I.R. No. 2006-012

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

CITY OF PATERSON,

Respondent,

-and- Docket No. CO-2006-167

PBA LOCAL 1,

Charging Party.

CITY OF PATERSON,

Respondent,

-and- Docket No. CO-2006-168

PBA LOCAL 1, SOA,

Charging Party.

SYNOPSIS

A Commission Designee denies interim relief where the City appeared to change work schedules and reduce the number of squads when it implemented a redistricting plan in response to a significant increase in violent crimes during 2005. The Designee determined that the City's asserted reasons for its actions - to more effectively deploy officers, to provide continuity of supervision and to increase command accountability, implicated non-negotiable governmental policy determinations and public safety considerations.

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Appearances:

For the Respondent, Dorf & Dorf, attorneys (Gerald Dorf, of counsel)

For the Charging Party, Mark Rushfield, attorney

INTERLOCUTORY DECISION

On December 29, 2005, Paterson Police PBA Local 1 (PBA) and Paterson Police PBA Local 1 Superior Officers Association (SOA) filed unfair practice charges with the Public Employment Relations Commission (Commission) alleging that the City of Paterson (City or Respondent) violated the New Jersey Employer-

Employee Relations Act, N.J.S.A. 34:13A-5.4a(1) and (5) (Act)[1/] by announcing in November 2005 that on January 15, 2006 it was unilaterally implementing a redistricting plan which reduces the number of squads in Platoons A and B to four from five and changes the work schedule for officers and superiors represented by the PBA and SOA. The change is made during the parties' interest arbitration.

The unfair practice charges were accompanied by an application for interim relief seeking to restrain the City from reducing the number of squads and implementing the work schedule change or, if the announced change is implemented, to return to the previously existing number of squads and schedule. On December 29, 2005, I executed an order to show cause consolidating the charges for the interim relief proceeding and scheduling a return date for January 25, 2006. Both parties submitted affidavits, briefs and other documents and argued orally on the return date.

The following relevant facts appear:

1/ These provisions 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."

The City and the PBA and SOA are parties to collective negotiations agreements effective from August 1, 1998 through July 31, 2003. The parties are currently in consolidated interest arbitration proceedings for successor agreements. During interest arbitration, the City proposed replacing the 4/4 schedule with a schedule of five days on and two days off (5/2 schedule). No other proposals were made regarding work schedules.

Article 7.0 of the parties' expired agreements, entitled "Work Schedule and Conditions", contains identical language and provides in pertinent part:

> . . . all employees assigned to Patrol Division Platoons A and B, Community Policing, and Traffic Division, shall be on a work schedule of four (4) consecutive work days of eleven hours and fifteen minutes (11 1/4 Hrs.), followed by four (4) consecutive days off which constitutes one work week. ("4 & 4 schedule"). . . . The squads contained in Patrol Division Platoons A and B shall be on steady shift.

This Article also provides that assignment to squad/shift is by seniority and done annually in October for the following year. The Collective Agreements are silent on the number of squads and the scheduled shift hours.

During the term of the recently expired agreements, however, Platoons A and B consisted of five squads each with shifts scheduled as follows: Squad 1 - 4:45 a.m. to 4:00 p.m.; Squad 2 -

7:15 a.m. to 6:30 p.m.; Squad 3 - 1:30 p.m. to 12:45 a.m.; Squad 4 - 6:00 p.m. to 5:15 a.m.; and Squad 5 - 8:30 p.m. to 7:30 a.m.

In November 2005 the City distributed annual Squad Selection Forms to rank-and-file and superior officers with instructions to indicate their first, second or third choices of squads for 2006. The forms indicate that squad picks would be assigned by seniority. The forms also reflect that commencing with the detail of January 15, 2006, there are four squads each in Platoons A and B with shifts scheduled as follows: Squad 1 - 4:00 a.m. to 3:15 p.m.; Squad 2 - 7:00 a.m. to 6:15 p.m.; Squad 3 - 2:00 p.m. to 1:15 a.m.; and Squad 4 - 6:00 p.m. to 5:15 a.m. The Squad 5 shift (8:30 p.m. to 7:30 a.m.) is eliminated.

