

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HARRISON TOWNSHIP,

Respondent,

-and-

Docket No. CO-82-238-128

P.B.A. LOCAL #178,

Charging Party.

SYNOPSIS

The Commission Designee orders Harrison Township to rescind a unilaterally imposed new schedule pending good faith negotiations.

The parties were engaged in negotiations for a successor agreement. At the final negotiations session the negotiations became deadlocked over whether personal day leave pay would be based on an 8-hour day or 10-hour day. The Town maintained it should be based on an 8-hour day, the PBA a 10-hour day since the police were working a 10-hour a day shift. The day after negotiations became deadlocked, the Town unilaterally imposed the new schedule whereby police officers worked an 8-hour day.

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Appearances:

For Harrison Township
(Butler and Butler, Esqs.
(Herbert H. Butler, Sr., Esq.)

For the Charging Party
Ralph Henry Colflesh, Jr., Esq.

INTERLOCUTORY DECISION

On March 15, 1982, the Policemen's Benevolent Association Local #178 (Charging Party or PBA) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that Harrison Township (Respondent or Town) has violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-5.4(a) (1), (2), (3), (5), (6) and (7) ^{1/} in that it unilaterally

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; (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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

and without negotiations altered the shift schedule of its police officers who were represented by the PBA.

The Charging Party subsequently, on June 24, 1982, submitted an Order to Show Cause requesting that the Town be ordered to rescind its new schedule and restore the status quo ante pending good faith negotiations.

The return date on the show cause order was set for July 13, 1982. Both parties submitted briefs and argued orally at the show cause hearing.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are similar to those applied by the courts when confronted with similar applications. The test is twofold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision and the irreparable nature of the harm that will occur if the requested relief is not granted. ^{2/}

These standards must be satisfied before the requested relief will be granted.

The Township of Harrison, a public employer, and the P B A, the majority representative for police officers employed by the Township, were engaged in negotiations for a successor contract to the one which expired on December 31, 1981. A tentative contract had been signed on January 30, 1982. The tentative agreement included a provision for payment for personal and vacation

^{2/} See In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).

leave. The old contract provided that each personal day would be paid at the rate of 1/260th of the member's annual salary. The new tentative agreement provided that each personal day shall be paid at the rate of 1/208th of the member's annual salary. These fractions mathematically correspond to the number of work days in a year in a 40-hour week based upon an 8-hour day versus a 10-hour day. That is, on a 10-hour day, 40-hour schedule a policeman would work 208 days and on a 5-day, 40-hour week schedule one would work 260 days. The tentative agreement was rejected and the parties met to negotiate a new agreement on March 9, 1982. These negotiations were held up over which formula to use to grant reimbursement for personal days. No agreement could be reached in the March 9 negotiations session.

On March 10 the Chief of Police posted a work schedule change. That change provided that the police would go on an 8-hour day, 40-hour week schedule. The expired contract provides, under Article VI, Overtime Provision, "All time worked over the normally scheduled ten (10) hour day or forty (40) hour week will be paid at the rate of one and one-half (1-1/2) the regular hourly rate of 1/208th of the annual salary." ^{3/} Further, for the past 17 months the police officers were on a 10-hour day, 4-day a week schedule. Prior to this 17-month period, the police department was temporarily on an 8-hour day schedule. However this schedule change was made apparently with the consent of the PBA to accommodate a fellow officer who took training at the Police Academy.

^{3/} The contract itself reads 1/280 rather than 1/208. It was stipulated that this is a typographical error however.

It was the Township's contention that this shift change was unrelated to the negotiations and that it was, rather, related to an Attorney General's opinion concerning the use of special police officers and to ensure proper manning levels they went to the 8-hour day schedule.

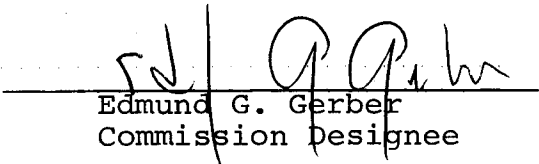
The motivations for the change are not controlling in this instance. The cases are clear that the Township has a right to establish minimum manning levels. The issue of manning is not a required subject of negotiations and the Township was free to establish unilaterally and without negotiations the number of men on duty at any time. However, once having made that determination the Township was required upon demand to negotiate with the PBA regarding the work schedule of employees within the framework of the Township's basic manning decision. See, In re Borough of Roselle and Roselle Borough PBA Local 99 (A.D. Docket #A-3379-79), decided May 7, 1981, affirming 6 NJPER 247 (¶11120 1980); In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977); In re Twp. of Weehawken, P.E.R.C. No. 77-63, 3 NJPER 175 (1977); In re City of Northfield, P.E.R.C. No. 78-82, 4 NJPER 247 (¶4125 1978). I find that the PBA has a substantial likelihood of success before the full Commission on the law and facts of the case in this matter.

Moreover, I find that the PBA has established irreparable harm. The Commission has recognized the irreparable nature of the harm in a unilateral change in the terms and conditions of employment during the course of negotiations. The very act of unilat-

erally modifying a particular term and condition of employment, at least in the absence of a genuine post fact-finding impasse, contradicts, in and of itself, the meaning of collective negotiations inasmuch as ordinarily one cannot unilaterally act and still collectively negotiate about the same subjects. City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977); In re Union County Reg. H.S Bd/Ed, P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977).

It was held in City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) that the same thinking is incorporated into the police and fire arbitration provisions of the Act, specifically N.J.S.A. 34:13A-21. ^{4/} Here the parties are scheduled for interest arbitration in the first week of August.

Accordingly, it is hereby Ordered that the Township of Harrison rescind its rescheduling order of March 9, 1982, and restore the 10-hour, 4-day a week work schedule for its police officers within a reasonable period of time.


Edmund G. Gerber
Commission Designee

Dated: July 15, 1982
Trenton, New Jersey

^{4/} This subsection provides that "During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act."