

I.R. NO. 95-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VILLAGE OF RIDGEWOOD,

Petitioner,

-and-

Docket No. SN-94-106

RWDSU, LOCAL 29,

Respondent.

SYNOPSIS

A Commission Designee temporarily restrains arbitration of a grievance pending a final decision on the negotiability issue by the full Commission. Respondent Local 29 filed a grievance contesting the Village of Ridgewood's decision to eliminate on-call assignments in two DPW subdivisions. Local 29 asserts that the on-call procedure has been a past practice between these parties, and that the on-call issue has been negotiated and is negotiable and arbitrable. The Village argues that its decision to eliminate on-call assignments is a managerial prerogative involving staffing and, therefore, is neither negotiable nor arbitrable.

The Commission Designee noted that the Commission has held that a public employer has a managerial prerogative to determine staffing levels and that decisions concerning whether or not to assign overtime or make on-call assignments are directly related to staffing determinations and the efficient delivery of governmental services. Accordingly, the Commission Designee restrained arbitration pending the Commission's negotiability decision.

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Appearances:

For the Petitioner
Grotta, Glassman & Hoffman, attorneys
(M. Joan Foster, of counsel)

For the Respondent
Stuart Salles, attorney
(Jeffrey Karp, of counsel)

INTERLOCUTORY DECISION

The Village of Ridgewood filed a Petition for Scope of Negotiations Determination on June 13, 1994, with the Public Employment Relations Commission seeking a determination as to whether certain grievance matters in dispute between the Village and RWDSU, Local 29 are within the scope of negotiations. The petition was accompanied by an Order to Show Cause seeking to temporarily restrain the scheduled arbitration of this dispute pending a final determination of the negotiability issue by the Commission. I executed an Order to Show Cause on August 1, 1994, and designated a return date of August 10, 1994. On that date, I conducted a hearing on the Order to Show Cause, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission.

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.^{1/}

Local 29 seeks to arbitrate a grievance concerning the Village's elimination of on-call assignments for certain segments of the Department of Public Works. The Village contends that its decision to eliminate on-call assignments is a non-negotiable, non-arbitrable managerial prerogative. Thus, the Village argues the arbitration should be restrained.

Based upon the parties' submissions (Commission Exhibits 1-6), the facts in this matter appear as follows.

The Ridgewood Village Department of Public Works employs 34 unit employees in four subdivisions: Street (snow removal and street cleaning); Garage (vehicle repair and maintenance); Traffic Signal (traffic signal installation and repair); and Sewer

^{1/} 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). See also, Englewood Bd. of Ed. v. Englewood Teachers Assn., 135 N.J. Super 120, 1 NJPER 34 (App. Div. 1975).

(operation, maintenance and repair of Village's sewage treatment facility).

DPW employees have been given on-call assignments for 25 years -- i.e., remaining available to report to work immediately during off-work hours, whenever the need might arise.

The Village asserts that it was faced with economic constraints in 1994 and so sought to lower expenses by eliminating positions and reducing services. Thus, the Village decided to eliminate on-call assignments in the Traffic Signal and Garage divisions. The Village notes that the cost of on-call assignments was a large part of the overtime budget and represented payment of non-productive time (i.e., time spent "waiting", not working). Further, the Village notes that a large portion of on-call assignments were unnecessary because employees were not frequently called in due to cuts in the overtime budget. The Village decided it could either postpone work previously done by on-call employees who were called in on overtime or, endure the delay and problems associated with contacting off-duty employees to come in to perform emergency work. The Village deemed these choices preferable to laying off several DPW employees.

Local 29 contends that the on-call procedure has been a past practice for many years between these parties. On-call issues have been negotiated by the parties for a long time -- Local 29 cites Article XXX of the parties' contract and several grievances about this article which the parties have processed over the years as support for its contention.

Further, Local 29 contends that in the parties' negotiations for their most recent collective negotiations agreement, the Village agreed to arbitrate the on-call issue and Local 29 agreed to a "lower wage percentage than usual in an effort to cooperate with the Village...." (Respondent's brief at 2).

Local 29 contends that the disputed on-call issue is negotiable, has been negotiated and, therefore, is arbitrable.

While the Village acknowledges that the parties have negotiated, agreed upon and memorialized terms concerning on-call assignments, these negotiations dealt with rates of compensation for on-call assignments, distribution of on-call assignments and substituting for the designated on-call employee (see Article XXX of parties' most recently expired collective negotiations agreement, Exhibit C-6 at 38). The Village notes that such terms and conditions of employment come into play only after it makes the determination to have employees work on-call assignments. The Village denies ever having negotiated the determination of whether or not to make on-call assignments.^{2/}

The Courts and the Commission have long held that a public employer has the non-negotiable managerial prerogative to determine the staffing levels needed for the efficient delivery of governmental services. Irvington PBA Loc. 29 v. Tp. of Irvington,

^{2/} Although the issue of whether the parties negotiated and reached agreement concerning the continuation of on-call assignments remains in dispute, it is not necessary to resolve that issue for purposes of this decision.

170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1982); and New Jersey Sports & Exposition Auth., P.E.R.C. No. 90-62, 16 NJPER 46 (¶21022 1989); Hunterdon Cty., P.E.R.C. No. 88-103, 14 NJPER 331 (¶19123 1988); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983).

Whether or not to schedule overtime is directly determined by decisions concerning staffing levels and the delivery of services. As such, the Commission has held that decisions as to whether overtime gets worked are managerial prerogative determinations. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983).

The Commission has held that an employer need not negotiate its determination to create an on-call schedule which was implemented in order to enhance departmental efficiency. Hunterdon Cty., P.E.R.C. No. 85-63, 11 NJPER 29 (¶16014 1984). The Commission has further held that an employer may determine that it does not need any employees on standby for weekend work. Tp. of Belleville, P.E.R.C. No. 94-111, 20 NJPER 241 (¶25119 1994); see also, City of Camden, P.E.R.C. No. 94-62, 20 NJPER 48 (¶25016 1993).

The Village has determined to completely eliminate on-call assignments in two of its DPW subdivisions. Based on the foregoing, it appears that the Village has a substantial likelihood of success on the merits of its scope petition, wherein it seeks to have the Commission determine that its decision to eliminate on-call

assignments is non-negotiable and restrain arbitration of Local 29's pending grievance. Accordingly, in the interest of efficiency, expediency and fairness and avoiding the harm resultant from proceeding with an arbitration which may ultimately be restrained by the Commission, Local 29 is restrained from proceeding with the arbitration on this matter pending the negotiability decision by the full Commission.



Charles A. Tadduni
Commission Designee

DATED: August 18, 1994
Trenton, New Jersey