

P.E.R.C. NO. 88-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC,

Respondent,

-and-

LOCAL 153, OPEIU and
LOCAL 32, OPEIU,

Docket Nos. CO-87-161-97
CO-87-162-98
CO-87-163-99
CO-87-164-100

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission finds that the County of Passaic violated the New Jersey Employer-Employee Relations Act when, on December 17, 1986, it announced that it would unilaterally increase, on January 1, 1987, the hours of work of County employees represented by Locals 32 and 153, OPEIU to 35 from 30.

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Docket Nos. CO-87-161-97
CO-87-162-98
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Charging Parties.

Appearances:

For the Respondent, Michael H. Glovin, Esq.

For the Charging Parties, Schneider, Cohen, Solomon, Leder
& Montalbano, Esqs. (Bruce D. Leder, of counsel)

DECISION AND ORDER

On December 26, 1986, Locals 32 and 153, OPEIU ("charging parties") filed unfair practice charges against the County of Passaic ("County"). The charges allege that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 and (5),^{1/} when, on December 17, 1986, it announced that it would unilaterally increase, on January 1, 1987, the hours of work of County employees represented by the charging parties to 35 from 30.

^{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 December 31, 1986 and January 30, 1987, Commission Designee Edmund G. Gerber granted the charging parties' application for interim relief restraining the County from unilaterally increasing the hours of work. I.R. No. 87-15, 13 NJPER 145 (¶18063 1987).

On February 13, 1987, a Complaint and Notice of Hearing and order consolidating the charges issued. The County filed an Answer, but later withdrew it.

On October 27, 1987, Hearing Examiner Alan R. Howe scheduled a hearing. However, the County did not appear and advised that it would not contest the charges.

On November 17, 1987, the Hearing Examiner issued his report and recommended decision. H.E. No. 88-22, 13 NJPER ____ (¶____ 1987). He found the County's actions violated the Act. As a remedy, he recommended a cease and desist order and posting.

The Hearing Examiner informed the parties that exceptions were due on or before November 30, 1987. Neither party filed exceptions.

We have reviewed the record. We adopt the Hearing Examiner's findings of fact, conclusions of law, and recommended remedy.

ORDER

The County of Passaic is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of their rights guaranteed to them by the Act, particularly, by unilaterally and without collective negotiations, announcing and increasing the work week from 30 hours

to 35 hours for employees represented by Locals 32 and 153, OPEIU.

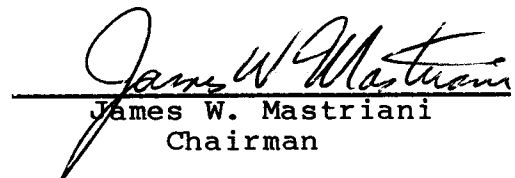
2. Refusing to negotiate in good faith with Locals 32 and 153, OPEIU concerning terms and conditions of employment, particularly by the unilateral announcement and implementation of a change in the work week from 30 hours to 35 hours for employees represented by Locals 32 and 153, OPEIU.

B. Take the following affirmative action:

1. 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.

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
December 21, 1987
ISSUED: December 22, 1987

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 their rights guaranteed to them by the Act, particularly by unilaterally and without collective negotiations announcing and increasing the work week from 30 hours to 35 hours for employees represented by Local 32, OPEIU and Local 153, OPEIU.

WE WILL NOT refuse to negotiate in good faith with Locals 32 and 153, OPEIU concerning terms and conditions of employment, including the unilateral announcement and implementation of a change in the work week from 30 hours to 35 hours for employees represented by Locals 32 and 153, OPEIU.

CO-87-161-97

CO-87-162-98

CO-87-163-99

Docket No. CO-87-164-100

COUNTY OF PASSAIC

(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.

H.E. NO. 88-22

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

In the Matter of
COUNTY OF PASSAIC,

Respondent,

-and-

Docket Nos. CO-87-161-97
CO-87-162-98
CO-87-163-99
CO-87-164-100

LOCAL 32, OPEIU and
LOCAL 153, OPEIU,

Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent County violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when by resolution on December 17, 1986, it unilaterally sought to increase the hours of work of employees of four collective negotiations units from 30 hour to 35 hours per week. The County did not contest the unfair practice charges in this matter and, thus, there was no contest over the facts or the order to post a notice.

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. 88-22

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

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COUNTY OF PASSAIC,

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LOCAL 32, OPEIU and
LOCAL 153, OPEIU,

Charging Parties.

