P.E.R.C. NO. 84-97

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and- Docket No. CO-83-185-18

IRVINGTON MUNICIPAL
EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, adopts a recommended decision of a Hearing Examiner. The Hearing Examiner found that the Township of Irvington violated the New Jersey Employer-Employee Relations Act when it unilaterally discontinued a past practice of paying field representatives for weekend standby time, but did not violate the Act when it required employees to take a pesticide applicators examination. No exceptions to these findings were filed.

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IRVINGTON MUNICIPAL
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Charging Party.

Appearances:
For the Respondent, Green and Dzwilewski, Esqs.
(Allan P. Dzwilewski, of Counsel)

For the Charging Party, Cifelli & Davie, Esqs.
(Kenneth P. Davie, of Counsel)

DECISION AND ORDER

On January 24, 1983, the Irvington Municipal Employees Association ("Association") filed an unfair practice charge against the Township of Irvington ("Township") with the Public Employment Relations Commission. The charge alleges that the Township violated subsections 5.4(a)(1),(2),(5) and (7)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it unilaterally discontinued a past practice of paying field representatives for weekend standby time and

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

related expenses and required them to take a pesticide applicators examination not mentioned in their job descriptions and not required under Civil Service law.

On July 22, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Township filed a timely Answer in which it denied a past practice of paying for weekend standby time. It further asserted that it had negotiated with the Association about standby time and had a managerial prerogative to change the job description and that the Commission had no jurisdiction over alleged violations of Civil Service laws.

On August 30, 1983, Hearing Examiner Arnold H. Zudick conducted a hearing.[2/] The parties examined witnesses and introduced exhibits. The Association filed a post-hearing brief.

On January 13, 1984, the Hearing Examiner issued his report and recommended decision, H.E. No. 84-35, 10 NJPER ___ (¶_____ 1984) (copy attached). He concluded that the Township had unilaterally altered a past practice of paying for weekend standby time, but found that the record did not firmly establish the pay rate for such time. He recommended that the Township be ordered to negotiate in good faith with the Association over the

2/ At the outset of the hearing, the Association made a Motion to Amend the Complaint to add an allegation that the Township changed the work schedule of unit employees effective October 3, 1983. The Hearing Examiner denied the motion and this denial was not appealed. I will not further consider that allegation.

pay rate for this standby time and the mileage reimbursement rate for employees called in to work on the weekend.[3/] Finally, concluding that the Township had a right to require the pesticide applicators examination, he recommended dismissal of all other portions of the Complaint.

The Hearing Examiner served his report on the parties and advised them that exceptions, if any, were due on or before January 26, 1984. The Association has filed a letter stating it will not file exceptions. The Township has not filed exceptions.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to decide this case in the absence of exceptions. I have reviewed the record. The Hearing Examiner's findings of fact are accurate. Based on these findings, I agree with the Hearing Examiner's recommendations that the Township be ordered to negotiate in good faith with the Association over a pay rate for weekend standby time and that the rest of the Complaint be dismissed. Accordingly, I enter the following order.

3/ He also recommended the Commission retain jurisdiction until negotiations over the mileage reimbursement rate have been concluded.

ORDER

The Township of Irvington is ordered to:

A. Negotiate in good faith with the Association over a rate of pay for field representatives for weekend standby time during the 1982-83 season and over a mileage reimbursement rate;

B. Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of this notice supplied by the Commission shall be posted immediately upon receipt and signed by the Township's authorized representative. The copies shall be maintained for at least sixty (60) consecutive days and the Township shall take reasonable steps to insure that they are not altered, defaced or covered by other materials; and

C. Notify the Chairman of the Commission within twenty (2) days of receipt of this order what steps the Township has taken to comply with its demands.

Those portions of the Complaint concerning the pesticide applicators examination are dismissed. The Commission retains jurisdiction over the remaining portions of the Complaint until negotiations over the mileage reimbursement rate have been concluded.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
February 8, 1984

APPENDIX "A"

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 negotiate in good faith with the Association over a rate of pay for field representatives for weekend standby time during the 1982-83 season and over a mileage reimbursement rate.

