

I.R. NO. 2018-6

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY TOWNSHIP,

Respondent,

-and-

Docket No. CO-2018-111

ROCKAWAY TOWNSHIP FRATERNAL ORDER  
OF POLICE LODGE NO. 31

Charging Party.

SYNOPSIS

A Commission designee denies an application for interim relief filed by the Rockaway Township Fraternal Order of Police Lodge No. 31. The FOP filed an unfair practice charge against Rockaway Township alleging that the Township violated the New Jersey Employer-Employee Relations Act when the Chief of Police terminated a program allowing officers to pair up to work steady shifts for three months, rather than rotating between the day and night shift every four weeks. The designee noted that several officers had used the procedure to maintain a steady shift for several years. He concluded that a temporary shift exchange program requires the advance permission of the Chief and that the directive ending the program, was not a mandatorily negotiable term and condition of employment.

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Appearances:

For the Respondent, Laddey, Clark, & Ryan, LLP,  
attorneys (Thomas N. Ryan, of Counsel)

For the Charging Party, Loccke, Correia, & Bukosky,  
attorneys (Michael A. Bukosky and Corey M. Sargeant, of  
Counsel and on the Brief)

INTERLOCUTORY DECISION

On October 30, 2017, the Rockaway Township Fraternal Order of Police Lodge No. 31 (FOP) filed an unfair practice charge against Rockaway Township (Township or Employer) alleging that the Township's ending, effective November 1, 2017, a practice allowing exceptions to the normal assignment of officers to rotating shifts unilaterally changed a mandatorily negotiable term and condition of employment.<sup>1/</sup> To temporarily avoid

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<sup>1/</sup> The normal work schedule had officers work the 12-hour day shift, followed by a tour on the 12-hour night shift. After four days on a shift, an officer had four days off. The rotation from day to night or night to day occurred every four weeks.

rotating shifts, officers could pair up so one would work steady day shifts and the other steady night shifts for up to three months. The FOP's unfair practice charge alleges that terminating the practice, as announced in a memorandum issued by the Chief on September 21, 2017, violated the New Jersey Employer-Employee Relations Act, as amended, specifically N.J.S.A. 34:13A-5.4a(1) through (7).<sup>2/</sup>

The FOP's charge was filed with an application for interim relief seeking "preliminary restraints" to prevent the Township "from unilaterally [changing] the shift schedule." The application was supported by certifications, exhibits and a brief.

On November 1, 2017, acting as Commission Designee, I executed an Order to Show Cause, without any restraints, setting

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<sup>2/</sup> These provisions bar public employers 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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission.

the date for submission of the Township's response and a return date of November 15, 2017 to consider the FOP's application. The Township filed a brief, the affidavit of the Chief of Police and exhibits opposing the FOP's application.

During a telephone conference call both parties argued orally. At the end of the argument, I stated that the FOP had not established that it was substantially likely to prevail on the merits of its charge and denied the application for interim relief. This decision contains my findings and analysis.

#### FINDINGS OF FACT

1. The FOP represents the Township's uniformed and non-uniformed police officers up to and including the rank of sergeant.
2. The FOP and the Township are parties to a collectively negotiated agreement (CNA) effective January 1, 2015 through December 31, 2017.
3. In 1995, the FOP and the Township agreed to a work schedule consisting of two 12 hour shifts (6 a.m. to 6 p.m. and 6 p.m. to 6 a.m.). An officer would work four days on one of the shifts and then have four days off.
4. After four weeks, an officer who had been working the day shift would rotate to the night shift and vice-versa.
5. However, pursuant to an informal practice, an officer who requested permission from the Chief could maintain a steady day

shift or steady night shift for up to three months if the officer could find another officer who wished to work the other shift on a steady basis.<sup>3/</sup> The affidavit of Chief of Police Martin McParland states that this practice was permitted for several years without incident.

6. On September 21, 2017, Chief McParland sent a memorandum (2017-78) to all police personnel titled "Rotating Schedules." It provides:

Please be advised that on or about November 1, 2017, the Patrol Division shall be resuming a rotating four (4) week schedule of four (4) days on, four (4) days off. Shift hours shall remain P1 (6 am to 6 pm) and P2 (6 pm to 6 am) for the present time.

Any exceptions and/or modifications previously granted in regards to steady patrol shifts are hereby rescinded as of November 1, 2017.

Squad assignments are subject to change for departmental needs.

7. On October 20, 2017, counsel for the FOP wrote to the Township's attorney asserting that the Township had, through the Chief's memo, unilaterally altered "shift selection." The letter stated that the FOP objected to the impending change and sought negotiations with the Township.

