

I.R. NO. 88-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MIDDLESEX

Respondent,

-and-

Docket No. CO-88-317

MIDDLESEX BOROUGH PBA LOCAL 181,

Charging Party.

SYNOPSIS

In a matter brought by the Middlesex Borough PBA, Local 181, against the Borough of Middlesex, a Commission Designee denies a request to restrain the Borough from implementing a different work schedule for police sergeants. The Designee determined that the PBA did not meet the standards for granting interim relief.

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Appearances:

For the Respondent
Thomas Benitz, Esq.

For the Charging Party
Klausner, Hunter & Oxfeld, Esqs.
(Stephen E. Klausner, of counsel)

INTERLOCUTORY DECISION

On June 6, 1988, Middlesex Borough P.B.A. Local 181 (PBA) filed an Unfair Practice Charge and request for interim relief together with an Order to Show Cause and Request for Temporary Restraints and supporting brief with the Public Employment Relations Commission (Commission) against the Borough of Middlesex (Borough) alleging that the Borough violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A 34:13A-1 et

seq. (Act) by changing the work schedules of certain police employees.^{1/}

A hearing on the request for a temporary restraint was held on June 6, 1988. Commission Designee, Edmund Gerber, denied the request.

The Order to Show Cause was signed on June 6 and made returnable for June 13, 1988. The interim relief hearing was held on that day. The Borough did not submit responsive papers, but both parties examined witnesses and argued orally in support of their positions.

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 the final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

^{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 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."

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

Findings of Fact

The PBA represents a unit of patrol officers, sergeants and lieutenants. The PBA and Borough began negotiations for a new collective negotiations agreement in September 1987. No agreement has been reached, and the parties' last agreement has expired. An interest arbitration proceeding is scheduled for July 26, 1988. Work schedules is one of the topics before the interest arbitrator.

The Borough's police department is comprised of three divisions: investigations, patrol, and administration. Each division is directed by a superior officer. Prior to April 29, 1988 the police department was comprised of one chief, one captain, two lieutenants, five sergeants, and approximately 19 officers. The captain directed the investigations division, and one lieutenant directed patrol division and the other lieutenant directed the administration division.

On April 29, 1988 the captain retired. The Borough did not fill that position, nor did it promote anyone to create an additional lieutenant or sergeant position. As a result of the captain's retirement, the Borough made one lieutenant the director

2/ Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); and Crowe v. DeGioia, 90 N.J. 126 (1982).

of the investigations division, the other lieutenant remained director of the patrol division, and the Borough made one sergeant the director of the administration division.

On May 3, 1988 the chief posted a notice (C-6) to all employees. That notice provided in pertinent part:

Due to the recent retirement of Command Officers and a reduction in overall strength, a change in scheduling must be made.

If any officer has any recommendations, suggestions or schedules he would like to be considered, please submit one (1) copy to Lt. Benson and one (1) copy to the P.B.A. President. All submissions will be considered and discussed prior to final adoption by a committee of Command Officers, Sergeants and P.B.A. representative.

Despite its request for suggested schedules, the Borough received none, and created a new schedule which became effective on June 4, 1988.

Prior to June 4 the sergeants and patrol officers worked a five-week rotating shift (C-4) which resulted in two weekends off per each five-week rotation. At that time one sergeant was assigned to supervise each platoon, and there were five sergeants available to rotate the platoon supervision during the five-week rotation. After the captain retired and a sergeant became a division director, there were only four sergeants available to supervise platoons. As a result, the new schedule (C-5), which affected sergeants only (the PBA President testified that the schedule change leading to the Charge concerned sergeants only), was a four-week rotating schedule which, although it did not change the number of hours worked per day

or days off per week, resulted in only one weekend off during each four-week rotation. The difference between the two schedules meant that affected sergeants would have eight fewer weekends off per year.

Even under the four-week rotation the four sergeants can only cover 20 of the 21 platoons each week, resulting in one platoon (Thursday day shift) having no supervisor on the shift. If the four sergeants remained on a five-week rotating shift it would result in a full week of shifts without a supervisor for each platoon.

Positions of the Parties

The PBA argued that the Borough unlawfully implemented the new schedule and seeks an order restraining the Borough from maintaining that schedule. The PBA also argued that since work schedules are negotiable and the parties are involved in interest arbitration, and since the Borough knew that the captain would retire, and because there was no emergency necessitating the change, that the change had a chilling effect upon the parties' negotiations and interest arbitration.

The Borough argued that it must be allowed to provide supervision for shifts and meet its needs within its complement of employees.

Analysis

Work schedules and work hours are generally mandatorily negotiable terms and conditions of employment. Englewood Bd.Ed. v. Englewood Teachers Assn., 64 N.J. 1, 6-7 (1973); Burlington Cty. Coll. Faculty Assn. v. Bd. Trustees, 64 N.J. 10, 14 (1973);

Woodstown-Pilesgrove Reg. School Dist. Bd.Ed v. Woodstown-Pilesgrove Reg. Ed. Assn., 88 N.J. 582 (1980); IFPTE Local No. 195 v. State of New Jersey, 88 N.J. 393 (1982)(Local 195); Tp. of Mt. Laurel v. Mt. Laurel Tp. Police Officers Assn., 215 N.J. Super. 108 (App. Div. 1987). Our Supreme Court, however, in Local 195 and Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), established a test 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. Local 195 at 404-405.


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); Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985)(Closter); County of Essex, I.R. No. 87-25, 13 NJPER 346 (¶18140 1987)(Essex County).

In Closter the Commission held that the Borough had the right to alter the police officers' shift by three hours to improve supervision by making the officers' shift the same as the superior officers' shift. That change did not result in any increase in the work hours or workdays. Similarly, in Essex County the County had the right to alter the shifts of corrections officers to insure proper manning levels and proper supervision.

In this case the facts and law do not presently support a finding of a substantial likelihood of success. An order restraining the Borough from using a four-week rotation for sergeants would interfere with certain managerial prerogatives. The Borough is entitled to determine within its employee complement the level and frequency of supervision that is needed for supervision of police officers.

The problem that occurred here resulted from the captain's retirement and the Borough's decision not to fill that position but to use a sergeant to direct one of the divisions. The Borough cannot be required to fill that vacant position. Since the Borough determined that a sergeant had to normally be available to supervise each shift, and since there were only four sergeants available for that duty, the Borough was entitled to enact a schedule that would provide the appropriate level of supervision. Closter; County of Essex. Since the new schedule did not change the number of hours worked per day or days worked per week there is no substantial likelihood of success in the context of this case that would justify the granting of interim relief.

Since the interim relief standards have not been met, the request for a restraint is denied.


Arnold H. Zudick
Commission Designee

Dated: June 22, 1988
Trenton, New Jersey