

P.E.R.C. NO. 85-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN COUNTY BOARD OF CHOSEN
FREEHOLDERS,

Petitioner,

-and-

Docket No. SN-84-128

WARREN COUNCIL NO. 17,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that Warren Council No. 17 filed against Warren County Board of Chosen Freeholders. The grievance alleges that the County violated its agreement with Council No. 17 when it changed the shift assignment of an institutional attendant. The Commission finds that the County has the managerial prerogative to assign employees to particular tasks and therefore grants the County's request for a permanent restraint of arbitration.

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Appearances:

For the Petitioner, Harper & Hansbury, P.C.
(John J. Harper, of Counsel)

For the Respondent, Fox & Fox, Esqs.
(Fredric M. Knapp, of Counsel)

DECISION AND ORDER

On June 14, 1984, the Warren County Board of Chosen Freeholders ("County") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The County seeks a restraint of binding arbitration of a grievance that Warren Council No. 17 ("Council 17") has filed against it. The grievance alleges that the County's decision to change the assignment of Russell Bruch from the 3 p.m. to 11 p.m. shift to the 7 a.m. to 3 p.m. shift violated certain provisions of the parties' collective negotiations agreement.

The parties have filed briefs, an affidavit and documents. The following facts appear.

The County operates Warren Acres, a Juvenile Detention Center located in Oxford. Employees at the Center staff three non-rotating shifts: 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and

11 p.m. to 7 a.m. The County and Council 17 are parties to a collectively negotiated agreement covering all County employees in the classified civil service in permanent and provisional titles, with certain exceptions not applicable here. Article XI (Hours of Work) of the contract provides:

It is understood and agreed by the parties hereto that the normal hours of work in existence at the time of this Agreement for all departments unless changed by mutual consent shall remain in full force and effect for the duration of this Agreement. Either party reserves the right to request a change in normal working hours, but no change shall be made unless mutually agreed to.

In addition, Article XIII, in pertinent part, provides for a shift differential for employees who start work after noon.

In early September, 1983, the Director of Warren Acres assigned Russell Bruch, a senior institutional attendant, to work the 7 a.m. to 3 p.m. shift. Previously, Bruch had worked the 3 p.m. to 11 p.m. shift. A result of the new assignment was that Bruch no longer received a shift differential. He also apparently now works two out of every three weekends instead of one out of three, as prior to the change. In its brief and an affidavit filed by the County Clerk, the County asserts that the change was made to "resolve security problems, to correct improper work habits and to increase the overall efficiency of the Warren Acres facility."

Bruch filed a grievance ^{1/} on September 7, 1983 claiming the assignment violated Articles VI, XI and XII of the agreement.

1/ In addition, other employees have filed grievances raising the same claim. They have been held in abeyance pending this decision.

It was processed through the steps of the grievance procedure to the demand for arbitration. The grievant is seeking restoration of his prior working hours and overtime pay for work performed at times other than his "normal working hours."

In IFPTE Local 195 v. State, 88 N.J. 393, 403-404 (1982), our Supreme Court summarized the tests for determining when a subject is mandatorily negotiable between public employers and employees:

...a subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.
Id. at 404-405.

See also Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980).

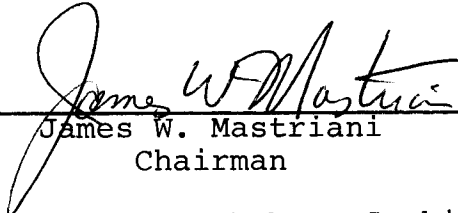
Our application of this test convinces us that this grievance may not be submitted to binding arbitration. Although the shift change had a discernible effect on Bruch's personal and financial welfare, we find that on balance, the dominant concern of the grievance relates to the County's ability to deploy its personnel in order to promote employee efficiency and increase

security at its juvenile detention center. Accordingly, it is apparent that the instant dispute primarily concerns the public employer's right to assign employees to particular tasks.^{2/} Given this, the public employer has the managerial prerogative to make such assignments. Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601, 602 (¶13283 1982). See also Irvington Policemen's Benev. Ass'n 29 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980).

ORDER

The County's request for a permanent restraint of arbitration of the grievance filed by Council 17 on behalf of Russell Bruch is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Newbaker, Suskin and Wenzler voted in favor of this decision. Commissioners Graves and Hipp were opposed.

DATED: Trenton, New Jersey
January 22, 1985
ISSUED: January 23, 1985

^{2/} There is no allegation that the hours of work will increase as a result of this assignment or that the employer has unilaterally changed the starting and stopping times of the established shifts.