

P.E.R.C. NO. 86-124

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-86-19-61

AFSCME, LOCAL 1676, EDISON
POLICE DISPATCHERS,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on an unfair practice charge filed by AFSCME, Local 1676, Edison Police Dispatchers against the Township of Edison. The Complaint alleged the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it required police dispatchers to work each of its three established shifts on a rotating basis. The Commission, however, in agreement with the Hearing Examiner, finds that the Township had the contractual right to rotate shifts.

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Charging Party.

Appearances:

For the Respondent, James McDonnell, Labor Consultant

For the Charging Party, Susan Mae Ragland, Staff
Representative, AFSCME, Council 73

DECISION AND ORDER

On July 19, 1985, AFSCME Local 1676 Edison Police Dispatchers ("AFSCME") filed an unfair practice charge against the Township of Edison ("Township"). The charge alleged that the Township violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it required police dispatchers to work each of its three established shifts on a rotating basis.

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; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On October 10, 1985, a Complaint and Notice of Hearing issued. The Township then filed an Answer. It contends it had always required dispatchers to work rotating shifts and that any deviations from this requirement were unauthorized. It added that it had a contractual right and managerial prerogative to insist that dispatchers work the established shifts unless they received approval to change shifts.

On November 13, 1985, Hearing Examiner David F. Corrigan conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. The Township filed a post-hearing brief.

On January 15, 1986, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 86-31, NJPER (¶ 1986). He found the Township had a contractual right and managerial prerogative to require prior approval of any shift changes.

The Hearing Examiner served his report on the parties and informed them that exceptions, if any, were due on January 28, 1986. Neither party filed exceptions or requested an extension of time.

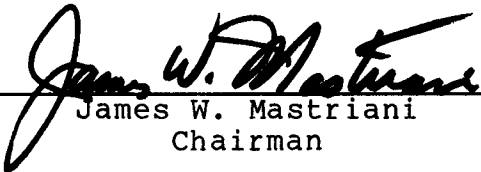
I have reviewed the record. The Hearing Examiner's findings of fact are accurate. I adopt and incorporate them. Under all the circumstances of this case, I agree with the Hearing Examiner that the Township had a contractual right to require prior

approval before dispatchers changed shifts. Accordingly, acting pursuant to authority delegated to me by the full Commission, I dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 1, 1986

H.E. NO. 86-31

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

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-86-19-61

AFSCME LOCAL 1676, EDISON
POLICE DISPATCHERS,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint based on an unfair practice charge filed by AFSCME Local 1676 Edison Police Dispatchers against the Township of Edison. The charge had alleged that the Township unilaterally established a regulation prohibiting police dispatchers from exchanging shifts with one another. The Hearing Examiner finds that the Township had the managerial prerogative and contractual right to establish this regulation.

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. 86-31

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

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-86-19-61

AFSCME LOCAL 1676, EDISON
POLICE DISPATCHERS,

Charging Party.

Appearances:

For the Respondent, Lawrence M. Pollex, Assistant
Township Attorney

For the Charging Party, Susan Mae Ragland,
Representative

HEARING EXAMINER'S REPORT AND
RECOMMENDED DECISION

On July 19, 1985, AFSCME Local 1676 Edison Police Dispatchers ("AFSCME") filed an unfair practice charge against the Township of Edison with the Public Employment Relations Commission. The charge alleged that the Township violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act,

^{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; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

N.J.S.A. 34:13A-1 et seq., when it unilaterally scheduled and required police dispatchers to work each of its three established shifts on a rotating basis. The charge alleged that "for the previous 5 years, some dispatchers had varied schedules that did not include all the shifts."

On October 10, 1985, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On October 23, 1985, the Township filed its Answer. It contends that (1) the Township always required dispatchers to work rotating shifts and that deviations from this requirement were unauthorized; (2) it has the contractual right to make the changes; and (3) the rotating shift requirement was pursuant to a managerial prerogative and therefore not subject to negotiations.