Appearances:

For the Respondent
Michael H. Glovin, Esq.

For the Charging Party
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(Bruce D. Leder, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

Four Unfair Practice Charges were filed with the Public Employment Relations Commission (hereinafter "Commission") on December 26, 1986, by Local 32 and Local 153 of the OPEIU (hereinafter "Charging Parties" or "Local 32" or "Local 153") alleging that the County of Passaic (hereinafter "Respondent" or "County") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter "Act"), in that Local 32 is the

exclusive collective negotiations representative for a unit of professional personnel at the County's Youth House whose contract expired on December 31, 1986; that Local 153 is the exclusive collective negotiations representative for a unit of clerical personnel in the County's Administration Building whose contract also expired on December 31, 1986; that Local 153 is the exclusive collective negotiations representative for a unit of supervisory personnel in the County's Administration Building whose contract expired on December 31, 1986; that Local 153 is the exclusive collective negotiations representative for a unit of clerical personnel employed by the Superintendent of Schools of the County, as to which the parties recently completed negotiations for an initial contract prior to December 31, 1986; that no contracts had been signed as of the filing of an unfair practice charges on December 26, 1986, supra; that the three collective negotiations units which had contracts that expired on December 31, 1986, had had a provision that the covered employees would work 30 hours per week; that the negotiations unit covering clerical personnel employed by the Superintendent of Schools likewise had had a 30-hour work week; that on or about December 17, 1986, the County unilaterally increased the work hours in the four collective negotiations units from 30 hours per week to 35 hours per week; all of which is alleged

to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.^{1/}

It appearing that the allegations of the respective unfair practice charges, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 13, 1987. Prior to the issuance of the said Complaint and Notice of Hearing, the Charging Parties made application for interim relief and on December 31, 1986, Commission designee Edmund G. Gerber granted temporary restraints, which restrained the County from increasing the work hours of the affected employees pending a return date on January 15, 1987. On the return date, both parties presented briefs, affidavits and argued orally. Thereafter, on January 30, 1987, Commission designee Gerber restrained the County from increasing the hours of its employees in the four units represented by Locals 32 and 153 pending a plenary hearing before the Commission (I.R. No. 87-15, 13 NJPER 145 (¶18063 1987)).

The Complaint and Notice of Hearing had scheduled hearings for March 30 and 31, 1987, in Newark, New Jersey. However, at the request of the parties, the hearings dates were indefinitely

^{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; (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."

adjourned until, at the request of the Charging Parties, a hearing was scheduled for October 27, 1987. On October 26, 1987, counsel for the Respondent telephoned the offices of the Commission in Trenton and advised that he was withdrawing the answer of the Respondent, which had been filed on October 5, 1987, thereby admitting all of the allegations in the respective unfair practice charges as true. Further, counsel for the Respondent stated on October 26th that the County agreed to the posting of a notice thereby acknowledging a violation of the Act as alleged.

On the scheduled hearing date of October 27, 1987, counsel for the County did not appear and the Hearing Examiner personally confirmed by telephone to his office that his position was as stated by telephone to the Commission the day before. Counsel for the Charging Parties having failed to receive timely notice of the County's position appeared as scheduled on October 27th at the Commission's offices in Newark. With a reporter present, the Hearing Examiner opened the record and placed upon it by the procedural history of the matter up to and including the events of October 26 and 27, 1987. There being no contest, no testimony was taken nor documentary evidence offered by the Charging Parties. Further, there was no oral argument made nor were any post-hearing briefs filed by the parties.

Four unfair practice charges having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing in the absence of a contest the

matter is appropriately before the Commission by its designated Hearing Examiner for determination.

On the record in this case, including certain uncontested factual representations which were made to the Hearing Examiner by counsel for the Charging Parties on October 27, 1987, the following facts are found for purposes of disposition of this matter by the Commission:

1. The County of Passaic is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Locals 32 and 153 of the OPEIU are public employee representatives within the meaning of the Act, as amended, and are subject to its provisions.

3. Local 32 is the exclusive collective negotiations representative for a unit of professional personnel at the County's Youth House whose contract expired on December 31, 1986.

4. Local 153 is the exclusive collective negotiations representative for a unit of clerical personnel in the County's Administration Building whose contract also expired on December 31, 1986.

5. Local 153 is the exclusive collective negotiations representative for a unit of supervisory personnel in the County's Administration Building whose contract expired on December 31, 1986.

