I.R. NO. 95-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and- Docket No. CO-95-265

CAMDEN POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 35 and CAMDEN POLICE SUPERIOR OFFICERS ASSOCIATION,

Charging Parties.

SYNOPSIS

Pending the March 20, 1995 return date of an Order to Show Cause, the Chairman of the Public Employment Relations Commission denies the request of Camden Policemen's Benevolent Association Local No. 35 and Camden Police Superior Officers Association for a temporary restraint of the City of Camden's change in work schedule. The Chairman orders the City and the unions to negotiate during the time period prior to the return date. Negotiations should be sufficiently flexible to address the interrelationships between work schedules and compensation for hours and days of work performed. Negotiations should be able to address any measurable increases in workload. In the event of a continuing impasse, disputes over lawfully negotiable issues may conclude in interest arbitration under the provisions of N.J.S.A. 34:13A-15 et seq.

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Charging Parties.

Appearances:

For the Respondent, Murray, Murray & Corrigan, attorneys (David F. Corrigan, of counsel)

For the Charging Party, Loccke & Correia, attorneys (Charles E. Schlager, Jr., of counsel)

INTERLOCUTORY DECISION

On February 14, 1995, the Camden Policemen's Benevolent Association Local No. 35 and the Camden Police Superior Officers Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Camden violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (5) and (7),[1/] when on February 13, 1995 it unilaterally changed the existing 4-2 work schedule to a 5-2 schedule.

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

The unfair practice charge was accompanied by an Order to Show Cause and a request that a temporary restraint be issued pending a return date. A hearing on the request for a temporary restraint was held on February 14, 1995.

The last collective negotiations agreement between these parties is dated January 1, 1990 through December 31, 1992.[2/] Since that time the parties have been attempting to negotiate a new agreement. An impasse developed during negotiations resulting in the initiation of interest arbitration proceedings. On or about October 21, 1994, after several formal hearings before the Interest Arbitrator, a voluntary agreement on wages and other economic issues was reached and set forth in a Memorandum of Understanding. The Memorandum was ratified. This agreement is effective from January 1, 1993 until December 31, 1996. It was implemented on December 9, 1994. The issue of the work schedule

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1/ Footnote Continued From Previous Page

rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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. (7) Violating any of the rules and regulations established by the commission."

2/ This decision will refer to the PBA although the relevant discussion applies to the SOA as well.

was not resolved at the time that the Memorandum of Understanding on economic issues was executed. That issue, among others, was to be the subject of continued negotiations pursuant to Section 5 of the Memorandum of Understanding which states:

> Both parties agree that all non-economic issues shall be clarified and modified prior to December 31, 1994.3/

Until now, work schedules have been governed by Article VIII of the collective negotiations agreement. That provision, in pertinent part, reads as follows:

> Work Week
>
> Effective as of January 1, 1990, regular motorized patrol shall work under a four (4) day on, two (2) day off work schedule (hereafter referred to as the 4-2 work schedule); other employees shall where possible.
>
> Working hours under the 4-2 schedule shall be as follows:
>
> Tour of Duty A:
>
> Four (4) consecutive calendar days of a 12:00 midnight to 8:00 a.m. work schedule.
>
> Tour of Duty B:
>
> Four (4) consecutive calendar days of a 8:00 a.m. to 4:00 p.m. work schedule.
>
> Tour of Duty C:
>
> Four (4) consecutive calendar days of a 10:00 a.m. to 6:00 p.m. work schedule.

3/ The parties have characterized this issue as a non-economic issue, a characterization that is not consistent with the definition in N.J.S.A. 34:13A-16(f)(2). It is a language issue which deals with wages in relation to hours.

Tour of Duty D:

> Four (4) consecutive calendar days of a 4:00 p.m. to 12:00 midnight work schedule.

Each tour of duty will be immediately followed by two (2) consecutive calendar days off. Also, each tour of duty will be worked on a continual clockwise rotation basis, i.e., Tour of Duty A, followed by Tour of Duty B, followed by Tour of Duty C, followed by Tour of Duty D.