On November 13, 1985, I conducted a hearing in Trenton.^{2/} The parties examined witnesses, presented evidence and argued orally. At the conclusion of the charging party's case, respondent made a motion to dismiss which I denied.

On November 19, 1985, the Township submitted a post-hearing brief. On January 7, 1985, I received the transcript of the hearing.

FINDINGS OF FACT

1. The Township of Edison ("Township") is a public employer within the meaning of the Act and is subject to its

^{2/} The Union had requested interim relief, but subsequently withdrew that request when the matter was set for plenary hearing. (T102-103)

provisions. AFSCME Local 1676, Edison Police Dispatchers ("AFSCME") is a public employee representative within the meaning of the Act and is also subject to its provisions. AFSCME is the majority representative "for all police dispatchers employed by the Township [of Edison]."

2. The Township and AFSCME are parties to a collective negotiations agreement whose term is January 1, 1984 to December 31, 1985. The contract provides for a shift differential of 3.5% for the first shift (11 p.m. to 7 a.m.) and third shift (3 p.m. to 11 p.m.) (Article 4). The contract further provides, at Article 5:

HOURS OF WORK AND OVERTIME

The hours of work for the Dispatchers shall consist of eight (8) hours per day, with a one (1) hour paid lunch period. Dispatchers shall work for four (4) days and then have two (2) days off. Any change in shift schedules must be approved by the Business Administrator.

According to Dr. James McDonnell, labor consultant to the Township, the Town's officials "felt that it was a matter of organization that [dispatchers] have rotating shifts along with the police officers. They also felt that it was a morale problem." (T65)^{3/} Therefore, according to McDonnell, they sought and succeeded that the business administrator must approve shift changes. (T65). Their managerial concerns which prompted this language was not discussed with the union, however. (T72) The remainder of the contract is silent with

^{3/} T refers to transcript of November 13, 1985 hearing.

respect to shift schedules, work hours, and management rights. This is the first contract between the parties. (T64)

3. The Edison Police Department has nine "squads." Each squad has a lieutenant and sergeant, six or seven patrolmen and two dispatchers. (T76) The employees on the squad are scheduled to work together. (T76) A master work schedule is prepared for the calendar year. Employees are scheduled to work four consecutive days on followed by two consecutive days off. There are three eight hour shifts (11 p.m. to 7 a.m.; 7 a.m. to 3 p.m.; 3 p.m. to 11 p.m.) and the work schedule requires employees to rotate shifts by squads. This work schedule has been in place for at least 6 years. (T16; T75) Prior to that, the dispatchers worked "steady" shifts. (T13) At the time the schedule change was made from steady to rotating shifts, the dispatchers were not organized in a collective negotiations unit. (T18) The change was made so the dispatchers would work together with the police officers in their squad "so they would be familiar with us and wouldn't be a problem for them." (T48)

4. Notwithstanding the "official" schedule, dispatchers had been permitted, since at least 1979, to exchange shifts with other employees. (T17) The then Chief of Police Fischer approved this practice (T17-18) and said to Dispatcher Margaret Burke, "If you can get someone to change, I don't care, as long as everybody shows up. It's okay to me, you can change every day if you want to." (T19) Therefore, certain employees did not work all three

shifts. Thus, Burke traded shifts with another employee, who was attending college. That employee worked the 11 to 7 shift and Burke never worked a midnight shift. (T21-22)^{4/} There are 21 dispatchers. At least eight dispatchers had similar arrangements. (T24)

5. This practice continued until June 1985. At that time, Captain Calamoneri issued, on June 24, 1985, the following order:

Effective July 5, 1985, all dispatchers will be required to work the schedule agreed upon in their contract with the Township of Edison. That schedule is listed as follows: 11-7, 7-3 and 3-11. This shift schedule will be adhered to without exception.

