

I.R. NO. 92-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF JACKSON,

Petitioner,

-and-

Docket No. SN-92-72

JACKSON POLICE SUPERIOR OFFICERS  
ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain the presentation of six grievances to arbitration, but restrains the arbitrator from changing the shift assignments for captains. The grievances involve mostly arbitrable issues, but the shift assignment issue was too likely to interfere with a managerial prerogative.

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Appearances:

For the Petitioner, Hierung, Hoffman and Gannon, attorneys  
(Thomas G. Gannon, of counsel)

For the Respondent, Levin, Shea, Pfeffer & McMahon, P.A.  
attorneys (Steven I. Pfeffer, of counsel)

INTERLOCUTORY DECISION

On January 21, 1992, the Township of Jackson (Township) filed a Scope of Negotiations Petition (Petition) with the New Jersey Public Employment Relations Commission (Commission) seeking to restrain an arbitration brought by Jackson Police Superior Officers Association (Association). The Petition was accompanied by an Order to Show Cause seeking to restrain the arbitration that had been scheduled for March 4, 1992. The order was executed on February 20, 1992 and made returnable for February 27, 1992. Both parties submitted written responses by February 25, 1992. With the consent of the parties, however, a telephonic hearing was conducted. At the conclusion of the hearing I decided to allow the arbitration to proceed but to restrain the arbitrator from issuing

any decision nullifying the assignment of captains to supervise second and third shifts.

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.<sup>1/</sup>

The scope petition and the request for restraint of arbitration arose out of the request for arbitration filed by the Association regarding six different grievances. On April 15, 1991, the Association filed a letter with the Commission regarding the six grievances. The letter was apparently treated as a request for arbitration and treats the six different grievances as six separate counts.

The first count or grievance concerns a holiday pay issue. The grievance alleges that the Township required captains and lieutenants to take days off on certain days which resulted in them

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<sup>1/</sup> 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).

receiving straight time rather than time and one half for holidays. In that grievance the Association alleged the violation of several articles of the parties' 1990-91 collective agreement. The pertinent portion of Article 10, Section 7 of the agreement provides: "The beginning of the work week may be changed if the change is intended to be permanent and is not designed to evade the overtime requirement of this section of the SOA contract." The Township did not allege any managerial prerogative that would be adversely affected by arbitrating the "holiday grievance."

The second and third counts involve grievances that were filed after the Township issued an order entitled "Establishment of Shift Commanders" which changed shifts for captains. Prior to the change there were three captains who worked Monday through Friday on the day shift. None of the captains were assigned to work evening or midnight shift. The new order required the assignment of a captain on the evening and the midnight shift. But the order also changed the captains' workweek from Monday through Friday, to Tuesday through Saturday with Sunday and Monday off for two captains, and the midnight captain working the latter part of Tuesday and finishing on the early hours on Sunday. Prior to the change the captains worked an eight-hour day. As a result of the change the captains were required to report to work fifteen minutes prior to their scheduled tour of duty in order to be briefed by the outgoing captain. Finally the order also placed certain restrictions on the use of scheduled vacation, comp time, earned vacation time as well as overtime by captains and lieutenants.

The second and third counts challenged the shift changes and claim that the hours of operation, compensation and days off are items that are subject to negotiations and arbitration.

The Association alleged that the shift change primarily violated Article 7 of the collective agreement which provides:

ACTIVE DUTY HOURS

Section 1.

The work day shall consist of not more than eight (8) consecutive hours, except as mutually agreed to by the parties. For Lieutenants assigned to the Patrol Division as Watch Commanders, the work week shall consist of four (4) consecutive days with two (2) consecutive days off. All other Superior Officers shall work a regular five (5) on, two (2) off schedule.

Section 2. (Duty Schedule Compensation)

S.O.A. members who work above and beyond the hours of those S.O.A. members assigned to Patrol Division as Watch Commanders shall be entitled to three (3) additional days off to compensate for the total hours difference between the S.O.A. members assigned to the four and two schedule. Said time to be considered as RDO's and shall automatically be posted on January 1 of each calendar year. These RDO's shall be used within the calendar year and non accruable from year to year.