TOWNSHIP OF IRVINGTON

(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 the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 84-35

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

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and- Docket No. CO-83-185-18

IRVINGTON MUNICIPAL EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Township of Irvington violated subsection 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it failed to negotiate with the Irvington Municipal Employees Association regarding the decision to discontinue paying field representatives for weekend standby work. The Hearing Examiner recommended that the Township be ordered to negotiate in good faith with the Association for a pay rate for such work. However, the Hearing Examiner recommends dismissal of the Complaint regarding the Association's charge that the Township unlawfully changed the field representative's job description and ordered affected employees to take a pesticide examination. The Hearing Examiner found that the Township's decision to require the exam was based upon legitimate managerial concerns and was not negotiable. The Hearing Examiner further found that any alleged violation of Civil Service requirements should be raised before the Department of Civil Service.

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. 84-35

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For the Charging Party, Cifelli & Davie, Esqs.
(Kenneth P. Davie, Of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on January 24, 1983, by the Irvington Municipal Employees Association ("Association") alleging that the Township of Irvington ("Township") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association alleged that the Township failed to pay certain field representatives (commonly referred to as housing inspectors) for weekend standby work and related expenses, and that it required those inspectors to take a pesticide examination which was not otherwise required in their job description, all of which was alleged to be in violation of subsections 34:13A-5.4(a)(1), (2),

(5), and (7) of the Act. 1/

The Association alleged in particular that the Township had failed to negotiate with it regarding compensation for field representatives who were required to be on standby call on several weekends throughout the 1982-83 heating season to respond to heating complaints, and that the Township unlawfully required these field representatives to take the Certified Pesticide Applicators Core examination which was not required by Civil Service. 2/

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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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/ At the opening of the hearing on August 30, 1983, the Charging Party made a Motion to Amend the Complaint to add a charge that the Township had issued a directive to change the work schedule of employees in the Association's unit effective October 3, 1983. The Township argued that the Association never made a demand to negotiate any aspects of the work schedule and that it would consider such a demand once made.

The undersigned denied the Motion and found that the issue raised in the Motion was not then ripe for hearing. No change had yet occurred, and there was still the possibility that the parties could resolve that issue.

The undersigned also notes that the Township in its Answer (Exhibit C-2) denied violating the Act regarding work schedules and relied upon In re Township of Irvington, P.E.R.C. No. 82-63, 8 NJPER 94 (¶13038 1982) wherein the Commission interpreted the contractual management rights clause of the instant parties and held that said clause gave the Township the right to establish and change work schedules without negotiations so long as the work hours clause was not violated. Although the undersigned is making no decision with respect to the facts and issues raised by the Motion to Amend, it is noted that the pertinent language of the management rights clause in the parties' current collective agreement (Exhibit J-1) is the same as that considered in In re Irvington, supra.

The Township denied the allegations in the Charge and asserted that it had a contractual right to schedule work hours for field representatives to enable them to respond to heating complaints, and it alleged that it negotiated, and is willing to continue negotiating, every aspect of the Charge that is negotiable. Finally, the Township alleged that it had a managerial right to change the job description.

It appearing that the allegations of the Unfair Practice Charge may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 22, 1983. A hearing was then held in this matter on August 30, 1983, in Trenton, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Only the Association filed a post-hearing brief which was received on October 24, 1983.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing, and after consideration of the post-hearing briefs, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record the Hearing Examiner makes the following:

Findings of Fact

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

2. The Irvington Municipal Employees Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The record shows that for several years in the late 1970's and into the 1980's the Township had at least one field representative available on weekends from October through the following April to handle heating complaints. Prior to October 1982 the field representative(s) was paid for his weekend standby work on a flat rate basis for the entire season, and one year it was $900.00 for the season. (Transcript "T" pp 29-30). The Association, however, did not negotiate the rate with the Township, nor does the parties' collective agreement specifically provide for standby pay for field representatives. 3/ Rather, the compensation for standby work for field representatives prior to October 1982 was arrived at in a discussion between the Director of the Department of Health, and Pell Giameo, the field repesentative who performed most - if not all - of the weekend standby work prior to October 1982 (T pp 29-30). The current Director of the Department of Health, John Ferraioli, admitted that Giameo was compensated for weekend standby work prior to October 1982 (T p 103).

