I.R. NO. 2000-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLAINFIELD,

Respondent,

-and- Docket No. CO-2000-42

CITY OF PLAINFIELD PBA LOCAL NO. 19
AND PLAINFIELD SUPERIOR OFFICERS
ASSOCIATION,

Charging Parties.

SYNOPSIS

During the course of collective negotiations, the City of Plainfield changed from a previously agreed upon 4 days on/4 days off fixed shift work schedule to a 4 day on/2 day off rotating shift schedule. Although the City agreed to follow the 4 days on/4 days off schedule for an approximately six month trial period, it decided to exercise its right expressly stated in a memorandum of understanding allowing it to revert to the 4 days on/2 days off rotating shift schedule stated in the parties' collective agreement. The Commission Designee found that the City's decision to revert to the work schedule stated in the collective agreement did not constitute a unilateral change in terms and conditions of employment during the course of negotiations. The Commission Designee held that the Charging Parties did not demonstrate that they have a substantial likelihood of prevailing in a final Commission decision, a requisite element to obtain interim relief. The application for interim relief was denied.

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Appearances:

For the Respondent, DeMaria, Ellis & Bauche, attorneys
(Kathryn V. Hatfield, of counsel)

For the Charging Party, S.M. Bosco Associates, consultant
(Simon M. Bosco, consultant)

INTERLOCUTORY DECISION

On August 20, 1999, Plainfield PBA Local No. 19 (PBA) and the Plainfield Superior Officers Association (SOA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Plainfield (City) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating 5.4a(1), (3) and (5) of the Act.1/ Shortly after

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

filing the unfair practice charge, the Charging Parties submitted an application for interim relief. On August 30, 1999, an order to show cause was executed and a return date was originally scheduled for September 23, 1999, and, subsequently, rescheduled by mutual agreement of the parties for September 30, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The parties allege the following facts.

The PBA and the SOA (Charging Parties), respectively, are parties to a collective negotiations agreement with the City effective January 1, 1996 through December 31, 1998. On July 28, 1999, the PBA filed a Petition to Commence Compulsory Interest Arbitration (Docket No. IA-2000-15). The Charging Parties allege that the City had unilaterally altered the work schedules in violation of the Act.

The parties began negotiations for a successor collective agreement in or about February 1999. Apparently, the practice has been and continues to be that both the PBA and the SOA negotiate

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1/ Footnote Continued From Previous Page

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."

jointly and simultaneously. Consequently, the Charging Parties make and serve a single set of demands upon the City. Specific proposals, which are germane to only one unit, are designated and marked accordingly.

The Charging Parties proposed to the City that the work schedule for uniformed patrol division employees be changed from four days on/two days off to one which allowed for four days on followed by four days off. The hours of work for each respective work shift would increase from 8 hours to 10.75 hours. The work shifts would be "fixed" rather than "rotating". The schedule would be staffed by way of a seniority-based bid system.

At some time after the initial negotiations session, the parties engaged in away-from-the-table discussions concerning Charging Parties' work schedule proposal. Ultimately, the parties agreed to implement a four day on/four day off fixed shift work schedule on a six month trial basis, beginning June 8, 1999 through December 31, 1999. Chief Edward Santiago assumed the responsibility for providing a side-bar memorandum of understanding reflecting the new terms of the schedule. Notwithstanding the fact that the memorandum had not yet been executed, the four on/four off work schedule was implemented on June 8, 1999.

Over the past nine years, the work schedule provision contained in the parties collective agreement had been modified numerous times. On February 5, 1996, the parties executed a

memorandum of understanding which modified, on a temporary basis, the work schedule contained in the collective agreement effective at that time to provide for a four day on/four day off schedule with fixed shifts. The 1996 memorandum provided that the work schedule set forth in the parties collective agreement would be modified for a temporary period of approximately six months, commencing in late January 1996. The 1996 memorandum of agreement expressly stated in paragraph (i) "[n]otwithstanding anything to the contrary set forth herein or otherwise, the decision to continue (permanently or temporarily) the work schedule set forth [in the memorandum of understanding] shall be made by the chief of the division in his sole and absolute discretion."

The work schedule specified in the memorandum of understanding remained in effect until January 1, 1997. At that time, the work schedule was modified to reflect a four day on/four day off schedule with rotating shifts. It was agreed that the four on/four off rotating shift schedule would remain in effect on a trial basis for approximately six months until June 30, 1997. In fact, the four on/four off rotating shift work schedule remained in effect until February 1998 when it was again modified. It was agreed that a four day on/three day off fixed shift schedule would be followed on a trial basis and went into effect in February 1998.

Each change in work schedule occurred as the result of discussions which took place between the Charging Parties and the

City. The four on/four off steady shift schedule implemented in February 1996 resulted in a memorandum of understanding which was jointly signed by City and PBA representatives and specifically modified the collective agreements of the PBA and the SOA. Each of the subsequent changes in the work schedule arose as the result of problems perceived by the City associated with supervision, staffing and accountability. The City advised the PBA and the SOA that in light of such problems it sought to discontinue the trial work schedule and each time, through joint discussions, a new modified temporary work schedule was agreed upon and implemented.

Shortly after June 8, 1999, when the parties agreed to try for a second time the four on/four off steady shift work schedule, Michael P. Lattimore, Director of the Department of Public Affairs and Safety directed Chief Santiago to memorialize the parties understanding with respect to the new shift schedule. Chief Santiago directed Captain John Keaveney to prepare a memorandum of understanding reflecting the work schedule agreement which the parties entered into during the Spring of 1999. Keaveney did not prepare a new memorandum of understanding "from scratch" but rather copied the February 1996 memorandum and changed the dates and shift starting times, as appropriate. The 1999 memorandum contains exactly the same language at paragraph (i) as contained in the February 1996 memorandum. On July 20, 1999, a copy of the 1999 proposed memorandum of agreement was provided to the PBA president for his review. Immediately

thereafter, the PBA president forwarded a copy to his labor consultant.

