

P.E.R.C. NO. 83-104

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ATLANTIC HIGHLANDS,

Petitioner,

-and-

Docket No. SN-82-100

ATLANTIC HIGHLANDS PBA LOCAL 242,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a Motion for Reconsideration of a decision its Chairman issued. P.E.R.C. No. 83-75, 9 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1982). The Chairman found, in part, a work schedule proposal mandatorily negotiable.

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Appearances:

For the Petitioner, John A. Meagher, Esq.

For the Respondent, Schneider, Cohen, Solomon &  
DiMarzio, Esqs. (David Solomon, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On April 8, 1982, the Borough of Atlantic Highlands ("Borough") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Borough contends that the following proposals which Atlantic Highlands PBA Local 242 ("Local 242") seeks to submit to interest arbitration are not mandatorily negotiable:

Article X: Hours

A. The work schedule for the employees covered by this agreement shall consist of a (5) five day on, (2) two day off, (5) day on, (2) two day off, (5) five day on, (3) three day off, revolving schedule, with the rotation of days off.

B. Each tour of duty, shall be no more than (8) eight hours of work, inclusive of all break times.

C. The employee shall work the same shift, for each of the (5) five days he is on duty, during his work week.

D. There shall be a minimum of (2) two employees available for patrol duties, at all times.

H. A master schedule shall be posted, showing the employees schedule, for a (1) one year period. Said schedule shall be strictly adhered to, unless the employee agrees to any shift change.

I. It is understood that there shall be a minimum of (16) sixteen hours off, for each employee, between his tours of duty.

Both parties filed briefs, and the Borough filed a reply brief.

On December 2, 1982, the Chairman, acting pursuant to authority the full Commission had delegated to him and applying well-established case law, held that all paragraphs of Article X except paragraph D were mandatorily negotiable. He cautioned, however, that in particular instances, a public employer's right to make necessary assignments could override a negotiated clause on shifts or hours of employment. P.E.R.C. No. 83-75, 9 NJPER \_\_\_\_ (¶ \_\_\_\_ 1982).

On December 20, 1982, the Borough, having received an extension of time, filed a Motion for Reconsideration and Stay of the Chairman's decision. It also submitted an accompanying letter memorandum in which it reiterated that it had a statutory prerogative pursuant to N.J.S.A. 40A:14-118(c) and an inherent prerogative pursuant to Town of Irvington v. Irvington PBA Local #29, 179 N.J. Super. 532 (App. Div. 1979) ("Irvington"), pet. for certif. den. 82 N.J. 296 (1980), to mandate a work schedule without negotiations.


Pursuant to N.J.A.C. 19:13-3.11 and 19:14-8.4, a motion for reconsideration of a Commission decision will not be granted

unless extraordinary circumstances exist. In the instant case, such extraordinary circumstances are lacking. The Chairman's decision accurately sets forth and applies the law on work schedules. The Borough's objections to negotiating over the employees' work schedule are essentially economic in nature and, failing a voluntary resolution during the course of negotiations, should properly be submitted to the interest arbitrator for his consideration.<sup>1/</sup> They do not afford a basis for reconsideration here.<sup>2/</sup>

ORDER

The Motion for Reconsideration filed by the Borough of Atlantic Highlands is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hipp, Newbaker, Suskin, Butch, Hartnett and Graves voted for this decision. None opposed.

DATED: Trenton, New Jersey  
February 16, 1983

- 1/ Inasmuch as the disputed issue is an economic issue for interest arbitration, see N.J.S.A. 34:13A-16(f)(2), the arbitrator must consider the issue as part of Local 242's economic package and proceed to make a reasonable determination giving due weight to the factors enumerated in the statute. N.J.S.A. 34:13A-16(g).
- 2/ We also note that the Borough has filed a Notice of Appeal with the Appellate Division of the Superior Court. Under R. 2:9-1, it appears to us that the filing of a notice of appeal divests a lower court or agency of jurisdiction to reverse or vacate a previous order. See, Sturdivant v. General Brass & Machine Corp., 115 N.J. Super. 224, 227 (App. Div. 1971), certif. den. 59 N.J. 363 (1971); Kohn's Bakery, Inc. v. Terracciano, 147 N.J. Super. 582 (App. Div. 1977).