

P.E.R.C. NO. 86-72

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MT. LAUREL

Petitioner,

-and-

Docket No. SN-86-3

MT. LAUREL TOWNSHIP  
POLICE OFFICERS ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds a proposal to retain the existing work schedule and hours of work made by the Mt. Laurel Township Police Officers Association to the Township of Mt. Laurel during contract negotiations to be mandatorily negotiable.

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Appearances:

For the Petitioner, Capehart & Scatchard, Esqs.  
(Alan R. Schmoll, of Counsel; Joseph F. Betley,  
On the Brief)

For the Respondent, Ralph H. Colflesh Jr., Esq.

DECISION AND ORDER

On July 11, 1985, the Township of Mt. Laurel ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a determination whether existing contract language and a proposal concerning work hours and work schedules made by the Mount Laurel Township Police Officers' Association ("Association") during successor contract negotiations are mandatorily negotiable.

The parties have filed briefs and exhibits. The following facts appear.

The Association is the majority representative of the Township's non-supervisory police officers. The Township and the Association are engaged in interest arbitration proceedings to resolve an impasse in successor contract negotiations.

The second paragraph of Article X of the agreement, entitled "Hours of Work," specifies a "days on/days-off" work schedule for patrol officers of 5-2, 5-2, 5-1. A block of five consecutive days off occurs three times a year for each patrol officer. The Association proposed new language be added to Article X which would set forth a normal 40-hour workweek and 8-hour workday and establish the starting and ending times of each shift.<sup>1/</sup> The Township asserts that this portion of the existing agreement and the Association's proposed additions are not mandatorily negotiable.

In Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) ("Paterson"), our Supreme Court outlined the steps of a scope of negotiations analysis for police and firefighters.<sup>2/</sup>

The Court stated:

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

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<sup>1/</sup> The three shifts are 12:00 a.m. to 8:00 a.m., 8:00 a.m. to 4:00 p.m. and 4:00 p.m. to 12:00 a.m.

<sup>2/</sup> The scope of negotiations for police and fire employees is broader than for other public employees because P.L. 1977, c. 85 provides for a permissive as well as a mandatory category of negotiations. Compare, IFPTE, Local 195 v. State, 88 N.J. 393 (1982).

welfare of police and firefighters, 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 firefighters, 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.

(Id at 92-93, citations omitted)

The Township, relying entirely on Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984) and Irvington Policemen's Benv. Assn. 29 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979) certif. den. 82 N.J. 296 (1980), contends that these provisions are not mandatorily negotiable. However, in Borough of Closter and PBA Local 233, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985), we reviewed the negotiability of work hours and schedules for public safety employees and rejected such an expansive reading of Atlantic Highlands as inconsistent with numerous Supreme Court and Appellate Division decisions requiring a balancing approach in each case. We stated, in part:

The fatal defect to the claim that work schedules are per se managerial prerogatives is that it focuses solely upon the interest of the public employer. But the Supreme Court has eschewed such a narrow approach. Woodstown-Pilesgrove recognized that:

Logically pursued, these general principals -- managerial prerogatives and

terms and conditions of employment -- lead to inevitable conflict. Almost every decision of the public employer concerning its employees impacts upon or affects terms and conditions of employment to some extent. While most decisions made by a public employer involve some managerial function, ending the inquiry at that point would all but eliminate the legislated authority of the union representative to negotiate with respect to "terms and conditions of employment." N.J.S.A. 34:13A-5.3. Conversely to permit negotiations and bargaining whenever a term and condition is implicated would emasculate managerial prerogatives. [Id. at 589].

Accordingly, the court cautioned against isolating and focusing solely upon one aspect of the test. Rather, it stressed that "[t]he nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives. A weighing or balancing must be made." Id. at 591.

Accordingly, we reject the assertion that the entire field of "work schedules" falls within the managerial prerogative sphere. Such a per se holding would be contrary to the "weighing or balancing" approach. Therefore, we will continue to make our work schedule scope of negotiations determinations based upon the balancing tests enunciated in Paterson, Woodstown-Pilesgrove and Local 195. In view of this balancing test, we cannot delineate with absolute precision what proposals will be mandatorily or permissibly negotiable. We merely point out that items which have traditionally been held to be appropriate subjects of negotiations will continue to be so. For instance, matters concerning hours and days of work would, in general, be mandatorily negotiable. [11 NJPER at 134-135].

