

P.E.R.C. NO. 80-137

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROSELLE,

Petitioner,

-and-

Docket No. SN-80-114

ROSELLE BOROUGH P.B.A. LOCAL #99,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, denies the Borough's request for a permanent restraint of arbitration. The Chairman concluded, consistent with prior Commission decisions, that the work schedule provision at issue is mandatorily negotiable and arbitrable if otherwise arbitrable under the parties' contract.

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Appearances:

For the Petitioner, Weinberg, Manoff & Dietz, Esqs.  
(Mr. Richard J. Kaplow, of Counsel)

For the Respondent, Nichols & Blackman, Esqs.  
(Mr. Robert Bradley Blackman, of Counsel)

DECISION AND ORDER

On March 12, 1980 a Petition for Scope of Negotiations Determination was filed by the Borough of Roselle (the "Borough") with the Public Employment Relations Commission seeking a determination as to whether a matter in dispute between the Borough and the Roselle Borough P.B.A. Local #99 (the "PBA") is within the scope of collective negotiations.

The Borough indicated in its scope petition and brief that the instant dispute arose with respect to a particular matter that the PBA sought to process pursuant to a negotiated grievance procedure in which the PBA filed a request for the institution of arbitration proceedings. The parties filed briefs, all of which were received by April 15, 1980.

The relevant grievance relates to the posting of a change in the work schedule of police officers assigned to Patrol Division Post Four, allegedly in violation of the collective negotiations agreement between the parties. The disputed schedule change involves the imposition of a work week consisting of five working days followed by two days off ("5-2 work week") as opposed to the previously existing work week of four working days followed by two days off ("4-2 work week"). The Borough maintains that the change from a 4-2 work week to a 5-2 work week relates to a managerial prerogative, is necessary to increase the number of police officers on duty when the need is greatest, and represents the fulfillment of the Borough's statutory obligation to insure and maintain the public safety. The Borough concludes that the instant dispute cannot proceed to arbitration. The PBA asserts that the work schedule change relates to a required subject for collective negotiations and that a dispute concerning such an issue may proceed to arbitration.<sup>1/</sup>

The specific contractual provisions in dispute are as follows:

Each unit member shall work the following schedule: Four consecutive eight (8) hour days followed by two (2) consecutive days off, except those employees, who because of the nature of their assignment are required to work five (5) consecutive eight (8) hour days...." Art. IV, Sec. A

\* \* \*

<sup>1/</sup> The PBA contends that the Borough's manpower needs can be satisfied while preserving the 4-2 work week.

The Borough agrees that it will not establish new work rules or regulations or modify or amend existing work rules or regulations, governing wages, hours or working conditions without prior negotiations with the Association.

Art. XIX, Sec. A

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission and/or the judiciary.

In numerous prior decisions, the Commission has determined that minimum manning provisions, i.e., proposals relating to the number of employees on a shift or in a department, or, more generally, the level of service to be provided by a governmental agency, are not required subjects for negotiation but are permissive subjects of collective negotiations.<sup>2/</sup>

Within the broad context of the minimum manning issue, the Commission has considered a group of related issues -- work schedules, time off, etc. In these decisions, the Commission has held that an employer has the right to unilaterally determine the number of employees that must be on duty at any given time. However, within the framework of these manning levels, an employer

<sup>2/</sup> See e.g. 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 City of Newark, 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 Township of Saddle Brook, P.E.R.C. No. 78-72, 4 NJPER 192 (¶4097 1978); In re Town of Northfield, P.E.R.C. No. 78-82, 4 NJPER 247 (¶4125 1978); In re Township of Maplewood (PBA), P.E.R.C. No. 78-92, 4 NJPER 265 (¶4135 1978); In re Township of Maplewood (FMBA), P.E.R.C. No. 78-89, 4 NJPER 258 (¶4132 1978); and In re Cinnaminson Township P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978).

must negotiate over such matters as which employees may be off, what hours during the day employees work and the schedules employees are required to work.<sup>3/</sup> In light of the above, the employee work schedule provision set forth in Article IV, Section A is mandatorily negotiable.<sup>4/</sup>

