

P.E.R.C. NO. 94-69

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-94-11

FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL 349,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds mandatorily negotiable a successor contract proposal submitted by the Firemen's Mutual Benevolent Association, Local 349 which seeks to preserve the existing tours of duty for emergency medical technicians. The employer has not sufficiently demonstrated a governmental policy need to control the work schedule unilaterally.

P.E.R.C. NO. 94-69

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-94-11

FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL 349,

Respondent.

Appearances:

For the Petitioner, Ronald J. Casella, attorney

For the Respondent, William P. McDonnell, Inc.  
(Michael J. Romano, labor consultant)

DECISION AND ORDER

On August 3, 1993, the City of Vineland petitioned for a scope of negotiations determination. The City seeks a declaration that a successor contract proposal submitted by the Firemen's Mutual Benevolent Association, Local 349 is not mandatorily negotiable. That proposal seeks to preserve the existing tours of duty for emergency medical technicians ("EMTs").

The parties have filed briefs and their predecessor contract. These facts appear.

Local 349 represents the City's EMTs. The parties entered into a collective negotiations agreement effective from January 1, 1991 through December 31, 1992. Article Three is entitled Tour of Duty and Management Rights. Section 1 states:

For the purposes of the articles of this contract a tour of duty shall consist of a 12-hour tour of duty beginning at 8:00 a.m. and ending at 8:00 p.m. or beginning at 8:00 p.m. and ending at 8:00 a.m.

Section 2 recognizes management's right, subject to the contractual terms, to take certain actions, including "schedule the hours."

Before the 1991-1992 contract was negotiated, EMTs had tours of duty lasting 24 hours, followed by 48 hours off duty. During those negotiations, however, the City changed the work schedule to 12 hour tours of duty. The 1991-1992 contract memorialized that work schedule. EMTs have a 28 day work cycle which, over a six week period, averages out to 56 work hours a week. They may also work up to six additional overtime hours a week.

The parties are engaged in negotiations over the contract to succeed the 1991-1992 contract. Local 349 has proposed retaining the 12 hour tour of duty called for by Article Three. The employer wants to have eight hour tours of duty and a 40 hour work week. It asserts that a 12 hour tour of duty, plus overtime hours, may fatigue EMTs and thus endanger the citizens they are helping.

Public employers have a prerogative to determine the hours and days during which a service will be operated and to determine the staffing levels at any given time. But within those determinations, work schedules of individual employees are, as a general rule, mandatorily negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982). That general rule applies in cases involving the work schedules of police officers and firefighters. In re Mt.

Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd App. Div. Dkt. No. A-918-89T1 (9/25/90); Borough of Maywood, P.E.R.C. No. 83-107, 9 NJPER 144 (¶14068 1983), aff'd App. Div. Dkt. No. A-3071-82T2 (12/15/83); City of Newark, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981), aff'd App. Div. Dkt. No. A-4143-80T3 (3/25/83); Borough of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Dkt. No. A-3329-79 (5/7/81); see also Borough of Sayreville, P.E.R.C. No. 91-35, 16 NJPER 542 (¶21244 1990) (employer could not create "power shift" unilaterally). But a particular work schedule proposal is not mandatorily negotiable if it would significantly interfere with a governmental policy determination. See, e.g., Irvington PBA Local #29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) (employer proved need to correct discipline problem on midnight shift, increase continuity of supervision, and improve training); Borough of Atlantic Highlands and Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984) (proposed work schedule would have eliminated relief officer system and caused coverage gaps); see also Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985), recon. den., P.E.R.C. No. 85-112, 11 NJPER 310 (¶16111 1985) (conforming shifts of supervisors and subordinates). Each case must be decided on its own facts. Mt. Laurel; Roselle.

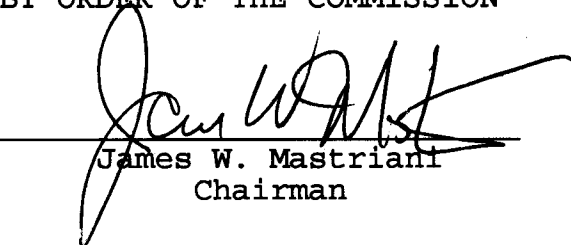
In Mt. Laurel, we held and an Appellate Division panel

agreed that a proposal to memorialize the existing work schedule was mandatorily negotiable since the employer had not demonstrated a need to control the work schedule unilaterally. While this employer, unlike the employer in Mt. Laurel, wishes to change the existing work schedule, it too has not sufficiently demonstrated a governmental policy need to control the work schedule unilaterally. No evidence has been adduced to show that the 12 hour tour of duty has caused problems or injuries. We will not assume, in the abstract, that a 12 hour tour of duty is so fatiguing that the EMTs should have no right to negotiate over the difference between an 8 hour and 12 hour tour of duty.

ORDER

Article Three, Section 1 is mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: December 14, 1993  
Trenton, New Jersey  
ISSUED: December 15, 1993