The Several Troop
Stations and Substations**

State Troopers have always shared the communications function with the civilian communications operators, at least from the 1960's to the present (Finding of Fact Nos. 11 & 12).^{4/}

Gorczyca testified that at the Totowa substation where she was assigned, there were three "positions" and the work was shared with State Troopers (1Tr27-29, 31, 32, 53).^{5/}

Exhibit CP-13, which is based upon State Trooper monthly activity reports, indicates that there have always been State Troopers working in communications, particularly, where there existed an insufficient number of CO's to cover all stations on a 24-hour basis. For example, in January 1991, 1192 hours of State Trooper time was spent performing communications functions in Troop A (2Tr25). These hours represented 149, 8-hour shifts served by State Troopers at the seven Troop A stations. Further, for example, the presentation on page 2 of CP-13 for Troop A at Absecon showed that in February 1991, there were 303 hours worked by State Troopers in the communications function. [2Tr26, 29]. It would thus appear that in excess of 37, 8-hour shifts were served by State Troopers in the communications function at Absecon alone in February 1991. It

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- ^{4/} Instructors provide comprehensive computer training to Police Academy recruits and at this training includes 90% of what a computer operator needs to know and includes the use of the computer manual (6Tr101-103).
- ^{5/} Sergeant Robert Martin confirmed that under his supervision at Troop B headquarters in Totowa, the State Troopers assigned to perform the communications function are responsible for and exercise the same duties as a civilian communications operator (7Tr6).

was conceded by 195 that Absecon did not have enough civilian communications operators "...to cover all three shifts, seven days a week, (but) they did have a high number of Troopers on the station record..." (2Tr29). Finally, Gorzcyca acknowledged that in January 1991, of the 32 Troopers assigned to Absecon, 22 were assigned to the communications room.

In May and June 1991, when communications operators were extensively using their sick leave, State Troopers who had previously been assigned to the communications function were called in to several stations on around-the-clock assignment. These Troopers had on earlier occasions been assigned to the communications function at least once a week, once a month or once every two months. Gorszcka agreed that this situation was true as to Troop A. [Finding of Fact No. 14; 2Tr32, 33, 36, 67]..

In the early 1960's, there were only civilian communications operators at Division Headquarters and the three Troop Headquarters. The radio dispatch function was performed at all other stations by State Troopers. [5Tr38]. Captain Joseph Saiia stated that the job duty of a State Trooper assigned to the communications function is identical to that of a communications operator. Troopers are trained for communications duties at the Police Academy. [5Tr47]. Kevin McPartland testified to the same effect (5Tr120) as did the following State Troopers: Elmer Phillips (6Tr39, 40); Fred Zeilsdorff (6Tr85); Benny Castillo (6Tr96); Thomas Robinson (6Tr107); Joseph Brennan (6Tr120); and Robert Martin (7Tr23).

The State Did not Violate Sections
5.4(a)(1) or (5) of the Act When It
Assigned The Communications Work Of
The Communications Operators To
State Troopers

The Commission has held in many cases that the shifting of work from employees within a specific negotiations unit to employees outside of that unit is a mandatory subject of negotiations:

Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (1983).^{6/}

However, if the shifting of such work is motivated primarily to increase the efficiency and economy of the services provided by the public employer, then its action is non-negotiable because it is deemed to be the exercise of a managerial prerogative, *i.e.*, a non-negotiable governmental policy determination.

In County of Bergen, (PBA Local No. 174), P.E.R.C. No. 92-17, 17 NJPER 412 (¶22197 1991), app. disp'd. App. Div. Dkt. No. A-518-91T5 (1992), the Commission adopted the decision of its

^{6/} See, for example: Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part, App. Div. Dkt. No. A-3564-78 (1980); Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), mot. for recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd App. Div. Dkt. No. A-3651-78 1980); City of Newark, P.E.R.C. No. 88-87, 14 NJPER 248 (¶19092 1988); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); City of Newark, P.E.R.C. No. 88-105, 14 NJPER 334 (¶19125 1988); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985); Washington Tp., P.E.R.C. No. 83-166, 9 NJPER 402 (¶14183 1983); Monroe Tp. Bd.Ed., P.E.R.C. No. 81-145, 7 NJPER 357 (¶12161 1981); Passaic Co. Reg. H.S. Dist., P.E.R.C. No. 81-107, 7 NJPER 155 (¶12068 1981); Piscataway Tp. Bd.Ed., P.E.R.C. No. 78-81, 4 NJPER 246 (¶4124 1978); Middlesex Cty. College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977).

Hearing Examiner [H.E. No. 91-39] in finding a violation of the Act. There Sheriff's Officers had traditionally performed certain communications work, which was shifted by the County to non-unit civilian employees without collective negotiations. The Commission cited, as it often has, Rutgers, The State University, supra, (7 NJPER at 506) in holding again that the preservation of unit work is mandatorily negotiable.

However, I must observe here that I can see no relevant comparison between the facts in the instant case and those in Bergen County where the traditional communications function of the Sheriff's Officers was unilaterally assigned to non-unit civilian employees. In this connection, I note that in Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20112 1989), the employer had laid off three civilian police dispatchers and assigned their duties to non-unit police officers. The Commission noted that there was no work preservation clause in the parties' collective negotiations agreement, and that there had been times when, in the absence of civilian dispatchers, the non-unit police officers had performed this function. Further, in the past, police officers had performed the dispatching function on every weekend and "filled in" during the week. Finally, it was held that negotiations were not required when the Town assigned more dispatching duties to police officers since they had historically performed those duties alone or in conjunction with civilian dispatchers. [15 NJPER at 265].

