

I.R. NO. 99-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEW BRUNSWICK,

Respondent,

-and-

Docket No. CO-99-289

NEW BRUNSWICK PBA LOCAL NO. 23A,

Charging Party.

SYNOPSIS

The City of New Brunswick issued an order temporarily changing the work schedules of most of its superior officers without prior negotiations. The City argued that the change was made to provide its police supervisors with special training in community policing skills, consequently, it had a managerial prerogative to unilaterally implement the temporary schedule change. The Commission Designee found that the City's underlying rationale for implementing the temporary schedule change appears to implicate the exercise of managerial rights. Therefore, the Designee found that the charging party had not successfully demonstrated that it has a substantial likelihood of prevailing in a final Commission decision and denied its application for interim relief.

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Appearances:

For the Respondent,
DeMaria, Ellis & Bauch, attorneys
(Kathryn Hatfield, of counsel)

For the Charging Party,
Abramson & Liebeskind, Consultants
(Marc D. Abramson, Consultant)

INTERLOCUTORY DECISION

On March 5, 1999, New Brunswick PBA Local No. 23A (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of New Brunswick (City) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The PBA contends that the City violated N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} The unfair practice charge was

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

accompanied by an application for interim relief. On March 11, 1999, an order to show cause was executed and by arrangement with the parties a return date was set for April 15, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

The City and the PBA appear to be parties to a collective negotiations agreement with an effective date of January 1, 1995 and an expiration date of December 31, 1997. The unit consists of police superior officers. Apparently, the parties have engaged in successor negotiations and are currently proceeding through the interest arbitration process.

Apparently, historically, unit employees have worked a 4-day on, 2-day off work shift. The PBA alleges that on or about January 29, 1999, the police director issued a special order regarding a temporary schedule change which was to take effect on January 30, 1999. It asserts that the new schedule will remain in effect until around June 25, 1999. The PBA contends, and the City does not dispute, that the parties did not engage in negotiations with respect to the temporary change in work schedule. It asserts

1/ Footnote Continued From Previous Page

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."

that effective January 30, 1999, most unit supervisors were required to work a 5-day on, 2-day off schedule. It argues that in addition to the work schedule change, unit employees will be required to work at times which do not comport with their regular shift hours in order to attend training sessions which run from 8:30 a.m. to 4:30 p.m.

Additionally, the PBA claims that supervisors will have to work an average of five extra days under the new schedule. It argues that the schedule change will impact on employees' vacations and require unit members to take vacation days when they otherwise would not have done so in order to keep appointments which were made prior to the schedule change. The PBA asserts that work schedules are mandatorily negotiable and may not be changed without prior negotiations. Further, the PBA contends that the City's implementation of the temporary schedule change during the course of interest arbitration undermines the PBA's representational status and violates the Act.

The City asserts that on July 7, 1997, the police director submitted a proposal to the United States Department of Justice, Office of Community Oriented Policing Services (COPS) for an Advanced Community Policing Grant on behalf of the City's police department. Apparently, the purpose of the grant proposal was to obtain funds to train the superior officers through a comprehensive instructional program focusing on enhancing managerial skills and leadership abilities with respect to community policing activities.

The City contends that while the police department embraces the philosophy of community policing and has instituted programs with respect thereto, it is deficient in areas dealing with leadership techniques to accompany community policing initiatives. It contends that the grant would enable the police department to train its supervisors in the area of community policing leadership. It further claims that although the police department has instituted community policing strategies for rank-and-file police officers, the leadership and management functions have experienced little change. The City asserts that training is essential if the police department is to improve as a law enforcement agency and its supervisors must be trained in leadership and managerial techniques in order to make community policing a success.

The City asserts that on September 27, 1997, COPS awarded it a grant to train management police personnel in the areas of leadership, management and community policing. Apparently, the grant expires on June 30, 1999. It claims that on January 15, 1999, after taking into account superior officers' schedules, the outside consultant's instructors' schedules and the availability of housing, a final schedule was developed. It asserts that shortly before the temporary schedule change was implemented, representatives of the police department met with unit employees to discuss the training program. The City contends that the employees were advised that no one would lose any time as a result of the schedule change in that employees would receive compensatory days for any additional days

worked, overtime for additional hours worked and all previously scheduled vacation plans would be honored. It argues that unit employees will return to their regular work schedule as soon as the training program is completed, on or about June 23, 1999. The City asserts that its implementation of the temporary schedule change constitutes an exercise of its inherent managerial prerogative. Consequently, it argues that notwithstanding the parties current engagement in interest arbitration, it need not negotiate the temporary schedule change. The City concedes that it may incur an obligation to negotiate schedule changes which either it or the PBA may seek to implement in other circumstances.

