

I.R. NO. 95-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-95-51

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to enter into an order restraining the City from altering the shift schedule of its police force. The shift was changed from the current 5-3 (five days on, three days off, 8 1/2 hour day) work schedule to a 4-2 (four days on, two days off, 8 hour day) work schedule. The City argued that it made a shift schedule change in the prior year but the change did not meet its objectives to provide adequate police services and improve supervision of its officers and had to reverse its shift schedule once again.

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Appearances:

For the Respondent
Martin R. Pachman, attorney

For the Charging Party
Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, attorneys
(David Solomon, of counsel)

INTERLOCUTORY DECISION

On August 22, 1994, the Jersey City Police Officers Benevolent Association (POBA) filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Jersey City engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically, subsections 5.4(a)(1) and (5)^{1/} when on or

^{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

about August 15, 1994, the City notified the POBA that, effective October 1994, the City would unilaterally change the current 5-3 (five days on, three days off, 8 1/2 hour day) work schedule to a 4-2 (four days on, two days off, 8 hour day) work schedule. The POBA demanded negotiations concerning the unilateral change of the work schedule with the City and the City has failed and refused to engage in negotiations.

The POBA alleges that the current work schedule has been contained within the collective bargaining agreement negotiated between the City and POBA and was established by an interest arbitration award in which the City proposed, and was successful in obtaining this work schedule.

On October 6, 1994, the POBA filed an Order to Show Cause. It was executed and made returnable for October 14, 1994. On October 13, 1994, the POBA amended its charge, alleging that on September 27, 1994 the City announced it would implement a 5-2, 5-2, 4-3 schedule but the City failed and refuses to negotiate. A hearing was conducted on the 14th and the parties were given the opportunity to submit evidence, briefs and argue orally.

1/ Footnote Continued From Previous Page

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."

It is undisputed that in the new work schedule a police officer would have to work an additional 14 days per year without additional compensation. However, the hours of work would only be increased 7 hours for the year; to offset the additional hours, the City would grant an additional personal or compensatory day to each employee, thus bringing the actual work year to one hour less than the current schedule.

The POBA asserts that the addition of 14 days or working tours per year to the schedule of every police officer employed by the City will irreparably injure the police officers personal lives.

The City argues that the current work schedule has not met its anticipated objective. That is, that the extra 1/2 hour per tour of duty was initially scheduled to provide training time for the patrolmen. The City now believes that this time is not being successfully utilized and the new system will improve supervision. Further, under the current system, the men on any shift are divided into 8 sections or groups which rotate. By going to the new schedule, this system can be abandoned and the City can move to a 3-squad system, each with its own sergeant thereby improving the supervision.

The POBA points out that the City won the existing shift in interest arbitration. That is, it was negotiated. However, it now officially refuses to negotiate. Moreover, the City keeps changing the new schedule. It further points to a tentative agreement

entered into between the City and the Superior Officers Association calls for a third shift schedule a 5-3, 5-3, 5-2.^{2/} The City, in turn, states that these changes were made in recognition of the limited nature of negotiability of shift changes; to the degree shift changes are negotiable, it is willing to negotiate while preserving its managerial rights. It is prepared to engage in a give-and-take in allowing the officers to express their needs while still ensuring a proper and efficient work schedule. It asserts that the POBA is adamant in not altering the existing schedule.

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.^{3/}

Where negotiations over work schedule changes interfere with management's policy on manning levels and supervision,


^{2/} The SOA, however, failed to ratify that Agreement.

^{3/} 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).

negotiations are not required. Atlantic Highlands, 192 N.J. Super. 71 (App. Div. 1983). But where there is no significant interference with management's ability to set policy, work schedules have been negotiable. 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 Paulsboro v. Paulsboro Police Assn., I.R. 88-6, 14 NJPER 30 (¶19009 1987).

The POBA has raised issues concerning the irreparable nature of the harm flowing from the unilateral implementation of the new shift schedule and has raised facts concerning the City's motivation in constantly revising the City's new work schedule. Nevertheless, the POBA has not met the severe test for granting interim relief. The City has, by way of affidavit, enumerated reasons for the schedule change which make the shift change a managerial prerogative and non-negotiable.

The Application for Interim Relief is denied. This matter will go forward to a full hearing on the merits.


Edmund G. Gerber
Commission Designee

DATED: October 14, 1994
Trenton, New Jersey