Finally, the State's position on shifting unit work from CO's to State Troopers is supported by the above-quoted provisions in the collective negotiations agreement, the absence of a "work preservation" clause and the negotiations history. Mason of OER testified without contradiction that there had never been a "work preservation" clause in the agreement although 195 had in the past made demands for such a provision (7Tr75, 76, 79; R-14). Mason's position in negotiations with 195 was that a "private sector model" was not appropriate for the New Jersey public sector (7Tr78). The Charging Party offered no evidence on the issue of its having unsuccessfully sought a "work preservation" clause.

Mason also testified that there had never been any modification in the recognition clause from that which appears in the current agreement (Article I, J-1). Finally, Mason was clear that Article I, "Recognition," did not embrace the concept of the ownership of work. [7Tr79, 80, 82, 83].

* * * *

The State Did Not Violate
Sections 5.4(a)(1) Or (5) Of The
Act When It Laid Off Of 50 to 55
Security Guards As Of July 12, 1991

Preliminarily, I have never been able to fathom exactly what the Charging Party contends that the State and its agencies did, which constituted a violation of Sections 5.4(a)(1) and/or (5) of the Act when 50 to 55 Security Guards were laid off on or about July 12, 1991. Recall, that these 50 to 55 Security Guards were

laid off from a unit of 212 Security Guards represented by 195 (2Tr94). Thereafter, the evidence adduced by 195 "boiled down" to the fact that there had been four Security Guards assigned to three locations of DHS at Capital Place One since 1986 and that by June 1991 only two Security Guards were so assigned on any given day. [Finding of Fact No. 16].

Great significance was attached by 195 to the fact that the two Security Guards assigned to the lobby of Capital Place One were required to work with a Receptionist whose duties, as perceived by this Hearing Examiner, could in no way constitute the duties performed by a Security Guard. [Finding of Fact No. 17]. Yet, I am asked to find and conclude that it was the placement of this Receptionist in the lobby of Capital Place One along with two Security Guards that constituted, in part, the reassigning of the work of Security Guards to a non-unit employee. The record does not support such a conclusion. The Receptionist was a clerical at best with no Security Guard functions, as this record and common sense would seem to suggest.

Thus, do I conclude that the State was within its rights under the Act in configuring the reorganization of its Security Guards at Capital Place One: Local 195 v. State, 88 N.J. 393, 409, 410 (1982) and Freehold Regional High School District Bd. of Ed., P.E.R.C. No. 85-69, 11 NJPER 47, 48 (¶16025 1984).

* * * *

A more substantial issue is raised by the allegation that the State subcontracted the work of certain Security Guards represented by 195 to Wells Fargo in the late summer and autumn of 1991. Article XLII, supra, which deals with the subcontracting of unit work, obligates the State to discuss with 195 any decision to subcontract work based on solely fiscal reasons when it is apparent that layoffs will result. The emphasis is on "discuss" in this case.

In June 1991, without the knowledge of 195, administrators within DOL learned that the Department of Law and Public Safety was going to layoff certain Security Guards, who were employed by DOL and assigned to three DOL buildings in Trenton. One Massari was requested to determine whether or not the vendor contract, applicable to Security Guards, could be amended to have private guards stationed at these three sites. His advice was that the contract could be so amended. [Finding of Fact No. 19].

Thereafter, Massari wrote to Wells Fargo, requesting that it provide additional Security Guards at the three DOL locations. These assignments were made on July 1, 1991. [Finding of Fact No. 20]. The Charging Party was not informed of this situation until September 1991. A question arose on whether to extend the Wells Fargo contract or award it to a new vendor, Consec Security, as of October 1991. The Charging Party was invited by Beil of OER to discuss the matter of subcontracts with dispatch but 195 refused to do so. [Finding of Fact No. 21].

Without reaching a conclusion as to the State's contention that the Subcontracting Article of J-1 is not applicable because DOL did not layoff the Security Guards, what impresses me is the fact that 195, by its Vice-President, effectively waived any claim to negotiate or otherwise complain about the Wells Fargo situation when he attached an offensive condition to the terms under which he would talk with DOL representatives on the matter of "subcontracts." Further, 195 must have known that the term of the Wells Fargo contract spanned June 1, 1989 to May 31, 1991 and that there was a provision that the term could be extended (7Tr54, 58).

* * * *


Upon the entire record, and after consideration of the briefs and arguments of the parties, I must recommend dismissal of the Complaint. Thus, I make the following:

CONCLUSIONS OF LAW

1. The Respondent did not violate N.J.S.A. 34:13A-5.4(a) (1) or (5) by the conduct of its representatives and agents in having laid off certain Communications Operators and Security Guards from the Department of Law and Public Safety; nor did the conduct of the Respondent's agents and representatives abridge the collective negotiations agreement.
2. Further, the Respondent did not violate N.J.S.A. 34:13A-5.4(a) (4), there having been no evidence adduced to support this allegation.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the Complaint be dismissed.



Alan R. Howe
Hearing Examiner

DATED: October 7, 1993
Trenton, New Jersey