

I.R. NO. 88-6

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PAULSBORO,

Respondent,

-and-

Docket No. CO-88-141

PAULSBORO POLICE ASSOCIATION,

Charging Party.

SYNOPSIS

In a matter brought by the Paulsboro Police Association against the Borough of Paulsboro, a Commission designee restrains the Borough from unilaterally changing the work schedules of police employees. The Borough did not demonstrate a sufficient governmental basis for making a unilateral change in hours. In addition, the parties were engaged in interest arbitration and the Commission has held that unilateral changes in terms and conditions of employment during the interest arbitration process creates irreparable harm in that process.

I.R. NO. 88-6

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PAULSBORO,

Respondent,

-and-

Docket No. CO-88-141

PAULSBORO POLICE ASSOCIATION,

Charging Party.

Appearances:

For the Respondent

Angelini, Viniar & Freedman, Esqs.  
(Michael A. Angelini, of Counsel)

For the Charging Party

Leo B. Dubler, Esq.

INTERLOCUTORY DECISION

On December 1, 1987, the Paulsboro Police Association (PPA) filed an Unfair Practice Charge and request for interim relief with the Public Employment Relations Commission (Commission) against the Borough of Paulsboro (Borough) alleging that the Borough violated subsections 5.4(a)(1), (4) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by announcing its intent to unilaterally change the work hours and work

schedules of police officers employed by the Borough.<sup>1/</sup> The PPA also alleged that the Borough's actions would violate section 34:13A-21 of the Act because it would be a change of the working conditions during the pendency of interest arbitration proceedings.<sup>2/</sup>

The Charge was accompanied by an Order to Show Cause which was signed and made returnable for December 10, 1987. Both parties submitted briefs in support of their positions prior to the return date, and argued orally on December 10.

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

---

<sup>1/</sup> 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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (7) Violating any of the rules and regulations established by the commission."

<sup>2/</sup> 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.

relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>3/</sup>

Findings of Fact

The parties had a collective agreement for 1985-86 that expired the end of December 1986. That contract contained an addendum that provided for a 12-hour workday on an experimental basis as of February 5, 1985. The addendum provides:

WHEREAS, N.J.S.A. 40A:14-133 prohibits employment of members of a police department for more than six (6) days in any one (1) week except in cases of emergency:

WHEREAS, both Employer and PPA recognize the need to satisfy this Statute by the Employer experimenting with a twelve (12) hour day and an average 42 hour work week as a temporary measure to accomodate [sic] the need to satisfy State Law as above.

WHEREAS, the Employer and the PPA recognize the scheduling of work as exclusively within management's prerogative [sic], but experimentation with the above schedule requires a temporary adjustment in Articles V, VI, XVII, XVIII, of the Agreement to which this is attached for the balance of said contract terminating on December 31, 1985.

WHEREAS, the Employer and the PPA expressly recognize that these amendments to the contract do not create any vested rights in the PPA, and shall not be construed as a past practice, but shall be limited to the period from the date of this Addendum through December 31, 1985, at which time the Addendum and the right created therein shall expire and be subject to re-negotiation by the Employer and the PPA for the

---

<sup>3/</sup> 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).

contract period commencing January 1, 1986, and thereafter;

NOW, THEREFORE, it is hereby mutually agreed by the Employer and the PPA that the Amendments to the aforesaid Articles attached to this Addendum and incorporated herein are hereby incorporated into the Agreement for the limited purpose of temporarily providing for rights and privileges through December 31, 1985, while the Employer determines the feasibility, economic and otherwise, of the new scheduling approach during the period aforesaid.

Prior to implementing the 12-hour shifts, there were three 8-hour shifts for the police department with one superior and two officers per shift. The 12-hour shifts also had one superior and two officers per shift. At the end of December 1985 the Borough took no action pursuant to the addendum to return to the three 8-hour shifts.

After December 1986 the parties engaged in negotiations for a new collective agreement. The PPA's proposals for 1987-88 included a 12-hour shift. The parties reached impasse in the summer of 1987, and on August 4, 1987 the PPA filed for interest arbitration (Docket No. IA-88-14). The interest arbitration hearing is scheduled for January 27, 1988.