The change in the number of squads and hours of work was discussed at the November 30, 2005 City Council meeting. Deputy Chief William Fraher explained Police Director Michael Walker's plan to implement a Computerized Statistic (COMSTAT) model of policing in response to a rise in violent crimes and to divide the City into three districts of equal population and demand for police services.

2005 Crime Analysis Reports for the City reveal the following: the incidence of homicides, rapes and aggravated assaults increased dramatically; Squad 5 handled the fewest assignments, significantly fewer than Squads 1, 2 and 3; and

assignments decreased substantially between the hours of 1:00 a.m. and 7:00 a.m.

Under COMSTAT, police officers are deployed based on these computer generated crime statistics to areas of most need. Also, the COMSTAT model seeks to achieve increased command staff accountability on the 4/4 schedule by holding captains and lieutenants accountable for responding to crime in their districts. In the past, these superiors have not been held accountable for responding to crime that occur on their days off. In order to ensure continuity of supervision, the new plan requires a change in the Department's table of organization - one additional captain and two additional lieutenants. Thus, the City anticipates increased costs associated with its implementation.

The COMSTAT model reduces the number of squads in Platoons A and B from five to four each and changes the starting and stopping times of three out of the four remaining shifts. Specifically, Squad 1 reports forty-five (45) minutes earlier at 4:00 a.m.; Squad 2 reports fifteen (15) minutes earlier at 7:00 a.m.; Squad 3 reports thirty minutes later at 2:00 p.m; and Squad 4 is unchanged. The length of each shift (11.25 hours), the two platoon system, and the 4/4 shift schedule remain unchanged. Also, squad/shift assignment is still by seniority.

The parties had at least two meetings to discuss the COMSTAT model and redistricting plan. The parties disagree as to the specific number of meetings and the gist of some discussions. However, it is undisputed that the parties discussed the Walker/Fraher plan on at least two occasions, that no agreement was reached and that implementation of the redistricting plan, reduction in squads and work schedule changes were not the subject of the City's negotiations proposals either before or during interest arbitration.

ANALYSIS

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. DeGioia, 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).

Charging Parties argue that work schedules are mandatorily negotiable, and that, therefore, the City violated the Act by unilaterally implementing a redistricting plan which reduced the

number of squads in Platoons A and B and changed the work hours of police officers and superior officers. Citing City of Plainfield, I.R. No. 2004-14, 30 NJPER 193 (¶72 2004), they further assert that unilateral changes during interest arbitration proceedings cause irreparable harm.

The City contends that it had no negotiations obligation regarding the reduction in number of squads or change in work hours because its actions were non-negotiable governmental policy determinations in response to public safety concerns regarding an upward trend in violent crimes. Its redistricting plan, it argues, more effectively allows it to deploy officers to address this growing trend. At the same time, it claims, the plan provides continuity of supervision and increases command accountability for crime occurring in assigned districts. The City also asserts that it has a managerial prerogative to determine staffing levels by reducing the number of squads and, thus, increasing the number of police on the remaining squads. Finally, the City argues that it has complied with all contractual requirements relating to the 4/4 schedule, two platoon system and seniority shift assignment.

It is well settled that after a collective negotiations agreement expires, existing terms and conditions of employment must continue until the negotiations obligation is satisfied. An employer violates 5.4a(5) of the Act by unilaterally modifying or

eliminating existing negotiable benefits during collective negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). N.J.S.A. 34:13A-21 also expressly prohibits changes in terms and conditions of employment while the parties are engaged in the interest arbitration process.