During the months of June and July 1999, Lattimore and Santiago discussed the effectiveness of the newly implemented four on/four off work schedule. Lattimore and Santiago agreed that the schedule did not adequately address the department's supervision, staffing and accountability concerns. They found that the four on/four off schedule created more problems with supervision because shifts were picked on a seniority basis and resulted in several shifts with less experienced officers or no experienced officers. Moreover, due to the level of experience on some shifts there was a lower degree of accountability among the officers. Finally, the municipal court was experiencing difficulties in scheduling cases under the four on/four off work schedule.

During this same period of time, Santiago had several conversations with PBA President Nolan concerning the work schedule. Santiago advised him that the schedule was creating supervision, staffing and accountability problems and that there was a possibility that the City may return to a four day on/two day off work schedule.

During the last two weeks of July 1999, Santiago continued to meet with Lattimore to discuss the four on/four off schedule. During that time, Lattimore and Santiago concluded that the work schedule had not effectively addressed the issues of supervision, accountability and coverage and, therefore, the work

schedule would revert back to the four on/two off rotating shift schedule as expressly provided in the parties' collective agreement. The 1999 memorandum of understanding was never signed.

On or about July 30, 1999, the PBA received a copy of a memorandum sent from the uniform patrol commander to Santiago outlining the four on/two off rotating shift work schedule. On August 3, 1999, Lattimore forwarded a memorandum to Santiago directing that on August 16, 1999, the department would revert to the work schedule reflected in the collective agreement. On or about August 6, 1999, the schedule change was posted along with the individual shift assignments, both of which were to be implemented on August 16. On August 16, 1999, the four on/two off rotating shift work schedule was implemented.

Article 7, Hours of Employment, contained in the parties recently expired collective agreement covering the period January 1, 1996 through December 31, 1998, provides in relevant part the following:

> (e) Shift changeovers where applicable shall occur either every second Monday or after days off as determined by the Chief of Police on a quarterly basis which shall be posted and issued to each of the designated personnel.
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> * * *
>
> (h) Should the necessity arise to change the exact starting times of personnel or **the method of rotation of tours of duty currently in effect**, inclusive of January 1985 Promulgated Work Schedules, on a more permanent basis, such change shall not take effect unless the City or its authorized agent has notified the PBA and all affected members at least seven (7) working days

> in advance of such change. The City reserves the right to change work schedules as is consistent with the law or negotiate with the PBA where applicable. [Emphasis added.]

The City contends that at the time that it decided to implement the four on/two off rotating shift work schedule in late July 1999, it was not aware of the PBA's July 28, 1999 Petition to Initiate Compulsory Interest Arbitration filing.

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).

Charging Parties argue that the City unilaterally changed terms and conditions of employment when it discontinued the work schedule which was implemented on June 8, 1999. The Charging Parties assert that changes in work schedules are mandatory subjects of negotiations. See Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987). See also Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997). Moreover, it is well established that the unilateral alteration of terms and conditions of employment during the course

of collective negotiations causes a chilling effect upon those negotiations because such action frustrates the statutory objective of establishing working conditions through bilateral negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). Indeed, the Commission has granted injunctive relief in situations where terms and conditions of employment have been unilaterally modified during the course of collective negotiations or interest arbitration. See Harrison Tp., I.R. No. 83-3, 8 NJPER 462 (¶13217 1982); Nutley Tp., I.R. No. 99-19, 25 NJPER 262 (¶30109 1999). See also, N.J.S.A. 34:13A-21.

However, it does not appear that this is a case where the City has unilaterally changed terms and conditions of employment during the course of negotiations. The Commission has consistently held that an employer does not violate the Act when it acts pursuant to its collective agreement. See Sussex-Wantage Reg. Bd. of Ed., P.E.R.C. No. 86-57, 11 NJPER 711 (¶16247 1985); Boro. of Moonachie, P.E.R.C. No. 85-15, 10 NJPER 509 (¶15233 1984); Randolph Tp. Bd. of Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982); Randolph Tp. School Bd., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980). In this case, it appears that the parties have been operating under the terms of the February 1996 memorandum of understanding which expressly allowed the chief to determine "in his sole and absolute discretion" whether or not to continue with a work schedule

different than that contained in the collective agreement.[2/] Upon exercising its right to escape from the terms of the 1996 memorandum, the City had no alternative but to return to the express terms of the collective agreement or voluntarily agree to enter into another bilateral agreement with the Charging Parties concerning work schedules. By reverting to a four day on/two day off rotating shift schedule as expressly provided in the collective agreement, it appears that the City has not modified terms and conditions of employment with respect to work schedule. Consequently, no negotiation obligation arose from the City's action. Accordingly, I find that the Charging Parties have not demonstrated they have a substantial likelihood of prevailing in a final Commission decision on their legal and factual allegations, a requisite element to obtain interim relief.[3/]

2/ The parties were not operating under the 1999 memorandum of understanding because it was never executed. Even assuming the 1999 memorandum of understanding applied, the same result would prevail.

3/ In light of this finding, it is unnecessary for me to discuss and analyze the City's alternative arguments proferred in opposition to the Charging Parties' application for interim relief. Likewise, the Charging Party has alleged a violation of 5.4a(3). However, it has set forth no facts in the charge supporting the a(3) alleged violation nor has it addressed that matter in its brief. Accordingly, I will not address the a(3) allegation.

ORDER

The Charging Parties application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.

Stuart Reichman
Commission Designee

DATED: October 7, 1999
Trenton, New Jersey