

P.E.R.C. NO. 88-132

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-86

AFSCME COUNCIL 52, LOCAL 2251,

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 Council 52, Local 2251 against the Bayonne Board of Education. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally implemented a time clock monitoring system. The Chairman, in agreement with a Commission Hearing Examiner and in the absence of exceptions, finds that the Complaint should be dismissed.

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Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy,
Esqs. (Robert T. Clarke, of counsel)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs. (Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On September 24, 1987, AFSCME Council 52, Local 2251 ("Local 2251") filed an unfair practice charge against the Bayonne Board of Education ("Board"). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),^{1/}

^{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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

when it unilaterally implemented a time clock monitoring system, but limited to employees in AFSCME's unit.^{2/}

On October 6, 1987, a Complaint and Notice of Hearing issued. On October 23, the Board filed its Answer. It admits implementing a time clock monitoring system, but contends it has the managerial prerogative to do so. It denies that the system affects only AFSCME employees.

On March 10, 1988, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. On May 10, the Hearing Examiner recommended that the Complaint be dismissed. H.E. No. 88-54, 14 NJPER ____ (¶ ____ 1988). He determined that the Board has the managerial prerogative to implement timekeeping procedures, including time clocks to monitor employee work time. He further determined that the time clocks were not implemented on a discriminatory basis.

The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before May 23, 1988. Neither party filed exceptions or requested an extension of time.

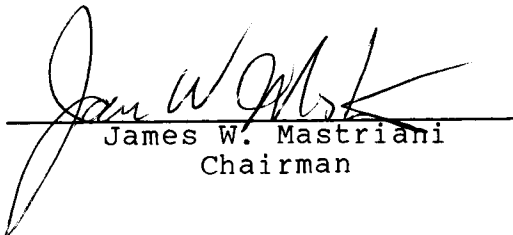
^{2/} Local 2251 also sought interim relief. On September 29, 1987, following a hearing, a Commission designee denied this request. Bayonne Bd. of Ed., I.R. NO. 88-5, 13 NJPER 800 (¶18304 1987).

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-5) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I agree that the Complaint should be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
June 8, 1988

H.E. NO. 88-54

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BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Respondent,

-and-

Docket No. CO-H-88-86

AFSCME COUNCIL 52, LOCAL 2251,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Bayonne Board of Education did not violate the New Jersey Employer-Employee Relations Act when it unilaterally implemented time clocks for custodial and maintenance employees. A public employer has a managerial prerogative to implement time clocks to monitor employee work time if not done on a discriminatory basis. No discrimination was established here.

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.

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(Robert T. Clarke, of counsel)

For the Charging Party

Oxfeld, Cohen, Blunda, Friedman, LeVine & Brooks, Esqs.
(Sanford R. Oxfeld, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (Commission) on September 24, 1987 by AFSCME Council 52, Local 2251 (AFSCME) alleging that the Bayonne Board of Education (Board) violated subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. (Act).^{1/} AFSCME alleged that the Board violated the Act and the parties' collective agreement (J-1) by implementing time clocks only for its employees represented in AFSCME's unit. The Charge was accompanied by an Order to Show Cause seeking an order restraining the Board from using time clocks. After an interim relief hearing on September 29, 1987 the Commission Designee denied the request for restraint. Bayonne Bd. of Ed., I.R. No. 88-5, 13 NJPER 800 (¶18304 1987).

A Complaint and Notice of Hearing (C-1) was issued on October 6, 1987. The Board filed an Answer (C-2) on October 23, 1987 denying that it violated the Act. The Board argued that it had a managerial right to implement time clocks, and denied that time clocks were implemented only for employees in AFSCME's unit.

A hearing was held on March 10, 1988.^{2/} Both parties filed post-hearing briefs by May 5, 1988.

^{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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

^{2/} When the Complaint issued on October 6, 1987 no date was set for hearing and the matter was not originally assigned to me for processing. This case was transferred to me for hearing in January 1988, and on January 21 I scheduled the hearing for March 10.

The transcript from March 10 will be referred to as "T."

Based upon the entire record, I make the following:

Findings of Fact

1. AFSCME represents all the custodial and maintenance employees employed by the Board. In late 1986 and early 1987 the parties were involved in collective negotiations for a new collective agreement. One of the Board's major issues during negotiations was the implementation of time clocks (T28). The parties negotiated over the implementation of time clocks during several negotiations sessions, but no agreement was reached (T12-T13, T21, T28). The Board argued that it had a managerial right to implement the time clocks, but negotiated over the issue because it believed that was more beneficial to the parties' relationship (T32).

The parties were unable to reach an agreement through mediation, and entered fact finding in February 1987. During fact finding the Board, while preserving its rights, withdrew the time clocks issue from the table to avoid impeding the reaching of a negotiated settlement (T30-T31). On February 26, 1987 the parties reached a settlement and signed a Memorandum of Agreement (J-3). The Memorandum provided for a new collective agreement (J-1) effective from July 1, 1986 through June 30, 1989. Item 15 of J-3 provided as follows:

(15) The Board withdraws its proposal to implement time clocks, without prejudice, and the parties hereby agree that their legal rights are preserved as to this issue.

