

I.R. No. 2004-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSIDE,

Respondent,

-and-

Docket No. CO-2003-330

FRATERNAL ORDER OF POLICE,
HILLSIDE LODGE #82,

Charging Party.

SYNOPSIS

A Commission Designee denies interim relief over a schedule change in the employer's police detective bureau. The employer made a colorable claim that its decision to change the schedule was based on a managerial prerogative to reorganize the department and staff the detective bureau only on weekdays to provide effective supervision and coordination with other departments, civilian staff and the courts.

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Appearances:

For the Respondent,
Schenck, Price, Smith & King, attorneys
(Richard Bauch, of counsel)

For the Charging Party,
LaCorte, Bundy, Varady & Kinsella, attorneys
(Robert F. Varady, of counsel)

INTERLOCUTORY DECISION

On June 30, 2003, the Fraternal Order of Police, Hillside Lodge #82 (FOP) filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of Hillside violated 5.4a(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} when on May 5, 2003,

^{1/} This provision prohibits public employers, their representatives or agents from: "(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
(continued...)

it unilaterally changed the work schedules of police officers assigned to the detective division from a "five-on/five-off" schedule to a "four-on/three-off" schedule, in violation of the parties' contract and the Act.

The Township admits that it changed the detectives' work schedule but denies that it violated the Act. It asserts that it had a managerial prerogative to make the schedule change.

An application for interim relief as well as a verified charge accompanied the FOP's charge. N.J.A.C. 19:14-9. On July 2, I issued an Order to Show Cause, scheduling the return date on the interim relief application for July 21, 2003. At the request of the Respondent, the matter was rescheduled to July 25. Both parties submitted briefs in accordance with the Commission Rules and argued orally on the scheduled return date.

FOP Lodge #82 represents the Township's rank-and-file police officers. The superior officers are represented by a different employee representative. The FOP and the Township have a collective negotiations agreement in effect for the period July 1, 2000 through June 30, 2005. That agreement provides in relevant part,

. . . employees are assigned a cycle whereby they work five (5) days, followed by five (5) days off . . . the foregoing recitation of the current work schedule shall be maintained throughout the term of this Agreement,

1/ (...continued)
grievances presented by the majority representative."

be maintained throughout the term of this Agreement, however, such does not preclude changes by the police chief during a bona fide emergency as the term "emergency" is defined in N.J.S.A. 40A:14-134.

By memorandum dated April 1, 2003, Chief Robert Quinlan notified members of the detective bureau that effective May 5, 2003, they would be working a 4/3 schedule.

The detectives who had been working the 5/5 schedule worked five consecutive days of 10 and 3/4 hours, followed by five days off. Under the new schedule, they work three 9 and 1/2 hour days, then one 9-hour day, followed by three days off. According to the chief's affidavit, the detectives now receive an additional three vacation days a year, as is permitted by Article IV of the FOP contract.^{2/} They either work Monday through Thursday, or Tuesday through Friday. The FOP alleges that the Township increased the detectives' overall number of work hours by the schedule change. The Township contends that the detectives previously worked 1961.8 hours annually, while they now work 1950 hours a year.

The Township submitted a certification from Chief Quinlan. Quinlan explained his rationale for making the change. Quinlan states that he reorganized some of the police functions, namely, that he consolidated the previously separate bureau of traffic

^{2/} Article IV provides, "the Police Chief is authorized to adjust inequities in vacation schedules which result from varying shifts."

safety and the community police unit into a single unit. The detective bureau consists of ten detectives and two superior officers. Since approximately 1990, the detective bureau has also included a narcotics unit consisting of two members. These employees have always worked the 4/3 schedule. The chief discontinued the narcotics unit and transferred the unit's functional responsibility to the community safety bureau. In addition, one of the detective has been in command of the police records bureau for the last five years. That detective has always worked the 4/3 schedule as well in order to effectively supervise the records bureau, which is staffed with civilian employees who only work weekdays. In restructuring the department, the chief reassigned the duties of the records bureau detective to a police captain and appointed the former records bureau detective to the new position of "information technology officer." That detective continues to work 4/3.