4. In October 1982, Ferraioli directed Supervisor Aldo Baratto to notify all of the field representatives to be available for weekend work. By memo dated October 28, 1982 (Exhibit CP-2) the field representatives were told:

3/ The parties' collective agreement, Exhibit J-1, Article 15 Section 4, does provide for weekend standby pay for employees in the Division of Streets and Sewers, and Bureau of Police and Fire Signal Alarms. However, neither the Department of Health and Housing, nor field representatives, in particular, are included in that clause. That clause provides for 12 hours pay at straight time for weekend standby work as well as an additional time and one-half for all hours actually worked.

There was some evidence that in the 1982 negotiations the Association sought standby pay for all employees in its unit. ((T p 76). However Art. 15 Sec. 4 of J-1 appears limited to the employees in the particular divisions or bureaus set forth in that clause.

> You are hereby notified to be available for a period of one (1) weekend on an alternating basis for the purpose of covering emergency heat complaints.

As evidenced by Exhibit J-2, the heating complaints began the weekend of October 30-31, 1982, and continued for most weekends through April 2-3, 1983. The facts show that the field representatives were required to be available for heating complaints throughout the entire weekend and they could not leave town. (T pp. 24, 48, 52, 58). The field representatives were required to notify the Township police as to which representative was on duty, then that field representative would either receive calls from the police concerning heating complaints, or the field representative would call the police to see if any heating complaints had been made. (T p. 32).

From October 30, 1982 through December 5, 1982, field representatives Giameo, Michael Luciano, and George Gurbin were actually called out on heating complaints for a varying number of hours on the weekends (there were no calls on two of the weekends during that time period), and were compensated for the time actually worked (not the standby time) by crediting their time sheets with time and one-half compensatory time (T pp 46, 98). [4/] However, they did not receive any compensation for their standby time.

The field representives, however, in accordance with the prior policy, expected to be paid for their standby time (T pp 38, 49, 55) and apparently communicated as much to Ferraioli or Baratto

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4/ Article 15 Section 1 of J-1 does provide for time and one-half for overtime on an employee's scheduled day off, and Art. 15 Sec. 8 gives the Township the option of giving overtime payments in cash, or crediting the overtime to the employee as compensatory time.

because by memo to the field representatives dated December 6, 1982 (Exhibit CP-1), Baratto, under Ferraioli's direction, essentially denied compensation for standby time and stated that:

> Pursuant to our conversation regarding comp. time on week-ends heat coverage, you are hereby notified that comp. time shall be allowed only when service is rendered following a service call from the police department. The assigned inspector shall give address and time spent on the service call. This is the only way that you are qualified for comp. time.
>
> This procedure has already been explained to you and this is final.

Subsequently, on or about December 17 and 27, 1982, field representatives Giameo, Luciano, Gurbin, and Louis Colucci, filed grievances seeking to be compensated for their standby time. (Exhibits 9A-9D). The facts show that from December 5, 1982 through the end of the heating season on April 3, 1983, the affected employees continued to receive time and one-half only for the hours actually worked, and they did not receive any compensation for actual standby time. Thereafter, on May 26, 1983, Meta Smith, Association President, met with representatives of the Township to try to resolve the standby pay issue. Although the Township expressed a willingness to discuss the issue at that meeting and did not tell Smith that there would be no money forthcoming for the standby work, no money has ever been provided for such work (T pp 78-80). In fact, Director Ferraioli testified that the Township has not made a formal decision on whether to pay the field representatives for standby time. (T p 106).

5. As a direct result of the Township's decision to

provide weekend coverage for heating complaints employee Gail Marshall, a sanitary inspector, was required to be available for the weekend standby work. It was her understanding that she could not leave her home while on standby, and she actually was called out on two of the three weekends she was on call (T p 52, Exhibit J-2). Since Marshall lived outside of the Township she requested the Township to reimburse her for tolls and mileage related to the weekend work. Exhibit CP-3 shows that Marshall traveled 187 miles as a result of that work. Marshall also expected to be reimbursed for the standby time itself. (T p 55).

The Township did reimburse Marshall for her tolls (T p 52), but she indicated that she was denied mileage reimbursement (T pp 56-57). However, Ferraioli testified that the Township will pay Marshall for her mileage, and that none of the other affected employees requested mileage because they were assigned Township vehicles. (T p 113). As of the instant hearing, however, the Township had still not paid Marshall for her mileage.

