

P.E.R.C. NO. 95-109

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-H-93-329

PBA LOCAL NO. 50,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Borough of Belmar violated the New Jersey Employer-Employee Relations Act by refusing to negotiate in good faith with PBA Local No. 50 concerning any proposed change in shift rotation frequency and by issuing a memorandum changing the express terms of the parties' collective negotiations agreement concerning exchanges of days, hours and tours of duty. The Borough did not file any exceptions to the hearing examiner's recommendation granting the PBA's motion for summary judgment.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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BOROUGH OF BELMAR,

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Docket No. CO-H-93-329

PBA LOCAL NO. 50,

Charging Party.

Appearances:

For the Respondent, Ruderman & Glickman, P.C., attorneys
(Mark S. Ruderman, of counsel)

For the Charging Party, Joseph N. Dempsey, attorney

DECISION AND ORDER

On March 22, 1993, PBA Local No. 50 filed an unfair practice charge against the Borough of Belmar. Local No. 50 alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(5),^{1/} by unilaterally changing the shift rotation frequency of patrol division employees from one week to three weeks and by requiring police officers who wish to exchange days, hours, or tours of duty to give the chief of police a written reason for the exchange.

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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...."

On January 26, 1995, a Complaint and Notice of Hearing issued. The employer did not file an Answer. On February 27, Local No. 50 moved for summary judgment. The employer did not respond to the motion. On March 16, the motion was referred to Hearing Examiner Stuart Reichman.

On March 24, 1995, the Hearing Examiner recommended granting the motion. H.E. No. 95-21, 21 NJPER 171 (¶26107 1995). He concluded that the employer violated the Act by unilaterally changing the shift rotation frequency and by issuing Memorandum No. 168 changing the express terms of the parties' collective negotiations agreement concerning exchanges of days, hours and tours of duty.

By letter dated March 31, 1995, the Borough notified Local No. 50 that it would not appeal the Hearing Examiner's recommendation. We have reviewed the record and adopt that recommendation.

ORDER

The Borough of Belmar is ordered to:

A. Cease and desist from:

1. Refusing to negotiate in good faith with PBA Local No. 50 concerning any proposed change in shift rotation frequency.

2. Refusing to negotiate in good faith with PBA Local No. 50 by issuing Memorandum No. 168 and implementing its terms.

B. Take this action:


1. Immediately restore the status quo ante by returning to a weekly shift rotation frequency for patrol division employees and rescinding Memorandum No. 168.

2. Negotiate with PBA Local No. 50 concerning shift rotation frequency and requiring employees to provide the chief of police with a written statement of reasons for an exchange of days, hours or tours of duty before implementing any change in such terms and conditions of employment.

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

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: May 23, 1995
Trenton, New Jersey
ISSUED: May 24, 1995



NOTICE TO 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 cease and desist from refusing to negotiate in good faith with PBA Local No. 50 concerning any proposed change in shift rotation frequency.

WE WILL cease and desist from refusing to negotiate in good faith with PBA Local No. 50 by issuing Memorandum No. 168 and implementing its terms.

WE WILL immediately restore the status quo ante by returning to a weekly shift rotation frequency for patrol division employees and rescinding Memorandum No. 168.

WE WILL negotiate with PBA Local No. 50 concerning shift rotation frequency and requiring employees to provide the chief of police with a written statement of reasons for an exchange of days, hours or tours of duty before implementing any change in such terms and conditions of employment.

Docket No. CO-H-93-329

BOROUGH OF BELMAR
(Public Employer)

Date: _____

By: _____

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, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

H.E. NO. 95-21

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

In the Matter of
BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-H-93-329

PBA LOCAL NO. 50,

Charging Party.

SYNOPSIS

A Hearing examiner of the Public Employment Relations Commission recommends that the Commission grant PBA Local No. 50's Motion for Summary Judgment. The Hearing Examiner found that shift rotation frequency is a mandatorily negotiable issue and the Borough of Belmar violated the Act when it unilaterally changed the shift rotation frequency of Patrol Division employees without prior negotiations with the majority representative. The Hearing Examiner also found that the Borough violated the Act when it unilaterally changed an express provision of the collective agreement, mid-contract, by requiring employees to provide the chief of police with the reason, in writing, for an exchange of days, hours or tours of duty.