Switching a day with another dispatcher for a specific reason will be allowed when approved by the Communications Supervisor. All other shift switching will cease.

Richard Kermes became Acting Chief of Police in 1984 and was named Chief of Police in August 1985. (T74-75) Prior to being Chief, he was aware that dispatchers had been permitted to exchange shifts. He did not, however, have the authority to disapprove such exchanges. (T77) Police officers had not been permitted to exchange shifts. (T77) In June 1985 he directed Captain Calamoneri to issue the above order. He did so because he believed that in a para-military organization it is important for the squads to work with the same employee complement. (T79-80) He also felt it was

^{4/} Even though she did not work these shifts, the yearly work schedule would indicate that she had been scheduled to work that shift. (T23) However, the weekly work schedule prepared by the department would indicate her actual working time. (T25)

important for recordkeeping, morale, discipline and accountability. (T80-81) Under the order, the procedure for changing shifts is now identical to that for police officers. (1T90)

6. Since the issuance of the order, all the dispatchers have generally^{5/} been working rotating shifts. There is specific evidence in the record that this has detrimentally affected some of their personal lives. For instance, Burke is raising her son and wants to be with him in the evening, especially since her husband recently passed away. (T31) Other employees have had their college plans disrupted and have had to quit other part-time employment. (T50)

ANALYSIS

This case presents one question: Did the Township violate subsections (a)(5) (and derivatively (a)(1)) of our Act when it required dispatchers to receive prior approval from the Township before exchanging shifts? The law is settled that for the Commission to find such a violation, the charging party bears the burden of proving: (1) a change (2) in a term and condition of employment (3) without negotiations. The Township however, may defeat such a claim if it has a managerial prerogative or contractual right to make the change. e.g., State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202

^{5/} However, for a short period of time, Burke was assigned to the 3-11 shift because of a shortage of dispatchers.

1985); Willingboro Board of Education, P.E.R.C. No. 86-76, 11 NJPER ____ (¶ ____ 1985).

The charging party met its burden of establishing the change without negotiations. The change was to require prior approval before changing shifts. This prior approval requirement, in effect, resulted in some employees being required to work rotating shifts for the first time. Prior thereto, certain employees had made certain arrangements, with the approval of the Chief, which resulted in their not working rotating shifts. It is conceded that this change was made without negotiations.

I now must consider whether this change pertained to a term and condition of employment or was a non-negotiable managerial prerogative. I find that it pertained to a managerial prerogative. The dispositive fact is that dispatchers had been scheduled, for at least several years, to work rotating shifts. Thus, this is not a case involving a unilateral change from a steady to a rotating shift. Rather, the rotating shift had already been established as the standard shift. The practice which had developed was to permit certain employees to exchange shifts with other employees without prior approval. This is not mandatorily negotiable. City of Orange Township, P.E.R.C. No. 86-23, 11 NJPER 522, 524 (¶16184 1985); Town of Kearny, P.E.R.C. No. 83-7, 8 NJPER 435 (¶13203 1983). Compare Township of Teaneck, P.E.R.C. No. 85-52, 10 NJPER 644 (¶15310 1984).

Even if I were to find that this change was from a steady to a rotating shift not involving exchange of tours, I would still

find the change to be not mandatorily negotiable. Local 195 v. State, 88 N.J. 383 (1982) sets the standard I must apply in determining this question:

