

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF GARFIELD,

Respondent,

-and-

Docket No. CO-77-48-38

P.B.A. LOCAL 46,

Charging Party.

SYNOPSIS

P.B.A. Local 46 filed an Unfair Practice Charge against the City of Garfield alleging that the City, without prior negotiations, unilaterally altered the established practice of shift assignments from a non-rotational to a rotational system. By agreement of the parties this issue was submitted directly to the Commission for a decision based on pleadings, briefs and stipulations. The Commission, relying on its decision in In re Town of Irvington, finds that what hours or shifts during the day employees work is a required subject of negotiations. Such negotiations, however, must be within the framework of the manning or redeployment requirement established by the City.

Accordingly, the Commission orders the City to cease and desist from refusing to negotiate with the P.B.A. regarding shift assignments and refusing to submit unresolved disputes to compulsory interest arbitration. Further the City is ordered to reinstitute as soon as practicable the non-rotational shift schedule which was in effect prior to the City's unilateral change to a rotational schedule.

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Appearances:

For the City of Garfield, Walsh, Sciuto &
Dimin, Esqs. (Mr. Anthony J. Sciuto, of Counsel)

For P.B.A. Local 46, Osterweil, Wind & Loccke, Esqs.
(Richard D. Loccke, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission by P.B.A. Local 46 (the "P.B.A.") on August 30, 1976. The P.B.A. alleged that the City of Garfield (the "City") engaged in conduct in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (7)^{1/} when, without prior negotiations, it unilaterally altered the established practice of shift assignments from a non-rotational to a rotational system.^{2/}

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission.

^{2/} The P.B.A.'s initial charge contained an additional allegation of unfair practices by the City. However, as stated in paragraph five (5) of the stipulations, this aspect of the charge was settled and is now moot.

This 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 October 25, 1977. At a pre-hearing conference held on January 4, 1978, before Alan R. Howe, Hearing Examiner of the Commission, the parties agreed that since there appeared to be no substantial and material disputed factual issues, and in the interest of a more expeditious resolution of the charge, they would mutually execute a Stipulation of Facts relating to this case, and would waive their right to an evidentiary hearing and an intermediate Hearing Examiner's Recommended Report and Decision. The parties further agreed that this matter would be submitted directly to the Commission for determination based on the pleadings, briefs and stipulations. At a formal hearing held on August 16, 1978 the following stipulations were placed on the record:

1. The City of Garfield is a public employer within the meaning of the New Jersey Public Employee Relations Act as amended and is subject to its provisions;

2. P.B.A. Local 46 is a public employee representative within the meaning of the same Act and is subject to those provisions;

3. P.B.A. Local 46 has been the exclusive collective negotiations representative for the members of the Garfield Police Department since the year 1973, and the parties have entered into collective negotiations agreements covering years beginning in or about 1974;

4. The parties negotiated a collective agreement for the years 1974 and 1975. The negotiations for the 1976 agreement commenced in the year 1975 and continued through 1976 and 1977 with a contract ultimately reached in the latter part of 1977, with an expiration date of December 31, 1977, and covering the single year 1977. There was a hiatus in the collective negotiations agreements in that there was never an agreement reached and negotiated and effected during the year 1976. The Employer did honor the terms and conditions as set forth in '74, '75 and through '76 and they lived up to those obligations. Although there was no contract as such during the year 1976, the Employer did continue the terms and conditions in 1976, carried over from the 1974 and 1975 contract. There was a wage freeze during the year 1976, which explains in part the reason why there was not a contract effected for the year 1976 as such;

5. A charge of unfair practices was filed by the P.B.A. Local 46 on August 30, 1976. The parties hereby stipulate that due to the settlement of the contract for the year 1977, the first paragraph of the unfair practice charge has become moot. The dispute arises from a letter attached to the charge of unfair practices, dated August 19, 1976 on the letterhead of the City of Garfield Police Department and signed by Carmine J. Perrapate, the Chief of Police. The letter is addressed to Robert Scarpa, President of P.B.A. Local 46, and indicates that commencing October 1, 1976, schedules shall be promulgated with rotation of shifts by uniform patrol sections;

6. For many years prior to the date in this charge there had been a non-rotational system of scheduling police officers of all ranks. This non-rotational system provided that an employee would work a fixed tour which would be scheduled pursuant to an internal system. The tour would not rotate. He would work steady days or steady afternoons or steady midnights, depending on various factors. The change of October 1, 1976 altered this non-rotational system to a rotational system wherein the officers of various ranks would be assigned to rotational work obligations wherein they worked three shifts around the clock and constantly rotated through these shift assignments;

