I.R. NO. 91-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Respondent,

-and- Docket No. CO-91-79

AFSCME, COUNCIL 73, LOCAL 2286,

Charging Party.

## SYNOPSIS

A Commission Designee denied interim relief on a request by AFSCME, Local 2286 to restrain the City of Trenton from changing the work hours of communication operators who formerly held the title fire dispatcher. The Designee found that a managerial prerogative might exist unilaterally authorizing the change, and that a material factual dispute exists over whether the parties' collective agreement authorizes the change. Noting the possible managerial prerogative and the factual dispute, AFSCME could not satisfy the substantial likelihood of success standard.

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Appearances:

For the Respondent, Michael Bitterman, City Counsel

For the Charging Party, Gerard Meara, AFSCME Council Representative

## INTERLOCUTORY DECISION

On October 10, 1990 AFSCME, Council 73, Local 2286 (AFSCME) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) against the City of Trenton (City) alleging that the City violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).[1/] AFSCME alleged that the City was about to violate the Act by unilaterally changing the work hours of certain communication operators in the fire division.

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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. (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."

A request for interim relief accompanied by an Order to Show Cause and a certification were filed with the Charge seeking to restrain the City from implementing the hours change. The application was treated as a request for emergent relief, thus an Order was signed on October 10 and made returnable for October 12, 1990. No briefs were filed but a hearing was held on the return date.

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.2/

Prior to January 1989 AFSCME represented approximately seven civilian "police dispatchers" who dispatched police officers. The police dispatchers worked three separate eight hour shifts, 8 a.m.--4 p.m.; 4 p.m.--12 a.m.; 12 a.m.--8 a.m., at a separate location from approximately nine "fire dispatchers" who were

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2/ 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).

represented by the FMBA and worked a 10/14 rotating shift. On April 13, 1988 the City, AFSCME, and the FMBA agreed to certain economic terms and conditions of employment for fire dispatchers in the event that police and fire dispatchers were consolidated in one unit. That agreement did not directly mention hours of work.

On or about January 1, 1989 the titles "police dispatcher" and "fire dispatcher" were abolished and a new title "communication operator" was created covering both former police and fire dispatchers, and AFSCME became the majority representative for all communications officers. The different hours and work locations for former police and fire dispatchers continued into October 1990.

The City also employs approximately nine communication operator trainees who are included in AFSCME's unit. One trainee currently works the 10/14 shift, the remaining eight trainees work the 8-4, 4-12 and 12-8 shifts.

On March 15, 1990 the City and AFSCME entered into a new collective agreement (J-1), effective January 1, 1990--December 31, 1991, which, under Article 8, Work Schedules, Section 8.06 Time Schedules, provided that police dispatchers work 8-4, 4-12 and 12-8. The title "communication operator" was not listed under Time Schedules, but was listed under the salary schedule titles.

The City has built and is ready to staff a new communication facility where all twenty-five communication operators will be located effective October 21, 1990. On or about October 1, 1990 the City unilaterally issued a public safety directive that

effective October 14, 1990 all communication operators would work 7 a.m.--3 p.m.; 3 p.m.--11 p.m.; 11 p.m.--7 a.m.

AFSCME filed the Charge alleging that the unilateral change in the work hours of communication operators from the "Fire Division" violated the Act, and seeks an Order restraining the change in their work hours. AFSCME did not allege that the change in hours of the former police dispatchers and trainees violated the Act.

The City first argued that it had a public safety managerial prerogative to have all communication operators and trainees working the same shift schedule at the new facility. The City explained that it would not be able to properly operate or staff the new facility if operators worked different schedules.

The City also argued that it had the right to implement the shift schedule set forth in Article 8, Time Schedules of J-1, for all communication operators. The City argued that the term "police dispatchers" in Article 8, Time Schedules really refers to communication operator because J-1 was reached after the police dispatcher title was abolished and replaced by communication operator. AFSCME did not agree with that argument. It maintained that the language in Article 8, Time Schedules reflected that shift schedules for former fire dispatchers were to be treated differently than schedules for former police dispatchers.

Since the City sought, at least in part, to rely on the language in Article 8, Time Schedules, it made a representation that

it would not implement the 7-3, 3-11, 11-7 shift schedule. Rather, it agreed to follow the shift schedule set forth in Article 8 which requires an 8-4, 4-12 and 12-8 schedule.

Analysis

While work schedules and work shifts are mandatorily negotiable terms and conditions of employment, where such negotiations would significantly affect managerial prerogatives involving, for example, public safety issues, staffing and supervision, negotiations over work schedule changes may not be required. 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); Borough of Middlesex, I.R. No. 88-19, 14 NJPER 447 (¶19183 1988); Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985). Here the City has shown a viable public safety and staffing concern for having all communication operators work the same shift schedule which, after a plenary hearing, may rise to the level of a managerial prerogative. Thus, AFSCME is unable to demonstrate a substantial likelihood of success on the merits at this proceeding which requires the denial of its request for interim relief.

In addition to its managerial concerns, the City has relied on its collective agreement as authority for implementing the 8-4, 4-12 and 12-8 shift for all operators. A public employer meets its negotiations obligation when it acts pursuant to its collective agreement, Pascak Valley Bd. of Ed., P.E.R.C. No. 81-61, 6 NJPER 554 (¶11280 1980), and may not be in violation of the Act even if its

interpretation of the contract is incorrect. Atlantic City, P.E.R.C. No. 86-121, 12 NJPER 376 (¶17146 1986).

Here the wording of Article 8, Time Schedules, is not clear on its face and there is a dispute over its meaning. Only a full hearing can resolve the meaning of the agreement. Noting a dispute over material facts, AFSCME is unable to demonstrate a substantial likelihood of success which again must result in dismissal of its request for interim relief. Township of South Orange Village, I.R. No. 90-14, 16 NJPER 164 (¶21067 1990).

Accordingly, the request for interim relief is denied.

Arnold H. Zudick
Commission Designee

Dated: October 18, 1990
Trenton, New Jersey