6. By memo dated October 1, 1982 (Exhibit CP-4), Ferraioli notified the field representatives that they were required to take the Certified Pesticide Applicators Core examination ("C.P.A. Exam") in order to properly handle housing violations related to insect and rodent problems. Ferraiolo testified that the reason for that requirement was to better handle insect and rodent infestations. He indicated that he wanted the field representatives to use a pesticide flushing agent to draw insects and rodents from walls, and that individuals who perform that work are required to

have a pesticide applicator's certification from the State Department of Environmental Protection. (T pp 92-94).

As a result of the October 1 memo, and since the job description for field representatives, Exhibit CP-5, did not require the C.P.A. Exam, the Association, through its attorney, contacted the State Department of Civil Service on or about November 1, 1982, and apparently inquired whether field representatives were required to possess a C.P.A. license. By letter dated November 5, 1982 (a copy of which is attached to the instant Charge in Exhibit C-1), a representative of Civil Service responded to the inquiry and stated in pertinent part that:

> ...[T]his office does not control conditions of employment for the Township of Irvington. However, the Department of Civil Service does govern the approval or disapproval for job specifications to be used throughout local government services.
>
> Concerning the matter of job title, Field Representative, Housing Inspection, it is not a requirement, at this time, to require a certified pesticide applicator license for the cited position....[T]he Department of Civil Service does not require a C.P.A. license for this position and the appointing authority, at this time, cannot require individuals on a certified list for the appointment of Field Representative, Housing Inspection to possess a certified pesticide applicator license for appointment.

Subsequently, on December 17 and 27, 1982, the employees affected by CP-4, Giameo, Luciano, Gurbin, and Colucci, included in their grievances regarding standby pay, that they should not be required to take the C.P.A. exam. (Exhibits 9A-9D). Thereafter, during the first half of 1983, it became apparent that only one of the employees directly affected by CP-4, Michael Luciano, had to take the C.P.A. exam. Employee Giameo transferred to the public

works department, and employees Gurbin and Colucci retired. (T p 96) 5/

By memorandum dated June 30, 1983 (Exhibit CP-7), Ferraioli advised Luciano that he was required to take the C.P.A. exam in July 1983, and by letter dated July 6, 1983 (Exhibit CP-8), Association President Smith advised Ferraioli that Luciano would take the exam "under protest" because of the instant Unfair Practice Charge. Luciano took the exam on July 7, 1983, and he was not required to pay any fees for the exam, he was not docked any time or pay to take the exam, he took the exam on Township time, and he was provided a Township vehicle to drive to the exam cite. (T p 66). Although Luciano failed the exam, no action has been taken to adversely affect his continued employment. (T p 96).

Analysis

Standby Pay and Related Expenses

The undisputed evidence shows that prior to October 1982 field representatives were paid a flat seasonal rate for weekend standby work during the heating season. Ferraioli admitted that a seasonal rate was paid for that standby work, and although he could only attest to that procedure for employee Giameo, the Township never established that any other employee was treated in a different manner. Thus, even absent any express language in the parties' contract covering such work, the undersigned is convinced that an established practice existed providing for payment to field representative(s) for weekend standby work. In addition, the undersigned is not persuaded that the Association negotiated that estab-

5/ However, Ferraioli clearly stated that the six newly hired field representatives were required to pass the C.P.A. exam as a condition of employment. (T pp 113, 114).

lished practice away by agreeing to extend the language in Article 15 Section 4 of J-1 which provided for standby pay for certain unit employees but did not mention field representatives. The undersigned notes that J-1 was originally effective from 1980-1982 and was merely extended from 1982-1984 with no change in Article 15. (Exhibit J-1B). The facts show that standby pay was given to field representatives during the 1980-1982 contract period at a rate different than that provided for in Article 15 Section 4, and there was every reason to expect that practice to continue during the 1982-1984 contract period. There was simply insufficient basis to prove that the parties had agreed to discontinue the established practice.

