

P.E.R.C. NO. 98-125

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EGG HARBOR CITY,

Petitioner,

-and-

Docket No. SN-97-110

MAINLAND PBA LOCAL #77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Egg Harbor City for a restraint of binding arbitration of a grievance filed by Mainland PBA Local #77. The grievance asserts that the City violated the parties' collective negotiations agreement when it changed its scheduling of police officers from steady shifts to rotating shifts. The Commission finds that if the employer did agree to maintain steady shifts, abiding by an agreement during the life of the contract would not substantially limit the City's governmental policymaking powers.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Robert J. Pinizzotto, attorney

For the Respondent, Schaffer, Plotkin & Waldman,
consultants (Myron Plotkin, on the brief)

DECISION

On May 8, 1997, the City of Egg Harbor City petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by Mainland PBA Local #77. The grievance asserts that the City violated the parties' collective negotiations agreement when it changed its scheduling of police officers from steady shifts to rotating shifts.

The parties filed documents and briefs. These facts appear.

The PBA represents the City's full-time police personnel with the exception of the director of public safety and the police clerk. The parties entered into a collective negotiations

agreement effective from January 1, 1996 through December 31, 1998. The grievance procedure ends in binding arbitration of contractual disputes.

Article II, Section A provides, in part, that the PBA "has the right to negotiate as to ... hours of work." Article VI is entitled "Management Rights." Subsection A provides, in part:

It is the right of the City to: ...direct its employees; ...maintain the efficiency of its operations; determine the methods, means and personnel by which its operations are to be conducted; schedule the hours of work, take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. The practical impact of the decisions of the above matters are subject to the grievance procedure as set forth in Article III. Nothing in this Article shall alter or relieve the City of any of its obligations undertaken by this Agreement.

Article XVIII is entitled "Continuation of Benefits Not Covered by this Agreement." It provides, in part, that "any present or past benefits which are enjoyed by the employees covered by this Agreement that have not been included in this contract shall be continued." Article XIX, Section B provides, in part, that the "City will make a good faith attempt to continue the current practice/policy regarding the number of officers assigned and working each shift."

The police department consists of thirteen officers, including four sergeants, and is headed by a director of public safety. There is no police chief.

For at least the last ten years, police officers have worked steady shifts. As an exception to that practice, officers could be assigned to other shifts to allow training, maintain minimum staffing levels, or call upon an officer's special qualifications.

The current police director was hired in January 1996. He reviewed department operations and decided to change the work schedule of police officers from steady work shifts to rotating shifts. His reasons were:

1. to have the ability to change shifts to add or decrease manpower in case there is a crime spree between 6 and 10 p.m.;
2. to have additional officers on weekend shifts during the summer months when traffic is heavy;
3. to fill shifts during in-service training days;
4. to be able to fill a power shift, should one become necessary;
5. to fill in for absent officers without having to pay overtime;
6. to expose officers to all facets of police work;
7. to expose personnel to one another;
8. to allow sergeants to work with less experienced personnel;
9. to maximize the cost effectiveness of manpower; and
10. to give all officers the opportunity to earn a shift differential pay for working the midnight shift.

On March 1, 1997, the director implemented rotating shifts. The number of hours worked in a shift, the number of days off between shifts, and the cycles of the shifts did not change.

On March 1, 1997, the PBA filed a grievance contesting the change from steady to rotating shifts. The grievance alleged that this change violated various contract provisions including Articles II, VI, XVIII and XIX; altered a past practice; and implicated shift differential compensation opportunities. The grievance was denied and the PBA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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.

Thus, we cannot consider the contractual merits of the grievance or any contractual defenses the City may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

When a negotiability dispute involving police officers or firefighters arises over a grievance, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers. No preemption argument has been raised.

In Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997), we comprehensively addressed the negotiability of police work schedules. Consistent with Supreme Court cases and the

Legislature's decrees, the Commission and the Appellate Division have generally held that work schedules of police officers are mandatorily negotiable. Id. at 113. However, the Commission and the Appellate Division have also found exceptions to the rule of negotiability when the facts prove a particularized need to preserve or change a work schedule to effectuate a governmental policy. Ibid. We must therefore examine the facts of each case in making a negotiability determination in the context of a work schedule dispute. Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); see also Borough of Closter, P.E.R.C. No 85-86, 11 NJPER 132 (¶16059 1985) (weighing or balancing approach requiring case by case analysis).

