

I.R. NO. 98-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BOGOTA,

Respondent,

-and-

Docket No. CO-98-306

BOGOTA PBA LOCAL 86,

Charging Party.

SYNOPSIS

A Commission Designee orders the Borough of Bogota to restore a work schedule of patrolmen assigned to the detective bureau. The change in shift schedules was made for economic reasons during interest arbitration.

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Appearances:

For the Respondent,
Dorf & Dorf, attorneys
(Gerald L. Dorf, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On February 18, 1998, Bogota PBA Local 86 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Bogota committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1), (3) and (7)^{1/} when

^{1/} These provisions 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

it instituted a unilateral change in the detective bureau's work schedule.

Until the change, the two patrolmen assigned to the detective bureau rotated between a 8 a.m. to 4 p.m. and a 4 p.m. to midnight shift with 6 days on and 2 days off, followed by 4 days on and 2 days off, i.e., 6-2, 4-2. The new work schedule is 5-2, 5-2, 5-3.^{2/} Additionally, the two detectives will be required to work a 12 a.m. to 8 a.m. shift every third week. This is the patrolmen's normal schedule. The PBA and the Borough are engaged in interest arbitration for a new agreement. The most recent agreement expired December 31, 1995.

The unfair practice charge was accompanied by an application for interim relief which was executed and made returnable for March 10, 1998 at which time both parties were given an opportunity to present evidence and argue orally.

The Borough does not dispute it made the shift change. Rather, it argues it has the right to make the shift changes pursuant to both its contractual right and its managerial prerogative.

^{1/} Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

^{2/} Five days on, two days off; five days on two days off; five days on three days off.

The contract provides at Article XI that the normal work day tour and the currently effective work schedule is, 5-2, 5-3, 5-2 with rotating shifts of 8 a.m. to 4 p.m., 12 a.m. to 8 a.m. and 4 p.m. to 12 a.m.

Article LI (51) of the contract at B provides:

The work schedule for detectives shall not be changed unless there is an emergency declared by the Chief of Police. Detectives shall be compensated at the overtime rate for work which is over eight (8) hours in a day or for work on their scheduled days off.

The Borough argues that the Article XI schedule applies to all police officers including detectives. The Borough submitted an affidavit of Juan Dominquez, the chairperson of the police Committee who affirms that unit members assigned to patrol "most frequently select their vacation for the weeks they are scheduled to work the 12 a.m. to 8 a.m. shift. The frequency creates a staffing need. If patrol officers are utilized to fill their staffing need, excessive overtime work hours are created during that shift, which in turn significantly increases the Borough's wage expenditures". The Borough Council "determined that it could more efficiently staff the 12 a.m. to 8 a.m. shift by assigning the two-man detective bureau to patrol duties on the midnight shift once every three weeks." The Borough contends that the measure was necessary in order to attempt to prevent the potential of laying off employees.

The Borough argues that it has the right to assign patrolmen into or out of the detective bureau and its action constitutes a partial transfer.

The Association demonstrated, by way of affidavit of the former chief of police, that until this schedule change the detective bureau schedule was unchanged for twenty years.

The Association argues that the shift schedule change for detectives is a repudiation of Article LI of the agreement.

Analysis

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).

It is not necessary to decide here if the Borough has the right to make partial transfers since the employees in question are not just being temporarily transferred. Their schedules have been permanently changed from 6-2, 4-2 to 5-2, 5-3, 5-2. Although the contract does not memorialize a schedule for the detectives, Article LI of the contract recognizes there is a specific schedule for the detective bureau and such a work schedule can only be changed "if an emergency is declared." The Borough's action is an apparent repudiation of Article LI of the contract.

Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), established a test for police departments to determine whether certain matters, even though generally negotiable, are appropriate for negotiations in specific factual settings. The Court held that if negotiations over a particular matter, including work schedules, would significantly interfere with the determination of a governmental policy, the matter was not negotiable. See also Woodstown-Pilesgrove Reg. School Dist. Bd. Ed. v. Woodstown-Pilesgrove Reg. Ed. Assn., 88 N.J. 582 (1980); Local 195.

Thus, where negotiations over work schedule changes interfered with management's policy on manning levels and supervision, negotiations were not required. Atlantic Highlands; Irvington Policemen's Benevolent Assoc. Local No. 29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979). But where there was no significant interference with management's ability to set policy, work schedules have been negotiable. Township of Mt. Laurel, 215 N.J. Super. 108 (App. Div. 1987); Township of Hamilton, P.E.R.C. No. 86-106, 12 NJPER 338 (¶17129 1986), aff'd App. Div. Dkt. No. A-4801-85T7 (4/2/87); Borough of Carteret, 14 NJPER 228 (¶19086 1988); Borough of Paulsboro, 14 NJPER 30, 32 (¶19010 1987).

Here, the reasons stated for the work schedule change are economic. They were made to avoid overtime. The decision did not flow from a policy decision. Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322 (¶27163 1996). Accordingly, the change in work schedules was a unilateral alteration of a term and condition of employment.

A unilateral change of a term and condition of employment during the pendency of interest arbitration constitutes a violation of N.J.S.A. 34:13A-21.

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

I am satisfied that the PBA met its heavy burden in this matter. The Borough apparently repudiated Article LI of the parties most recent collective negotiations agreement and it appears that the violation of §21 of the Act constitutes irreparable harm. The issue here does not concern a policy decision as to the operation of the police department. Accordingly, the public interest would not be harmed if an order was entered into.

Accordingly, it is hereby **ORDERED** that the Borough of Bogota restore the 6-2, 4-2, 8 a.m. to 4 p.m., 4 p.m. to midnight schedule to patrolmen assigned to the detective bureau pending good faith negotiation with the PBA. This is an interim order only. This charge will be referred to the Director of Unfair Practices for further processing.


Edmund G. Genber
Commission Designee

DATED: March 20, 1998
Trenton, New Jersey