...a subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

This item intimately and directly affects the work and welfare of these employees. There is specific evidence in this record that one employee has had her family life disrupted, another employee has had to eliminate or reduce other part-time employment, and another employee may have her plans to attend college affected because of this change. The second test is not applicable. I now must consider whether negotiations on this issue would "significantly interfere with the determination of governmental policy." In deciding this question, I

am mindful that I must balance the parties' respective interests. In this case, the employer's decision does implicate governmental policy. The primary reason it made the change was to conform the dispatchers' schedule to that of the police officers' so that they could work as a "team." Specifically, it was also designed to effectuate discipline and accountability purposes. Given these reasons (all of which were uncontroverted), I am compelled to hold that this change is not mandatorily negotiable. The situation presented is not a case of first impression. Rather, it is analogous to other instances where both the courts and the Commission have already ruled. First, in Irvington Policemen's Benev. Ass'n 29 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979) certif. den. 82 N.J. 296 (1980), the Appellate Division held that a change from steady to rotating shifts was non-negotiable. There it was prompted, in part, "to improve efficiency by rotating the hours of the superior officers with their men thereby increasing continuity and consistency of supervision." Id. at 545 n. 2. Similar reasons exist here. See also Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985).^{6/} Accordingly, for the

^{6/} In reaching this result, I recognize that the employees involved are not police officers and therefore Irvington and Closter arguably might not apply. I do believe this factor somewhat distinguishes Irvington. Governmental policy considerations are lessened when police officers are not involved because the public safety factor is absent. See Irvington, supra at 547; Cape May County, P.E.R.C. No. 83-98, 9 NJPER 97 (¶14053 1983). Nevertheless, even though this change did not involve police officers, I still am obliged to

reasons already stated, I recommend that the Commission dismiss the charge because the change involved a managerial prerogative.

I also believe the charge should be dismissed because the Township had the contractual right^{7/} to require prior approval. It is well established that there is no unlawful unilateral change where the collective negotiations agreement permits such a change. Under such circumstances, the union has waived its right to negotiate. e.g., State of New Jersey, P.E.R.C. 86-64, 11 NJPER 723 (¶16254 1985). However, to establish such waiver, the contract must clearly and unequivocally authorize the change. E.g., Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983). In making this determination, I am required to "look at a variety of factors, such as the history of negotiations over the disputed contract provision, to determine if, in fact, there was a waiver of the right to negotiate." Deptford Board of Education, P.E.R.C. No. 81-78, 7 NJPER 35, 36 (¶12015 1980). Article 5 of the parties' agreement provides:

6/ Footnote Continued From Previous Page

apply the Local 195 balancing test. See also Bd. of Ed. Woodstown-Piles Grove v. Woodstown-Piles Grove Ed. Ass'n. 81 N.J. 582 (1980); Warren County, P.E.R.C. No. 85-83, 11 NJPER 99 (¶16043 1985) (change in shift assignment of non-police officer made to resolve security problems, to correct improper work habits and to increase overall efficiency of facility is not arbitrable); Freehold Regional High School Board of Education, P.E.R.C. No. 78-29, 4 NJPER 19 (¶4010 1977).

7/ In view of the foregoing discussion on the managerial prerogative defense, I need not discuss the Township's other defense but am doing so since the Commission might disagree with my managerial prerogative determination.

The hours of work for the Dispatchers shall consist of eight (8) hours per day, with a one (1) hour paid lunch period. Dispatchers shall work for four (4) days and then have two (2) days off. Any change in shift schedules must be approved by the Business Administrator.
(emphasis added)

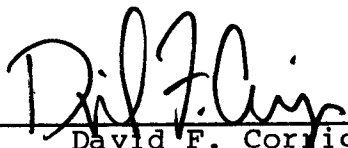
My task is to interpret this last sentence. I believe it grants to the Township the authority to exercise the right to require prior approval before permitting an employee to alter her assigned rotating shift. I reach this conclusion because I interpret "shift schedule" to pertain to that yearly schedule (J-2) which the Department makes prior to the new year (as opposed to the weekly schedule). I believe such a conclusion is warranted by both the plain language of the agreement and the negotiations history.

CONCLUSIONS OF LAW

The Township of Edison did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it required police dispatchers to receive prior approval before exchanging shifts with other dispatchers.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the Complaint be dismissed in its entirety.



David F. Corrigan
Hearing Examiner

DATED: Trenton, New Jersey
January 15, 1986