During negotiations, the City sought to change the work schedule to five (5) days on and two (2) days off. The City cited the need to have the additional police protection the revised schedule would provide. When the economic settlement was achieved, however, there was no agreement on the issue of the revised work schedule.

Thereafter, pursuant to the agreement to continue to negotiate the remaining issues, proposals and responses on this issue were made. While the record in this proceeding does not reflect what those proposals and responses were, there appears to be no dispute that the union's position is to maintain the existing 4-2 work schedule and that the City has rejected this demand and continues to seek a change to the 5-2 schedule. There is a factual dispute over the meaning of the continued impasse on the non-economic issues. It is the City's position that these issues remain on the table unresolved and it is the union's position that in the absence of a new agreement on these issues, the parties have agreed to revert back to the status quo of the expired agreement.

This unfair practice charge, and thus the request for interim relief, stems from a decision by the City on February 9, 1995 to implement a 5-2 work schedule effective 12:01 a.m., Monday, February 13, 1995. The stated reasons for the change were set forth in an affidavit of George Pugh, Chief of Police. The Chief states that there have been 15 murders in the City since January 1, 1995; most occur from 4:00 p.m. to 8:00 a.m.; the City is in a public safety crisis; there is a demonstrated need for increased police presence during these hours, and the new work schedule provides greater police presence during these critical times.

At the hearing, the parties acknowledged that the new schedule results in an additional 28 police officers on the 2:00 p.m. to 10:00 p.m. and 10:00 p.m. to 6:00 a.m. shifts or an additional 14 officers per shift. The hours of these two shifts are new. The old shifts remain and are supplemented by the new shifts. The number of platoons has been reduced from five to four. Police officers from the fifth platoon have been assigned to work the two new overlapping shifts.

Each party correctly cites the relevant precedent on the negotiability of work schedules. In Mt. Laurel Tp. and Mt. Laurel Police Officers Ass'n, 215 N.J. Super. 108 (App. Div. 1987), the Court held that work schedules of police officers are sometimes, but not always, mandatorily negotiable and in particular:

> the differing facts of each case should determine whether a disputed subject is mandatorily negotiable and that such a decision needs to be made on a case-by-case basis. ...[T]his principle is at the opposite end of the spectrum from a rule of automatic exclusion. Thus in this case, PERC correctly determined that the Association's proposed schedule changes were not automatically prohibited from being the subject of mandatory negotiation but were subject to the Local 195 balancing test. [Id. at 114-115][4/]

Because each case must be decided on its own facts, the Commission has applied Mt. Laurel to find that this issue was mandatorily negotiable in certain instances, but not in others. Each party has offered the case citations it believes best support its position in the present case.

4/ The balancing test referred to by the Court is enunciated in Local 195, IFPTE v. State, 88 N.J. 393 (1982), which articulates the standards for determining whether a subject is mandatorily negotiable:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The particular facts of this case are unique. The union has provided strong evidence supporting its position that this subject is mandatorily negotiable because it intimately and directly affects the work and welfare of the police officers. Under the new schedule, police officers would be required to work at least 17 additional days per year. The union estimates that the schedule change may mean an additional 30 and 1/2 days per year for some police officers.[5/] In addition, there are other obvious consequences of this change. The family lives and obligations of the police officers will be disrupted, secondary employment will be interfered with, and vacation plans will be disturbed. The union believes that an existing contractual provision creating a "Special Tactical Force-Supplementary Patrol" is sufficient to meet the City's public safety concerns, an assertion which the City rejects.

The City has provided strong evidence supporting its position that the subject is not mandatorily negotiable because restoration of the 4-2 work schedule would significantly interfere with its determination of governmental policy. It believes that the circumstances which prompted it to seek changes in the work schedule during negotiations through the end of 1994 have become imperative. The City claims that it could no longer delay

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5/ At this point in the proceedings, it is impossible to verify the higher estimate. There is no dispute, however, that the schedule change will result in at least 17 additional days of work per year.

responding to the need to deploy more police officers because of the grave public concern and fear prompted by the recent horrifying increase in the number of murders.