The Township seeks to restrain the second and third counts because it alleges the shift change was made to provide greater supervision on the evening and midnight shifts. It argues that the decision for the shift change was a managerial prerogative and could not be disturbed by arbitration. Paterson Police PBA Local #1 v. City of Paterson, 87 N.J. 78 (1981); Local 195, IFPTE v. State, 88 N.J. 393 (1982).

The fourth count concerned a freedom of speech issue which the Township alleged did not arise under the contract and, therefore, should not be subject to arbitration.

The fifth count concerned letters of discipline that were issued to unit employees. The Association is seeking to arbitrate over that discipline. In its brief, the Township does not object to proceeding to arbitration on those matters and reserves its right to raise procedural defenses.

The sixth count alleges a threat was made to a unit employee. The Township seeks to restrain arbitration of that matter alleging that neither the arbitrator nor the Commission is the proper forum for resolving that matter.

Having considered all of the information I find that counts One, Four, Five, and Six of the demand for arbitration may proceed without restraint. The Township did not object to arbitrating over counts One and Five, and it raised no managerial prerogative that would be adversely affected by arbitrating over counts Four and Six. Whether the arbitrator has jurisdiction over counts Four and Six, and whether those grievances are contractually and/or procedurally arbitrable is for the arbitrator to decide.<sup>2/</sup>

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<sup>2/</sup> In Bloomfield Bd. of Ed. v. Bloomfield Ed. Assn., 251 N.J. Super. 379 (App. Div. 1990), aff'd 126 N.J. 300 (1991), the Court left open the issue of whether matters of procedural arbitrability are for the court or arbitrator to decide. Those issues should proceed to arbitration here because there is no substantial likelihood that they would be restrained pursuant to law, and because no managerial prerogative is likely to be adversely affected.

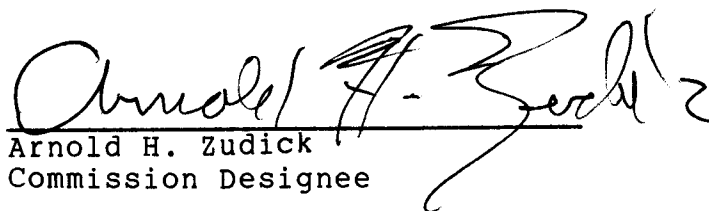
Counts Two and Three are arbitrable, but the arbitrator is restrained from issuing a decision disturbing the assignment of a captain to each shift and requiring them to report 15 minutes before their shift.

Work schedule or work shift changes for police employees do not automatically rise to the level of a managerial prerogative. Work schedules are negotiable and arbitrable as long as negotiations/arbitration would not significantly interfere with the determination of governmental policy. Local 195; Mt. Laurel Tp. v. Mt. Laurel Tp. Police Officers Assn., 215 N.J. Super. 108 (App. Div. 1987). A balancing of the relative harms must be made in each instance to determine whether a matter is arbitrable.

Here the Township changed the captains' shift, at least in part, to provide more supervision on the evening and midnight shifts. An employer has the managerial right to change shift assignments to provide more supervision or discipline for other officers. See Tp. of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). Thus, the arbitrator is restrained from issuing a decision changing the captains' shift assignment or requirement to arrive 15 minutes early pending a final determination of the scope petition by the Commission.

But counts Two and Three also involve several arbitrable issues. There are several compensation issues, including compensation for reporting 15 minutes early, which are arbitrable; and the work week and use of vacation and other leave time is

arbitrable unless it would interfere with the determination of governmental policy. The Township has not demonstrated that arbitration over those issue would interfere with its governmental policy determinations. Thus, counts Two and Three may proceed to arbitrations subject to the above restraint.

  
Arnold H. Zudick  
Commission Designee

Dated: March 3, 1992  
Trenton, New Jersey