The question in Maplewood was whether a proposed contract provision on work schedules, if adopted, would so significantly interfere with governmental policy that it had to be taken off the negotiations table as a matter of law. This case arises in the grievance arbitration context. The question is whether an alleged contractual agreement on work schedules, if made, would so substantially limit governmental policy that it cannot be allowed to be enforced through grievance arbitration. Such a finding requires a specific showing that a governmental policy need requires the employer to act now, in the middle of a contract despite an alleged agreement, rather than at the end of the contract and through the normal collective negotiations process.

Citing Irvington PBA Local No. 29 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) and Atlantic Highlands v. Atlantic Highland PBA Local #242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984), the City argues that the fixing of an overall work schedule for its police force is not negotiable as it would impermissibly interfere with its governmental policy determinations. The PBA also cites Irvington and Atlantic Highlands, and adds that under Mt. Laurel, there is no per se managerial prerogative for police scheduling issues. As we have already discussed, there is no such per se prerogative and we must instead examine the particular facts and arguments of this case.

Under the circumstances of this case, we hold that if the employer did agree to maintain steady shifts, abiding by such an agreement during the life of this contract would not substantially limit the City's governmental policymaking powers. The parties' contract expires in December. The City has not pointed to any emergent reasons for changing to rotating shifts now, but has instead articulated a mix of economic, efficiency, supervision, and shift coverage reasons for making the change. None of those reasons requires that an alleged agreement to maintain steady shifts until December be abrogated. We note, in particular, that the number of officers on a shift and the filling of shifts do not appear to depend on whether rotating or steady shifts are used; the

possibility of a power shift appears to be hypothetical; comparative labor costs do not make a work schedule question non-negotiable; and the opportunity to earn shift differential pay is a mandatorily negotiable. We also note that the steady shifts in effect before March 1997 permitted the employer to make changes to facilitate training, maintain staffing levels, and assigning an officer with special qualifications to do special tasks. If a grievance arbitrator finds that steady shifts must be maintained until December, the City may then seek an agreement to change to rotating shifts through the regular collective negotiations process. If the parties cannot reach such an agreement, the City may invoke interest arbitration.

In Maplewood Tp., we also comprehensively addressed the negotiability of work schedules in the context of the interest arbitration process. We noted that:

When the Legislature required negotiations over terms and conditions of employment, it recognized that both management and employees would have legitimate concerns and competing arguments and it decided that the negotiations process was the best forum for addressing those concerns and arguments and the best way to improve morale and efficiency. See N.J.S.A. 34:13A-2; Woodstown-Pilesgrove at 591. When the Legislature approved interest arbitration as a means of resolving negotiations impasses over the wages, hours, and employment conditions of police officers and firefighters, it recognized that both management and employees would have legitimate concerns and competing evidence and it decided that the interest arbitration process was the best forum for presenting, considering, and reviewing those concerns and evidentiary presentations and the best way to ensure the high morale of these employees and the efficient

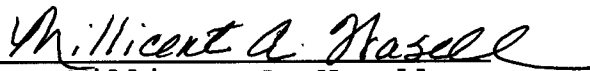
operation of their departments. N.J.S.A. 34:13A-14 et seq. Indeed, the Legislature expressly instructed interest arbitrators to consider the public interest and welfare in determining wages, hours, and employment conditions and contemplated that such considerations would be based on a record developed by the parties in an interest arbitration proceeding. N.J.S.A. 34:13A-16g(1). See also Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994). The question, then, is not which party should prevail in negotiations or interest arbitration or whether a particular proposal raises some legitimate concerns, but whether the facts demonstrate that a particular work schedule issue so involves and impedes governmental policy that it must not be addressed through the negotiations process at all despite the normal legislative desideratum that work hours be negotiated in order to improve morale and efficiency.

Thus, if the grievance arbitrator should require the City to reinstate steady shifts and continue such shifts until the end of the year, the City will be able to address all of its concerns during negotiations. If necessary, it may present those concerns to an interest arbitrator who must evaluate them in light of the public interest. Should the employer have an immediate and particularized governmental policy need to change an individual's work schedule, it may do so despite an alleged contractual prohibition.

ORDER

The request of the City of Egg Harbor City for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: March 26, 1998
Trenton, New Jersey
ISSUED: March 27, 1998