

I.R. No. 2010-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,

Respondent,

-and-

Docket No. CO-2010-157

CAMDEN COUNTY COUNCIL #10,

Charging Party.

SYNOPSIS

A Commission Designee denies in part and grants in part interim relief on an unfair practice charge filed by Camden County Council 10 concerning juvenile detention officers at the County's Youth Center. The charge alleged that the County announced its intention to impose a 12 hour shift at the County's Youth Center for juvenile detention officers (JDOs) at the County's Youth Center, without notice or prior negotiations during bargaining for a successor agreement. The County argued that the parties' collective agreement authorized the change. The Commission Designee finds that Charging Parties have not demonstrated a substantial likelihood of success on the merits, because of a material dispute over whether the parties' contract authorized the schedule and shift changes. However, the Commission Designee orders the County to negotiate with Council 10 during the next 30 days over severable economic and non-economic issues resulting from the shift change.

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Appearances:

For the Respondent, Michael Brennan, Camden County
Counsel (Catherine Binowski, of counsel)

For the Charging Party, Spear Wilderman, attorneys
(James Katz, of counsel)

INTERLOCUTORY DECISION

On November 2, 2009, Camden County Council #10 (Council 10) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that Camden County (County) violated the New Jersey Employer-Employee Relations Act (Act), specifically N.J.S.A. 34:13A-5.4a(1), (2), (5) and (7).^{1/}

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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
(continued...)

Council 10 alleged that on or around October 28, 2009, the County announced its intention to implement 12 hour shifts for juvenile detention officers, or JDOs, working at the County's Youth Center effective November 15, 2009, without notice or prior negotiations with Council 10, and during negotiations for a successor agreement, in alleged violation of subsection 5.4(a) 1, 2, 5 and 7 of the New Jersey Public Employee-Employer Relations Act.

The charge was accompanied by an application for interim relief seeking an Order enjoining the County from making the shift change without first bargaining in good faith with Council 10 concerning economic and non-economic issues, prohibiting the County from direct dealing with bargaining unit members over a mandatory subject of bargaining; and from interfering with and dominating Council 10's handling of contract negotiations, as well as any other relief the Commission shall deem just and appropriate. An Order to Show Cause was signed on November 4, 2009 scheduling a return date for November 17, 2009.^{2/} Both parties submitted briefs, affidavits and exhibits in support of

1/ (...continued)
the commission."

2/ After the return date was set, the County decided to postpone implementation of the schedule change to November 28, 2009, pending the determination of Council 10's application for interim relief.

their respective positions and argued orally on the return date. The following facts appear.

Council 10 represents approximately 754 County civilian employees, including approximately 80 juvenile detention officers working at the Youth Center, a residential juvenile detention facility. The most recent collective agreement between Council 10 and the County was effective January 1, 2003 through December 31, 2007. The parties are in negotiations for a new collective agreement. On October 23, 2009, Council 10 filed a Notice of Impasse (I-2010-088) and the parties were assigned a mediator on October 28, 2009.

The Youth Center is a 24 hour operation. Currently, JDOs work three fixed eight hour shifts: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m..

In July 2009, then-acting Director of Camden County Department of Public Safety Edward Fanelle, began considering a change in the work schedule of the Youth Center from 8 to 12 hour shifts to decrease overtime, minimize shift shortages, and reallocate staffing levels. At Fanelle's direction, Youth Center Chief of Operations Johann Arnold formed a 12 hour shift committee composed of management and union representatives.

On August 3, 2009, a meeting was held with union representatives, employees and supervisors to discuss the issue. Fanelle and Council 10 President Karl Walko attended the meeting.

At the meeting, the JDOs voiced their opposition to 12 hour shifts, stressing that the change would interfere with personal and family life and was unnecessary and unsafe. Walko also explained that an employee survey conducted by Council 10 revealed that up to 80% of JDOs were opposed to the shift change. Walko certifies that Fanelle stated that he would not force anyone to go to 12 hour shifts. Fanelle certifies that he stated that 12 hour shifts would happen or the County would entertain any viable option.