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. 95-21

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

In the Matter of

BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-H-93-329

PBA LOCAL NO. 50,

Charging Party.

Appearances:

For the Respondent, Lynch, Martin, Philibosian, Chansky,
Fitzgerald & Kane
(Michael D. Fitzgerald, of counsel)

For the Charging Party, Joseph N. Dempsey, Esq.

HEARING EXAMINER'S REPORT AND RECOMMENDED
DECISION ON MOTION FOR SUMMARY JUDGMENT

On March 22, 1993, PBA Local No. 50 filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Borough of Belmar ("Borough"). Local No. 50 alleges that the Borough unilaterally altered the shift rotation frequency of Patrol Division employees from one week to three weeks in length, without negotiations. Local 50 also alleges that the Borough unilaterally changed the terms of the collective agreement by requiring police officers who wish to exchange days, hours or tours of duty with other officers to provide the chief of police with the written reason for the change. Previously, Patrol Division employees were not required to provide a reason, in writing, for the

exchange. Local 50 asserts that the changes implemented by the Borough violate the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-5.4(a)(5).^{1/}

On January 26, 1995, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On February 27, 1995, Local 50 filed a Motion for Summary Judgment pursuant to N.J.A.C. 19:14-4.8. On March 16, 1995, the Motion was referred to me for disposition. The Borough has filed neither an answer pursuant to N.J.A.C. 19:14-3.1^{2/} nor a response to Local No. 50's Motion for Summary Judgment.

It is well settled law that in considering a motion for summary judgment, all inferences are drawn against the moving party and in favor of the party opposing the motion. No credibility

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

^{2/} N.J.A.C. 19:14-3.1 requires the respondent to file its answer within 10 days from the service of the complaint unless, upon proper cause shown, the hearing examiner has granted a filing extension. The Rule also states that "[a]ll allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the commission, unless good cause to the contrary is shown." Thus, I treat the allegations set forth in the unfair practice charge as true.

determinations may be made, and the motion must be denied if material factual issues exist.^{3/} A motion for summary judgment should only be granted with extreme caution; the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 117 N.J.Super. 182 (App. Div. 1981); Essex County Educational Services Commission, P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); New Jersey Dept. of Human Services, P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

The New Jersey Supreme Court established in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1974) that where the party opposing the motion does not submit any affidavits or documentation contradicting the moving party's affidavits or documents, the moving party's facts may be considered as true, and there would be no material factual issue to adjudicate, unless it was raised in the movant's pleadings. See also In re City of Atlantic City, H.E. No. 86-36, 12 NJPER 160 (¶17064 1986), adopted

3/ N.J.A.C. 19:14-4.8(d) explains that summary judgment may be granted only if there are no material facts in dispute. That rule provides:

(d) If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

P.E.R.C. No. 86-121, 12 NJPER 376 (¶17145 1986); AFT Local 481 (Jackson), H.E. No. 87-9, 12 NJPER 628 (¶17237 1986) adopted P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986); In re CWA Local 1037, AFL-CIO, H.E. No. 86-10, 11 NJPER 621 (¶16217 1985), adopted P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 1985). The Court in Judson held that:

...if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature...he will not be heard to complain if the court grants summary judgment, taking as true the statements of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact. [Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. at 75.]

Upon application of the standards set forth above, and in reliance upon the record papers filed in this proceeding to date, I make the following:

FINDINGS OF FACT

1. On January 4, 1993, Chief of Police Harold Allen unilaterally implemented a new work schedule which altered the frequency of the Patrol Division's shift rotation from one week to three weeks in length. On January 18, 1993, Local No. 50 sent Chief Allen a letter requesting that the three week rotation be abandoned and the one week rotation be reinstated.

2. On February 4, 1993, Local 50's attorney sent Chief Allen and the Borough's attorney a letter demanding negotiations concerning the issue of shift rotation frequency. The Borough has failed to respond to the February 4, 1993 letter. While the Borough has increased the shift rotation frequency from three weeks to two weeks, it has neither entered nor agreed to enter into negotiations with Local No. 50 regarding the shift rotation frequency issue.

