

I.R.NO. 88-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NORTH BRUNSWICK,

Respondent,

-and-

Docket No. CO-88-291

PBA LOCAL NO. 160,

Charging Party.

SYNOPSIS

In a matter brought by PBA Local 160 against the Township of North Brunswick, a Commission designee denies a request to restrain the Township from implementing a different work schedule for Memorial Day weekend. The designee determined that the PBA did not meet the standards for granting interim relief.

I.R.NO. 88-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NORTH BRUNSWICK,

Respondent,

-and-

Docket No. CO-88-291

PBA LOCAL NO. 160,

Charging Party.

Appearances:

For the Respondent, Savage & Serio, Esqs.
(Thomas Savage, of counsel)

For the Charging Party, Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

INTERLOCUTORY DECISION

On May 13, 1988, PBA Local No. 160 (PBA) filed an Unfair Practice Charge and request for interim relief with the Public Employment Relations Commission (Commission) against the Township of North Brunswick (Township) alleging that the Township violated subsections 5.4(a)(1 and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by changing the work schedules of certain police officers.^{1/} The PBA also alleged that

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

the Township's actions contravened an existing grievance arbitration award and chilled negotiations.

The Charge was accompanied by an Order to Show Cause which was signed and made returnable for May 23, 1988. Both parties submitted documents and argued orally in support of their positions.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

Findings of Fact

1/ Footnote Continued From Previous Page

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."

2/ Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); and Crowe v. DeGioia, 90 N.J. 126 (1982).

On April 7, 1988 the Township posted a work schedule effective for May 1988. No previous work schedule had been posted for May. The schedule shows that two police officers, Conry and Grasso, are scheduled to work on Sunday, May 29, 1988, the date of the Township's Memorial Day parade. The schedule shows that during May, all officers normally work Monday through Friday and are off weekends and holidays. The other officers are off May 28 and 29 (Saturday and Sunday) and Monday, May 30, Memorial Day. Conry and Grasso, however, are off May 27 and 28 (Friday and Saturday), they work Sunday, May 29, and are off Monday, May 30.

The PBA filed a grievance over this schedule but the grievance has not reached the arbitration stage. The Township has not changed the schedule that was posted on April 7.

The parties have completed interest arbitration proceedings and are awaiting an award. One issue before the arbitrator was the establishment of a new work schedule. The Township has also filed a scope of negotiations petition, Docket No. SN-88-71, regarding work schedules. That petition is pending before the Commission.

A grievance arbitration award involving these parties issued on January 13, 1988. That grievance concerned work schedule changes implemented by the Township during July 1987 to cover an Italian-American Heritage Festival. The arbitrator found that the Township violated the parties' collective agreement by requiring certain officers to work at straight time during the Festival which would have been their days off. The arbitrator ordered the Township

to pay the affected employees at the overtime rate for those days, and to cease and desist from making shift changes on seventy-two (72) hours notice. The parties are currently litigating the viability of the arbitration award in Superior Court.

Positions of the Parties

The PBA argued that the work schedule implemented on April 7 pertaining to May 1988 changed the existing practice which would have resulted in officers Conry and Grasso being off on May 29, 1988. The PBA maintains that those officers should be working on Friday, May 27, and be off Saturday, Sunday and Monday, May 28, 29 and 30. The PBA also argued that in accordance with the January grievance arbitration award, Conry and Grasso should at least be paid at the overtime rate for Sunday, May 29, since it alleged that the Township switched their days off to avoid overtime. The PBA concluded that the Township should be restrained from implementing the schedule as posted for the Memorial weekend.

The Township argued that the May schedule was not created or posted until April 7, 1988, and that it has not changed that schedule. It also argued that it needed certain employee coverage on May 29.

Analysis

Work schedules and work hours are generally mandatorily negotiable terms and conditions of employment. Englewood Bd.Ed. v. Englewood Teachers Assn., 64 N.J. 1, 6-7 (1973); Burlington Cty. Coll. Faculty Assn. v. Bd. Trustees, 64 N.J. 10, 14 (1973);

Woodstown-Pilesgrove Reg. School Dist. Bd.Ed v. Woodstown-Pilesgrove Reg. Ed. Assn., 88 N.J. 582 (1980); IFPTE Local No. 195 v. State of New Jersey, 88 N.J. 393 (1982)(Local 195); Tp. of Mt. Laurel v. Mt. Laurel Tp. Police Officers Assn., 215 N.J. Super. 108 (App. Div. 1987)(Mt. Laurel). Our Supreme Court, however, in Local 195 and Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), established a test to determine whether certain matters, even though generally negotiable, are appropriate for negotiations in specific factual settings. The Court held that if negotiations over a particular matter, including work schedules, would significantly interfere with the determination of a governmental policy, the matter was not negotiable. Local 195 at 404-405.

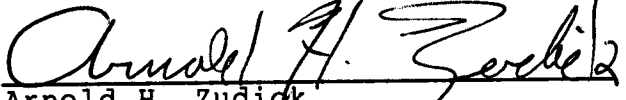
Thus, where negotiations over work schedule changes interfered with management's policy on manning levels and supervision, negotiations were not required. Atlantic Highlands; Irvington Policemen's Benevolent Assoc. Local No. 29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979). But where there was no significant interference with management's ability to set policy, work schedules have been negotiable. Mt. Laurel; Tp. of Hamilton, P.E.R.C. No. 86-106, 12 NJPER 338 (¶17129 1986), aff'd App. Div. Dkt. No. A-4801-85T7 (4/2/87).

In this case the facts and law do not presently support a finding of a substantial likelihood of success or irreparable harm. The facts suggest that the Township scheduled Conry and Grasso to work on May 29 in order to cover the Memorial Day parade. If those

facts prove to be accurate the work schedule change would involve the Township's right to set manning levels for the parade which would not be negotiable.

The remaining issue would be compensation. Should Conry and Grasso receive straight time or overtime for working on May 29? Paying them at straight time while litigating the Charge would not be irreparable. The compensation issue could be remedied at a later time.

Since the interim relief standards have not been met, the request for a restraint is denied.


Arnold H. Zudick
Commission Designee

Dated: May 25, 1988
Trenton, New Jersey