In deciding this request for interim relief, I have carefully examined the comprehensive submissions offered by each party and have evaluated the standards the Commission routinely applies, including the relative hardship to the parties in granting or denying such relief. As the Court recognized in Mt. Laurel, this Commission must make a "fact intensive determination which must be fine tuned to the details of each case." Id. at 114. At this juncture of the proceeding, and after carefully weighing the respective interests, I believe it would be inappropriate to order a return to the old work schedule pending the return date of the Order to Show Cause.

Under more normal circumstances, the interests of the police officers in negotiating over hours and days of work would likely be the dominant issue. It is apparent from the City's submission that it would not have made this work schedule change if circumstances were normal. In fact, the work schedule was an issue in dispute during negotiations. The Chief, in a memorandum to the Mayor dated February 10, 1995, acknowledged this and stated that he had informed the union representatives that he recognized the contractual ramifications of his decision. He also indicated that the implementation of the schedule at this particular point was temporary, although he had advanced a proposal for a permanent

change to the work schedule during negotiations. He indicated a willingness to consider a similar schedule that would put approximately the same number of police officers on the street during the critical hours. He has sought help from the State Police, but has not received a positive response at this time. He believes there will be future hires, but cannot immediately increase staffing levels because recruits must first complete the police academy. He is not opposed to further discussion of the work schedules, but he believes he had to act immediately in response to the emergent nature of the crisis.

The fact that the 4-2 work schedule has not been restored at this juncture does not mean that the union has not proved a basis for relief. Because of the dramatic increase in the hours and days of work of the police officers, there are mandatorily negotiable consequences arising from the City's decision to change the work schedule. The City, in fact, during negotiations recognized that salaries are interwoven with proposals to modify the work schedule. Because it claimed to be in dire economic circumstances, it alleged that its salary offer was affordable because of the increase in time the police officers would work under a new schedule. However, based upon this record, the City appears to have entered a wage agreement without a change in the days and hours of work of the police officers and did agree to continue negotiations over the issue of the work schedule.

Accordingly, notwithstanding this decision not to restrain the revised work schedule, I will order that negotiations proceed during the time period prior to the return date I have set below. I believe that a 30-day time period will be sufficient for the parties to engage in negotiations over the issues which remain unresolved. I do not believe that it is in the interest of the parties or the public to place a restriction on these negotiations. Negotiations should be sufficiently flexible so as to address the interrelationship between work schedules and compensation for hours and days of work performed. Negotiations should also be able to address any measurable increases in workload.

The merits of the parties' positions on these negotiations issues are left to them to resolve. I pass no judgment on the potential outcomes. For example, the City has proposed a new Article IX, Section 5, providing that no additional compensation shall be required in the event of the implementation of the 5-2 work schedule in recognition of the salary increases provided in the 1993-1996 agreement. The union's contention is that the negotiated increases were based upon no increases in work hours or work days. In the event of a continuing impasse, disputes over lawfully negotiable issues may ultimately conclude in interest arbitration under the provisions of the statute.

Based upon all of the foregoing, I hereby set a return date on the Order to Show Cause. The Respondent City of Camden

shall show cause before the Commission on the 20th day of March, 1995 at 10:00 a.m. at the Trenton Offices, why an Order should not be issued granting injunctive relief to the Charging Parties, requiring the Respondent to immediately cease and desist from unilaterally changing the existing 4-2 work schedule pending a Final Decision and Order by the Commission on the unfair practice charge filed February 14, 1995.

In the event that the Charging Parties decide to file an additional brief or affidavits, such documents shall be filed with the Commission no later than March 13, 1995 and any additional brief or affidavits the Respondent wishes to file shall be filed with the Commission no later than March 16, 1995. Any such papers shall be filed with proof of service upon each attorney of record.

James W. Mastriani
Chairman

DATED: February 16, 1995
Trenton, New Jersey