

P.E.R.C. NO. 91-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LITTLE FERRY,

Petitioner,

-and-

Docket No. SN-90-48

PBA LOCAL 102 (LITTLE FERRY UNIT)

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of grievances filed by PBA Local 102 (Little Ferry Unit) against the Borough of Little Ferry. The Borough did not argue why posting a yearly work schedule and keeping a four-squad system would substantially limit its policy goals. Accordingly, the Commission declines to restrain arbitration of those two grievances. The Borough's request to restrain arbitration of a third grievance challenging a change from rotating to fixed shifts is denied except to the extent that resolution of the grievance would substantially limit the Borough's ability to fulfill staffing requirements for each shift.

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Appearances:

For the Petitioner, Alfred G. Osterweil, attorney
(Craig Kozan, on the brief)

For the Respondent, DeCotiis and Pinto, attorneys
(Sheldon L. Cohen, of counsel)

DECISION AND ORDER

On February 15, 1990, the Borough of Little Ferry petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of three grievances filed by PBA Local 102 (Little Ferry Unit). The grievances challenge changes in police work schedules.

The parties have filed briefs, certifications and documents.^{1/} These facts appear.

The PBA is the majority representative of the Borough's police excluding the chief. The parties' most recent collective

^{1/} The PBA has requested an evidentiary hearing. We deny that request.

negotiations agreement expired December 31, 1988.^{2/} The agreement's grievance procedure ends in binding arbitration. The agreement also contains these provisions:

10.04 - The normal work day shall be based upon the utilization of a four-squad system, three of which shall function for eight (8) hours for each squad during a twenty-four (24) hour day.

16.01 - The Employer agrees that it will not indiscriminately adjust shifts so as to avoid overtime payment to Employees covered by this Agreement. A minimum of forty-eight (48) hours notice shall be given on any change of shift. Any change of shift on less than forty-eight (48) hours notice shall entitle the Employee to two additional hours of pay at the straight time rate. This clause shall not be interpreted so as to limit the Employer's duties of manning and staffing.

42.01 - Except as otherwise modified by this Agreement, the present calendar and scheduling procedures are to remain in full force and effect.

42.02 - The calendar showing the yearly schedule rotations assignments shall be posted at a conspicuous location and available for review by Employees no later than January 15th of each calendar year.^{3/}

Before January 1, 1989, the Borough's 18 patrol officers were divided into four essentially equal-sized squads, three of which were on duty each day. The squads and superior officers rotated periodically through three eight-hour shifts.

On January 17, 1989, the PBA filed two grievances. The first alleged that the Borough had violated paragraph 42.02 by

^{2/} The parties are engaged in interest arbitration proceedings.

^{3/} Other provisions include a maintenance of benefits clause and a past practices clause.

failing to post the work schedule for calendar year 1989 by January 15, 1989. The second alleged that the Borough violated paragraph 10.04 by abandoning the four-squad scheduling system. These grievances were denied and on February 15, 1989 the PBA, pursuant to the labor agreement, asked the Commission to appoint arbitrators to hear the grievances, Docket Nos. AR-89-307 (schedule posting) and AR-89-308 (four-squad system).

On October 31, 1989, the chief issued General Order No. 15-89 directing patrol officers to submit to him, by November 15, 1989, their first and second preferences for fixed shift assignments for the entire 1990 calendar year. The order indicated that a change to fixed shifts would take effect January 1, 1990. It read in part:

Each man will now know his schedule for the entire year, and he will have the ability to plan his entire year out. As was discussed in our previous meeting, one of the concerns brought to my attention was the health and welfare of the men, due to the fact that the schedule was not posted and the men did not know their schedule from month to month. This schedule change should help this type of problem in the future.

This schedule change will not preclude management from making any changes as departmental needs dictate.

When the change to fixed shifts took effect, the PBA filed a grievance alleging that the Borough violated paragraph 42.01 by changing the current "calendar and scheduling procedures." On January 29, 1990, the PBA filed a request for the appointment of an arbitrator, Docket No. AR-90-273. On February 15, 1990, the Borough filed its petition.

