P.E.R.C. NO. 88-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LYNDHURST,

Respondent,

-and- Docket No. CO-87-2-63

LYNDHURST PBA, LOCAL 202,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, finds that the Township of Lyndhurst violated the New Jersey Employer-Employee Relations Act when it unilaterally implemented rules and regulations on matters within the scope of negotiations.

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TOWNSHIP OF LYNDHURST,

Respondent,

-and- Docket No. CO-87-2-63

LYNDHURST PBA, LOCAL 202,

Charging Party.

Appearances:

For the Respondent, George Savino, Esq.

For the Charging Party, Loccke & Correia, P.A.
(Richard D. Loccke, of counsel)

DECISION AND ORDER

On July 1, 1986, Lyndhurst P.B.A. Local 202 ("Local 202") filed an unfair practice charge against the Township of Lyndhurst ("Township"). The charge alleges the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (4), (5) and (7),[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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the

Footnote Continued on Next Page

when it unilaterally adopted rules and regulations for its police employees which concern terms and conditions of employment and disciplined employees for violations of the new rules before their adoption.

On November 26, 1986, a Complaint and Notice of Hearing issued. On December 10, the Township filed its Answer. It contends the Township has the statutory authority to enact police rules and regulations, that the rules do not conflict with the collective negotiations agreement, and that the disciplined employees were aware of the new regulations and would also have been charged under the former regulations.

On August 6, 1986, Hearing Examiner Mark A. Rosenbaum conducted a hearing. The parties examined witnesses and introduced exhibits. They agreed that certain aspects of the rules and regulations should have been negotiated before implementation. They also filed post-hearing briefs.

On December 17, 1987, the Hearing Examiner issued his recommended decision. H.E. No. 88-27, 14 NJPER ___ (¶_____ 1987). He determined that the Township violated the Act when it

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1/ Footnote Continued From Previous Page

exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

unilaterally implemented rules and regulations on matters within the scope of negotiations. As a remedy, he recommended that the Township implement the changes it agreed to with the PBA during the hearing and negotiate on demand other rules which pertain to negotiable items. He declined, however, to declare invalid the disciplinary charges; rather he found that these disciplinary actions should be reviewed through statutory or negotiated disciplinary review procedure. N.J.S.A. 34:13A-5.3. He also determined that the Commission did not have jurisdiction to review the fairness of the disciplinary proceedings.

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

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-5) are accurate. I agree that the Township violated the Act by unilaterally implementing new rules and regulations and that the remaining allegations should be dismissed. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I adopt the Hearing Examiner's conclusions of law and recommended remedy. With respect to the disciplinary charges, I specifically note that even if the new regulations were invalid,[2/] it would not necessarily mean that the

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2/ I do not decide that question. But see N.J.S.A. 34:13A-5.3 (standards or criteria for employee performance are not negotiable).

employees could not have been disciplined, see, e.g., In re Tuch, 159 N.J. Super. 219, 224 (App. Div. 1978), or that they cannot contest that discipline through statutory or negotiated grievance procedures. N.J.S.A. 34:13A-5.3.

ORDER

The Township of Lyndhurst is ordered to:

A. Cease and desist from refusing to negotiate in good faith with PBA Local 202, particularly, by unilaterally adopting and implementing new rules and regulations for the police department of the Township of Lyndhurst.

B. Take the following affirmative action:

1. Implement those changes in its rules and regulations which counsel agreed to on the record in this matter.

2. Negotiate upon demand of PBA Local 202 concerning adoption and implementation of its rules and regulations pertaining to 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 Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

The remaining allegations of the Complaint are dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
January 20, 1988

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 cease and desist from refusing to negotiate in good faith with PBA Local 202, particularly, by the unilateral adoption and implementation of new rules and regulations pertaining to terms and conditions of employment for the Police Department of the Township of Lyndhurst.

WE WILL implement those changes in the rules and regulations which our counsel agreed to on the record before the Public Employment Relations Commission.

WE WILL negotiate upon demand of PBA Local 202 concerning adoption and implementation of our rules and regulations pertaining to terms and conditions of employment.

Docket No. CO-87-2-63

TOWNSHIP OF LYNDHURST
(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. 88-27

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

In the Matter of

TOWNSHIP OF LYNDHURST,

Respondent,

-and- Docket No. CO-87-2-63

LYNDHURST PBA, LOCAL 202,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Township of Lyndhurst violated its obligation to negotiate in good faith with PBA Local 202 by the unilateral implementation of rules and regulations for the police department. The Hearing Examiner recommends that the Commission order the Township to implement changes in the rules suggested by the PBA and agreed to by counsel for the Township at hearing. In addition, the Hearing Examiner recommends that the Township negotiate, upon demand, with the PBA over all contested rules and regulations, subject to the Township's right to file for scope of negotiations determinations. The Hearing Examiner recommends that the Commission dismiss all other portions of the complaint.

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. 88-27

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

In the Matter of

TOWNSHIP OF LYNDHURST,

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LYNDHURST PBA, LOCAL 202,

Charging Party.

Appearances:

For the Respondent
George Savino, Esq.

