

I.R. NO. 93-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and-

Docket No. CO-93-213

PBA LOCAL 29,

Charging Party.

SYNOPSIS

The Irvington PBA Local 29 sought to restrain the Township of Irvington from altering work schedules of police from a 4 days on/4 days off to a 4 days on/2 days off schedule. The employer argued that the expired contract between the parties gave it the right to so alter the schedule. In fact, the contract language is not inconsistent with the Board's position.

Accordingly, pursuant to Human Services, the Application was denied.

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Appearances:

For the Respondent
Michael A. Blasi, consultant

For the Charging Party
Courter, Kobert, Laufer, Purcell & Cohen, attorneys
(Fredric M. Knapp, of counsel)

INTERLOCUTORY DECISION

On December 17, 1992, the Irvington PBA Local 29 filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Township of Irvington engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (6)^{1/} when on December 7, 1992, the Township

^{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. (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. (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."

unilaterally changed the work schedule of police officers by ordering the Chief of Police to issue an order changing the work schedule from 4 days on/4 days off to a 4 days on/2 days off schedule effective January 1, 1993.^{2/}

The unfair practice charge was accompanied by an application for an order to show cause through which the PBA sought to restrain the Township from implementing the new shift on January 1, 1993. The order was executed and made returnable on December 28, 1992.^{3/} The Township opposes the order and argues that it had a right to make the shift change pursuant to a recent collective negotiations agreement.

In the two-year agreement between the parties which expired December 31, 1991, Article XVIII Management Rights clause, provides the Township with the right "to establish and change work schedules" and at Article XXIII, the contract provides:

The Township declares, and the PBA acknowledges, that the work schedules the Township has determined to adopt and implement for the trial period of one year beginning December 31, 1990 and ending December 31, 1991, are defined as follows:

1. "4 & 4" WORK SCHEDULE.

(a) The work schedule which Police Officers

^{2/} In the 4/4 schedule, patrolmen work 4, 11-hour days and have 4 days off. In the 4/2 schedule, they work 4, 8 1/4-hour days with 2 days off.

^{3/} The parties appeared before me on that date and had an opportunity to present evidence and argue orally.

assigned to the Uniform Patrol Division, SCAT and Communications shall work during the trial period shall be four (4) eleven (11) hour days on and four (4) days off (herein called the "4 & 4" Work Schedule).

3. ITEMS COMMON TO "4 & 4" AND "4 & 3" SCHEDULES.

(c)....

The determination whether to continue the Trial Alternative (4 & 4 and 4 & 3) Work Schedules after the trial period shall be at the exclusive and absolute discretion of the Township. Notice of the determination by the Township shall be made in writing signed by the Mayor of the Township or the Mayor's designee and provided to the PBA not later than October 15, 1991, and the determination of the Township shall be final.

The provisions made in alteration or supplement of this Agreement made to accommodate the Trial Alternative (4 & 4 and 4 & 3) Work Schedule shall remain effective during the trial period therefor. In the event of discontinuance of the Trial Alternative (4 & 4 and 4 & 3) Work Schedules, those provisions thus made shall cease to be effective, and the provisions of this Agreement shall revert automatically to to (sic) accommodate the former (4 & 2 and 5 & 2) Work Schedules previously maintained by the Department.

The Township declares, and the PBA acknowledges, that neither the negotiation and making of this Agreement nor the adoption and implementation of the Trial Alternative (4 & 4 and 4 & 3) Work Schedules render work schedules the subject of negotiations by and between the Township and the PBA.

At the expiration of that contract there was no written agreement. In a letter to the PBA, Mayor Michael Steele continued the 4/4 schedule for another year. The Mayor stated "I am willing to extend this schedule another year, through December 31, 1992,

pending discussions at the bargaining table, where a more definitive outcome of the "4 On/4 Off" can be designed."

In the fall of this year, the parties were in interest arbitration when they executed a memorandum of agreement for a new contract. The memorandum of agreement is silent as to the schedule to be used for the coming year.^{4/} The agreement was signed on November 24, 1992, and shortly thereafter, the Township announced it was implementing the 4/2 schedule.

The PBA argues that the Township is required to continue the 4/4 schedule pursuant to the agreement between itself and the Mayor effective in 1992. The Township maintains it has the right to change the schedule pursuant to the language of the old agreement.


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

^{4/} As part of its demands in interest arbitration, the Township sought to return to a 4/2 schedule. The interest arbitrator, who mediated the settlement agreement, used the Township's offer sheet as a model for the settlement. He struck the language concerning the 4/2 schedule from the agreement apparently stating "schedules are not negotiable."

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{5/}

The Township has at least a colorable argument that it has the right to restore the 4/2 schedule pursuant to the old contract. The PBA's claim that the agreement with the Mayor supercedes the contract language is not so clear that I can state that it has a substantial likelihood of success in prevailing on the facts before the full Commission.

Accordingly, its application is denied.



Edmund G. Gerber
Commission Designee

DATED: December 29, 1992
Trenton, New Jersey

^{5/} 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).