3. On February 18, 1993, the Borough issued Memorandum No. 168 which requires an officer who wishes to exchange days, hours or tours of duty with another officer to advise the chief of police, in writing, as to the reason for the exchange. Memorandum No. 168 changes Article 12, Section F., of the collective agreement^{4/} covering the period January 1, 1991 through December 31, 1993, and changes the parties' past practice.

ANALYSIS

N.J.S.A. 34:13A-5.3 states in relevant part:

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

^{4/} A copy of the parties' 1991-1993 collective agreement was submitted by the parties and is included in the file compiled in this matter. I take administrative notice of the collective agreement.

In Asbury Park and Asbury Park PBA Local No. 6, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2nd 245 (¶204 App. Div.), the Commission held that the issue of shift rotation frequency is mandatorily negotiable provided such provision expressly preserves management's right to act unilaterally when necessary. See also, Borough of Middlesex, P.E.R.C. No. 92-32, 17 NJPER 470 (¶22225 1991); Borough of Carteret, P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988). Thus, since the issue of shift rotation frequency is mandatorily negotiable, the Borough is required by the Act to negotiate with Local No. 50 before it implements any change in the existing shift rotation program. Consequently, the Borough violated Section 5.4(a)(5) of the Act when it unilaterally implemented a shift rotation schedule different from the existing one week program without negotiations.

The employer changed the collective agreement concerning the exchange of days, hours or tours of duty when it issued Memorandum No. 168. As indicated above, the Act requires the employer to negotiate proposed new work rules or modifications of existing rules with the majority representative before they are established. In Middlesex Bd. of Education, H.E. No. 93-26, 19 NJPER 279 (¶24143 1993), adopted P.E.R.C. No. 94-31, 19 NJPER 544 (¶24257 1993), the Commission held that an employee organization has no obligation to reopen negotiations mid-contract and that an employer, therefore, violates the act by unilaterally implementing any changes to terms and conditions of employment expressly set by

the collective agreement. Here, the Borough changed the contract with respect to the provision contained in Article 12, Section F., of the collective agreement pertaining to exchanges of days, hours and tours of duty by requiring that the reason for such exchange be provided to the chief of police in writing. This mid-contract modification in terms and conditions of employment violates Section 5.4(a)(5) of the Act. Middlesex.

On the basis of the particular facts in this matter, I make the following:

CONCLUSIONS OF LAW

1. The Borough violated N.J.S.A. 34:13A-5.4(a)(5) by unilaterally changing the shift rotation frequency without entering into prior negotiations with Local No. 50 and by changing the express terms of the collective agreement when it issued Memorandum No. 168.

2. Local No. 50's Motion for Summary Judgment is granted.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Borough cease and desist from:

1. Refusing to negotiate in good faith with Local No. 50 concerning any proposed change in shift rotation frequency.

2. Refusing to negotiate in good faith with Local No. 50 by issuing Memorandum No. 168 and implementing its terms.

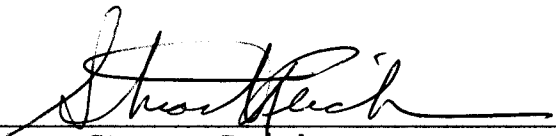
B. That the Borough take the following affirmative action:

1. Immediately restore the status quo ante by returning to a weekly shift rotation frequency for Patrol Division employees and rescind Memorandum No. 168.

2. At the appropriate time, negotiate with Local No. 50 concerning shift rotation frequency and requiring employees to provide the chief of police with a written statement of reasons for an exchange of days, hours or tours of duty prior to implementation of any change in such terms and conditions of employment.

3. 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 Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.^{5/}



Stuart Reichman
Hearing Examiner

Dated: March 24, 1995
Trenton, New Jersey

^{5/} Pursuant to N.J.A.C. 19:14-4.8(e), a decision on a motion for summary judgment which resolves the complaint in its entirety may be appealed to the Commission in accordance with N.J.A.C. 19:14-7.3(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 refuse to negotiate with PBA Local No. 50 concerning any proposed change in shift rotation frequency.

WE WILL NOT unilaterally implement changes in terms and conditions of employment mid-contract by requiring Patrol Division employees to submit the reason, in writing, to the chief of police for an exchange of days, hours or tours of duty.

WE WILL immediately restore the weekly shift rotation for Patrol Division employees.

WE WILL rescind Memorandum No. 168.

Docket No. CO-H-93-329

Borough of Belmar

(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, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.