For the Charging Party
Loccke & Correia, PA
(Richard D. Loccke, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On July 1, 1986, the Lyndhurst PBA Local 202 ("Local 202" or "PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission"), alleging that the Township of Lyndhurst ("Township") violated the New Jersey Employer-Employee Relations Act ("Act"). Local 202 alleged that the Township unilaterally promulgated and implemented new rules and regulations for its police department and retroactively disciplined employees

for violations of the new rules and regulations, in violation of §5.4(a)(1), (2), (3), (4), (5) and (7)[1/] of the Act.[2/]

On November 26, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On December 10, 1986, the Township filed an Answer asserting that the new rules and regulations were implemented on or about April 1, 1985; that it had authority to adopt the rules and regulations; that the disciplinary actions were filed after the implementation of the new rules; that the actions of the two officers would have violated the old rules as well; and that the new rules did not conflict with the existing collective agreement, did not impact on terms and conditions of employment, and were not retaliatory.

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; (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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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; (7) Violating any of the rules and regulations established by the commission."

2/ Local 202 also alleged that the Township denied a unit member the right to representation at a disciplinary hearing. The parties resolved that matter at hearing.

In the spring of 1987, the parties attempted to resolve these matters. On June 24, 1987, the parties resolved certain issues on the record. On August 6, 1986, I conducted a hearing in Newark, New Jersey, where the parties had opportunities to examine and cross-examine witnesses, present relevant evidence and argue orally. Both parties filed briefs, and Local 202 filed a reply brief which I received on December 16, 1987. Upon the entire record, I make the following:

FINDINGS OF FACT

1. The Township of Lyndhurst is a public employer within the meaning of the Act.

2. The Lyndhurst PBA Local 202 is an employee representative within the meaning of the Act. Local 202 is the collective negotiations representative for all non-civilian employees in the police department of the Township of Lyndhurst.

3. The Township and Local 202 are parties to a collective agreement covering the period of January 1, 1986, through December 31, 1987 (Exhibit J-1).

4. During 1985 the Township drafted and circulated new rules and regulations to some but not all members of the police department. In late 1985, the PBA requested a labor management meeting to discuss the rules and regulations, and that meeting was conducted in January 1986. At the meeting, PBA representatives objected to the lack of negotiations over the rule changes and to the failure of the entire Board of Commissioners of the Township of Lyndhurst to review and approve the new rules and regulations. The

PBA sought input into the the rules and regulations; the Township representatives indicated that "they would look into it." (TB at 24-27 and 29; Exhibit J-2).[3/]

5. On February 11, 1986, the governing body of the Township of Lyndhurst resolved at a formal meeting "that the revised rules prepared by the police department in 1985 be adopted and approved." (Exhibit CP-1). The resolution passed by 5-0 vote (Exhibit CP-2).

6. On January 8, 1986, Patrolman Anthony Antiorio received a letter from Police Chief William Jarvis which stated:

> You are hereby ordered...to answer chrges preferred against you, to wit: Section 3:4 of Revised Rules and Regulations approved and adopted April 1st, 1985 in that on or about December 14th, 1985, said patrolman was negligent in causing the loss or theft of department property. (Exhibit CP-4)

Officer Antiorio was not disciplined for this alleged infraction; however, reference to that matter may be contained in Antiorio's personnel file (TA at 4).

7. On February 5 and 12, 1986, Chief William Jarvis brought departmental charges against Lt. Peter Isoldi, alleging violations of "the Revised Rules and Regulations, Department of Police, Township of Lyndhurst, New Jersey, adopted and approved April 1, 1985...." Lt. Isoldi was charged with violating Section 3:1.12--"Conduct Towards Superior and Subordinate Officers and

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3/ TA refers to the Transcript of June 24, 1987. TB refers to the Transcript of August 6, 1987.

Associates." (Exhibit CP-5). Isoldi was later found to have violated the referenced rule and was docked one and one-half day's pay. (TB at 35-36 and 38-39).

ANALYSIS

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

> A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

The above section of the Act emphasizes the right of majority representatives to negotiate both contracts and work rules. Of course, these rights apply only to topics within the scope of negotiations as established by the Commission and the courts, and not preempted by the Legislature. See, generally State v. State Supervisory Employees Assn, 78 N.J., 54 (1978) and In re IFPTE Local 195 v. State, 88 N.J. 393 (1982).

In this matter, the PBA alleges that the Township unilaterally created and implemented work rules and regulations without negotiations. Without reviewing each rule and regulation, I note that many of them concern areas clearly within the scope of negotiations. For example, Section 2:5.11 requires patrolmen to report for duty 15 minutes prior to his or her scheduled shift. That section does not provide for any additional compensation for the 15 minutes. Employee work hours and compensation are mandatory

subjects of negotiations. See Woodstown-Pilesgrove Bd. of Ed. and Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582 (1980); Burlington Cty. Coll. Faculty Assn. v. Bd. of Trustees, 64 N.J. 10 (1973); and Belleville Aides and Bus Drivers Assn. and Belleville Bd. of Ed., P.E.R.C. No. 87-66, 13 NJPER 8 (¶18006 1986).[4/] Similarly, Rule 2:5.36 limits meal periods for patrolmen to one-half hour. This rule also affects work hours and is mandatorily negotiable.