Moreover, in view of the New Jersey Supreme Court's recognition of the continuing existence of permissive subjects relating to police and firefighters negotiations <sup>5/</sup> and the Commission's

3/ In re City of Garfield, P.E.R.C. No. 79-16, 4 NJPER 457 (¶4207 1978); In re City of Orange, P.E.R.C. No. 79-10, 4 NJPER 420 (¶4188 1978); In re Township of Cinnaminson, P.E.R.C. No. 79-5, supra; In re Township of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (¶4136 1978) and In re Township of Maplewood, supra.

The Appellate Division in In re Town of Irvington, P.E.R.C. No. 78-84, 4 NJPER 251 (¶4127 1978), 170 N.J. Super. 532 (App. Div. 1979), pet. for certif. den. \_\_\_ N.J. \_\_\_ (2/19/80), a case cited by the Borough, reversed the Commission's determination that the decision that all officers in the Patrol Division work on full rotating around the clock shifts, e.g. two weeks on the morning shift, two weeks on the midnight shift, and two weeks on the afternoon shift, etc., in contrast to a system wherein one third of the employees in the Division worked the midnight shift on a steady basis, was a mandatory subject for collective negotiations. [See also In re City of Garfield, P.E.R.C. No. 79-16, 4 NJPER 457 (¶4207 1978), App. Div. Docket No. A-4450-78, PERC rev'd, App. Div. Docket No. A-4459-78 (12/12/78)]. The Irvington and Garfield decisions are distinguishable from the instant matter inasmuch as they relate to the issue of the rotation of shifts while the instant matter concerning the 4/2 work week issue directly relates to the number of hours that a police officer would work in one day and the number of days that an officer would work in one week.

4/ Burlington County College Faculty Assn. v. Bd. of Trustees, Burlington County College, 64 N.J. 10 (1973).

5/ The Supreme Court in Ridgefield Park Bd of Ed v. Ridgefield Park Ed Assn, 78 N.J. 144 (1978) and in Woodstown-Pilesgrove Bd of Ed v. Woodstown-Pilesgrove Ed Assn, 81 N.J. 582 (1980), noted that Chapter 85, Public Laws of 1977 (N.J.S.A. 34:13A-14 to 21) covering police and fire fighters expressly provided for a permissive category of negotiations. See N.J.S.A. 34:13A-16(b) and 34:13A-16(f) (4).

position concerning the enforceability of permissive subjects included in a contract,<sup>6/</sup> the undersigned concludes that a grievance concerning the work schedule provision at issue would be arbitrable if otherwise arbitrable under the parties agreement,<sup>7/</sup> even if it could be established that the existing 4-2 work schedule would negate, contravene or otherwise necessitate modifications in a specified manning level determination of a public employer. Thus, the result is the same whether or not the disputed provision is held to be mandatorily or permissively negotiable.

<sup>6/</sup> In re Bridgewater-Raritan Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976), the Commission held that if the parties agreed to include a permissive subject of negotiations in a collective negotiations agreement, the matter would be arbitrable, if otherwise arbitrable under the parties' contract. Since the Supreme Court in Ridgefield Park and Woodstown-Pilesgrove recognized that Chapter 85 authorized a permissive category of negotiation for police and fire fighters, the Bridgewater-Raritan analysis continues to be utilized by the Commission in police and firefighter matters.

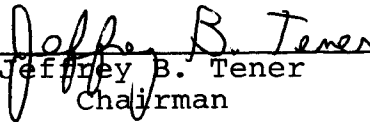
<sup>7/</sup> The New Jersey Supreme Court in Ridgefield Park, supra, discussed the proper procedure in resolving scope of negotiations cases and cited approvingly the Commission's description of its role in such cases:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

ORDER

Based on the above discussion, it is hereby determined that the work schedule provision at issue is not an illegal subject for collective negotiations and that the grievance relating thereto is arbitrable if otherwise arbitrable under the parties' agreement. The Borough's request for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
April 25, 1980