On September 30, Walko wrote to Youth Center Administrator Robert Reid, inquiring whether a decision had been made on the shift change and requesting negotiations. Reid did not respond. In October 2009, after learning that the County was requesting employees' shift preferences for a 12 hour schedule, Walko asked the County's Director of Human Resources, Frank Cirii, whether the County intended to make the shift change. Cirii indicated he did not know. On October 27, an attorney for Council 10 emailed Assistant County Counsel Howard Wilson. On October 28, Wilson replied that the County intended to implement 12 hour shifts on November 15, 2009. The 12 hour shifts to be implemented at the Youth Center are as follows: 7:00 a.m. to 7:00 p.m., 11:00 A.M. to 11:00 p.m. and 11:00 p.m. to 11:00 a.m.. On November 2, Council 10 filed this unfair practice charge.

Article III of the parties' most recent collective agreement, Work Schedules, provides in pertinent part as follows:

A. The regularly scheduled work week shall consist of thirty (30) through forty-eight (48) hours per week as noted elsewhere in this agreement.

E. All employees covered by the Agreement shall receive a salary predicated on the appropriate hourly rate for their title multiplied by the actual number of hours that comprise their scheduled work week.

F. Dispatchers covered by this Agreement who employed at the Camden County Communications Center shall work a twelve (12) hour shift and the daily benefits of such employee such as vacations, sick days, etc, shall accordingly reflect this length of shift. For example a twelve (12) hour shift employee will receive two (2) sick days for each three (3) received by an eight (8) hour shift employee. However, with respect to discipline, a day shall be considered eight (8) hours. The County may discontinue the aforementioned twelve (12) hour shift.

Article XXIX of the parties' agreement, Management Rights, provides that the County retains the right:

A.2. To make rules of procedure and conduct, to use improved methods and equipment, to determine work schedules and shifts, to decide the number of employees needed for any particular time, and to be in sole charge of the quality and quantity of work required.

Council 10 contends that the JDOs, many of whom have been employed by the County for up to 25 years, have never worked other than an 8 hour shift, and that only dispatchers, also known as Public Safety Telecommunicators (PSTs), have ever worked 12

hour shifts; and moreover, that some have medical conditions which prevent them from working longer than 8 hours so that a 12 hour shifts puts their employment at risk. Council 10 asserts that the change to 12 hour shifts will require employees to work an extra four hours per day and 104 hours per year, and that the County has failed to negotiate over the impact of the change upon economic issues including salary, overtime, bereavement, sick or personal days, or discipline, all of which are based upon 8 hour days. Further, Council 10 argues, the creation of a fourth shift is impossible to reconcile with the current contract language on shift differential. Council 10 further asserts that this is the third time in 20 months it has been forced to seek interim relief to prevent the County from making unilateral changes without negotiations.

The County opposes the application. It argues that the change to 12 hour shifts is consistent with the parties' negotiated agreement; therefore, Council 10 cannot show a substantial likelihood of prevailing on the unfair practice charge and interim relief should be denied.

The County asserts that JDOs working 12 hour shifts will be treated similarly as dispatchers/PSTs who currently work 12 hour shifts. The County asserts that 12 hour shifts will result in custody staff working 4 additional hours per pay period, for which they will be compensated; that the current 7:00 a.m. to

3:00 p.m. shift will remain in place for any custody staff not physically able to work beyond an 8 hour shift; that sick, vacation and personal days will be increased based on the additional hours worked; that employees will continue to be paid shift differential for working during the time periods specified in the collective agreement; and that disciplinary suspensions will be calculated based upon an 8 hour day according to the County's position for all its employees. At oral argument, Council 10 asserted that those provisions pertaining to 12 hour shifts for dispatchers were negotiated between the County and Council 10, as well as its belief of the County's intent to calculate time for the JDOs based upon an 8.4 hour work day, and change the payroll period to impact overtime.

