P.E.R.C. NO. 2011-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOUNT LAUREL TOWNSHIP,

Petitioner,

-and- Docket No. SN-2010-074

AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES,
COUNCIL 71, LOCAL 3263,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of Mt. Laurel Township to restrain arbitration of a grievance filed by the American Federation of State, County and Municipal Employees, Council 71, Local 3263, challenging the employer's decision to change the work schedule of sanitation workers from Monday to Thursday, ten hours per day, to Monday through Friday, eight hours per day. The employer did not substantiate its claim that in this case, employee work schedules, which are normally mandatorily negotiable, should be unilaterally controlled by the employer.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Capehart Scatchard, P.A., attorneys (Alan R. Schmoll, of counsel; Kelly M. Estevam, on the briefs)

For the Respondent, Marge Howardell, Staff Representative

DECISION

On March 18, 2010, Mount Laurel Township filed a petition for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the American Federation of State, County & Municipal Employees, Council 71, Local 3263. The grievance asserts that the Township's implementation of a new work schedule for all sanitation workers violated the parties' collective negotiations agreement. As work schedules are generally mandatorily negotiable and the Township has not shown a particularized,

operational need to unilaterally change the work schedule, we decline to restrain arbitration.

The parties have filed briefs, reply briefs and exhibits. Neither party has filed a certification based on personal knowledge. See N.J.A.C. 19:13-3.5(f)(1). These uncontested facts appear.

Local 3263 represents the Township's blue collar, non-supervisory employees, including workers in the Sanitation Department. The parties' collective negotiations agreement is effective from January 1, 2005 through December 31, 2008.

Article VII.A of the agreement provides that the workweek for sanitation workers will be Monday through Thursday and Article VII.B.3 provides that sanitation work hours will be from 7 a.m. through 5 p.m.[1/]

On October 2, 2009, the Township notified AFSCME in writing that effective October 19, the work schedule for sanitation workers would be changed to a five-day workweek, Monday through Friday, consisting of eight hour work days.

On November 2, 2009, AFSCME filed a demand for arbitration of a grievance asserting that the Township violated the agreement by changing the workweek and work hours of the sanitation workers. The grievance seeks the restoration of the contractual

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1/ AFSCME's brief asserts that the contract language has remained the same since 1981.

work schedule. On March 18, 2010, the Township filed this scope of negotiations petition.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

> The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable. A subject is negotiable if it is not fully or partially preempted by a statute or regulation; it intimately and directly affects the employees' work and welfare; and a negotiated agreement would not significantly interfere with the determination of governmental policy. Local 195 adds:

> To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a

> subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.
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> [Id. at 404-405]

The Township concedes that, in general, work schedules are mandatorily negotiable and acknowledges the language in the parties' agreement establishing a Monday through Thursday, 7 a.m. to 5 p.m. work schedule for sanitation workers. However, it asserts that Commission case law has established exceptions to this general rule of negotiability and that the Township was not required to negotiate over this work schedule change.[2/]

AFSCME asserts that even though negotiations for a new agreement had commenced before the Township made the change, a proposal to change work schedules was not discussed during collective negotiations.

From its first case addressing the scope of negotiations to its more recent cases, our Supreme Court has recognized the vital interests of employees in negotiating over their work hours and their compensation. See Englewood Bd. of Ed. v. Englewood

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2/ In the brief and reply brief filed by the attorneys for the Township, they assert that the change was made for reasons of efficiency because all other public works employees worked five day workweeks and the different schedules affected the Township's ability to replace sanitation workers who were on sick leave. However no certification supporting these assertions has been filed by any Township official or managerial or supervisory employee with personal knowledge. See N.J.A.C. 19:13-3.5(f)(1).

Teachers Ass'n, 64 N.J. 1 (1973); Teaneck Tp. v. Teaneck FMBA Local No. 42, 177 N.J. 560 (2003), aff'g o.b. 353 N.J. Super. 289 (App. Div. 2002); see also Woodstown-Pilesgrove Reg. School Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 589 (1980) (working hours and rates of pay are the prime examples of terms and conditions of employment); Local 195 at 403; Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 331-332. Work schedules are thus mandatorily negotiable unless the facts of a particular case prove a particularized need to preserve or change a work schedule to implement a governmental policy. Teaneck; Local 195; Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 113 (¶28054 1997). The Township has submitted no certifications based on personal knowledge establishing facts that would show how adherence to the negotiated workweek and work hours would interfere with any of its prerogatives.

In only one of the cases cited by the Township, did the Commission restrain arbitration of a grievance challenging a change in the work schedule.[3/] In Atlantic Cty. Prosecutor, P.E.R.C. No. 2008-24, 33 NJPER 262 (¶99 2007), to investigate a

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3/ Town of Irvington v. Irvington PBA Local No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980), cited by the Township, was distinguished and deemed inapplicable to a dispute between the Township and the representative of its police over the negotiability of work schedules. In re Mt. Laurel Tp., 215 N.J. Super. 108, 115-116 (App. Div. 1987) (Township did not meet burden to advance reasons in support of its need to unilaterally control police work hours).

series of similar homicides, the employer created a temporary extra evening shift.[4/] We blocked arbitration of a challenge to the creation of the temporary tour.[5/]

None of the cases allowing an employer to change work hours without prior negotiations have involved a desire to conform the work hours of one type of employee to those of others who are performing different jobs and duties. Nor do these cases hold that difficulty in securing replacements to cover employees who are out sick justify a permanent change in work week and work hours. Even where an employer seeks to have supervisors and the employees they supervise work the same schedule, that subject has been held to be mandatorily negotiable. See Teaneck, 353 N.J. Super. at 305. We therefore decline to restrain arbitration.

4/ The new shift extended the daily hours of investigators for periods ranging between one and a half to two months. The change was not permanent. And, claims for overtime pay for working the extended shift were allowed to proceed to arbitration. 33 NJPER at 162.

5/ A certification submitted by the Chief of Atlantic County Investigators described the conditions necessitating the creation of the new temporary shift.

ORDER

The request of Mount Laurel Township for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Colligan, Eaton, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Bonanni was not present.

ISSUED: May 26, 2011

Trenton, New Jersey