The law in this State is well settled. An established practice of a term and condition of employment such as the payment for standby work herein, whether or not it is specifically included in a collective agreement, is a negotiable item that generally cannot be unilaterally discontinued by an employer. As early as In re New Brunswick Bd/Ed, P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), Motion for recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. No. A-2450-77 (April 2, 1979), the Commission held that:

> Where, during the term of an agreement, a public employer desires to alter an established practice governing working conditions which is not an implied term of the agreement...the employer must first negotiate such proposed change with the employees' representative prior to its implementation. 4 NJPER at 85.

The Commission has followed that same rule of law more recently in In re Sayreville Bd/Ed, P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983), where it held that:

> ...[A]n employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment, such as...the amount of an employees salary, even though that practice or rule is not specifically set forth in a contract. 9 NJPER at p. 140.

In fact, even where a collective agreement is ambiguous as to a particular term and condition of employment, established practice may be used to define the intent of the parties and the established practice cannot be unilaterally changed. See In re Township of Jackson, P.E.R.C. No. 81-76, 7 NJPER 31 (¶12013 1980). 6/

In this case the Township violated §5.4(a)(1) and (5) of the Act by unilaterally discontinuing payment to field representatives for standby work. However, the undersigned finds that the Association has never firmly established what the standby pay rate was for the affected employees. For example, there was no evidence as to how much money the field representatives received for standby work in the 1981-82 heating season. The most that the Association proved is that one year Giameo received a flat rate of $900 for standby work. However, there was no indication as to which year(s) was covered by that $900, how many weekends were included, whether he was the only field representative performing the duty, or whether Giameo received time and one-half in addition to the $900 for the hours he actually worked. Moreover, the Association cannot rely upon the standby rate set forth in Article 15 Section 4 of J-1 since that clause does not specifically include the field representatives.

6/ There have been numerous cases where an employer violated the Act because it unilaterally changed an established practice. For example, see In re Wharton Bd/Ed, P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982); In re Morris County Park Comm., P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982); In re Oakland Bd/Ed, P.E.R.C. No. 82-125, 8 NJPER 378 (¶13173 1982); and, In re Lawrence Twp. Bd/Ed, P.E.R.C. No. 81-69, 7 NJPER 13 (¶12005 1980).

Consequently, since the Association failed to demonstrate that it was entitled to a particular pay rate for standby work for field representatives, the most that it is entitled to is the right to negotiate with the Township over a retroactive rate of pay for the particular standby work that was performed herein.

Regarding employee Marshall's request for reimbursement for tolls and mileage related to her standby work, although the Association did not prove that an established practice existed regarding those expenses, the Township has already paid her tolls, and it has agreed to pay her mileage expenses. 7/ Since no mileage reimbursement rate has ever been established, the Association is not entitled to a particular rate, and at most is only entitled to negotiate over what reimbursement rate shall be retroactively applied. 8/

The Job Description Change

The Association's charge that the Township unlawfully changed the job description is without merit at least before this Commission. In In re West Deptford Bd/Ed, P.E.R.C. No. 80-95, 6 NJPER 56 (¶11030 1980), the Commission held that when done in a legal manner, and consistent with its managerial prerogatives, an employer may change a job description. The Commission found that job descriptions serve numerous purposes including:

7/ The undersigned credits Ferraioli's testimony that the Township will pay Marshall for her mileage.

8/ Since no established practice existed regarding a payment for mileage, and since no showing was made that the Association ever demanded to negotiate over mileage, and since that issue was not specifically raised on the face of the Charge, then the Township did not actually violate the Act with respect to that issue. However, the Township is not excused from negotiating a mileage rate with the Association to cover the mileage in question.

> ...a means by which the employer can indicate to prospective or current employees what it expects of them and thus provides a guide to the employees on how to perform their particular job responsibilities. 6 NJPER at p. 57.

The Commission indicated, however, that an employer could not establish a job description which violated other requirements established by statute or other State agencies.

The instant facts show that the Township's reason for requiring the C.P.A. exam is rooted in its managerial right to determine how best to deal with insect and rodent infestation. Ferraioli wanted a certain flushing chemical to be used to control such infestations and according to him, only certified individuals could apply such a chemical. The Association did not contradict Ferraioli's assertion that the State Department of Environmental Protection requires certification for those employees applying a flushing chemical, it did not establish that there were Township employees with other titles who were already certified to apply a flushing chemical or who were more appropriate for that work, and it did not establish that the exam was required for the field representatives in retaliation for their exercise of protected activity.