7. There were no negotiations prior to this change, although the P.B.A. requested negotiations of the change. The City in declining negotiations stated that they felt this change from a non-rotational to a rotational system was a management prerogative and therefore no negotiations were required. The City felt they had satisfied any obligation that may exist by prior advice of the change to the P.B.A., that being the letter of August 19, 1976 which was annexed to the charge. Negotiations never did take place;

8. The non-rotational shift change has continued since October 1, 1976 and is still in effect today;

9. Under the charge, P.B.A. Local 46 seeks an order of the Commission upon the City to negotiate in good faith with respect to the unilateral change made effective October 1, 1976. By way of

amplification the P.B.A. seeks to negotiate the impact of the change and such negotiations would be subject to the dispute resolution provisions of the PERC statute as amended by public laws, 1977, Chapter 85.

On September 13, 1978 a brief was filed by the City directly with the Commission. A letter in lieu of brief was filed with the Commission by the P.B.A. on September 14, 1978. On September 28, 1978 the City filed a letter in lieu of reply brief, while the P.B.A. has failed to so reply. The record having been completed according to the agreement of the parties at the August 16, 1978 hearing,^{3/} this issue is now ripe for determination by the Commission.

The P.B.A. contends that hours of employment, that is the time of day during which an employee is required to work, is a term and condition of employment which must be negotiated. When the City unilaterally changed the established practice from non-rotating to rotating shifts, personnel who in the past had constantly worked only one shift, whether it be day, evening or night, were then required to rotate through all three shifts. The P.B.A. argues that this unilateral alteration of work schedules constituted an unfair practice under the Act.

The City contends that this decision is a managerial prerogative in that it involves the authority of the Chief of Police to transfer personnel into different shifts to create a more efficient and experienced patrol unit and to provide a more thorough police protection. The rotation of shifts, it is argued, establishes

^{3/} The parties agreed to the filing of briefs and reply briefs to complete the record. See page seven of the transcript.

an organized manner in which all patrolmen will obtain varied knowledge and experience, thereby enabling them to respond to all types of situations where police assistance is needed.

N.J.S.A. 40A:14-118 ^{4/} grants to municipalities broad statutory authority to establish and regulate municipal police departments. N.J.S.A. 34:13A-8.1 states in pertinent part that: "Nothing in this Act shall be construed to annul or modify any pension statute or statutes of this State." Based upon this statutory language, and the general principle of statutory construction that a specific statute prevails over a general statute on the same subject, the City argues that the Act's requirement of collective negotiations over terms and conditions of employment cannot contravene pre-existing laws. Consequently, the granting of this authority to the City under N.J.S.A. 40A:14-118 precludes negotiations over the issue in dispute.

In order to develop a comprehensive and consistent framework for analysis, the Commission, in a recent series of cases, has considered a related group of issues concerning the matters of manning requirements, work schedules, and time off. To summarize these decisions, the Commission has held that an employer has the

^{4/} N.J.S.A. 40A:14-118 provides that:

"The governing body of any municipality, by ordinance, may create and establish a police department and force and provide for the maintenance, regulation and control thereof, and except as otherwise provided by law, appoint such members, officers and personnel as shall be deemed necessary, determine their terms of office, fix their compensation and prescribe their powers, functions and duties and adopt and promulgate rules and regulations for the government of the department and force and for the discipline of its members."

(Emphasis provided by the City in its brief)

right to unilaterally determine the number of employees that must be on duty at any given time. However, within the framework of these manning levels, an employer must negotiate over such matters as which employees may be off duty, at what time, the amount of consecutive time they may be off, the method of selecting those employees to be off, what hours during the day employees work and the schedules employees are required to work.^{5/}

It is apparent from the record in this case that the City has not redeployed its manpower in that it has not altered the total number of men required to man each shift. While the shift manning requirements apparently remain the same, the City has altered the hours of work of individual employees by requiring that employees who, under the established practice, had constantly worked only one shift, now rotate through all three shifts.^{6/}

Based on these facts the Commission finds that this case falls squarely within its decision in In re Town of Irvington, supra, in which the Commission found that what hours or shifts during the day employees work is a required subject of negotiations. However, negotiations over these subjects must be conducted within the context of the City's managerial rights. Of course, as we said in

^{5/} In re Township of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (¶4136 1978), In re City of Orange, P.E.R.C. No. 79-10, 4 NJPER (¶ 1978), In re Township of Cinnaminson, P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978), In re Township of Maplewood, P.E.R.C. No. 78-89, 4 NJPER 258 (¶4132 1978), In re Township of Maplewood, P.E.R.C. No. 78-92, 4 NJPER 265 (¶4135 1978), In re City of Northfield, P.E.R.C. No. 78-82, 4 NJPER 247 (¶4125 1978), In re Town of Irvington, P.E.R.C. No. 78-84, 4 NJPER 251 (¶4127 1978).

