

P.E.R.C. NO. 81-124

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-80-129

I.A.F.F., LOCAL 1860,  
AFL-CIO,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the City of Newark, the Commission determines that two provisions of a collectively negotiated agreement between the City and Local 1860, IAFF, are mandatorily negotiable. The provisions in question relate to work schedules and hours of work for firefighters.

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Appearances:

For the Petitioner, John J. Tearce, Esq. (Rosalind L. Bressler, Esq., Assistant Corporation Counsel, of Counsel)

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

DECISION AND ORDER

On April 29, 1980, the City of Newark (the "City") filed a Petition for Scope of Negotiations Determination seeking a determination as to whether a certain matter in dispute between the City and IAFF, Local 1860, AFL-CIO (the "IAFF") was within the scope of negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). On June 2, 1980, the City amended its petition to add a second matter which was in dispute between the parties. The City sought to have the Commission determine the negotiability of the clauses contained in a contract between the parties which the City refused to negotiate in a successor agreement.

The City filed a brief on this matter in September of 1980 but the case was not processed further by apparent consent of the parties. The IAFF has declined to file a brief.

On January 14, 1981, the IAFF advised the Commission of its position as to one of the disputed clauses which remained unresolved and the Chairman issued a decision on February 24, 1981, P.E.R.C. No. 81-96 covering that issue. On February 27, 1981, the City advised the Chairman that there remained a dispute concerning Article 17, the Hours of Work clause:

17.01 Hours of Work

The work week for all who perform fire-fighting duties shall be an average of not more than forty-two (42) hours computed over periods of duty in an eight (8) week cycle based on the schedule of two (2) days of ten (10) hours each, followed by forty-eight (48) hours off, followed by two (2) nights of fourteen (14) hours each, followed by seventy-two (72) hours off, followed by two (2) days of ten (10) hours each and so on.

17.02

In accordance with the needs of the Department, the work week of the employees in the Alarm and Radio Division, Bureau of Combustibles, Special Services, Arson Squad, and Training Academy shall be assigned by the Director on the same basis as heretofore, but no more than forty-two (42) hours per week. Nothing in this section shall limit the Director in regulating or changing the specific hours of work.

The City argues that while the Commission consistently held work schedules and hours of work to be mandatorily negotiable, prior to the Appellate Division's decision in In re Town of Irvington, P.E.R.C. No. 78-84, 4 NJPER 251 (¶4127 1978), P.E.R.C. revd, 170 N.J. Super 539 (App. Div. 1979) they request the Commission to reexamine these decisions in light of Irvington. In Irvington the Court held that the change of shift assignments was not mandatorily negotiable. The specific number of hours of work or work schedules was not an issue in Irvington.

The City argues that negotiations on hours of work and work schedules should also be precluded because they would be determinative or injurious to the public welfare.

We disagree that our prior decision on work hours and schedules are inconsistent with Irvington. The negotiability of work schedules and work hours have been examined since Irvington by the Commission and by the courts. The Appellate Division examined the issue in State of New Jersey and Local 195, IFPTE, AFL-CIO, 6 NJPER 32 (¶11017 1980), affmd in part, revd in part, 176 N.J. Super. 85 (App. Div. 1980), pet. for certif. pending Supreme Court Docket No. 17,828. In that decision, the court affirmed the Commission's determination that within the framework of the employer's manpower determinations, the employer was obliged to negotiate over the work schedule provision in dispute concerning workweek. The Court found that the disputed provision was directed to negotiations concerning which employees will work at any particular time and noted that it did not interfere with any management decisions concerning manning.<sup>1/</sup> In upholding the

<sup>1/</sup> The City concedes that the work schedule provision does not interfere with the current manning needs of the City but notes that in the future the work schedules may interfere with manning requirements. The Commission has noted in all its work hours and work schedules cases that these matters are negotiable within the minimum manning requirements of the employer. Thus, our previous decisions have taken into account the ability of an employer to determine manning requirements to protect against a negotiated work schedule dictating the level of manning. See In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Newark Firemen's Union, P.E.R.C. No. 76-40, 2 NJPER 139 (1976); In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977); In re Township of Weehawken, P.E.R.C. No. 77-63 3 NJPER 175 (1977); In re City of Northfield, P.E.R.C. No. 78-81, 4 NJPER 247 (¶4125 1978); In re Town of West Orange,

(Continued)

Commission's decision, the Court noted at p. 93 that we had held that within the framework of an employer's right to determine the number of employees to be on duty at a given time, the employer must negotiate over such matters as to which employees may be off duty, at which time, the amount of consecutive time off, the method of selecting the employees to be off and the employees' hours and schedules. The court pointed out at page 94 that the decision was "not contrary to the result we reach[ed]" in Irvington. While acknowledging this was not a police matter, the court noted that the proposal "implicates no encroachment on managerial prerogatives such as that in Irvington." (at 95)

The Commission has also recently held work schedule proposals to be mandatorily negotiable in a police context. In re Borough of Montvale, P.E.R.C. No. 81-55, 6 NJPER 542 (¶11275 1980). This was decided after the court handed down the Irvington decision and specifically addressed the public employer's managerial rights and need to protect the community. We found a work schedule proposal -- days on and days off -- to be mandatorily negotiable again acknowledging that an employer's manpower determinations may effectively determine work schedules for employees.<sup>2/</sup> Accordingly, we find the instant provisions mandatorily negotiable.


1/ (Continued) P.E.R.C. No. 78-93, 4 NJPER 266 (¶4135 1978); In re Township of Clark, P.E.R.C. No. 79-50, 5 NJPER 90 (¶10049 1979); In re Township of Mount Holly, P.E.R.C. No. 79-51, 5 NJPER 91 (¶10050 1979); In re City of Perth Amboy, P.E.R.C. No. 79-86, 5 NJPER 205 (¶10117 1979); In re Borough of Edgewater, P.E.R.C. No. 80-15, 5 NJPER 368 (¶10188 1979); In re City of Cape May, P.E.R.C. No. 80-35, 5 NJPER 403 (¶10210 1979); In re Borough of Edgewater, P.E.R.C. No. 80-62, 6 NJPER 197 (¶11096 1980).

2/ Since there were only two superior officers and the variations of work schedules and days off had to meet Montvale's supervisor needs, possibilities for negotiations on work schedules were quite limited.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the City of Newark negotiate in good faith with I.A.F.F., Local 1860, AFL-CIO, the Hours of Work clause.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Hipp, Newbaker, Parcels and Suskin voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
April 16, 1981  
ISSUED: April 20, 1981