CITY OF WORCESTER AND IBPO LOCAL 378, MUP-2525 (1/31/78). Decision on Appeal of Hearing Officer's Decision.

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Commissioners Participating: James S. Cooper, Chairman; Garry J. Wooters, Commissioner; Joan G. Dolan, Commissioner.

Appearances:

Linda Rodgers, Esq. - Counsel for the City of Worcester
David Downes, Esq. - Counsel for the International Brotherhood of Police Officers, Local 378

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

On September 13, 1977, Hearing Officer Philip J. Dunn issued his Decision in this matter pursuant to the Expedited Hearing Procedure established by Section 11, Chapter 150E (the Law). He dismissed charges filed by the International Brotherhood of Police Officers, Local 378 (Union) against the City of Worcester (City) alleging that the City had violated Sections 10(a)(5) and (1) of the Law by unilaterally changing certain terms and conditions of employment of employees in the bargaining unit represented by the Union. The Union's charges alleged specifically that the City had changed leave of absence and sick leave policies; temporarily transferred officers from one shift to another for training sessions in order to avoid paying overtime; discontinued procedures for juvenile court appearances by all arresting officers thus eliminating significant overtime benefits; introduced a written employee evaluation form; and failed to take appropriate corrective action to assure that grievances were processed. The Hearing Officer found that the evidence failed to show that the City had unilaterally changed any pre-existing practices.

The Union filed a timely request for review of the Hearing Officer's Decision by the full Commission pursuant to MLRC Rules, Article III, Section 28, and the Hearing Officer submitted his Statement of the Case to the Commission in accordance with that Article. The Union's request for review was limited to the allegations of unilateral change in three areas: transferring officers for training; introducing written employee evaluation forms; and grievance processing.

Both the Union and the City filed timely Supplementary Statements on November 7, 1977.

Opinion

The Union's timely appeal has put in issue the Hearing Officer's conclusions of law relative to the three areas of alleged unilateral change. In addition, the Union's Supplementary Statement has specifically pointed to alleged incorrect findings of fact, which are therefore also before us on review. Town of Dedham, 3 MLC 1332 (1976).

The proper test to be applied when a charge alleging unilateral change is before this Commission is whether there has been unilateral action, a change, and an effect upon wages, hours or conditions of employment. Town of North Andover, 1 MLC 1103, 1106 (1974). The Hearing Officer applied this test and found that no change from past practice was proven in regard to any of the allegations.

We have carefully examined de novo those portions of the record pointed out to us by the Union in support of its petition for review. After so doing we affirm the findings and decision of the Hearing Officer.

As to the issue of temporary transfers of officers, the Union contends that there was sufficient evidence showing a pre-existing practice changed by the City and that the Hearing Officer erred when he concluded that the record lacked such evidence. The Union bases its argument on the testimony of Officer McGrath, who said that each officer's daily schedule is pre-assigned twelve months in advance. However, the testimony of the Chief, which elaborated significantly on the assignment procedures in the police department, showed that the past practice was either to transfer officers to another shift, thus avoiding overtime, or to allow the officers to remain on their assigned shifts and paying overtime if training sessions occurred during off-shift hours. According to the Chief, the availability of overtime funds was one factor in determining which procedure was to be followed. As to the pre-arranged schedule, the Chief testified that it was a general guide only, and that although attempts were made to adhere to pre-arranged days off, all types of exigencies of the police department routinely required shift changes. We conclude that the Hearing Officer was correct in finding that there was insufficient evidence of any but a flexible past practice which included shift transfers for training as well as other purposes.

The second issue raised on appeal is the introduction of written evaluation forms. The Union argues on two levels that the Hearing Officer is in error. First, the Union contends that the introduction of a written form, which standardized a less formal and therefore more ambiguous procedure, violated the Law. We disagree. Unilateral change in evaluation procedures requires a finding of a material departure from previous procedure, Trading Post, Inc., 224 NLRB 160, 92 LRRM 1606 (1976). A written form itself is not such a material departure without an accompanying change in standards of productivity or performance. Thus an employer does not violate the Law by instituting a more dependable method of measurement. See Wabash Transformer Corp., 215 NLRB, 88 LRRM 1511 (1974); Rust Craft Broadcasting, Inc., 225 NLRB 65, 92 LRRM 1576, 1577 (1976). The Hearing Officer applied the proper legal test. Even so, the Union argues that new standards were created by the introduction of the written

evaluation forms and cites the testimony of the Chief. We have carefully examined the Chief's testimony and agree with the Hearing Officer that it is clear that the same standards of productivity and performance measured on the written form were always considered by superior officers in evaluation of their subordinates. The Chief distinguished between these standards, such as knowledge of the law, judgment and decision making ability, and arrest or ticket "quotas" which have not now or in the past been part of the police department's method of evaluating its officers. The written form does not refer to any numerical quota.

Since the Chief was the only witness to testify on this issue, the Hearing Officer was justified in finding that this unrebutted testimony disposes of the matter and that no changes in standards of performance or productivity were effected by the introduction of a written form.

As to the third area of appeal, grievance processing, the Union argues that the Hearing Officer erred in failing to find that the City had refused to share the cost of an arbitrator to resolve grievances after the individual in charge of grievance processing insisted on a larger fee. However, the testimony of the Union's own witness bolsters the Hearing Officer's finding that the City met and bargained to impasse with the Union and that the issue separating the parties was the finality of the arbitrator's award. Officer Hamilton testified as follows:

> They (City) came out with the idea of having an arbitrator hear the grievances, which was agreeable on both sides. But we could not make an agreement on the arbitrator's final decision being final and binding. The City would not state it would be final and binding. They wanted the City Manager to have the final word on grievances. Transcript at p. 62.

In light of this testimony and the affidavit of the City's labor negotiator, we affirm the Hearing Officer's findings that the City bargained in good faith to impasse over the issue of grievance processing and conclude that this charge should be dismissed.

Finding no error of law or fact finding in the decision of the Hearing Officer, it is hereby ordered that the Decision and Order in MUP-2525 is AFFIRMED and the Complaint DISMISSED.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

Joan G. Dolan, Commissioner