^{6/} Exhibit "A" attached to the P.B.A.'s complaint is a letter from the Chief of Police to the President of the P.B.A. stating that the Chief was ordering the promulgation of rotating shift schedules.

Northfield, if the employer had made a managerial decision to re-deploy its police officers to result in greater coverage during high crime times or for other reasons, that decision would not be negotiable and the P.B.A. would have to negotiate regarding shift assignments and work schedules within the framework of those times and levels that the employer had determined to provide various police service. But that is not the situation in the instant matter. Negotiations on shift assignments or hours of work in this context will not affect the Town's ability to determine the number of employees on duty at a given time and, therefore, these proposals are mandatorily negotiable.^{7/}

As in Irvington, much of the City's brief focuses on the desirability of having rotating shifts. The Commission again observes that by ordering negotiations regarding shift assignments and a return to the status quo of non-rotating shifts, it is not ordering the City to abandon its position in negotiations. The arguments in favor of rotating shifts may also be submitted to the arbitrator if the parties fail to reach an agreement through direct negotiations.^{8/}

Finally, in response to the City's argument that the managerial authorities granted to it by N.J.S.A. 40A:14-118, in conjunction with the requirements of section 8.1 of the Act, preclude negotiations over the instant dispute, the Commission finds

^{7/} In re Town of Irvington, supra, at page 5.

^{8/} In paragraph nine (9) of the stipulations, the parties agreed that this dispute is subject to compulsory interest arbitration under N.J.S.A. 34:13A-14 et seq.

that, under the decision in State of New Jersey v. State Supervisory Employees Assn, affmd in part, revd in part ___ N.J. ___ (A-162/176/190 Sept. Term 1977 8/2/78), N.J.S.A. 34:13A-8.1 precludes negotiations over terms and conditions of employment only where a statute specifically establishes a particular term and condition. General enabling statutes, such as N.J.S.A. 40A:14-118, cannot be used by municipalities as shields against negotiations.

Therefore, for the reasons set forth above, the Commission finds that the City violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when, without prior negotiations, it unilaterally established a rotational shift schedule. The charged violations of N.J.S.A. 34:13A-5.4(a)(2), (3) and (7) are dismissed inasmuch as no evidence was presented to support these allegations.

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Respondent, City of Garfield, shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate with the P.B.A. regarding shift assignments and by refusing to submit any unresolved disputes regarding this matter to compulsory interest arbitration in accordance with the Commission's Rules.

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

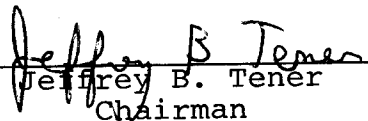
(a) Upon demand by the P.B.A. negotiate with its representatives concerning shift assignments and submit any unresolved disputes regarding this matter to compulsory interest arbitration in accordance with the Commission's Rules.

(b) Reinstigate as soon as practicable the non-rotational shift schedule which was in effect prior to the City's unilateral implementation of a rotational shift schedule.

(c) Post in all police stations in the City of Garfield the attached notice marked "Appendix A". Copies of said notice, on forms provided by the Commission shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material.

(d) Notify the Chairman, in writing, within 20 days from the date of receipt of this Order what steps have been taken to comply herewith.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp and Parcels voted for this decision. Commissioner Schwartz opposed this decision.

DATED: Trenton, New Jersey
October 23, 1978
ISSUED: October 25, 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 with the P.B.A. regarding shift assignment and by refusing to submit any unresolved disputes regarding this matter to compulsory interest arbitration in accordance with the Commission's Rules.

WE WILL upon demand by the P.B.A. negotiate with its representatives concerning shift assignments and submit any unresolved disputes regarding this matter to compulsory interest arbitration in accordance with the Commission's Rules.

WE WILL reinstitute as soon as practicable the non-rotational shift schedule which was in effect prior to the City's unilateral implementation of a rotational shift schedule.

City of Garfield

(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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.