6. Local 153 is the exclusive collective negotiations representative for a unit of clerical personnel employed by the Superintendent of Schools of the County, as to which the parties

recently completed negotiations for an initial contract prior to December 31, 1986. No contracts had been signed as of the filing of an unfair practice charge on December 26, 1986.

7. the three collective negotiations units which had contracts that expired on December 31, 1986 had had a provision that the covered employees would work 30 hours per week.

8. The negotiations unit covering clerical personnel employed by the Superintendent of Schools likewise had provided for a 30-hour work week.

9. On or about December 17, 1986, the County unilaterally increased the work hours in the four collective negotiations units from 30 hours per week to 35 hours per week.

10. There are now four negotiated successor collective negotiation agreements for the four respective units, effective January 1, 1987, which have been in place since in or around June of 1987 but have not been executed. Each agreement contains a provision for a 30-hour work week and further a provision for a contract term of two years, expiring December 31, 1988.

DISCUSSION AND ANALYSIS

The Commission has on many occasions stated, in connection with what constitutes a violation of § 5.4(a)(5) of the Act, that a public employer may violate its negotiations obligations in two separate fashions: (1) repudiating a term and condition of employment that it had agreed would remain in effect throughout the contract's life (which is involved herein), and (2) implementing a

new rule or changing an old rule concerning a term and condition of employment without first negotiating in good faith to impasse or having a managerial prerogative or a contractual defense authorizing the change (also involved herein). See, e.g., Willingboro Bd. of Ed., P.E.R.C. No. 86-76, 12 NJPER 32, 33 (¶17012 1985); Ramapo State College, P.E.R.C. No. 86-28, 11 NJPER 580, 581 (¶16202 1985); and Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985).

The New Jersey Supreme Court in Galloway Tp. Bd. of Ed. v Galloway Tp. Ed. Assn., 78 N.J. 25 (1978) said, in connection with unilaterally imposed changes, that the Legislature "...has also recognized that the unilateral imposition of working conditions is the antithesis of its goal that the terms and conditions of public employment be established through bilateral negotiation and, to the extent possible, agreement between the public employer and the majority representative of its employees...." (78 N.J. at 48). See also, NLRB v Katz, 369 U.S. 736, 743-47 (1962).

It requires little further discussion to conclude that on the admitted facts herein the Respondent County violated §§ 5.4(a)(1) and (5) of the Act when it repudiated a negotiated term and condition of employment by unilaterally increasing the work week for the employees in the four affected units from 30 hours to 35 hours. Accordingly, an appropriate remedy will be recommended hereinafter.

* * * *

Upon the admitted facts alleged in the four respective unfair practice charges, supra, plus uncontested factual representations made by counsel for the Charging Parties at the hearing on October 27, 1987, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent County violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when by resolution adopted on December 17, 1986, it unilaterally and without collective negotiations increased the work week for employees in the four affected units from 30 hours to 35 hours.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent County cease and desist from:

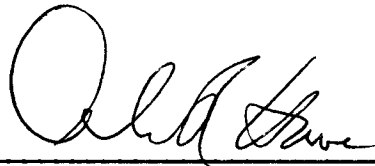
1. Interfering with, restraining or coercing its employees in the exercise of their rights guaranteed to them by the Act, particularly, by unilaterally and without collective negotiations, increasing the work week for employees in the four affected units from 30 hours to 35 hours.

2. Refusing to negotiate in good faith with the Charging Parties concerning terms and conditions of employment, including the unilateral implementation of a change in the work week of the employees in the four affected units by increasing the work week from 30 hours to 35 hours.

B. That the Respondent County take the following affirmative action:

1. 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.

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



Alan R. Howe
Hearing Examiner

DATED: November 17, 1987
Trenton, New Jersey

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 their rights guaranteed to them by the Act, particularly, by unilaterally and without collective negotiations increasing, the work week for employees in the four affected units from 30 hours to 35 hours.

WE WILL NOT refuse to negotiate in good faith with the Charging Parties concerning terms and conditions of employment, including the unilateral implementation of a change in the work week of the employees in the four affected units by increasing the work week from 30 hours to 35 hours.

Docket Nos. CO-87-161-97
CO-87-162-98
CO-87-163-99
CO-87-164-100

COUNTY OF PASSAIC

(Public Employer)

Dated _____

By _____
(Title)

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