We now apply these principles to Article X and the proposed amendments. Three separate negotiability issues arise from this

dispute: (1) The actual amount of hours a patrol officer will work during a given work day and work week (8 hour day and 40 hour week proposal); (2) The work schedule or work cycle for patrol officers (5-2, 5-2, 5-1); and (3) The maintenance of three eight hour tours and their starting and ending times.

The Township relies on Irvington and Atlantic Highlands in seeking the removal or preclusion of these provisions from the agreement. It does not assert that it has made or plans to make changes in these subjects. The Association states in its brief that the Township has not sought to alter these items. It notes that its proposed additions would simply memorialize what has been the practice in the Township since 1981.

A standard 8 hour work day and 40 hour work week are mandatorily negotiable. See, e.g., In re IFPTE Local 195 v. State, 88 N.J. 393, 411-412 (1982); Burlington Cty. Col. Fac. Assoc. v. Bd. of Trustees, 64 N.J. 10 (1973); Borough of Moonachie, P.E.R.C. No. 85-15, 10 NJPER 509 (¶15233 1984); City of Orange Township, P.E.R.C. No. 85-120 11 NJPER 373 (¶16134 1985); and N.J.S.A. 40A:14-132. We also recently held, citing Borough of Roselle and Roselle Borough PBA, Local No. 99, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd. App. Div. Docket No. A-3329-79, that a proposal to memorialize the existing work schedule in a contract was mandatorily negotiable. Township of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224, 227 (¶16087 1985). Thus, the proposed 5-2, 5-2 ,5-1 language is mandatorily negotiable.

We also hold that the language establishing three shifts and listing their starting and ending times is mandatorily negotiable. In Cape May County, P.E.R.C. No. 83-98, 9 NJPER 97 (Para. 14053 1983), we held that a unilateral change in work hours of maintenance workers from a 6:00 a.m. to 2:00 p.m. shift to a 3:00 p.m. to 11:00 p.m. shift was a mandatory subject of negotiations. In pertinent part, we said:

In the instant case, we believe that the employees' interest in preserving their existing hours of employment is the dominant issue. As the Supreme Court said in Englewood, working hours was surely one of the items most evidently in the legislature's mind when it extended the New Jersey Employer-Employee Relations Act to public employees. See also, Galloway (Alteration of reporting and departing times of two secretaries and reduction of working day from seven hours to four violates the Act). The change in work hours here essentially turns daytime employees into nighttime employees. Balanced against this dramatic change is the County's interest in increasing the amount of time the maintenance crew spends cleaning offices outside normal working hours from 2 1/2 hours to 5 1/2 hours per day. While we recognize that this increase may facilitate the cleaning of County buildings, we do not believe that to permit negotiation or arbitration concerning the hours of work of the affected employees would constitute a significant interference with the determination of governmental policy. [Id. at 98].


In Closter, where we restrained arbitration of a grievance challenging a change in shift starting and ending times, we did so based upon a showing by the employer that the change was made to conform patrol officers' shifts to supervisors' shifts in order to promote effective supervision and to enable the force to function

effectively as a unit. 11 NJPER 132, 135. The Association's proposal, which would only memorialize existing practices, is mandatorily negotiable since no matter of significant managerial preogatives has been placed on the scale to counterbalance the direct and intimate effect work schedules have on employees.<sup>3/</sup> Compare also, City of Newark, P.E.R.C. NO. 86-\_\_, 11 NJPER \_\_ (¶ \_\_\_\_ 1985) (decided today).

ORDER

Article X (Second Paragraph) and the Association's proposed additions are mandatorily negotiable. Any unresolved dispute with respect to these matters may be submitted to interest arbitration. .

BY ORDER OF THE COMMISSION

  
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 James W. Mastriani  
 Chairman

Chairman Mastriani, Commissioners Graves, Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
 November 18, 1985  
 ISSUED: November 19, 1985

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<sup>3/</sup> Should a future need to alter work schedules or shift hours arise and should the Association seek to submit such a change to binding arbitration, the Township can file another scope of negotiations petition and we can decide the dispute in a specific factual context.