2. The 1986-89 collective agreement (J-1) implemented as a result of J-3 retained clauses from the previous agreement which were not changed in negotiations. Prior to 1987 there were no time clocks, only a sign-in, sign-out procedure (T10). Article 3.8 of J-1, which was the same in the prior agreement, provides as follows:

All employees must sign in at the beginning of the workday, sign in and out for lunch breaks, and sign out at the end of the shift.

Article 15.4 of J-1 provides:

None of the rights reserved to the Employer shall be exercised in a discriminatory, arbitrary or capricious manner.

Article 20.1 of J-1 provides:

However, the employer agrees that it will make no changes in current rules and regulations without appropriate prior consultation and negotiations with the designated representative of the Union.

3. Between February and September 1987 there were no negotiations between the parties regarding time clocks (T23). The Board's chief negotiator, however, told AFSCME's chief negotiator that time clocks would be implemented (T31, T42-T43, T47).

On September 14, 1987 the affected employees were brought to a meeting, presumably during work time, and presented with a memorandum (J-2) informing them that time clocks were being implemented (T16). Exhibit J-2 informed the employees that time clocks would be implemented on October 1, 1987, and it set forth a procedure that would be followed. The procedure, for example, included a provision for pay deductions for punching in late or out early. The employees were required to read and sign a copy of J-2

under threat of insubordination (T16). There were no negotiations regarding any provision in J-2 (T16).

4. The Board implemented time clocks to better monitor the comings and goings of the custodial staff. Not enough supervision was available on a daily basis to monitor the employees signing in or out (T33). There had been several instances where custodial or maintenance employees had not been accurately signed in or out but were charging the Board for time worked (T33-T34).

When the time clocks were implemented for custodial and maintenance employees at the regular schools, teachers and secretaries in regular full-time positions were still only required to use the sign-in or out procedure. They continued to use a sign-in and out procedure because administrators were available to monitor their coming and going (T35-T36). The Board, however, required all employees at the Physical Education Community Center, which included teachers and secretaries in addition to custodial staff, to use time clocks because of the lack of supervisors at that location to monitor employee work time (T21-T22, T34-T35).

The Board also intends to install a time clock for teachers and counselors involved with "Project Connect," an after hours and weekends program providing crises intervention for students. The Board believed that time clocks are necessary there to monitor the employees work time (T36).

ANALYSIS

The Courts and Commission have held that a public employer has a managerial prerogative to implement time keeping procedures, including time clocks, to monitor employee work time. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 135 N.J. Super 269, 1 NJPER 33 (Chan. Div. 1975), aff'd 142 N.J. Super 44 (App. Div. 1976); Tp. of Pennsauken, P.E.R.C. No. 80-51, 5 NJPER 486 (¶10248 1979)(Pennsauken); Bergen Cty. Utilities Auth., H.E. No. 84-22, 9 NJPER 640 (¶14274 1983), aff'd P.E.R.C. No. 84-52, 9 NJPER 678 (¶14296 1983). Thus, despite the Board's good faith willingness to negotiate over the implementation of time clocks, and despite its willingness to withdraw that item from negotiations during fact finding, the Board was legally entitled to unilaterally implement time clocks if done on a lawful "non-discriminatory" basis.

AFSCME's allegation that time clocks were implemented on a discriminatory basis was not supported by the evidence. The mere allegation of discrimination is not enough to prove a violation of the Act. The Board established a sound business reason for implementing time clocks for the custodians at the schools, and a legitimate reason for not implementing time clocks for teachers and secretaries at those locations. The record also established that time clocks were implemented for teachers, secretaries, as well as custodians, at those locations or projects where supervision of work time was not readily available. In Pennsauken the Commission recognized that an employer could implement one time keeping procedure in one location, and a different procedure in another

location, as long as it was not motivated by reasons violative of the Act. 5 NJPER at 487. The record here shows only a legitimate business motivation for the Board's actions.

In its post-hearing brief AFSCME argued that it succeeded in negotiations in preventing the implementation of time clocks, and that the Board violated Article 20.1 of J-1 by unilaterally implementing time clocks. I do not agree. First, the Board was not required to negotiate over the implementation of a time clock; it had a managerial right to implement that procedure. Thus, its agreement to withdraw that issue during fact finding did not waive its right to implement the procedure.^{3/} Second, even if Article 20.1 required the Board to "consult" with AFSCME prior to implementing the new time-keeping procedure, the record shows that the Board had already thoroughly consulted and, in fact, negotiated with AFSCME over that issue.

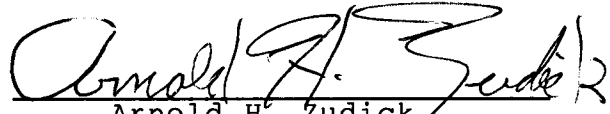
Finally, there was no showing that the implementation of time clocks changed the employees' terms and conditions of employment. Similarly, there was no evidence that the procedures implemented by J-2 were different than the procedures that had previously existed.

Accordingly, based upon the above facts and analysis, I make the following:

^{3/} In fact, its rights were preserved in item 15 of J-3.

RECOMMENDATION

I recommend that the Complaint be dismissed.


Arnold H. Zudick
Hearing Examiner

DATED: May 10, 1988
Trenton, New Jersey