Police work schedules are generally mandatorily negotiable unless the employer demonstrates a particularized need to preserve or change a work schedule to support or implement a governmental policy determination. See N.J.S.A. 34:13A-14 et seq.; N.J.S.A. 34:13A-16g(2) and (8); Irvington PBA Local #29 v Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den 82 N.J. 296 (1980); Borough of Atlantic Highlands and Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984); Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 113 (¶28054 1997) and the cases cited therein. Even if the aggregate number of work hours remains the same, changing starting and stopping times violates 5.4a(5). State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985).

The Commission, however, has recognized the employer's right to unilaterally change work schedules where it has demonstrated a need to improve supervision, enforce discipline, train rank-and-file officers and align a unit's schedule with the time services are most needed. Irvington PBA; Borough of Roselle

Park, P.E.R.C. No. 2006-18, 31 NJPER 301 (¶118 2005); City of Trenton, P.E.R.C. No. 2005-60, 31 NJPER 59 (¶28 2005); Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985). Each case must be decided on its own facts. Teaneck Tp. and Teaneck Tp. FMBA Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003).

Here, it is undisputed that the City unilaterally changed work hours by changing the starting and stopping times of various shifts and reduced the number of squads. These changes occurred during interest arbitration. The primary issue before me is whether based upon the facts presented to date, and the applicable law, the Charging Parties have demonstrated a substantial likelihood of success on the merits of their claims. I find they did not.

The City has argued to date that these changes occurred as the result of its implementation of a redistricting plan in response to a rise in violent crimes, the need to deploy officers more effectively, and to increase command accountability. These reasons implicate non-negotiable governmental policy determinations. Where there is a nexus between the unilateral change and the employer's supervision or operational needs, the Courts and Commission have held that work schedules are not mandatorily negotiable. See Borough of Franklin, P.E.R.C. No. 2006-20, 31 NJPER 305 (¶120 2005) and cases cited therein. Also,

the reduction in the number of squads implicates the City's prerogative to determine staffing levels at any given time. Local 195, IFPTE v. State, 88 N.J. 393 (1982).

The Charging Parties do not oppose the redistricting plan, but contend that the redistricting could be accomplished without reducing the number of squads or changing shift hours. Citing Gloucester Cty., I.R. 2004-11, 30 NJPER 62 (¶19 2004), Hamburg Boro, I.R. 2004-9, 30 NJPER 58 (¶17 2004), and City of Passaic, I.R. 2004-2, 29 NJPER 310 (¶96 2003), the Charging Parties argue that it is not enough to claim managerial prerogative, the employer must support its claims with specific facts. The matter before me, however, is distinguishable from these cases.

First, in Hamburg and Passaic, the Commission Designee found that the employer was primarily motivated by economic benefit. Here, the City has demonstrated that its redistricting will likely increase costs because the reorganization contemplates at least three new superiors. Additionally, in Gloucester, the Commission Designee denied interim relief finding that the employer's assertion of managerial prerogative was not supported by specific facts. That is not the case in this matter. The City has shown that serious crimes rose significantly in 2005 and that crime reporting statistics for 2005 support its decision to eliminate Squad 5 which handled the fewest assignments during that year. The elimination of Squad 5 increased the number of

officers on the remaining squads during hours of higher crime incidence.

The Charging Parties did not factually dispute the City's reasons for the changes. Thus, given an employer's right to make such changes to implement policy determinations and public safety considerations, the Charging Parties are unable to demonstrate a substantial likelihood of success on the merits of the charges. Additionally, if the Charging Parties disputed the City's articulated reasons for the changes, such disputes are appropriately determined in a full plenary hearing on the merits, not in this interim relief proceeding. The Charging Parties, therefore, have not met the standards for a grant of interim relief.

Accordingly, the Charging Parties' application for interim relief is denied. These matters will be returned to the Director of Unfair Practices for further processing.

Wendy L. Young
Commission Designee

Dated: January 27, 2006
Trenton, New Jersey