In addition, the chief transferred two superior officers from the detective bureau to a newly created Urban Enterprise Zone ("UEZ") unit, which is grant funded, and will be part of the patrol division. The UEZ unit will consist of four additional police officers and the two superiors. The chief expects some additional downsizing in the detective bureau in addition to these two supervisors.

The chief determined that the old schedule, where detectives worked through the weekends, was ineffective in solving criminal cases. The lack of weekend civilian support staff needed to record witness statements often meant that interviews were postponed until Mondays. Interaction with investigators at the County prosecutor's office and detectives from other police departments was limited to weekdays. The chief claims it is difficult to obtain arrest and search warrants on weekends because the courts are closed. Moreover, when detectives were off on weekdays, they were unavailable to other detectives, the prosecutor and the courts, resulting in a lack of continuity of ongoing investigations.

Further, there was no supervisory oversight in the detective bureau on weekends, since both the captain and the lieutenant worked the 4/3 schedule, working either Monday through Thursday or Tuesday through Friday.

As with the patrol division, members of the detective bureau working the five/five schedule are assigned to either "side A" or "side B" of the shift schedule. Members of side A worked the five consecutive days that side B was off, then they switched and side A was off while side B worked. Thus, there was little face-to-face communication between the two detective squads, limiting their ability to share vital information. The chief believes that the 4/3 schedule is necessary to enable the squads

to coordinate their efforts, share information and unify the detective bureau into one work unit.

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); 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).

The FOP alleges that the schedule change, made without negotiations, violated the clear language of the contract, and constitutes a unilateral change in a negotiable working condition in violation of the Act. The Township argues that the change was an exercise of a managerial prerogative, and, therefore, the Township was not obligated to negotiate before implementing the change.

There is no per se rule that police work schedules are or are not negotiable. Rather, the negotiability of work schedules must be decided on a case-by-case basis. Mt. Laurel Tp., 215

N.J. Super. 108 (App. Div. 1987). In Mt. Laurel, the court reaffirmed that the appropriate balancing test to decide the negotiability of police work schedules is set forth in Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981):

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 firefighters, 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 firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking 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]

Generally, the Commission and the courts have found that where the employer demonstrates that negotiations would significantly interfere with management prerogative, then negotiations are not required. Irvington PBA Local 29 v. Tp. of Irvington, 171 N.J. Super. 539 (App. Div. 1979); Bor. of Atlantic Highlands and Atlantic Highlands PBA Loc. 242, 96 N.J. 293 (1984). Where it is found that the basis for the schedule change is purely economic, then there is no managerial concern to

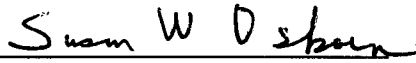
balance against the employees' interests, and the change must be negotiated. Mt. Laurel. Here, the Township argues that its decision to reorganize and redeploy its workforce to provide effective supervision and coordination with other law enforcement entities is a non-negotiable exercise of a managerial prerogative.

In this case, interim relief must be denied. The Township has made a colorable claim that its decision to change the detective bureau's work schedule was based upon a management right to reorganize and redeploy the workforce and to provide effective supervision for the detectives. While the FOP disputes the Township's factual assertions underpinning its decision, that factual dispute prevents me from finding at this early stage of the process that the FOP has a substantial likelihood of prevailing on the merits of the charge in a final Commission decision. Accordingly, the substantial likelihood of success test has not been met and interim relief must be denied.

Additionally, while the FOP makes a generalized argument that employees' personal lives, outside employment opportunities, and educational pursuits will be disrupted because of the modified schedule, it has provided no affidavits or other evidence to demonstrate a particularized claim of such harm. Therefore, it has not demonstrated irreparable harm.

ORDER

The application for interim relief is denied.



Susan Wood Osborn
Commission Designee

DATED: August 1, 2003
Trenton, New Jersey