

I.R. NO. 93-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RAMSEY,

Respondent,

-and-

Docket No. CO-93-151

RAMSEY PBA LOCAL 155,

Charging Party.

SYNOPSIS

A Commission Designee restrains the Borough of Ramsey from implementing a shift schedule change which was motivated by economics. There was un rebutted evidence that the shift change was instituted to minimize overtime. Shift changes for economic reasons are mandatorily negotiable and to permit this shift change without negotiations would cause irreparable harm.

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Appearances:

For the Respondent
James F. Brennan, attorney

For the Charging Party
Whipple, Ross & Hirsh, attorneys
(William C. Varian, Jr., of counsel)

INTERLOCUTORY DECISION

On October 30, 1992, Ramsey PBA Local 155, filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Ramsey engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(1), (5) & (7)^{1/} when it unilaterally and without negotiations or prior

^{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. (7) Violating any of the rules and regulations established by the commission."

notice announced the modification of the weekly work schedule of PBA unit members. The Borough announced that on or about November 1, 1992, it would change the current "4-2" schedule (4 days on-two days off) to a "5-2" schedule (5 days on-two days off).

It was further alleged that the announcement of this schedule change was made just as the PBA and the Borough were about to commence negotiations and has had adverse impact thereon.

The PBA also sought a restraint of the implementation of the shift change scheduled to occur on November 1, 1992. I denied the Application but signed an Order to Show Cause with a return date of November 17, 1992. I conducted a hearing on that date.^{2/}

The Borough argues that it was free to unilaterally change the schedule; it had a non-negotiable managerial prerogative to set the work schedule as per Borough of Atlantic Highlands v. Atlantic Highland PBA, 192 N.J. Super. 71 (App. Div. 1983) cert. den. 96 N.J. 293 (194) and Irvington PBA v. Irvington, 170 N.J. Super. 539 (App. Div. 1979) cert. den. 82 N.J. 296 (1980).

Both sides submitted affidavits in support of their respective positions and both sides presented certifications of one lieutenant, Mark Delhauer.

The Borough initially submitted a certification of Delhauer dated October 30, 1992 where he states that since August 1992, he was assigned by the Chief of the department, Franceschi, to set the

^{2/} Both sides argued orally and were given an opportunity to present evidence.

personnel work schedule of the department and "as a result of the Borough's change in the personnel work schedule to a 5-2, 5-2, 5-1 rotation...effective on November 1, 1992, I prepared a schedule for the month of November 1992 based upon such a rotation." This schedule "shows an increase in the number of men working per shift which results in increased manning levels." This certification was silent as to the actual motivation of the shift change. The PBA submitted a certification by Delhauer dated November 6, 1992. In this certification, Delhauer certifies that certain statements in this October 30, 1992 certification were "misleading" and he was making the second certification to clarify and fully explain "portions of the first certification". Delhauer stated that he asked Chief Franceschi the reason for the shift change. The Chief responded that "the change was due to the complaints voiced by members of the PBA...that they had been working too many hours of overtime which were claimed to have been due to the Chief's inability to effectively manage the department."

Chief Franceschi also signed two affidavits, both were submitted by the Borough. He states in his certification, dated October 30, "since becoming Chief I have concluded the 4-2 rotation does not provide adequate coverage it is not efficient and is not an effective method of providing adequate police coverage to the Borough."

Chief Franceschi's second certification dated November 13, 1992 challenges certain statements in Delhauer's second

certification and specifically stated that Delhauer's statement as to Franceschi's stated reason for changing the shifts "is erroneous." "I explained to Delhauer that the problem was that the existing 4-2 rotating schedule was not an efficient or effective schedule in terms of providing adequate police coverage to the Borough and that the 5-2, 5-2, 5-1 schedule would provide the Borough with approximately 17 more shifts per man per year."

Also in the second certification, Franceschi stated two specific reasons for the need to for increased man power. "The re-organization of the Ramsey elementary schedule which was announced in September and will require four additional school crossing guards" and although the department will attempt to have the crossings manned by crossing guards, in the past, police have had to cover for guards when the guards were unable to cover their posts and since 1988, there have been approximately 100,000 square feet of office/commercial constructed in the Borough which has put increasing demands on the Department.

The PBA also submitted affidavits concerning unit members who claim that vacation schedules, educational and teaching obligations have been disrupted by the new schedule. The Borough, in turn, submitted affidavits contesting the disruptions.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of

success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{3/}

Work schedules and work hours are generally mandatorily negotiable terms and conditions of employment. Englewood Bd.Ed. v. Englewood Teachers Assn., 64 N.J. 1, 6-7 (1973); Burlington Cty Coll. Faculty Assn v. Bd. Trustees, 64 N.J. 10, 14 (1973); Woodstown-Pilesgrove Reg. School Dist. Bd.Ed. v. Woodstown-Pilesgrove Reg. Ed. Assn., 88 N.J. 582 (1980); IFPTE, Local 195 v. State of New Jersey, 88 N.J. 393 (1982); Twp. of Mt. Laurel v. Mt. Laurel Police Officers Assoc., 215 N.J. Super. 108 (App. Div. 1987). Our Supreme Court, however, in Local 195 and Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), established a test to determine whether certain matters, even though generally negotiable, are appropriate for negotiations in specific factual settings. The Court held that if negotiations over a particular matter, including work schedules, would significantly interfere with the determination of a governmental policy, the matter was not negotiable. Local 195 at 404-405.

Thus, where negotiations over work schedule changes interfered with management's policy on manning levels and

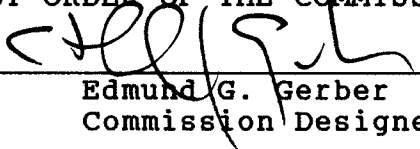
^{3/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

supervision, negotiations were not required. Atlantic Highlands; Irvington. But where there was no significant interference with management's ability to set policy, work schedules have been negotiable. Mt. Laurel; Township of Hamilton, P.E.R.C. No. 86-106, 12 NJPER 338 (¶17129 1986), aff'd App. Div. Dkt. No. A-4801-85T7 (4/2/87); Borough of Paulsboro v. Paulsboro Police Assn., I.R. 88-6, 14 NJPER 30 (¶19009 1987).

Here, I am satisfied tht the PBA has a substantial likelihood of prevailing before the Commission. Although there is a dispute as to certain aspects of Delhauer's affidavit, his contention that the reason for the shift change was to minimize overtime was not effectively rebutted. Moreover, in balancing the equities, in the event that the PBA is successful, the damages to the Borough would be extremely high, as the chief certified, the damages would amount to 17 additional shift days per man per year. Given the imminence of negotiations and the disruptions to the daily life of the personnel so involved, I believe that it would be far less disruptive to maintain the status quo of the 4-2 schedule instead of the 5-2, 5-2, 5-1 schedule.

Accordingly, the Borough is hereby restrained from continuing the 5-2, 5-2, 5-1 shifts and, effective with the December calendar, must return to the existing 4-2 shifts.

BY ORDER OF THE COMMISSION


Edmund G. Gerber
Commission Designee

DATED: November 25, 1992
Trenton, New Jersey