The undersigned notes that the exam requirement for field representatives did not change their basic negotiable terms and conditions of employment, the exam was given on Township time and at Township expense, and there was no indication that employee Luciano was terminated, disciplined or demoted, adversely evaluated, or in any way punished for failing the exam. Thus, the undersigned believes that the Township acted within its managerial

right in requiring field representatives to take the C.P.A. exam and the Complaint should be dismissed with respect to that issue.

The only basis for alleging that the Township acted unlawfully in requiring field representatives to take the exam seems to be the allegation that it violated Civil Service requirements for that job title. However, the November 5, 1982 letter from Civil Service which the Association relied upon states in pertinent part:

> this office does not control conditions of employment for the Township of Irvington.

The undersigned believes that sentence can be interpreted to mean that the Township is not a Civil Service participant and thus the Association would have no recourse to Civil Service concerning the matter, and the Township could not then be bound by the Civil Service job description for the affected title. However, if the Township is a Civil Service participant then the Association should proceed before that agency regarding the changed job description. Of course, in that situation, the Township would also have the right to request that Civil Service change the job description to comport with its managerial needs. Nevertheless, the available evidence does not clearly establish a Civil Service violation, and the exam requirement does not otherwise appear to be a violation of our Act.

Finally, there was no showing herein that any of the Township's actions interfered with the formation, existence or administration of the Association as an employee organization, nor was there any indication that any rule established by the Commission was violated. Consequently, the §5.4(a)(2) and (7) allega-

tions should be dismissed. 9/

Accordingly, based upon the above analysis, the undersigned makes the following:

Conclusions of Law

1. The Township of Irvington violated §5.4(a)(1) and (5) of the Act by unilaterally discontinuing payment to field representatives for weekend standby work.

2. The Township did not violate §5.4(a)(1) and (5) of the Act by requiring field representatives to take the Certified Pesticide Applicators Core examination and the Complaint should be dismissed regarding that issue.

3. The Township did not violate §5.4(a)(2) and (7) of the Act since it did not interfere with the Association and did not violate any Commission rules. That portion of the Complaint should be dismissed in its entirety.

Recommended Order

The Hearing Examiner recommends that the Commission ORDER:

A. That the Township cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and from refusing to negotiate in good faith with the Association concerning terms and conditions of employment of Association

9/ The undersigned notes that the Association in its post-hearing brief argued that the Township violated the Act by unilaterally changing the employees' work schedule. However, no such issue was litigated herein and no such finding made. The Association appears to be referring to the issue raised in its Motion to Amend the Complaint. However, that Motion was denied. The instant case did not concern work schedules in the traditional sense, and was limited to the issues raised on the face of the Charge, payment for standby work, and the change in the job description. Any alleged change in the work schedule would have to be considered on its own merits.

unit members, particularly, by failing to negotiate with the Association about eliminating payment to field representatives for weekend standby work.

B. That the Township take the following affirmative action.

1. Forthwith engage in good faith negotiations with the Association regarding a retroactive rate of pay for field representatives for their 1982-83 weekend standby work. 10/

2. Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Township's authorized representative shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Township to insure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Township has taken to comply herewith.

C. That the Complaint be dismissed regarding the allegation that the Township unlawfully changed the job description, and regarding the alleged violations of §5.4(a)(2) and (7) of the Act.

Arnold H. Zudick
Hearing Examiner

Dated: January 13, 1984
Trenton, New Jersey

10/ It is also recommended that the Commission retain jurisdiction in this matter to ascertain whether the Township negotiates with the Association regarding a mileage reimbursement rate for employee Marshall for expenses she incurred in order to perform the required weekend standby work.

Appendix "A"

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, and

WE WILL NOT refuse to negotiate in good faith with the Association concerning terms and conditions of employment of Association unit members, particularly, by failing to negotiate with the Association about eliminating payment to field representatives for weekend standby work.

WE WILL forthwith enter into good faith negotiations with the Association concerning a retroactive rate of pay for field representatives for their 1982-83 weekend standby work.

TOWNSHIP OF IRVINGTON
(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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.