

P.E.R.C. NO. 93-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-92-103

POLICE EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Police Employees Association against the City of Newark. The grievance contests the decision to conform one employee's work hours to those of other unit employees working on established shifts. Assessing the facts of this case, the Commission holds that the employer had a non-negotiable right to change the employee's work hours to conform to the established shifts for other unit employees. The Commission further finds that the employee's overtime compensation claim is not severable from his non-negotiable challenge to his new regular work hours.

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Appearances:

For the Petitioner, Michelle Hollar-Gregory, Corporation
Counsel (James E. Walker, Assistant Corporation Counsel)

For the Respondent, Fox and Fox, attorneys
(Craig S. Gumpel, of counsel)

DECISION AND ORDER

On May 13, 1992, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by an employee represented by the Police Employees Association. That grievance contests a decision to conform one employee's work hours to those of other unit employees working on established shifts.

The parties have filed affidavits, exhibits, and briefs. These facts appear.

The Association represents police department employees holding the title of chief communications officer, communications officer, communications clerk, lineman and supervising police

property clerk. The parties entered into a collective negotiations agreement effective from January 1, 1988 through December 31, 1990. Article 6 is entitled Hours of Work and Overtime. Section 1(b) states:

The hours for communications officers and communications clerks who are assigned to rotating shifts shall be various tours of duty worked out in schedule form made up for no less than three (3) months in advance, but complying with the general concept of four (4) days or nights on duty and two (2) days or nights off duty. The present practice for lunch period shall continue. In emergency situations and when necessitated by manpower needs, the schedule for any individual communications officers and communications clerks can be changed with a twenty-four (24) hour change of tour notice.

The grievance procedure ends in binding arbitration.

The communications unit has these shifts: 6:30 a.m. to 2:30 p.m., 2:30 p.m. to 10:30 p.m., and 10:30 p.m. to 6:30 a.m. However, one communications officer, Charles Dino, worked for many years from 6:00 p.m. to 2:00 a.m. Dino is also the Association president.

On October 11, 1991, the commanding officer of the communications unit directed that Dino's work hours be changed to coincide with the 2:30 p.m. to 10:30 p.m. shift.^{1/} The commanding officer asserts that Dino's previous work hours had caused a lack of productivity and accountability. In particular, there was no sustained supervision since Dino's previous hours were split between

^{1/} Dino asserts that the same change was made in 1988, but rescinded after his grievance was settled.

two shifts. Further, when Dino left work, he was not relieved by an employee who could timely complete his work.

On October 20, 1991, Dino grieved the change in his work hours. He sought overtime pay for the hours worked outside his previous shift.

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 do not consider the contractual merits of the grievance or any defenses the employer may have.

The Association claims that the employer waived its right to seek a restraint of arbitration because it had settled a similar grievance four years ago. Such a settlement is not res judicata. Nor does it bar our consideration of a negotiability dispute arising under the present circumstances. The inclusion of a clause in previous contracts does not prevent a negotiability challenge when that clause is sought to be included in a successor contract.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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]

Work hours, including work schedules, are mandatorily negotiable as a general rule. See Local 195; 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); Bor. 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); Bor. 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). But a particular work schedule proposal will be held not mandatorily negotiable if it would significantly interfere with a governmental policy determination. See 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

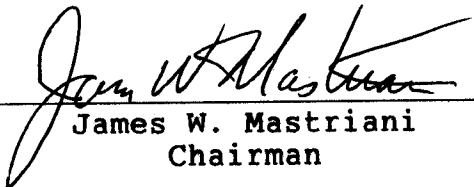
supervision, and improve training); Bor. of Atlantic Highlands and Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984) (proposed work schedule would have eliminated relief officer system and caused coverage gaps). Each case must be decided on its own facts. Mt. Laurel; Roselle.

Assessing the facts of this case, we hold that the employer had a non-negotiable right to change Dino's work hours to conform to the established shifts for other unit employees. Changes to provide and improve supervision have been held non-negotiable. Irvington; Jackson Tp., P.E.R.C. No. 93-4, 18 NJPER 395 (¶23178 1992); Bor. of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). While Dino had previously been supervised by different supervisors on different shifts, the City has a prerogative to ensure that Dino, like the other unit employees, is accountable to one chain of command on one shift. We further hold that Dino's overtime compensation claim is not severable from his non-negotiable challenge to his new regular work hours. See City of Newark, P.E.R.C. No. 88-137, 14 NJPER 442 (¶19181 1988) (holding non-negotiable claim for overtime compensation for police officers required to work steady shifts in order to increase coverage during high crime periods).

ORDER

The request of the City of Newark for a restraint of binding arbitration is granted.

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: October 22, 1992
Trenton, New Jersey
ISSUED: October 23, 1992