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).

Although work hours are generally negotiable (Englewood Bd. of Ed. v. Englewood Teachers Ass'n., 64 N.J. 1 (1973)), where negotiations over work schedules interfere with established

managerial prerogatives, negotiations are not required. Borough of Atlantic Highlands and Atlantic Highlands PBA Local 42, 192 N.J. Super. 71 (App. Div. 1983) certif. denied 96 N.J. 293 (1984); Town of Irvington v. Irvington PBA Local No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif. denied 82 N.J. 296 (1980).

In Irvington, the employer changed the shift schedule for police officers from a schedule where one-third of the officers worked steady midnights and two-thirds of the officers worked rotating day and evening shifts to a schedule where all officers worked rotating shifts. The employer made this change to enhance departmental efficiency, particularly the supervision of its officers. The employer noted that superior officers were unable to enforce discipline and follow-up on disciplinary matters because their rotating schedule did not permit them to supervise non-supervisory officers who are on a permanent midnight shift for more than a short period of time.

The Court viewed the "fundamental issue" as "...whether the change of shifts...is a term or condition as to which mandatory negotiations would significantly interfere with the exercise of the Town's managerial prerogative." Id. at 543. The Court held that the shift change was not mandatorily negotiable because negotiations on this issue could impede the Town's ability to increase departmental efficiency, particularly as it related to providing continuous and consistent supervision, and to address departmental discipline. In Atlantic Highlands, the PBA sought to negotiate a

change in the shift schedule from a 5-2 work schedule to a 5-2, 5-2, 5-3 work schedule. The employer contended that the proposed shift change was not mandatorily negotiable because, citing the small size of the department, coverage gaps in the schedule and increased police costs, it intruded on the employer's managerial prerogative to plan for "the most efficient utilization of its existing manpower." *Id.* at 75. The Court held that negotiations concerning the proposed work schedule change

...would significantly interfere with the exercise of inherent managerial prerogatives necessary to the proper operation of a police force. [*Id.* at 77.]

Interim relief has been denied in circumstances where work schedules have been modified during on-going negotiations where it was found that such negotiations would interfere with the exercise of managerial prerogatives. In Somerset County, I.R. No. 93-1, 18 NJPER 405 (¶23184 1992), the Commission Designee declined to restrain the employer from changing the shift schedule during negotiations. The employer stated that it changed the work schedule due to an emergency at the Somerset County Trash Recycling Center which threatened the operation's survival. Although the charging party argued that no emergency existed, the Commission Designee concluded that the charging party had not met its heavy burden of establishing a substantial likelihood of success on the legal and factual allegations in a decision by the full Commission.

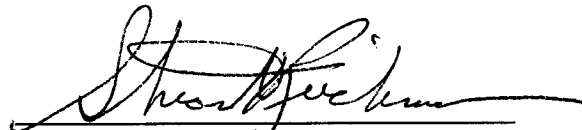
In Borough of Princeton, I.R. No. 94-3, 19 NJPER 516 (¶24238 1993), the Commission Designee again declined to restrain

the employer from changing work schedules during on-going negotiations. The Designee found that the Borough had set forth reasons for its implementation of the schedule change which implicated the exercise of managerial prerogatives and held under that circumstance the Borough's schedule change was not mandatorily negotiable.

In this matter, it appears that the City's underlying rationale for implementing the temporary schedule change also implicates the exercise of managerial prerogatives. The City claims that its decision to temporarily change unit employees' work schedules was made in order to accommodate an important training program that is designed to increase supervisors' leadership and management skills. The City asserted that the training program was necessary to the successful implementation of its community policing efforts. Consequently, under the circumstances here where such managerial prerogative issues are implicated, I conclude that the charging party has not successfully demonstrated that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

ORDER

New Brunswick PBA Local No. 23A's application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.



Stuart Reichman
Commission Designee

DATED: April 22, 1999
Trenton, New Jersey