While the rules also contain provisions which are clearly outside the scope of negotiations, this does not cure the Township's actions, nor does the Township's recorded, but as yet unimplemented, agreement to certain PBA rule proposals (TB at 10-14). When the Township resolved to create rules and regulations for its police department it was responsible under N.J.S.A. 34:13A-5.3 to negotiate with the PBA over those rules and regulations which were negotiable prior to implementation. Instead, it met with PBA representatives once about the rules and regulations, offered to "look into" negotiations, then passed the rules and regulations intact the following month.

As "[o]ur Legislature has...recognized...[,] the unilateral imposition of working conditions is the antithesis of its goal that terms and conditions of public employment be established through

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4/ The Township does not argue, nor does the record reflect, any "reasons in support of its need, from a policy making point of view to unilaterally control police work hours..." Twp. of Mt. Laurel, P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), aff'd 215 N.J. Super. 108, 115 (App. Div. 1987).

bilateral negotiation and, to the extent possible, agreement between the public employer and the majority representative of its employees." Galloway Twp Bd. of Ed. and Galloway Twp Ed. Assn., 78 N.J. 25, 48 (1978). Accordingly, I recommend that the Commission find that the Township violated its obligation to negotiate in good faith when it unilaterally implemented the rules and regulations of the police department without prior negotiations.

The remedy for this violation should not require the rescission of the rules and regulations in their entirety, since to do so would leave the department without rules and regulations by which to operate. Instead, I recommend that the Commission order the Township to implement those changes in the rules and regulations which were requested by the PBA and agreed to by counsel for the Township during the hearing (TB at 10-14), and to negotiate upon demand with the PBA on those additional rules which remain in dispute and are otherwise negotiable.[5/]

Antiorio and Isoldi Departmental Charges

The PBA argues that since the rules and regulations were not properly negotiated pursuant to N.J.S.A. 34:13A-5.3, departmental charges brought against employees Anthony Antiorio and Peter Isoldi for violations of those rules cannot be valid. Alternatively, the PBA argues that the departmental charges brought

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5/ Should the Township maintain that any of the disputed rules is not mandatorily negotiable, the appropriate course would be to file a Petition for Scope of Negotiations Determination with the Commission.

against Antiorio and Isoldi are based on alleged conduct which occurred prior to the formal adoption of the rules by the Township of Lyndhurst in February 1986, and that the retroactive application of those rules to Antiorio and Isoldi is "arbitrary, capricious and fundamentally unfair..." (Brief of PBA at 12).

Absent a claim that their disciplinary actions were taken in retaliation for the exercise of protected activity, public employers have the right to discipline their employees, subject to statutory or negotiated procedures of review. There is no requirement that employers properly implement regulations upon which to base their disciplinary actions. See Demarest Bd. of Ed. v. Demarest Ed. Assn., 177 N.J. Super. 211 (1980). Rather, contested disciplinary actions may be reviewed through statutory or negotiated procedures. N.J.S.A. 34:13A-5.3.

While the Complaint alleges a violation of subsection 5.4(a)(3) of the Act, there is no record evidence to suggest that the disciplinary actions taken against Antiorio and Isoldi were in retaliation for protected activity. Absent such evidence, the departmental charges against Antiorio and Isoldi cannot constitute a violation of the Act. The PBA's recourse here is to challenge the charges through their contractual grievance procedure.

Without ruling on whether or not the rules and regulations were retroactively applied to Antiorio and Isoldi and thus "fundamentally unfair," I find that the Commission does not have jurisdiction to review that claim.

The Alleged Violations of 5.4(a)(2), (3), (4) & (7)

While the PBA alleges violations of these subsections it did not pursue these allegations at hearing, and I recommend that they be dismissed.

RECOMMENDED ORDER

I recommend that the Commission ORDER the Township of Lyndhurst to:

A. Cease and desist from refusing to negotiate in good faith with PBA Local 202, particularly, by the unilateral adoption and implementation of new rules and regulations for the Police Department of the Township of Lyndhurst.

B. Take the following affirmative action:

1. Implement those changes in its rules and regulations which its counsel agreed to on the record in this matter.

2. Negotiate upon demand of PBA Local 202 concerning adoption and implementation of its rules and regulations.

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 herewith.

I further recommend that the Commission dismiss the remaining allegations of the Complaint.

Mark A. Rosenbaum
Hearing Examiner

Dated:
December 17, 1987
Trenton, New Jersey

Appendix "A"
Recommended Notice

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 cease and desist from refusing to negotiate in good faith with PBA Local 202, particularly, by the unilateral adoption and implementation of new rules and regulations for the Police Department of the Township of Lyndhurst.

WE WILL implement those changes in the rules and regulations which our counsel agreed to on the record before PERC.

WE WILL negotiate upon demand of PBA Local 202 concerning adoption and implementation of our rules and regulations.

The Complaint's remaining allegations are dismissed.

Docket No. CO-87-2-63 TOWNSHIP OF LYNDHURST
(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.