During March 1990, none of the Borough's highest ranking officers (two lieutenants and one captain) were assigned to the second shift. The Borough asserts that this was a temporary situation which was tolerated because it did not compromise the delivery of police services and that a lieutenant was assigned to the second shift in April.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154.]

Thus we do not consider the merits of the grievances or any defenses. Instead, we consider only the abstract issue of whether the Township could legally agree to arbitrate the grievances.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982) with Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78

(1981). The steps of a scope of negotiations analysis for police and fire fighters are outlined by Paterson:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable.... In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy-making powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93, citations omitted]

Since this case involves grievances, we need only consider whether the grievances are at least permissively negotiable and hence legally arbitrable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83).

The Borough has not argued why a requirement to post a yearly schedule would substantially limit its policy goals and accordingly we decline to restrain arbitration of Docket No. AR-89-307. See Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981). Similarly, the Borough has not addressed how keeping

a four-squad system would substantially limit its policymaking powers. Accordingly, we decline to restrain arbitration of Docket No. AR-89-308.

We must now determine whether the grievance challenging the change from rotating to fixed shifts is legally arbitrable. The negotiability of police work schedules is to be determined on a case-by-case basis. Mt. Laurel Tp., P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), aff'd 215 N.J. Super. 108 (App. Div. 1987). Consistent with the limitations outlined in this decision, we hold that arbitration of this grievance would not substantially limit the Borough's policy-making goals.

When issuing General Order No. 15-89, the chief gave as his reason that the officers would know their schedules for the whole year and be able to plan accordingly. This is not a governmental policy reason. Instead, it is a reason which goes to the employees' health and welfare and is legally negotiable. Cf. E. Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982).

The Borough has cited a study which asserts that a fixed shift is less stressful for police. But the amount of stress generated by a particular type of shift schedule "intimately and directly affects the work and welfare of police...." Paterson. If, as the Borough asserts, shift schedules affect job stress, then that factor weighs in favor of finding the shift change negotiable.

The Borough claims that steady shifts will minimize the disruptions associated with absences due to court appearances,

firearm qualifications, and professional seminars. The PBA, however, has shown that rotating shifts require fewer scheduling changes and less overtime to meet these special circumstances.^{4/}

The Borough has also raised concerns about continuity of supervision under rotating shifts. Unlike the situation of proven supervision and discipline problems in Town of Irvington v. Irvington PBA Loc. No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980), the Borough is at most conjecturing that such problems "might" arise if a rotating schedule is reinstated. It has not shown that such problems had arisen before or that fixed shifts have improved continuity of supervision. In addition, the PBA has effectively argued that supervisors can regularly be assigned to the same shifts as patrol officers under either system.

The Borough's primary argument against arbitrating this grievance is based on its desire to have increased staffing on the second shift when service calls are at their peak (3 to 11 p.m.). We recognize that a rotating shift schedule which has a different number of police officers working on each shift is harder to arrange than a fixed schedule or a rotating schedule with squads of equal size. However, the Borough has not shown that an increase in

^{4/} The PBA claims through a certification that a Borough official stated that the shift changes were made to reduce overtime payments. That reason alone would not make this grievance nonarbitrable. Tp. of South Orange Village, P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989).

staffing on the second shift could not be achieved by a rotating schedule or by some means less drastic than a complete change to fixed shifts.


For these reasons, we decline to restrain arbitration in Docket No. AR-90-273. An arbitrator, however, does not have unlimited authority. Should a contract violation be found, the arbitrator's remedy must not compromise the Borough's managerial prerogative to meet its staffing needs on each shift. If any aspect of a rotating shift schedule prevents adequate staffing, then that aspect must fall.

ORDER

A. The Borough's request to restrain the arbitrations in Docket Nos. AR-89-307 and AR-89-308 is denied.

B. The Borough's request to restrain the arbitration in Docket No. AR-90-273 is denied except to the extent that resolution of the grievance would substantially limit the Borough's ability to fulfill staffing requirements for each shift.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Smith, Wenzler, Johnson, Ruggiero, Reid and Bertolino voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
August 13, 1990
ISSUED: August 15, 1990