

I.R. NO. 2006-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DOVER,

Respondent,

-and-

Docket No. CO-2006-171

PBA LOCAL 137,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application seeking the rescission of a unilaterally implemented work schedule for police officers. The Designee found that an article ("hours") in the current collective agreement indicated that the PBA did not meet its burden to demonstrate a "substantial likelihood" of prevailing on legal allegations. The charge was referred to the Director of Unfair Practices for processing.

I.R. NO. 2006-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DOVER,

Respondent,

-and-

Docket No. CO-2006-171

PBA LOCAL 137,

Charging Party.

Appearances:

For the Respondent, Secare, Delanoy, Martino & Ryan
(Steven Secare, of counsel)

For the Charging Party, Lindabury, McCormick &
Estabrook (Eric B. Levine, of counsel)

INTERLOCUTORY DECISION

On January 3, 2006, Dover Township Policemen's Benevolent Association, Local 137 (PBA) filed an unfair practice charge against the Township of Dover. The charge alleges that the Township "unilaterally modified" an existing work schedule from four days-on, three days-off to five days-on, two days-off, violating 5.4a(1) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} The PBA alleges that

^{1/} These provisions 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; (7) Violating any of the rules and regulations established by the commission."

a "9 1/2 hour 4-day workweek" schedule was implemented in January 2004; on September 2, 2005, it was informed that the schedule was to be unilaterally changed to "5 days on, 2 days off, [with] evening shift [changed to] 10-hour days." The charge alleges that the new schedule was to be implemented on January 7, 2006.

The charge was accompanied by an application for interim relief which was executed with a return date of January 25, 2006. On the return date, the parties orally argued their cases.

The Township admits the schedule change. It asserts that in March 2005, a "scheduling committee," comprised of employer, Association representatives and FOP representatives (another unit of police employees) was established to "share and exchange views" on scheduling. The Township contends that the PBA proposed two schedules, one with 12-hour shifts, the other with 11-hour shifts; neither were "acceptable." The Township contends that it has the contractual right and a managerial prerogative to make the schedule change.

Article VIII ("Hours") of the parties' 2003-07 collective agreement describes the "daily" and "weekly" work schedules. It provides, in pertinent part:

Section 1. The parties understand and agree that the standard weekly work schedule for Employees covered by this agreement requires Employee services continuously throughout the seven (7) day week, and that the standard work week shall consist of forty (40) hours of work within said standard week.

Section 2. The tours of duty shall be established by the Employer, through the Chief of Police, and the Employer shall have the right, for efficiency of its operations, to make changes in starting and stopping time of the daily work schedule and to vary from the daily or weekly work schedule. If practicable, officers will be given a one week notice prior to changing their scheduled tour of duty in other than a declared state of emergency.

Section 3. The parties further agree that they shall discuss changes in the daily or weekly work schedule which may be necessitated for the efficient operation of the work force prior to implementation of such changes, and that the Union shall have the right to submit written recommendations with respect to any such changes.

PBA president Stephen Russell certified that the 4-day workweek schedule was implemented in January 2004 and that in October and December of that year the PBA consented to two minor changes to that schedule, neither of which resulted in an additional day of work for any officer. President Russell certified that under the newly-implemented schedule, officers will work "an additional 36 days per year" and that "family arrangements" will be "significantly affected."

ANALYSIS

Interim relief is available to a moving party that demonstrates that it has both a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest

must not be injured by an interim relief order and the relative hardship of the parties in granting or denying relief must be considered. Crowe v. DeGoia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 36 (1971).

Our Supreme court has held that work hours is a term and condition of employment requiring negotiations. Englewood Bd. of Ed. v. Englewood Ed. Ass'n., 64 N.J. 1, 6-7 (1973); Hunterdon Cty. Freeholder Bd. v. CWA, 116 N.J. 322, 331 (1989).

Recognizing that the subject of work hours encompasses work schedules setting the hours and days employees will work, the Court has held that work schedules are generally negotiable. Local 195, IFPTE v. State, 88 N.J. 393, 411-412 (1982). The Commission has found exceptions to the rule of negotiability when the facts prove a particularized need to preserve or change a work schedule to effectuate a governmental policy. See Irvington PBA Local #29 v. Town of Irvington, 176 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) (employer proved on appeal that discipline problems caused by inadequate supervision of radio patrol officers on midnight shift necessitated shift change); Borough of Prospect Park, P.E.R.C. No. 92-147, 18 NJPER 301 (¶23129 1992).


The Township has provided no certification(s) to prove a particularized need to change the work schedule. The Township

has asserted that the PBA has contractually waived its right to negotiate.

An employer may not unilaterally change an existing, negotiable condition of employment unless the employee representative has waived its right to negotiate. Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd. 166 N.J. 112 (2000); Red Bank Reg. Ed. Ass'n. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978).

A reading of Article VIII, particularly sections 2 and 3, reveals that the Township retained a right in unspecified circumstances, "to vary from the daily and weekly work schedule" and is obligated to "discuss" such changes "prior to [their] implementation . . ." Considering these provisions, together with the certification and the parties' arguments, I cannot find that the PBA has demonstrated a "substantial likelihood" that the Township has unlawfully changed the 4-3 work schedule of police officers.

Accordingly, the request for interim relief is DENIED. The charge shall be forwarded to the Director of Unfair Practices for processing.


Jonathan Roth
Commission Designee

DATED: January 25, 2006
Trenton, New Jersey