On August 20, 1987 the Borough filed an unfair practice charge (CE-88-3) against the PPA alleging that it violated subsections 5.4(b)(3) and (4) of the Act.<sup>4/</sup> The Borough alleged

---

<sup>4/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in

that it and the PPA had reached an agreement for a new collective agreement but that the PPA had reneged on that agreement. On October 22, 1987 an exploratory conference was held regarding CE-88-3. The parties disagreed upon how to convert the 12-hour workday into vacation and sick days. The Borough understood that if there was an 8-hour workday there would be no need to convert workdays into vacation and sick days.

At a Council meeting on November 4, 1987 the Borough unilaterally decided to return to three 8-hour shifts. On November 5, 1987 it gave the PPA 30 days' notice of the change. By December 5, 1987, however, the Borough was not ready to implement the new schedule, and as of the return date no specific date had been set for the implementation of a new work schedule.

Since the Borough had not devised a new work schedule by the return date, it could not be certain how the 8-hour shifts would be manned, but it expected to place one superior and two officers on each shift. Neither party expected that the work schedule change would affect employee wages, or the number of hours they worked per year. The primary reason offered by the Borough for making the change was to save money by reducing overtime. The Borough

---

4/ Footnote Continued From Previous Page

good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

explained that the 12-hour shifts generated more overtime than would the 8-hour shifts.

#### Positions of the Parties

The Borough argued that, pursuant to the addendum, it had a contractual right to implement the change, and further argued that it had a managerial right to make the change pursuant to Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983)(Atlantic Highlands).

The PPA argued that the schedule change has been threatened in retaliation for its filing the petition for interest arbitration. It further argued that a change in terms and conditions of employment during the pendency of interest arbitration violated the Act. The PPA maintained that pursuant to Twp of Mt. Laurel v. Mt. Laurel Twp. Police Officers Assoc., 215 N.J. Super. 108 (App. Div. 1987)(Mt. Laurel) police work schedules are not managerial prerogatives per se, and that pursuant to the balancing test in IFPTE Local No. 195 v. State of N.J., 88 N.J. 393 (1982)(Local 195), it was not a managerial prerogative in this case. The PPA also disputed the contractual defense.

#### 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-Pilesgrave Reg. Ed. Assn., 88 N.J. 582 (1980); Local 195; 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; Township 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 negotiations over the work schedule changes would not have significantly interfered with the Borough's ability to set policy. There was no major policy issue raised in this case. The Borough did not argue that the announced change was needed to enhance supervision or to better meet manning levels. In fact, the manning levels of the new schedule may be the same as the old schedule. The primary reason for the change according to the



Borough was to save money, and that is not a sufficient basis to justify a unilateral change in a term and condition of employment. See Piscataway Twp. Bd. of Ed. v. Piscataway Twp. Principals Assoc., 164 N.J. Super. 98 (App. Div. 1978); Morris County and Morris County Park Commission v. Morris Council No. 6, NJCSA, App. Div. Dkt No. A-795-82T2 (1/12/84); New Jersey Sports & Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987).

The decision here then must be focused on whether a work schedule change during the pending interest arbitration process would violate the Act. In City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981), appeal for enforcement granted mot. No. M-3982-80 (7/15/81); and Middlesex County Sheriff, I.R. No. 87-19, 13 NJPER 251 (¶18101 1987), the Commission held that a unilateral alteration of a term and condition of employment during interest arbitration unlawfully interfered with the interest arbitration process. There is a substantial likelihood of success that the result here would be the same particularly since the contract defense is without merit. The language in the addendum is not clear or convincing enough to constitute a waiver. Red Bank Reg. Ed. Assn. v. Red Bank Reg. Bd.Ed., 78 N.J. 122, 140 (1978); Deptford Bd.Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80T8 (5/24/82).

In balancing the relative harm to the parties, no significant harm will come to the Borough or its citizens by keeping the work schedule at 12-hour shifts at least until the interest

arbitration process is completed. Whereas, a change during the interest arbitration process would irreparably affect both that process, and the employees' work time and personal lives.

Accordingly, but for emergency conditions, the Borough is hereby restrained, pending a resolution of the underlying dispute, from implementing the announced work schedule change without first negotiating over such an alteration with the PPA.

  
Arnold H. Zudick  
Commission Designee

Dated: December 16, 1987  
Trenton, New Jersey