8. Certifications filed by several officers in support of the FOP's application for interim relief assert that the elimination

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<sup>3/</sup> According to certifications submitted by officers in the FOP unit, in some cases they maintained their steady shifts for several years.

of their ability to work steady shifts would impact their personal lives in a variety of ways including:

- Care for children and elderly or infirm family members;
- Having to pay for child or family care;
- Ability to engage in or maintain secondary employment;
- Personal medical and fitness issues;
- Maintaining a normal family life.

The Chief's affidavit recites several reasons for ending the practice of allowing officers to work steady shifts for up to three months, including:

1. Supervision concerns because the last Lieutenant on duty leaves at 7 p.m., i.e. only an hour into the night shift;
2. A night shift officer is under indictment for sexual assault on underage girls and other sexual misconduct while on duty on the night shift;<sup>4/</sup>
3. Insuring that officers with special skills are available;
4. Rotation enhances the ability for officers to receive training;

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<sup>4/</sup> Some of the acts are alleged to have occurred in the officer's police car and at a police substation.

5. Efficiency issues including covering for sick officers and the scheduling of court appearances.

#### ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has 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 to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The FOP argues that the Township's action is a unilateral change in the mandatorily negotiable subject of police work hours including shift selection.

The Township responds that the cases relied on by the FOP are inapposite. It notes that the Appellate Division of the Superior Court, in Mt. Laurel Tp. and Mt. Laurel Police Officers Ass'n, 215 N.J. Super. 108 (App. Div. 1987) held that the negotiability of a police work schedule is fact-sensitive and accordingly, at best, the FOP cannot show the Township's action was subject to negotiations until after the facts have been

established at a hearing. It asserts that the standard for the issuance of interim relief has not been satisfied by the FOP's application.

Although the FOP asserts that the Township has altered "shift selection," I find that phrase mostly inapplicable to the present dispute. "Shift selection" normally means an overall method of assigning officers of equal rank or equal abilities to shifts for a certain period of time, often a year. See, e.g. Asbury Park and Asbury Park PBA Local No. 6, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990) (determining shift assignments by seniority mandatorily negotiable because language protects employer's right to assign officers with special skills to specific shifts).

Because the normal work schedule, both before and after November 1, 2017, called for the rotation every four weeks of all officers from the day shift to the night shift and vice-versa, there is neither a change in the work schedule nor a shift selection issue present here.<sup>5/</sup>

Instead, this dispute involves "shift swaps" or "shift exchanges." The negotiability of shift exchanges is illustrated by Tp. of Teaneck, P.E.R.C. No. 85-51, 10 NJPER 644 (¶15309 1984) and Tp. of Teaneck, P.E.R.C. No. 85-52, 10 NJPER 644 (¶15310

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<sup>5/</sup> Based upon comments made at oral argument, a significant number of Rockaway officers have used the informal procedure to remain on steady shifts.



1984). In P.E.R.C. No. 85-51, the Commission held that contract language allowing fire fighters of the same rank to exchange up to 18 tours of duty per year with the advance approval of the Chief was mandatorily negotiable. In P.E.R.C. No. 85-52, the Commission held that a proposed contract change that would require only advance notice to the Chief for shift swaps, rather than approval, was not mandatorily negotiable. Cf. Rochelle Park Tp. and Rochelle Park PBA Local #102, P.E.R.C. No. 88-40, 13 NJPER 818 (¶18315 1987), aff'd NJPER Supp.2d 198 (¶176 App. Div. 1988) (language allowing unlimited shift swaps with advance notice not mandatorily negotiable, but arbitration award allowing two officers to temporarily exchange shifts was not illegal).

Based upon Chief McParland's affidavit, officers desiring to remain on steady shifts "would request permission from the Chief" to switch with another officer for "up to three months." However, it is clear from the certifications submitted by the FOP that although the steady shift program has a duration of three months, officers have used it to remain on steady shifts for several years and seek to maintain it in order to continue to do so.

The FOP essentially seeks to continue the "pairing up" procedure to allow officers to maintain steady shifts for indeterminate or unlimited periods even though it cannot demonstrate that the program extends beyond the three-month

duration. Accordingly, the FOP has not demonstrated that it is substantially likely to prove that the Township has unilaterally changed a mandatorily negotiable term and condition of employment.<sup>6/</sup>

As the FOP has not met its burden regarding the merits of its charge, I need not discuss the other Crowe factors.<sup>7/</sup>

ORDER

The FOP's application for interim relief is denied.

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DON HOROWITZ  
Commission Designee

Dated: November 15, 2017

Trenton, New Jersey

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6/ The FOP has not made specific arguments that the Township violated N.J.S.A. 34:13A-5.4a(1) through (4), (6) and (7).

7/ As to employees whose certifications recite possible needs for accommodation under federal and/or state statutes pertaining to disabilities, illnesses or family leave, neither a negotiated agreement nor unilateral employer action would bar individual employees from seeking relief under such laws. This ruling does not address such issues.