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. De Gioia, 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).

N.J.S.A. 34:13A-5.3 requires an employer to negotiate over terms and conditions of employment with the majority representative. This section of the Act further states, in relevant part:

Proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

An employer may not unilaterally change an existing, negotiable condition of employment unless the employee representative has waived its right to negotiate. See Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28, 29-30 (¶29016 1998), aff'd 166 N.J. 112 (2000); Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978); Barneгат Tp. Bd. of Ed., P.E.R.C. No. 91-18, 16 NJPER 484 (¶21210 1990), aff'd NJPER Supp.2d 268 (¶221 App. Div. 1992). If the employee representative has expressly agreed to a contractual provision authorizing the change, then there is nothing further to negotiate and the employer is free to make the contractually permitted change. In re Maywood Bd. of Ed., 168 N.J. Super. 45, 60 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd NJPER Supp.2d 170 (¶149 App. Div. 1987).

Work schedules are negotiable terms and conditions of employment except to the extent they significantly interfere with the determination of governmental policy. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Woodstown-Pilesgrove Reg. Bd. Ed. v. Woodstown-Pilesgrove Reg. Ed. Assoc., 81 N.J. 582 (1980); City of East Orange, I.R. No. 2007-5, 32 NJPER 354 (¶148 2006).

Council 10 cites City of Cape May, H.E. No. 2005-8, 31 NJPER 65 (¶31 2005). In that case, a hearing examiner recommended the Commission find that the employer violated 5.4a(1) and 5 of the Act by repudiating the 8 hour shift schedule set forth in the parties' collective bargaining agreement after negotiations for a 12 hour shift schedule ended. However, in that case, the parties' agreement explicitly provided an 8 hour shift schedule for police officers; therefore, the employer was directed to revert to those shifts.

Here, the contract language establishing a work week of "thirty (30) through forty-eight (48) hours", is not as clear. The question of the County's authority to change JDO shifts from 8 to 12 hours is more appropriately resolved by an arbitrator than the Commission. See Borough of Closter and PBA Local 233, I.R. No. 2007-10, 33 NJPER 101 (¶35 2007) (interim relief denied where parties disagreed concerning practice for implementing work schedules); Township of Dover and PBA Local 137, I.R. no. 2006-11, 32 NJPER 9 (¶3 2006) (interim relief denied where parties'

agreement appeared to give employer right to vary work schedule after "discussion" with the union).

I find that the Council 10 has failed to establish a substantial likelihood of success on the merits of its application because of the material dispute over whether the parties' contract authorized the schedule and shift changes. If the parties' agreement authorized the change, the County had no obligation to negotiate before changing the schedule. I am sensitive to the concerns Council 10 has raised about the implementation of this change during negotiations. However, interim relief is not the forum to resolve the meaning of the contract. See e.g., State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

In its request for relief, Council 10 seeks an Order directing the County to negotiate over economic and non-economic consequences which will result from the shift change from 8 to 12 hours, specifically salary (including overtime and shift differential) bereavement, sick or personal days, and discipline. The County takes the position that it intends to treat the JDO's in a manner "similar" to the contractual provisions applicable to dispatchers/PSTs working 12 hour shifts. Council 10 asserts, without contradiction, that those provisions were bargained between the County and Council 10 on the dispatchers' behalf. The JDOs should have the same opportunity. I hereby order the

County to negotiate with Council 10 concerning these impact issues for thirty (30) days following the date of this decision.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

The application for interim relief is denied to the extent it requests that the County be restrained from implementing 12 hour shifts for juvenile detention officers at the County's Youth House. Interim relief is granted to the extent it requests that the County negotiate severable issues of economic and non-economic issues arising from 12 hour shifts for juvenile detention officers. This matter shall be returned to the Director of Unfair Practices for further processing.


Patricia Taylor Todd
Commission Designee

DATED: November 25, 2009
Trenton, New Jersey