

I. R. NO. 84-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HIGHTSTOWN,

Petitioner,

-and-

Docket No. SN-84-135

P.B.A. LOCAL 283,

Respondent.

SYNOPSIS

The Commission's Designee denies a request to restrain arbitration regarding compensation matters, but does restrain the arbitration with respect to considering whether the employer was permitted to make a work schedule change for police employees.

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Appearances:

For the Petitioner
DeMaria, Ellis & Hunt, Esqs.
(Dennis J. Alessi, of Counsel)

For the Respondent
Strauss, Wills, O'Neill & Voorhees, Esqs.
(G. Robert Wills, of Counsel)

Interlocutory Decision

This matter was opened to the Public Employment Relations Commission ("Commission") by Dennis J. Alessi, Esq., for the Petitioner, Borough of Hightstown ("Borough") seeking a stay of arbitration in the matter of the work schedule change grievance, filed by P.B.A. Local 283 ("PBA"), before the Commission, Docket No. AR-84-270, which is currently scheduled before Arbitrator Harry Stark for June 29, 1984. Pursuant to the request for the stay of arbitration a hearing was held before the undersigned on June 27, 1984 in Trenton, New Jersey, where the parties had the opportunity to argue orally and present documentary evidence. Having considered the parties' arguments, and having reviewed the Scope of Negotiations Petition accompanying the Order to Show Cause and brief in support thereof submitted on June 20 and 22, 1984, the undersigned

hereby denies the request for restraint of arbitration concerning compensation matters but restrains the PBA from presenting, or the arbitrator from considering, the work schedule change itself.

Pursuant to Englewood Bd.Ed. v. Englewood Teachers Assoc., 135 N.J. Super. 120, 1 NJPER 34 (App. Div. 1975), the Commission has the authority to stay arbitrations in order to prevent unnecessary litigation where it reasonably appears that the subject matter of the Petition may be non-arbitrable.

The facts show that the Borough changed the police work schedule from six (6) days on with three (3) days off, to five (5) days on with two (2) days off. ^{1/} The PBA grieved the change on or about February 11, 1984 and argued that it was a unilateral change and resulted in an increase of 2.6 hours of work per week. The Borough in the Scope Petition did not address the increase in hours, it only sought a determination regarding the Borough's ability to make the work schedule change.

The request for arbitration identified the grievance as:

The public employer unilaterally changed the work schedule by increasing it 2.6 hours per week in violation of the existing contract and past practice and tradition.

That grievance appeared to concern the work schedule change itself, but at hearing the PBA clarified its grievance and argued that it only sought to arbitrate whether the employees were entitled to additional compensation pursuant to the parties' contract and past practice because of the increase in work hours.

^{1/} The Borough actually first changed the work schedule on January 19, 1984 from a 6/3 schedule to a 7/2, 6/3, 6/2 schedule, but then changed to the 5/2 schedule effective June 25, 1984.

The Borough maintained that since the contract provided for a 40 hour week, and that since it only implemented a 40 hour week, that no additional compensation was necessary, and it argued that the hours clause was clear on its face and that the undersigned should therefore restrain the arbitrator from interpreting that clause. 2/

Based upon the facts set forth in the Petition, the briefs, and in oral argument, it must be clarified that the instant arbitration is restrained regarding the Borough's decision to change the work schedule because that apparently concerns the implementation of a work schedule for police officers which is now a non-arbitrable subject. However, the grievance arbitration should go forward concerning compensation because that involves an interpretation of the parties' collective agreement regarding work hours, and a consideration of the parties' past practice, both of which are appropriate for arbitration.

The Appellate Division in Borough of Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. denied ___ N.J. ___ (3/2/84), held that the fixing of the overall work schedule for police officers was a managerial prerogative. However, the courts have also held that negotiations (arbitration) for compensation as a result of managerial changes is appropriate. Ramapo-Indian Hills Ed.Assoc. v. Ramapo-Indian Hills H.S. Dist. Bd.Ed., 176 N.J. Super. 35 (App. Div. 1980); Morris

2/ The pertinent part of the contract, Article 6, provided that:

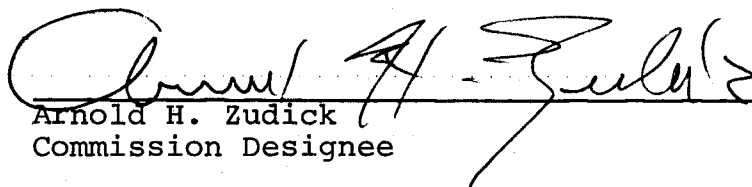
§6.01

Normal hours of employment shall not exceed eight (8) hours in any twenty-four (24) hour period, nor forty (40) hours in any one week, nor six (6) days in any one week.

County and Morris County Park Commission v. Morris Council No. 6,
N.J.C.S.A., App. Div. Docket No. A-795-82T2, January 12, 1984.
(Petition for Certif. pending Sup. Ct. Docket No. 22,347). Con-
sequently, any attempt to arbitrate the work schedule change itself
is restrained, however, arbitration over compensation must proceed
because it is for the arbitrator to determine whether or not the
contract and past practice moots the need for additional compen-
sation.

But for the partial restraint set forth hereinabove, the
request for a restraint of arbitration is denied.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


Arnold H. Zudick
Commission Designee

Dated: June 28, 1984
Trenton, New Jersey