

I.R. NO. 88-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

JERSEY CITY POBA

Docket Nos. CO-I-88-233 and
CO-I-88-234

Charging Party,

-and-

JERSEY CITY POLICE SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee restrains the City of Jersey City from unilaterally altering shifts for a period of seven days. The City altered shifts of certain administrative police officers who were working a 5-day on, 2-day off, 4-day on, 3-day off (5-2, 4-3) schedule. The contract provides that all police officers must work a 5-2, 5-3 schedule. The City ordered all administrative police to be in conformance with the contract language. The Association claims that there is an independent side-bar agreement authorizing 5-2, 4-3 schedules. Accordingly, the restraint was entered into for a one week period to permit the Association to produce the separate agreement.

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Appearances:

For the Respondent
Pachman and Glickman, Esqs.
(Martin R. Pachman, of counsel)

For the Charging Party-POBA
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(David S. Solomon, of counsel)

For the Charging Party-PSOA
Loccke and Correia, Esqs.
(Manuel A. Correia, of counsel)

INTERLOCUTORY DECISION

On March 10, 1988, the Jersey City POBA ("POBA") and the Jersey City Police Superior Officers Association ("Superior Officers") filed unfair practice charges and application for interim relief against the City of Jersey City ("City"). The charges allege that the City 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")^{1/} when on March 9, 1988 the City promulgated General Order #6-88 which they claim will unilaterally alter the work schedules of all police personnel in the administrative offices as well as Superior Officers without prior negotiations.

I conducted a hearing on March 10, 1988 on the applications for interim relief having been delegated such authority by the Public Employment Relations Commission ("Commission"). The City made an appearance at the Show Cause hearing and all parties were given an opportunity to submit affidavits, introduce evidence and argue orally. The Associations applied for a restraint of the City's General Order, pending a final plenary Commission decision or, in the alternative, a temporary restraint if I were to determine that additional evidence was needed.

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 parties must demonstrate that they have a substantial likelihood of success on the legal and factual allegations in a final Commission

^{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 and (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."

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/}

In 1981, a dispute arose between the POBA and the City concerning scheduling. That scheduling dispute was the subject of an interest arbitration award. On June 22, 1981, an arbitrator issued an award creating a five-day on two-day off, five-day on three-day off (5-2, 5-3) work shift for all POBA members. That award was memorialized in subsequent contracts, including the contracts for January 1, 1985 to December 31, 1987. The contract provides that the normal work day and work week "shall be 15 Section schedules". It is undisputed that the term "15 Section schedules" refers to a 5-2, 5-3 shift. It is also undisputed that certain POBA members who work in administrative positions currently work a shift that is five-days on two-days off, four-days on three-days off (5-2, 4-3).

The parties are currently without a contract and interest arbitrations in the two units are scheduled for April 14, 1988 and April 20, 1988 respectively. As part of its package for interest arbitration, the POBA demanded that patrol division officers be

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

granted the same shift schedule as officers in administration that is, a 5-2, 4-3 shift. Shortly after the submission of its arbitration demands, the City promulgated Order #6-88 which requires that all police department personnel adhere to the 5-2, 5-3 schedule.

It is the contention of the Associations that shortly after the arbitrator's award in 1981, which created the 5-2, 5-3 schedule, the then president of the POBA, Ronald Buonocore, met with Deputy Police Chief Russ and Police Director Richard Harrison to discuss the implementation of the new shift schedule. The parties agreed that a 5-2, 5-3 shift schedule would be unacceptable for officers in the police administration since these officers did not work Saturdays and Sundays and agreed to have these officers work a 5-2, 4-3 schedule to insure that they would not work Saturdays or Sundays. By Buonocore's affidavit, Buonocore believes that this work schedule was reduced to writing by the Police Director although he could not find a copy and no copy of this writing was submitted at the hearing.

The Superior Officers were also assigned this type of schedule and, in fact, other schedules exist for various assignments.

It is the position of the Associations that the meeting between Buonocore and the Director and Deputy Chief constituted negotiations and the 5-2, 4-3 shift assignment was a contractual agreement and this agreement, therefore, is paramount to the shift schedule language in the contract. The City claims that its administration was unaware of any such agreement and became aware

that some of its police personnel worked a 5-2, 4-3 shift only when the POBA submitted its interest arbitration demands. When it discovered that officers were not complying with the language of the contract, it immediately ordered complete compliance with the contract.

ANALYSIS

The issue of police work schedules and their negotiability must be determined on a case-by-case basis. When issues such as adequate police coverage and police protection are not in issue, work schedules are negotiable. Tp. of Mt. Laurel, 215 N.J. Super. 108, (App. Div. 1987); Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985).

After the expiration of a collective negotiations contract and during the pendency of proceedings before an interest arbitrator, existing wages and hours of employees may not be changed. See Vineland PBA 266 and City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981), enf. granted 7/15/81, Mot. No. M-3982-80, leave to app. den. 7/15/81, App. Div. Dkt. No. AM-1037-80T3. A unilateral alteration of terms and conditions of employment during this period is subject to restraint.

As the City correctly points out, if contract language provides for a given work schedule but past practice permits a work schedule of fewer hours, the employer is free to increase hours up to the level stated in the contract. Borough of Moonachie, P.E.R.C.

No. 85-15, 10 NJPER 295 (¶15233 (1984)). Here, however, the Associations contend that there is an existing side bar agreement creating the 5-2, 4-3 schedules and, according to their affiants a writing exists memorializing this agreement. Moreover, the City's agent, the Police Director, has the authority to bind the City. See N.J.S.A. 40:14-118 and Gauntt v. Mayor and Council of the City of Bridgeton, 194 N.J. Super. 468 (App. Div. 1984). The City is not in a position to confirm or deny such an agreement. Accordingly, after balancing the equities, I hereby temporarily restrain the City from implementing General Order 36-88 until the end of the business day, March 18, 1988 in order to give the Associations time to submit a writing in support of its claim that a negotiated agreement created the 5-2, 4-3 schedule. It would be far more disruptive to effectuate a shift change during the pendency of the interest arbitration proceeding only to have the Associations subsequently produce a written memorialization of the agreement and then order the City to once again return to the current status quo in one week's time. Given the 5-2, 4-3 shift has existed for seven years, it would not be disruptive to extend this schedule for one more week.



Edmund G. Gerber
Commission Designee

DATED: March 11, 1988
Trenton, New Jersey